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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Judge of the South Carolina Business Court

Appellate Case No. 2021-000767

C. Barry Dykes and Barbara Eisenhardt, Individually and Derivatively On Behalf Of The Wild Wing Plantation Property Owners' Association, Inc., ... Appellants,

v.

Wild Wing Company, LLC; Sunstar, LLC; Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development Holdings, LLC; Wild Wing Residential Development, LLC; Stratford Land Manager, L.P. d/b/a Stratford Land; Stratford Land Fund IV, L.P.; SB Investments LLC; Realstar Management, LLC; Graeme T. Black; H. Gilford Edwards; Founders Wild Wing, LLC; Founders Group International, LLC; Dan Liu; Xian "Nick" Dou; Rick Schultz; Rick Taylor And Thomas Plankers Respondents,

Wild Wing Plantation Owners' Association, Inc., ... Nominal Defendant.

RECORD ON APPEAL
Volume 1 of 4

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LP**

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
C. Barry Dykes and Barbara Eisenhardt,)
Individually and Derivatively On Behalf Of)
The Wild Wing Plantation Property)
Owners' Association, Inc.,)
Plaintiffs,)
vs.)
Wild Wing Company, LLC; Sunstar, LLC;)
Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing,)
LLC; SLF IV/SBI JV, LLC; SLF IV/SBI)
Properties MM, LLC; SLF IV/SBI)
Development Holdings, LLC; Wild Wing)
Residential Development, LLC; Stratford)
Land Manager, L.P. d/b/a Stratford Land;)
Stratford Land Fund IV, L.P.;)
SB Investments LLC; Realstar Management,)
LLC; Graeme T. Black; H. Gilford)
Edwards; Founders Wild Wing, LLC;)
Founders Group International, LLC; Dan)
Liu; Xian "Nick" Dou; Rick Schultz; Rick)
Taylor and Thomas Plankers,)
Defendants.)
Wild Wing Plantation Owners' Association,)
Inc.,)
Normal Defendant.)

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT

C/A NUMBER: 2017-CP-26-04187

**ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF DEFENDANTS
STRATFORD LAND MANAGER, LP and
STRATFORD LAND FUND IV, LP**

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Defendants Stratford Land Manager, LP d/b/a Stratford Land and Stratford Land Fund IV, LP (the "Stratford Defendants") filed their Motion for Summary Judgment as to call causes of action alleged against them by Plaintiff pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on December 22, 2020. The matter was heard before me, with all pending

motions filed by all parties in this matter on May 4, 2021. This Order is entered as to the Stratford Defendants. Other Orders have been filed as to the remaining Defendants. This Order addresses the Stratford Defendants only. The summation of claims set forth in the other orders presented to the Court granting Summary Judgment in favor of Defendants, as well as the standard to be applied based on the Stratford Defendants Motion, is incorporated herein.

PROCEDURAL SUMMARY

On June 30, 2017 the Plaintiffs brought this action individually and allegedly in a derivative capacity on behalf of the Wild Wing Plantation Property Owners' Association, Inc. (hereinafter "POA") claiming causes of action for Breach of Fiduciary Duty, Unjust Enrichment, and Veil Piercing/Alter Ego/Amalgamation. Plaintiffs filed an Answer to the Counterclaim on November 16, 2017. On June 10, 2019 the Plaintiffs filed an Amended Complaint which added nine new Defendants, made allegations that Amendments to the Declaration were improper, and asserted an additional cause of action under the South Carolina Unfair Trade Practices Act.

Plaintiffs later filed a revised Amended Complaint on March 19, 2020. An Answer and Counterclaim to the Amended Complaint was filed on behalf of Declarant entities and their members on April 16, 2020. Plaintiffs filed an Answer to the Counterclaim on May 19, 2020. On October 29, 2020, Declarant Defendants filed numerous Motions for Summary Judgment on the following grounds:

- The Business Judgment Rule;
- The Statute of Limitations;
- The Validity of the Amendments to the Declaration;
- Inadequate Derivative Capacity of the Plaintiffs;
- Lack of Standing of the POA; and
- South Carolina Unfair Trade Practices Act.

On October 30, 2020, Plaintiffs also filed several Motions for Summary Judgment. On May 4, 2021, this Court heard all Motions for Summary Judgment. All filed materials, briefs,

memoranda, and supporting documents were incorporated as part of the Summary Judgment Motions record with all matters therein preserved for review. During the Summary Judgment Motions hearing, Plaintiffs announced on the record that they were dismissing their causes of action for Unjust Enrichment, Veil Piercing, and Alter Ego. These causes of action are therefore not addressed further. Plaintiffs proceeded on their claims for Breach of Fiduciary Duty and the South Carolina Unfair Trade Practices Act.

At the conclusion of the hearing, this Court denied all of Plaintiffs' Motions and granted all Defendants' Motions for Summary Judgment. In accordance with the foregoing and for the following reasons, Plaintiffs' claims fail as this Court finds no issue of material fact and that Declarant Defendants are entitled to judgment as a matter of law.

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear that the moving party is entitled to a judgment as a matter of law. S.C.R. Civ. P. 56(c). Although the court must view the facts and inferences therefrom in the light most favorable to the non-moving party, the non-movant may not rest on mere allegations or denials of his pleading. Instead, the non-movant must set forth or point to specific facts showing that there is a genuine issue of material fact. *Hancock v. Mid-South Management Co.*, 381 S.C. 326, 330-331, 381 S.E.2d 801, 803 (2009).

FINDING OF FACTS

In the light most favorable to the non-movant, The Court finds the record in this case to show as follows:

In the Amended Shareholder Derivative Complaint filed March 19, 2020, the Plaintiffs allege that Stratford Land Fund IV, LP was a member of a JV formed November 29, 2010. The

Plaintiffs also allege that the JV, of which Stratford Land Fund IV, LP was a member, owned, controlled and directed the operations of the Wild Wing Association. However, it is undisputed that on or about December 22, 2010, the initial Declarant/Developer One assigned all its rights to another entity, SFL IV/SBI Wild Wing, LLC, which Plaintiff refers to as Developer Two. Neither of the moving Defendants were involved in this matter in any capacity after December 22, 2010. No evidence exists to suggest otherwise. All allegations and causes of action brought by Plaintiff are based on actions/omissions after January 1, 2011 against Defendants other than the Stratford Land Manager, LP and Stratford Land Fund IV, LP.

In his deposition taken December 5, 2018, when asked who Plaintiff Dykes believed Stratford Land Manager was, he replied “I believe they were involved with the second developer.” P. 65, ln. 4-7, 12/5/18 deposition of Dykes. Dykes further testified that his intent in naming entity Defendants was to sue “anyone who was involved in the decision-making” for Wild Wing Plantation. P. 68, ln16-17, 12/5/18 deposition of Dykes. Dykes was later asked what role Stratford Land Fund IV played in appointing the board members of the property owners association. He answered “I don’t know specifically.” P. 79, ln 6, 12/5/18 deposition of Dykes.

CONCLUSION

Based on my review of the pleadings filed by the parties, the briefs/memorandums and evidence in the record in support of all Defendant’s Motions filed in this matter and heard this date, Defendants Stratford Land Manager, LP d/b/a Stratford Land and Stratford Land Fund IV, LP Motion for Summary Judgment is hereby GRANTED and Plaintiff’s case against the Stratford Defendants is hereby dismissed with prejudice.

(JUDGE’S SIGNATURE PAGE TO FOLLOW)

IT IS SO ORDERED.

The Honorable R. Markley Dennis, Jr.
Judge of the South Carolina Business Court

:



Horry Common Pleas

Case Caption: C Barry Dykes , plaintiff, et al VS Wild Wing Company LLC ,
defendant, et al
Case Number: 2017CP2604187
Type: Order/Summary Judgment

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt,
Individually and Derivatively On Behalf of
The Wild Wing Plantation Property Owners'
Association, Inc.,

Plaintiffs,

vs.

Wild Wing Company, LLC; Sunstar, LLC;
Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing,
LLC; SLF IV/SBI JV, LLC; SLF IV/SBI
Properties MM, LLC; SLF IV/SBI
Development Holdings, LLC; Wild Wing
Residential Development, LLC; Stratford
Land Manager, L.P. d/b/a Stratford Land;
Stratford Land Fund IV, L.P.; SB Investments
LLC; Realstar Management, LLC; Graeme T.
Black; H. Gilford Edwards; Founders Wild
Wing, LLC; Founders Group International,
LLC; Dan Liu; Xian "Nick" Dou; Rick
Schultz; Rick Taylor and Thomas Plankers,

Defendants.

Wild Wing Plantation Owners' Association,
Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-26-04187

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**ORDER GRANTING SUMMARY
JUDGMENT FOR DEFENDANTS
WILD WING COMPANY, LLC;
SUNSTAR, LLC; SLF IV/SBI WILD
WING, LLC; SLF IV/SBI JV, LLC;
SLF IV/SBI PROPERTIES MM, LLC;
SLF IV/SBI DEVELOPMENT
HOLDINGS, LLC; WILD WING
RESIDENTIAL DEVELOPMENT, LLC;
SB INVESTMENTS, LLC; REALSTAR
MANAGEMENT, LLC; FOUNDERS
WILD WING, LLC; FOUNDERS GROUP
INTERNATIONAL, LLC; and DAN LIU**

This Order is entered as to certain Defendants consisting of Declarants and related persons and entities; these Defendants being: Wild Wing Company, LLC; Sunstar, LLC; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development Holdings, LLC; Wild Wing Residential Development, LLC; SB Investments, LLC; Realstar Management, LLC; Founders Wild Wing, LLC; Founders Group International, LLC; and Dan Liu (hereinafter "Declarant Defendants"). Other Orders have been filed as to the remaining Defendants Ralph R. Teal, Jr.; Graeme T. Black; H. Gilford Edwards; Rick Schultz; Rick Taylor; Thomas

Plankers; Stratford Land Manager, LP; and Stratford Land Fund IV, LP (hereinafter the “Remaining Defendants”). Those Orders as to the Remaining Defendants are incorporated herein by reference. This Order addresses Declarant Defendants only.

PROCEDURAL HISTORY

On June 30, 2017, the Plaintiffs brought this action individually and allegedly in a derivative capacity on behalf of the Wild Wing Plantation Property Owners’ Association, Inc. (hereinafter “POA”), a nonprofit corporation, claiming that Declarants had not paid the correct amount of assessments to the POA. Plaintiffs initially brought causes of action for Breach of Fiduciary Duty, Unjust Enrichment, and Veil Piercing/Alter Ego/Amalgamation. An Answer and Counterclaim on behalf of Declarant Defendants was filed on October 3, 2017. Plaintiffs filed an Answer to the Counterclaim on November 16, 2017.

On June 10, 2019, the Plaintiffs filed an Amended Complaint which added nine new Defendants, made allegations that Amendments to the Declaration were improper, and asserted an additional cause of action under the South Carolina Unfair Trade Practices Act. Plaintiffs later filed a revised Amended Complaint on March 19, 2020. An Answer and Counterclaim to the Amended Complaint was filed on behalf of Declarant entities and their members on April 16, 2020. Plaintiffs filed an Answer to the Counterclaim on May 19, 2020.

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- The Business Judgment Rule;
- The Statute of Limitations;
- The Validity of the Amendments to the Declaration;
- Inadequate Derivative Capacity of the Plaintiffs;
- Lack of Standing of the POA; and
- South Carolina Unfair Trade Practices Act.

On October 30, 2020, Plaintiffs also filed several Motions for Summary Judgment. On May 4, 2021, this Court heard all Motions for Summary Judgment. All filed materials, briefs, memoranda, and supporting documents were incorporated as part of the Summary Judgment Motions record with all matters therein preserved for review. During the Summary Judgment Motions hearing, Plaintiffs announced on the record that they were dismissing their causes of action for Unjust Enrichment, Veil Piercing, and Alter Ego. These causes of action are therefore not addressed further. Plaintiff proceeded on their claims for Breach of Fiduciary Duty and the South Carolina Unfair Trade Practices Act.

At the conclusion of the hearing, this Court denied all of Plaintiffs' Motions and granted all Defendants' Motions for Summary Judgment. In accordance with the foregoing and for the following reasons, Plaintiffs' claims fail as this Court finds no issue of material fact and that Declarant Defendants are entitled to judgment as a matter of law.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue of material fact and it is clear that the moving party is entitled to a judgment as a matter of law. Rule 56, SCRPC. Although the court must view the facts and inferences therefrom in the light most favorable to the non-moving party, the non-movant may not rest on the mere allegations or denials of its pleading. Instead, the non-movant must set forth or point to specific facts showing that there is a genuine issue of material fact. *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009); *Hancock v. Mid-South Management Co.*, 381 S.C. 326, 330-331, 381 S.E.2d 801, 803 (2009); *Dickert v. Metro. Life Ins. Co.*, 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct. App. 1991); *McNair v. Rainsford*, 330 S.C. 332, 341, 499 S.E.2d. 488, 493 (Ct. App. 1998). "When ruling on a motion for summary judgment, the trial judge must consider all of the documents and evidence within the records, including the

pleadings, depositions, answers to interrogatories, admissions on file, and affidavits.” *Higgins v Med. Univ.*, 326 S.C. 592, 599, 486 S.E.2d 269, 272 (Ct. App. 1997).

FINDINGS OF FACT

Plaintiffs brought this action alleging that Declarant Defendants have underpaid the POA. Plaintiffs’ claims have two bases:

- (1) Plaintiffs contest the POA’s math as to how the Declarant annual contribution to the POA, if any, is calculated (hereinafter the “Math”); and
- (2) Plaintiffs contest two Amendments adopted by the POA extending the time frame within which Declarant payment options exist (hereinafter the “Amendments”).

Plaintiffs’ case relies entirely upon blending the actions of the POA as actions of the Declarants. There exists no evidence or law to support this theory. The actions complained of by the Plaintiffs were actions of the POA. There exists no rule of law that an appointing Declarant is somehow vicariously liable for the actions of its appointee.

Wild Wing Plantation is a residential golf community situated within the City of Conway, South Carolina. Wild Wing Company, LLC was the initial Developer and therefore served as the initial Declarant. There have since been three successor Declarants. The Declarant succession is as follows:

Declarant	Dates
Wild Wing Company, LLC	09/26/06 – 12/22/10
SLF IV/SBI Wild Wing, LLC	12/22/10 – 11/09/11
Wild Wing Residential Development, LLC	11/09/11 – 04/13/15
Founders Wild Wing, LLC	04/13/15 – Present

Declarants' rights were transferred by written Assignments. There were no assumptions of Declarant contingent liabilities.

In 2006, the POA was established as a Not-for-Profit Corporation to maintain and administer the Wild Wing community in accordance with the Declaration. The Declaration provides that the affairs of the POA shall be governed by a Board of Directors which was appointed by the Declarant. Once these directors are appointed to the POA Board, they assume a duty to the POA of a nonprofit entity as Board Members.

Duties of the Board of Directors in administering the POA include levying assessments against Lot Owners to defray the Common Expenses and to establish the means and methods of collecting such assessments. To assist in carrying out its duties, the Board of Directors hired a property manager, an auditing accountant, and formed a Finance Committee of Members all as permitted by the Declaration. Two of the Members of the Finance Committee were Plaintiffs Dykes and Eisenhardt.

The Declarants were also obligated to contribute monies to the POA. The Declaration provided the Declarant the option to pay assessments for each lot the Declarant owed or to pay the shortfall of "the actual amount of actual operating expenditures incurred" by the POA less "an amount equal to the total assessments made". This formula is common in many community governing documents. The Declarant Contribution has been calculated the same way since the inception of the POA.

In 2012, a Finance Committee made up of Lot Owners was established. Plaintiff Eisenhardt was one of the initial members. The Finance Committee was charged with reviewing all matters that may have a financial impact on the community and making recommendations to the Board of

Directors. This specifically included review and presentation of the Declarant Contribution Calculation. Plaintiff Dykes purchased his lot in Wild Wing Plantation in 2013 and was appointed to the Finance Committee in mid-2014. Immediately following his appointment, Plaintiff Dykes met with the POA property manager and obtained copies of all POA financial information. On April 28, 2015, Plaintiff Dykes met with members of Waccamaw Management and the POA accountant, Jim Corbett, to review the draft of the 2014 Annual Audit. During this meeting, Plaintiff Dykes raised concerns about the Declarant Contribution Calculation. Plaintiff Dykes took issue with the CPA's calculation, specifically with the fact that bad debt was excluded from the "actual amount of actual operating expenditures incurred". Following deliberation and discussion, the Finance Committee commissioned Mr. Corbett to further review, investigate, and advise as to this decision. Mr. Corbett testified that he reviewed the Declaration and Generally Accepted Accounting Principles along with the other CPAs in his office. He also met with Jane Atkinson, the Chief Financial Officer of Waccamaw Management. Ms. Atkinson had never seen bad debt included as an "actual operating expenditure incurred" in her many years of Association accounting. Mr. Corbett took his conclusions back to the Finance Committee explaining that the Declarant cannot be held responsible for the unpaid assessments of members of the POA. Despite Plaintiff Dykes' objection, the Finance Committee and the Board of Directors relied on its accountant, and later the property manager, and continued to calculate Declarant dues as it had since 2007.

In 2011 and 2016, the Declaration was amended to extend the period of time for the payment option. The Amendments were passed by vote of the POA pursuant to and in strict accordance with the procedures required by the Declaration. On November 9, 2011, the Board of Directors of the POA sent out official Notice to all Members of the POA, including Plaintiff

Eisenhardt, giving notice that a Special Meeting of the Members had been called for November 21, 2011 to amend the Declaration. The Notice attached the proposed Amendment to the Declaration for each Member's review. Pursuant to the Notice, a special meeting was held and there was a vote of the membership. Plaintiff Eisenhardt was in personal attendance at the special meeting, and voted in favor of the Amendment. In fact, the membership voted unanimously in favor of the Amendment.

Plaintiff Dykes purchased his property in Wild Wing Plantation in 2013, after the 2011 Amendment had been filed of public record. Mr. Dykes' deed and title insurance policy, which he received in his closing documents, specifically provided that the property was subject to the Declaration and all amendments thereto.

In 2016, both Plaintiff Dykes and Plaintiff Eisenhardt received Notice of the Special Meeting to vote on the proposed Amendment. The Notice included the proposed Amendment and a letter explaining the proposed Amendment. On November 4, 2016, both Plaintiff Dykes and Plaintiff Eisenhardt voted against the Amendment. However, once again, the Amendment passed with the required two-thirds majority vote of the membership, including a majority of the Lot Owner Members voting in favor of the Amendment.

Contrary to Plaintiffs' claims that the POA has been underfunded, the POA has never operated at a deficit since its inception. In addition:

- Lot owner dues have stayed consistent from 2006 to date;
- No special assessments have ever been levied from 2006 to date;
- No POA bills have ever gone unpaid; and
- The Reserve Fund of the POA is fully funded.

This Court finds that Plaintiffs' claims against the Declarant Defendants as to the Math fail because of the protection of the Business Judgment Rule, S.C. Code Ann. § 33-31-830 and the Statute of Limitations. Additionally, this Court finds that Plaintiffs claims against the Declarant

Defendants as to the Amendments fail due to the validity of the Amendments under South Carolina law and the Statute of Limitations. For these and other reasons as further set forth below, Summary Judgment is **GRANTED** for the Declarant Defendants and Plaintiffs' case is **DISMISSED WITH PREJUDICE**.

I. PLAINTIFF'S CLAIMS ARE BARRED BY THE BUSINESS JUDGMENT RULE.

In South Carolina, the actions of the directors of a nonprofit POA are governed by the Business Judgment Rule. "The burden of proving good faith is not on the governing board; the burden of proving a lack of good faith is borne, rather, by those challenging the board's actions." *Dockside Ass'n, Inc. v. Detyens*, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987). Plaintiffs incorrectly contend that the Court in *Walbeck v. I'On Co., LLC*, 426 S.C. 494, 827 S.E.2d 348 (Ct. App. 2018) is controlling in this matter. *Walbeck* specifically addresses whether a developer owes a fiduciary duty to convey title to subdivision common areas to a homeowners association. Unlike *Walbeck*, this case involves the actions of a nonprofit POA. This Court finds that Plaintiffs' allegations are based on the actions of the nonprofit POA. Thus, these actions must be reviewed under the Business Judgment Rule.

In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the 'business judgment rule,' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action.

Goddard v. Fairways Dev. Gen. P'ship, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993) (Emphasis added).

The Business Judgment Rule as applied to a Nonprofit Organization is further specified in S.C. Code Ann. § 33-31-830, as is hereafter specifically addressed.

A corporation can only "exercise the powers granted to it by law, its charter or articles of incorporation, and any bylaws made pursuant thereto." *Lovering v. Seabrook Island Prop. Owners*

Ass'n, 289 S.C. 77, 82, 344 S.E.2d 862, 865 (Ct. App. 1986). When a corporation acts within its scope of authority, such conduct is considered *intra vires*. “Acts beyond the scope of a corporation’s powers as defined by law or its charter are *ultra vires*.” *Id.* In South Carolina, the business judgment rule operates to preclude judicial review of *intra vires* actions taken by a corporate governing board absent a showing of a lack of good faith, fraud, self-dealing or unconscionable conduct. *Dockside Ass’n, Inc. v. Detyens*, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987) (internal citation omitted).

A director shall discharge his duties as a director, including his duties as a member of a committee in good faith; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director reasonably believes to be in the best interests of the corporation. S.C. Code Ann. § 33-31-830(a). In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person’s professional or expert competence, or a committee of the board of which the director is not a member. S.C. Code Ann. § 33-31-830(b). A director is not liable to the corporation, a member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section. S.C. Code Ann. § 33-31-830(d).

In Plaintiffs’ action against the Declarant Defendants, Plaintiffs have only complained about the actions of the POA. No evidence was produced to show the Declarant Defendants were separately liable. Plaintiffs’ case relies upon the incorrect conclusion that the Declarant Defendants are the Board of Directors of the POA. The Declarant Defendants are not the Board of Directors of the POA and the actions of the POA are not the actions of the Declarant Defendants. The actions

which Plaintiffs complain of were the actions of the POA through the POA accountant, the POA property management company, and the Finance Committee properly relied upon by the Board of Directors.

S.C. Code Ann. § 33-31-830 expressly allows the POA Board of Directors to rely on outside sources for guidance. Once the requirements of this section are met, it precludes review or second-guessing of the director's decisions. The Plaintiffs have not put forth any evidence or allegations that the Board of Directors acted contrary to the accounting work performed by these delegated hands. The evidence instead shows that the Board of Directors acted within their scope of authority and did not act in bad faith or with corrupt motives. The Board of Directors acted in reasonable reliance upon the POA accountant, the POA property management company, and the Finance Committee properly charged with responsibility for matters relative to calculating the Declarant's annual funding obligation. The decisions regarding the payment of Declarant contributions to the POA fall squarely within the Business Judgment Rule and are not subject to judicial review by this Court.

II. PLAINTIFF'S CLAIMS ARE BARRED BY THE SOUTH CAROLINA NONPROFIT CORPORATION ACT (S.C. CODE ANN. § 33-31-830).

As noted above, in conjunction with the Business Judgment Rule, the actions of the POA Board of Directors are also reviewed under S.C. Code Ann. § 33-31-830 of the Nonprofit Corporation Act. The applicability of S.C. Code Ann. § 33-31-830 is affirmed by the South Carolina Homeowners Association Act, which states "No provision of this article may be construed to be in conflict with the provisions of the South Carolina Nonprofit Corporation Act." S.C. Code Ann. § 27-30-170.

S.C. Code Ann. § 33-31-830 expressly insulates the POA Board of Directors when it relies on outside sources for guidance. Once the requirements of this section are met, review or second-

guessing of the directors' decisions is precluded. In the present case, the undisputed evidence shows compliance with S.C. Code Ann. § 33-31-830.

In discharging his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:... public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence, [or] a committee of the board of which the director is not a member.

S.C. Code Ann. § 33-31-830(b).

By relying upon the POA property manager, the POA auditing accountant, and the POA Finance Committee, the Board of Directors discharged its duties in good faith and with the care of an ordinarily prudent person. Accordingly, this Court finds the actions taken by the POA Board in reliance upon the POA auditing accountant, the POA property manager, and the POA Finance Committee were in compliance with the Business Judgment Rule and S.C. Code Ann. § 33-31-830 and thus Summary Judgment is granted in favor of the Declarant Defendants.

III. PLAINTIFF'S CLAIMS ARE BARRED DUE TO PLAINTIFF'S FAILURE TO FILE THIS LAWSUIT WITHIN THE APPLICABLE STATUTE OF LIMITATIONS.

Plaintiffs' claims related to the Math in 2012 are also barred by the statute of limitations. A two-year statute of limitations and three-year statute of repose applies to the claims brought by Plaintiffs against these Defendants, pursuant to S.C. Code Ann. § 33-31-830 (f) which states,

An action against a director asserting the director's failure to act in compliance with this section and consequent liability must be commenced before the sooner of (i) three years after the failure complained of or (ii) two years after the harm complained of is, or reasonably should have been, discovered.

Actions initiated under § 15-3-530 must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action. *Walbeck v. I'On Co., LLC*, 426 S.C. 494, 519, 827 S.E.2d 348, 361 (Ct. App. 2018).

South Carolina follows the “discovery rule,” which requires that an action “must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action.” S.C. Code Ann. § 15-3-535; *See e.g., Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994); *see also Republic Contracting Corp. v. S.C. Dep’t of Highways and Public Transp.*, 332 S.C. 197, 207, 503 S.E.2d 761, 766 (Ct. App. 1998). The language in S.C. Code Ann. § 33-31-830 (f) is substantially the same as S.C. Code Ann. § 15-3-535, and the discovery rule also applies. The relevant inquiry is not what Plaintiffs subjectively knew at specific points in time, but rather, at what point Plaintiffs objectively had “enough information such that [they] should have acted promptly to determine whether a cause of action might exist against [Defendants] for the injuries claimed in this case.” *Ashley River Indus., Inc. v. Mobil Oil Corp.*, 135 F. Supp. 2d 733, 742 (D.S.C. 2000), *aff’d* 245 F.3d 849 (4th Cir. 2001); *see also Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 333, 534 S.E.2d 672, 678 (2000).

Plaintiffs and most other Members of the POA were part of the POA more than two or even three years prior to the commencement of this action. As Members of the POA, Plaintiffs and the Members they presume to represent have complete access to all books and records of the POA. Moreover, Plaintiffs were members of the Finance Committee more than two or even three years prior to the initiation of this action. The Finance Committee is intimately familiar with the financials of the POA especially considering its role in setting the budget, inclusive of the requested Declarant Contribution. Plaintiffs had actual knowledge of any alleged underfunding of the Declarant more than two or even three years prior to the filing of this lawsuit.

Plaintiffs’ claims regarding the Amendments are likewise barred by the two year statute of limitations in S.C. Code Ann. § 33-31-830(f). Plaintiffs amended their Complaint on June 10, 2019

to add their claims on Amendments that were passed in 2011 and 2016. Plaintiffs filed this action in 2017 exclusive of any claims or allegations concerning the Amendments. Plaintiffs amended their Complaint on June 10, 2019 to add their claims on the 2011 and 2016 Amendments. Plaintiff Eisenhardt has been a property owner in Wild Wing Plantation since 2007, and she was one of the three founding members of the Association's finance committee in 2012. Plaintiff Dykes has been a homeowner since 2013 and was appointed to the Association's Finance Committee at the 2014 Annual Meeting.

Plaintiff Eisenhardt was in attendance at the special meeting for the 2011 Amendment and voted in favor of the Amendment. Plaintiff Dykes purchased his property in Wild Wing Plantation in 2013 with record notice of the 2011 Amendment. Property Owners are charged with constructive notice of instruments recorded in their chain of title. *S.C. DOT v. Horry County*, 391 S.C. 76, 84, 705 S.E.2d 21, (2011) (quoting *Binkley v. Rabon Creek Watershed Conservation Dist.*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001)). A party has constructive notice if the party knows of "facts and circumstances of an injury [that] would put a person of common knowledge and experience on notice that some right... has been invaded or that some claim against another party might exist." *Barr v. City of Rock Hill*, 330 S.C. 640, 645, 500 S.E.2d 157, 160 (1998). Failure of the injured party to comprehend the full extent of damages is immaterial. *Id.* "The date on which discovery should have been made is an objective, not subjective, question." *Id.*

In 2016, both Plaintiff Dykes and Plaintiff Eisenhardt received Notice of the Special Meeting to vote on the proposed Amendment and cast their votes against the Amendment. At that time, Plaintiffs had knowledge of the harm complained of. Again, Plaintiffs failed to file until 2019. Therefore, this Court finds that Plaintiffs' allegations related to the Math are barred by the statute of limitations under S.C. Code Ann. § 33-31-830(f) and S.C. Code Ann. § 15-3-530.

IV. PLAINTIFF LACKS STANDING AND CLAIMS ARE BARRED PURSUANT TO THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT.

It is fundamental that before this Court can exercise jurisdiction over a case, the party bringing suit must have standing to do so. *See Anders v. S.C. Parole & Cmty. Corr. Bd.*, 279 S.C. 206, 211, 305 S.E.2d 229, 231 (1983). To possess standing, either the POA itself must have suffered a concrete, particularized injury or its members must have suffered such an injury and the other elements of associational standing must be satisfied. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E.2d 846 (2014).

Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by § 39-5-20 may bring an action individually, *but not in a representative capacity*, to recover actual damages.

S.C. Code Ann. § 39-5-140(a) (Emphasis added).

“An unfair trade practices claim may not be brought in a representative capacity.” *Wogan v. Kunze*, 366 S.C. 583, 609, 623 S.E.2d 107, 121 (Ct. App. 2005).

This Court finds that the POA cannot satisfy the requirements to have standing on its own or for associational standing on behalf of its members. The POA itself does not possess standing because it has not suffered an injury-in-fact. The POA also fails to satisfy associational standing because the POA members have not suffered an injury-in-fact necessary to establish standing in their own right and the damage claims are not common to the entire membership, nor shared equally. Plaintiffs presume to bring this lawsuit as representatives of the POA. Plaintiffs’ Amended Complaint alleges a Cause of Action under the Unfair Trade Practices Act in a representative capacity. South Carolina law makes clear that Plaintiffs may not bring an action for unfair trade practices in a representative capacity.

CONCLUSION

This Court has also reviewed Plaintiffs' remaining arguments and in light of the foregoing, this Court finds these arguments unpersuasive and unnecessary to address. Therefore, Plaintiffs' Motions for Summary Judgment are denied. The Motion for Summary Judgment by the Defendants mentioned herein is hereby **GRANTED** and the Plaintiff's case against the aforementioned Defendant is hereby dismissed with prejudice.

IT IS SO ORDERED!

The Honorable Judge R. Markley Dennis, Jr.
Judge of the South Carolina Business Court



Horry Common Pleas

Case Caption: C Barry Dykes , plaintiff, et al VS Wild Wing Company LLC ,
defendant, et al
Case Number: 2017CP2604187
Type: Order/Summary Judgment

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt,
individually and derivatively on behalf of the
Wild Wing Plantation Property Owners'
Association, Inc.,

Plaintiffs,

-vs-

Wild Wing Company, LLC, Sunstar, LLC,
Ralph R. Teal, Jr., SLF IV/SBI Wild Wing,
LLC, SLF IV/SBI JV, LLC, SLF IV/SBI
Properties MM, LLC, SLF IV/SBI Development
Holdings, LLC, Wild Wing Residential
Development, LLC, Stratford Land Manager,
L.P., d/b/a Stratford Land, Stratford Land Fund
IV, L.P., SB Investments, LLC, Realstar
Management, LLC, Graeme T. Black, H.
Gilford Edwards, Founders Wild Wing, LLC,
Founders Group International, LLC, Dan Liu,
Xian "Nick" Dou, Rick Schultz, Rick Taylor
and Thomas Plankers,

Defendants,

Wild Wing Plantation Owners' Association, Inc.

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2017-CP-26-04187

RECEIVED

Jul 16 2021

SC Court of Appeals

**ORDER GRANTING INDIVIDUAL
DEFENDANTS SCHULTZ, TAYLOR
AND PLANKERS' MOTION FOR
SUMMARY JUDGMENT**

This matter came before the Court on May 4, 2021, concerning the Motion for Summary Judgment of Defendants Rick Schultz, Rick Taylor, and Thomas Plankers (hereinafter, collectively, the "Individual Defendants"), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, on grounds that Plaintiffs C. Barry Dykes and Barbara Eisenhardt (hereinafter, "Plaintiffs") have failed to raise genuine issues of material fact in support of their claims. This

Order is entered as to these Individual Defendants. Orders as to the Remaining Defendants are incorporated herein by reference. This Order addresses the Individual Defendants only.

Following a hearing on the matter and review of the arguments and pleadings submitted by all parties, for the reasons detailed below, this Court GRANTS the Motion for Summary Judgment of the Individual Defendants and DISMISSES the lawsuit against them with prejudice.

PROCEDURAL HISTORY

Plaintiffs, as individual unit owners in a residential housing development in Horry County, brought this suit allegedly as a shareholder derivative action against various individual and corporate entities in connection with the development and administration of the development (“Wild Wing Planation”) and its associated property owners association (“Wild Wing Plantation Property Owners Association” or “the Association”). Plaintiffs’ claims against these Individual Defendants related to the Individual Defendants’ status as members of the Association’s Board of Trustees between 2015 and 2019 and included claims for breach of fiduciary duty, unjust enrichment, and a S.C. Unfair Trade Practices Act (“SCUTPA”) claim. As originally pled, the Plaintiffs’ breach of fiduciary duty claim centered on allegations that the Individual Defendants and others breached their duty to the Association’s members by failing to observe generally accepted accounting principles (“GAAP”) in conducting the affairs of the Association. Over the course of discovery and litigation, the parties narrowed and focused the GAAP issue to two primary issues. The first of these is what the parties came to refer to as “the Math” – that is, the Plaintiffs’ contention that the Defendants failed to accurately calculate their funding obligation under the declarant’s funding options in the yearly budget, by failing to include “bad debt”¹ as a

¹ In this matter, Plaintiffs define “bad debt” as the amount consisting of individual owners who have failed or elected not to pay their yearly assessments to the association.

component of the funding obligation. The second issue related to extensions of a declarant funding option (“the funding option”) found within the original covenants which allowed the declarant, for a specified time, to choose between paying an assessment based on the number of individual lots owned by the declarant, or funding any shortfall between the association’s actual operating expenditures and the assessments made against the individual lot owners in that year. Plaintiffs asserted that the two amendments of the funding option were “for the sole benefit of the Declarants and at the sole expense of the POA.” Plaintiffs claim that the Individual Defendants’ calculation of the Math and their extension of the funding option have resulted in the various declarants paying less to the Association than they otherwise would have, and that this constitutes a violation of GAAP and amounts to a breach of the Individual Defendants’ fiduciary duty to the Association. The Court finds that at this point in the litigation the Plaintiffs have abandoned or dismissed their unjust enrichment and SCUTPA claims against these Individual Defendants, or otherwise conceded that these claims would fail of a necessary element should Plaintiffs not prevail on their fiduciary duty claims. Accordingly, the Court finds that a decision in favor of the Individual Defendants on the Math and the funding option are dispositive as to all claims against the Individual Defendants.

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear that the moving party is entitled to a judgment as a matter of law. S.C.R. Civ. P. 56(c). Although the court must view the facts and inferences therefrom in the light most favorable to the non-moving party, the non-movant may not rest on mere allegations or denials of his pleading. Instead, the non-movant must set forth or point to specific facts showing that there is a genuine

issue of material fact. *Hancock v. Mid-South Management Co.*, 381 S.C. 326, 330-331, 381 S.E.2d 801, 803 (2009).

FINDING OF FACTS

In the light most favorable to the non-movant, this Court finds the record in this case to show as follows:

The Wild Wing Plantation is a residential development located in Horry County between Conway and Myrtle Beach. The POA was formed on June 14, 2006 as a non-profit corporation. The initial declarant, Wild Wing Company, LLC (“WWC” or “Developer One”) was organized on or about December 7, 2005. On or about September 26, 2006, Developer One filed the Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation (the “Wild Wing Covenants”). The Wild Wing Covenants identify the developer as “Declarant”, provide that the Association was to be governed by a Board of Directors, and vested a number of rights and obligations in the Declarant. These included the right of the Declarant to name all members of the Association’s Board during the period of the Declarant’s control. On December 22, 2010, Developer One assigned its declarant rights to SLF IV/SBI Wild Wing Company, LLC (“Developer Two”). Developer Two remained the Declarant until November 9, 2011. On that date, Developer Two assigned its declarant rights to Wild Wing Residential Development, LLC (“Developer Three”). Developer Three served as Declarant from November 9, 2011 until April 13, 2015, when the declarant rights were assigned to Founders Wild Wing, LLC (“Developer Four”), which remains the Declarant to date.

Contemporaneously with its assumption of the Declarant rights for the Wild Wing Plantation, Developer Four purchased a number of golf courses in the Grand Strand area. Individual Defendants Rick Taylor, Rick Shultz, and Tom Plankers were all working as golf course

managers at one or more of the courses purchased by Developer Four and became employees of Developer Four pursuant to those purchases. On or about May 2015 Developer Four notified the Individual Defendants that they would henceforth serve as its representatives on the Board of Directors of the Wild Wing HOA. Defendants Plankers and Taylor remained on the board until sometime in 2017, when they both left the employment of Developer Four. Defendant Schultz continues to be on the board at the time of the issuance of this Order.

The Association's right to levy assessments on property owners within the development are set forth in the Wild Wing Covenants. The Association has the power to collect both annual assessments and special assessments. The covenants also allow the Declarant the funding option referenced earlier – in lieu of paying a per-lot assessment on all lots owned by the Declarant, the Declarant may pay a single annual assessment of “a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made by the Association against owners of lots other than those owned by the Declarant.” Stated as simply as possible, this language meant that the Declarant's minimum obligation was to annually fund any shortfall between the Association's actual operating expenditures and the assessments made against all other owners during that year.

Each fiscal year, the Association's Finance Committee, with the assistance of the property management company hired by the Association, created an annual budget. This annual budget projected both annual expenses and annual revenues for the Association, as well as a projected shortfall – the estimated deficit that would likely be owed by the Declarant at the end of the year pursuant to the language of the covenants. During that fiscal year the Declarant would then make installment payments on the projected shortfall.

Each year, the Association hired an accounting firm to audit the Association's financial statements. The accounting firm also prepared a "Developer Assessment" worksheet. The worksheet used the information gained from the audit to identify (a) the difference between the actual amount of actual operating expenditures, less the amount equal to the total assessments made (the "shortfall"); or (b) an amount equal to the per-unit assessment for all lots owned by the Declarant within Wild Wing Plantation. Pursuant to the Declaration, the Declarant was allowed to select its preferred funding mechanism and then make the appropriate payment to the Association.

The annual budgets, including the calculation of the declarant's contribution, were prepared by the property manager and then submitted to the Association's Finance Committee.² The budget sent forward by the Finance Committee was then reviewed and approved by the Board. The Board also reviewed the reports of the accounting professionals engaged to perform the yearly audits of these budgets.

In November 2011, the Association's Board of Directors (predecessor board to the board on which these Individual Defendants served) called a special meeting for the purpose of voting to amend the Covenants to extend the Declarant funding option from December 31, 2010 until December 31, 2016. Declarant and the individual Lot Owners, including Plaintiff Eisenhardt, voted unanimously in favor of the amendment. In November 2016, the Association's Board of Directors (on which these Individual Defendants served) called a special meeting for the purpose of voting to again amend the Covenants to extend the Declarant's funding option from December 31, 2016 until December 31, 2019, at which time the Declarant would be subject to assessments

² During the time frame that coincides with the board terms of Taylor, Schultz and Plankers, both Plaintiffs were members of the Finance Committee which was involved in the creation of these budgets and the accompanying calculation of the Declarant's contribution.

on the same basis as other lot owners. Once again, the amendment was passed, this time with a majority of Lot Owners and the Declarant voting in favor.

I. PLAINTIFF’S CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS ARE BARRED BY APPLICATION OF THE BUSINESS JUDGMENT RULE

In South Carolina, courts apply the business judgment rule to protect corporate directors. “Under the business judgment rule, a court will not review the business judgment of a corporate governing board when it acts without corrupt motives and in good faith.” *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 599, 538 S.E.2d 15, 25 (Ct. App. 2000). Our Court of Appeals has stated “the conduct of the directors should be judged by the ‘business judgment rule’ and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action.” *Goddard v. Fairways Dev. Gen. P’ship*, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993) (citing 4 S.C. Juris. *Condominiums* § 42 (1991)). Further, “[t]he burden of proving good faith is not on the governing board; the burden of proving a lack of good faith is borne, rather, by those challenging the board’s actions.” *Dockside Ass’n, Inc. v. Detyens*, 294 S.C. 86, 87, 362 S.E.2d 874 (1987) (internal citation omitted).

In applying the business judgment rule, it must be determined if the acts complained of are *intra vires* acts or *ultra vires* acts. “A corporation may exercise only those powers granted to it by law, its charter or articles of incorporation, and any bylaws made pursuant thereto.” *Seabrook Island Prop. Owners Ass’n v. Pelzer*, 292 S.C. 343, 347, 356 S.E.2d 411, 414 (Ct. App. 1987) (citing *Lovering v. Seabrook Island Prop. Owners Ass’n*, internal citations omitted). A corporation’s actions taken within the scope of the powers granted it are considered *intra vires* acts, while “acts beyond the scope of its powers are *ultra vires* acts.” *Id.* The business judgment rule applies to *intra vires* acts of the corporation, but not to *ultra vires* acts. *Id.*

The acts of the Individual Defendants singled out by Plaintiffs as the basis for their claims against the Individual Defendants are the calculation of the Declarant's contribution and the enactment of the covenant amendment which extended Declarant Four's option on how to fund any shortfall. (Transcript of Plaintiff Barry Dykes of June 25, 2020, pp.27-28, hereinafter, "Dykes Transcript"). Plaintiffs admit that the Covenants authorized the board to prepare and adopt annual budgets, to establish the means and methods to collect assessments, to make and amend rules and regulations, to employ professional management agents to assist them in carrying out their administration duties. Plaintiffs also acknowledge that the Covenant provides a mechanism for its own amendment. The record reflects that the procedures set forth in the Covenant to amend the document were followed on both extensions of the declarant's funding option. Accordingly, the Court finds that Plaintiffs concede that the acts of the Individual Defendants of which they complain are all *intra vires* acts:

Q: You have named Tom Plankers, Rick Schultz, and Rick Taylor as defendants in this litigation. Do you contend that they acted, during the time they served as board members, they acted outside their authority?

A: I contend that they violated their fiduciary duty to the membership.

Q: I'm simply asking you to tell me is the thing they did wrong, can you point to a section of the covenants or the declarations and say, see, it says right here they should not do this and they did this?

A: No, I can't point to a specific –

Q: Okay.

A: -- area that I recall right now.

(Dykes Transcript, p.13, lines 6-13; p.15, lines 10-17).

Having ascertained that the acts complained of by Plaintiffs are *intra vires* acts, at the summary judgment stage it is the Plaintiffs' burden to make a showing that the business judgment rule should not apply because the judgment of the directors was the product of bad faith,

dishonesty, or incompetence. While suspicious of the motivations of the Individual Defendants, Plaintiffs have failed to make the required showing:

Q: All right. Do you contend that my clients had any corrupt motives or acted in bad faith with regards to any actions they took as board members?

A: I can't answer as to what their motivations are for their decisions.

Q: Okay, so that's a no? Your answer to that question is no?

A: No, it's not a no. It's a – it's a – you're asking me what their motivations are. I can't say what their motivations are. I can say that their actions were such that they were not in the best interest of the membership and the motivations for why they did that I can – I can guess but I don't know.

(Dykes Transcript, p. 21, lines 5-19).

Q: Do you have any evidence that their employer directed them to make particular decisions or take particular actions as board members?

A: I don't have – I can't specifically say what the process was. I believe there was collaboration there.

Q: And I understand. My question is do you have any evidence to support that belief?

A: Not that I'm aware of.

Q: Do you have any evidence that my clients would lose their jobs if they didn't take a particular action?

A: I don't have specific evidence. I am aware that Rick Schultz tried to resign from the board at one point and was told he couldn't.

Q: Well, that's not losing his job, that's keeping his job, right?

A: Well, if he didn't – didn't do what they wanted, I assumed he'd lose – he would lose his job. But I don't – I don't have evidence of that.

Q: Do you believe that my clients had any sort of financial incentive, other than maintaining their jobs, with regards to any of the decisions they made as board members?

A: I don't know.

(Dykes Transcript, p.25, lines 5-14; p.25, line 19-p.26, l.4; p.39, lines 16-20).

Under the summary judgment standard, the court must view the facts and inferences therefrom in the light most favorable to the non-moving party. Plaintiff Dykes has testified that he has formed an inference that the Individual Defendants acted with bad faith, based upon their actions. (Dykes Transcript, pp. 21-22; p.27, lines 18-22). However, the actions upon which Plaintiff's inferences are based are the aforementioned *intra vires* acts of the calculation of the

developer's contribution and the decision to extend the developer's funding option. Essentially, Plaintiff's testimony is that he infers bad will on the part of the Individual Defendants because he disagrees with their decisions: "I'm not disputing that as the board they have the right to make the decision, I am disputing that the decision was made in the best interests of the membership which is what their duty is." (Dykes Transcript, p. 19, lines 10-15). This is insufficient to meet the Plaintiffs' burden at this stage of the litigation. The business judgment rule acknowledges that reasonable minds can differ with regards to the best course of action for an organization, and exists to shield directors from litigation where in those circumstances, and this Court finds that Plaintiffs' claims against these Individual Defendants are barred pursuant to the application of that doctrine.

Additionally, S.C. Code Ann. § 33-31-830(b)(2) provides that a

"director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence."

The evidence in the record in this matter indicates that the role of the Individual Defendants in determining the calculation of the developer's contribution was limited to reviewing and approving the figures that were provided to them by the joint work of the Association's finance committee, the property management company and the accountants retained for that purpose. Plaintiffs have conceded that the Individual Defendants' reliance on the finance committee, the property management company and the CPAs hired by the property management company was reasonable:

Q: Is it your understanding that somebody has to have an understanding of GAAP in order to serve on the development's finance committee?

A: No.

Q: What about on the HOA's board?

A: Not to my knowledge.

Q: So if you don't believe it's a requirement that you as a putative board member have to really understand GAAP, but you believe there is a requirement that they abide by the principles of GAAP, would it in your judgment be reasonable for a board member who didn't have your understanding of GAAP to approach other professionals for help in understanding that concept and how to apply it?

A: Yes, that would be reasonable.

(Dykes Transcript, p.46, lines 21-p.47, line 1; p.47, lines 12-21).

II. PLAINTIFF'S CLAIMS ARE BARRED BY THE SOUTH CAROLINA NONPROFIT CORPORATION ACT (S.C. CODE ANN. § 33-31-830).

As noted above, in conjunction with the Business Judgment Rule, the actions of the POA Board of Directors are also reviewed under S.C. Code Ann. § 33-31-830 of the Nonprofit Corporation Act. The applicability of S.C. Code Ann. § 33-31-830 is affirmed by the South Carolina Homeowners Association Act, which states "No provision of this article may be construed to be in conflict with the provisions of the South Carolina Nonprofit Corporation Act." S.C. Code Ann. § 27-30-170.

S.C. Code Ann. § 33-31-830 expressly insulates the POA Board of Directors when it relies on outside sources for guidance. Once the requirements of this section are met, review or second-guessing of the directors' decisions is precluded. In the present case, the undisputed evidence shows compliance with S.C. Code Ann. § 33-31-830.

By relying upon the POA property manager, the POA auditing accountant, and the POA Finance Committee, the Board of Directors discharged its duties in good faith and with the care of an ordinarily prudent person. Accordingly, this Court finds the actions taken by the POA Board in reliance upon the POA auditing accountant, the POA property manager, and the POA Finance Committee were in compliance with the Business Judgment Rule and S.C. Code Ann. § 33-31-830 and thus Summary Judgment is granted in favor of the Declarant Defendants.

III. PLAINTIFF'S CLAIMS ARE BARRED DUE TO PLAINTIFF'S FAILURE TO FILE THIS LAWSUIT WITHIN THE APPLICABLE STATUTE OF LIMITATIONS.

Plaintiffs' claims related to the Math in 2012 are also barred by the statute of limitations. A two-year statute of limitations and three-year statute of repose applies to the claims brought by Plaintiffs against these Defendants, pursuant to S.C. Code Ann. § 33-31-830 (f) which states,

An action against a director asserting the director's failure to act in compliance with this section and consequent liability must be commenced before the sooner of (i) three years after the failure complained of or (ii) two years after the harm complained of is, or reasonably should have been, discovered.

Actions initiated under § 15-3-530 must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action. *Walbeck v. I'On Co., LLC*, 426 S.C. 494, 519, 827 S.E.2d 348, 361 (Ct. App. 2018).

South Carolina follows the "discovery rule," which requires that an action "must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535; *See e.g., Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994); *see also Republic Contracting Corp. v. S.C. Dep't of Highways and Public Transp.*, 332 S.C. 197, 207, 503 S.E.2d 761, 766 (Ct. App. 1998). The language in S.C. Code Ann. § 33-31-830 (f) is substantially the same as S.C. Code Ann. § 15-3-535, and the discovery rule also applies. The relevant inquiry is not what Plaintiffs subjectively knew at specific points in time, but rather, at what point Plaintiffs objectively had "enough information such that [they] should have acted promptly to determine whether a cause of action might exist against [Defendants] for the injuries claimed in this case." *Ashley River Indus., Inc. v. Mobil Oil Corp.*, 135 F. Supp. 2d 733, 742 (D.S.C. 2000), *aff'd* 245 F.3d 849 (4th Cir. 2001); *see also Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 333, 534 S.E.2d 672, 678 (2000).

Plaintiffs' claims regarding the Amendments are likewise barred by the two year statute of limitations in S.C. Code Ann. § 33-31-830(f). Plaintiffs amended their Complaint on June 10, 2019 to add their claims on Amendments that were passed in 2011 and 2016. Plaintiffs filed this action in 2017 exclusive of any claims or allegations concerning the Amendments. Plaintiffs amended their Complaint on June 10, 2019 to add their claims on the 2011 and 2016 Amendments.

In 2016, both Plaintiff Dykes and Plaintiff Eisenhardt received Notice of the Special Meeting to vote on the proposed Amendment and cast their votes against the Amendment. At that time, Plaintiffs had knowledge of the harm complained of. Again, Plaintiffs failed to file until 2019. Therefore, this Court finds that Plaintiffs' allegations related to the Math are barred by the statute of limitations under S.C. Code Ann. § 33-31-830(f) and S.C. Code Ann. § 15-3-530.

IV. PLAINTIFF CLAIMS ARE BARRED PURSUANT TO THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT.

Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by § 39-5-20 may bring an action individually, *but not in a representative capacity*, to recover actual damages.

S.C. Code Ann. § 39-5-140(a) (Emphasis added).

“An unfair trade practices claim may not be brought in a representative capacity.” *Wogan v. Kunze*, 366 S.C. 583, 609, 623 S.E.2d 107, 121 (Ct. App. 2005).

This Court finds that the POA cannot satisfy the requirements to have standing on its own or for associational standing on behalf of its members. The POA itself does not possess standing because it has not suffered an injury-in-fact. The POA also fails to satisfy associational standing because the POA members have not suffered an injury-in-fact necessary to establish standing in their own right and the damage claims are not common to the entire membership, nor shared equally. Plaintiffs presume to bring this lawsuit as representatives of the POA. Plaintiffs' Amended

Complaint alleges a Cause of Action under the Unfair Trade Practices Act in a representative capacity. South Carolina law makes clear that Plaintiffs may not bring an action for unfair trade practices in a representative capacity.

CONCLUSION

For the reasons stated in this Order, following a hearing and review of the arguments and briefs submitted by all parties, this Court **GRANTS** the Motion for Summary Judgment of Individual Defendants and **DISMISSES** the claims of the Plaintiffs with prejudice.

IT IS SO ORDERED.

The Honorable R. Markley Dennis, Jr.
Judge of the South Carolina Business Court



Horry Common Pleas

Case Caption: C Barry Dykes , plaintiff, et al VS Wild Wing Company LLC ,
defendant, et al
Case Number: 2017CP2604187
Type: Order/Summary Judgment

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt,
individually and derivatively on behalf of the
Wild Wing Plantation Property Owners'
Association, Inc.,

Plaintiffs,

vs.

Wild Wing Company, LLC; Sunstar, LLC;
Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing,
LLC; SLF IV/SBI JV, LLC; SLF IV/SBI
Properties MM, LLC; SLF IV/SBI Development
Holdings, LLC; Wild Wing Residential
Development LLC; Stratford Land Manager,
L.P. d/b/a Stratford Land Fund IV, L.P.; SB
Investments, LLC; Realstar Management, LLC;
Graeme T. Black; H. Gilford Edwards;
Founders Wild Wing, LLC; Founders Group
International, LLC; Dan Liu; Xian "Nick" Dou;
Rick Schultz; Rick Taylor; and Thomas
Plankers,

Defendants.

Wild Wing Plantation Owners' Association,
Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-26-04187

RECEIVED

Jul 16 2021

SC Court of Appeals

**ORDER GRANTING DEFENDANTS
TEAL, BLACK & EDWARDS'S MOTION
FOR SUMMARY JUDGMENT**

This matter came before the Court on May 4, 2021. Among other motions for summary judgment, the Court considered Defendants Ralph R. Teal, Jr., Graeme T. Black, and H. Gilford Edwards' ("these Defendants") Motion for Summary Judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. All parties were represented by counsel at the hearing and presented oral argument. Based on the extensive briefing, oral arguments, and review of the pleadings and documents submitted by all parties, for the reasons detailed below, this Court

GRANTS these Defendants' Motion for Summary Judgment and DISMISSES the lawsuit against them with prejudice.¹

PROCEDURAL HISTORY

This lawsuit involves a dispute between property owners within Wild Wing Plantation, various Declarant entities associated with the development of Wild Wing Plantation, and current and former directors on the Wild Wing Plantation Owners' Association, Inc. ("the Association"), Board of Directors ("the Board"). Plaintiffs Barry Dykes ("Dykes") and Barbara Eisenhardt ("Eisenhardt") (hereinafter referenced individually or collectively as "Plaintiffs") are members of the Association, and brought this action as a shareholder derivative lawsuit.

Wild Wing Plantation is a residential development in Horry County near the border of Conway and Myrtle Beach, South Carolina. Several entities have served as the developer, maintaining Declarant's rights within Wild Wing Plantation pursuant to the Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation ("the Wild Wing Covenants") and other governing documents (collectively "the Governing Documents"). The Association was formed on June 14, 2006 as a non-profit corporation. Pursuant to these Covenants, the Association was to be governed by a Board of Directors. The initial Declarant was Wild Wing Company, LLC ("WWC"). WWC was the Declarant from September 2006 and throughout the unstable economic climate and real-estate downturn that began shortly thereafter and lasted for a few years.

On December 22, 2010, WWC assigned its Declarant rights to SLF IV/SBI Wild Wing Company, LLC ("SLF"), and SLF held Declarant's rights until November 9, 2011 when it assigned them to Wild Wing Residential Development, LLC ("WWRD"). WWRD was the Declarant from

¹ In separate Orders following the May 4, 2021 hearing, this Court granted summary judgment for all Defendants. This Order addresses only Defendants Teal, Black, and Edwards but incorporates the Court's findings in the other Orders by reference.

November 9, 2011 until April 13, 2015. On April 13, 2015, WWRD assigned Declarant rights to Founders Wild Wing, LLC, and this entity remains the Declarant to date. Defendants Ralph R. Teal, Jr., Graeme T. Black and H. Gilford Edwards were members of the Association's Board of Directors at various times until Declarant rights were assigned to Founders Wild Wing, LLC in April 2015.

Plaintiffs' pled against these Defendants causes of action for breach of fiduciary duty, unjust enrichment, and veil piercing/alter ego /amalgamation, and violation of the S.C. Unfair Trade Practices Act ("SCUTPA"). Plaintiffs' breach of fiduciary duty claim centered on allegations that these Defendants and others breached their duty to the Association's members as to two issues. The first is that the Declarant's funding obligation in the Covenants was incorrectly calculated because it failed to include "bad debt" as an expense in calculating the "shortfall" owed annually by the Declarant. The second issue is the Association's approval of the 2011 Amendment to the Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens for Wild Wing Plantation ("2011 Amendment"), which, among other things, extended the Declarant's rights as to voting and its right to pay the Association the shortfall or assessments on a per lot basis. Plaintiffs asserted the amendment of the Covenants were "for the sole benefit of the Declarants and at the sole expense of the POA." Plaintiffs claim that these Defendants' calculation of the shortfall and extension of the funding option resulted in the various declarants paying less to the Association than they should have, and that this constitutes a breach of the Individual Defendants' fiduciary duty to the Association.

The Court finds that at this point in the litigation the Plaintiffs have abandoned or dismissed their unjust enrichment, veil piercing/alter ego/amalgamation, and SCUTPA claims against these Defendants, or otherwise conceded that these claims would fail of a necessary element should Plaintiffs not prevail on their fiduciary duty claims.

DECLARANT'S ANNUAL FINANCIAL CONTRIBUTION TO THE ASSOCIATION

The Association's right to levy assessments on property owners within the development is set forth in the Wild Wing Covenants. The Association has the power to collect both annual assessments and special assessments. The Wild Wing Covenants also allow the Declarant the funding option referenced earlier – in lieu of paying a per-lot assessment on all lots owned by the Declarant, the Declarant may pay a single annual assessment of “a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made by the Association against owners of lots other than those owned by the Declarant.” Stated as simply as possible, this language meant that the Declarant's minimum obligation was to annually fund any shortfall between the Association's actual operating expenditures and the assessments made against all other owners during that year.

Each fiscal year, the Association's Finance Committee, with the assistance of the property management company hired by the Association, created an annual budget. This annual budget projected both annual expenses and annual revenues for the Association, as well as a projected shortfall – the estimated deficit that the Declarant would likely owe by the end of the year pursuant to the language of the covenants. During that fiscal year the Declarant would make installment payments on the projected shortfall to the Association.

At the end of each fiscal year, the Association hired an accounting firm to audit the Association's financial statements. In conjunction with the audit, the accounting firm also prepared a “Developer Assessment” worksheet. This worksheet applied certain relevant figures from the audited annual financial statements to the Declarant funding options as set forth in the Declaration. This yielded two options: (1) the Declarant could fund the shortfall (i.e., the difference between the actual amount of actual operating expenditures incurred by the Association ... less an amount equal to the total assessments made); or (2) the Declarant could pay an

assessment for all lots it owned within Wild Wing Plantation. As permitted by the Covenants, the Declarant then selected its funding mechanism, and, when required, paid the identified amount to the Association.

Ultimately, the Board— and these Defendants – only reviewed and approved annual budgets as prepared by the Finance Committee and property management companies. These Defendants were not involved in auditing the annual financial statements or determining the Declarant’s shortfall contribution amount as presented in the “Developer Assessment” worksheet. Instead, the Board relied upon the Finance Committee, property management company, and accounting professionals to prepare budgets, track the Association’s finances, perform annual audits, and determine the appropriate Declarant “shortfall” contribution.

2011 AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES, AND LIENS FOR WILD WING PLANTATION

In November 2011, the Association’s Board of Directors, including these Defendants serving as Board members, called a special meeting for the purpose of voting to amend the Covenants, which among other things would extend the Declarant funding option from December 31, 2010 until December 31, 2016. In light of the challenges presented by the real estate downturn, the Association voted overwhelmingly in favor of the amendment, after appropriate notice and a meeting of the owners to discuss the amendment.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper when there is no genuine issue of material fact and it is clear that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. Although the court must view the facts and inferences therefrom in the light most favorable to the non-moving party, the non-movant may not rest on the mere allegations or denials of its pleading. Instead, the non-movant must set forth or point to specific facts showing that there is a genuine issue of material fact. *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009). *Hancock v.*

Mid-South Management Co., 381 S.C. 326, 330-331, 381 S.E.2d 801, 803 (2009); *Dickert v. Metro. Life Ins. Co.*, 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct. App. 1991); *McNair v. Rainsford*, 330 S.C. 332, 341, 499 S.E.2d. 488, 493 (Ct. App. 1998). “When ruling on a motion for summary judgment, the trial judge must consider all of the documents and evidence within the records, including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits.” *Higgins v Med. Univ.*, 326 S.C. 592, 599, 486 S.E.2d 269, 272 (Ct. App. 1997). In determining whether any triable issue of fact exists so as to preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Comm’n*, 332 S.C. 54, S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). “If evidence favoring the non-moving party is merely colorable . . . or is not significantly probative . . . summary judgment may be granted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986). “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Vermeer Carolina’s Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 59, 518 S.E.2d 301, 305 (Ct. App. 1999).

The plain meaning of Rule 56(c), SCRCP, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case. *Id.* In such a situation, the moving party is entitled to judgment as a matter of law because the non-moving party has failed to demonstrate a genuine issue of material fact as to a necessary part of that party’s claim. *Id.* “When a motion for summary judgment is made and properly supported, an adverse party may not rest solely upon the allegation or denials in his pleadings, but must set forth specific facts showing that there is a genuine issue of fact for trial.” *Jones v. Enterprise Leasing Company-Southeast*, 383 S.C. 259, 267, 678 S.E.2d 819, 823 (Ct. App. 2009).

FINDINGS OF FACT

Plaintiffs brought this action alleging that Declarant Defendants have underpaid the POA. Plaintiffs' case relies entirely upon blending the actions of the POA as actions of the Declarants. There exists no evidence or law to support this theory. The actions complained of by the Plaintiffs were actions of the POA. There exists no rule of law that an appointing Declarant is somehow vicariously liable for the actions of its appointee.

In 2006, the POA was established as a Not-for-Profit Corporation to maintain and administer the Wild Wing community in accordance with the Declaration. The Declaration provides that the affairs of the POA shall be governed by a Board of Directors which was appointed by the Declarant. Once these directors are appointed to the POA Board, they assume a duty to the POA of a nonprofit entity as Board Members.

Duties of the Board of Directors in administering the POA include levying assessments against Lot Owners to defray the Common Expenses and to establish the means and methods of collecting such assessments. To assist in carrying out its duties, the Board of Directors hired a property manager, an auditing accountant, and formed a Finance Committee of Members all as permitted by the Declaration. Two of the Members of the Finance Committee were Plaintiffs Dykes and Eisenhardt.

The Declarants were also obligated to contribute monies to the POA. The Declaration provided the Declarant the option to pay assessments for each lot the Declarant owed or to pay the shortfall of "the actual amount of actual operating expenditures incurred" by the POA less "an amount equal to the total assessments made". This formula is common in many community governing documents. The Declarant Contribution has been calculated the same way since the inception of the POA.

In 2012, a Finance Committee made up of Lot Owners was established. Plaintiff Eisenhardt was one of the initial members. The Finance Committee was charged with reviewing all matters that may have a financial impact on the community and making recommendations to the Board of Directors. This specifically included review and presentation of the Declarant Contribution Calculation. Plaintiff Dykes purchased his lot in Wild Wing Plantation in 2013 and was appointed to the Finance Committee in mid-2014. Immediately following his appointment, Plaintiff Dykes met with the POA property manager and obtained copies of all POA financial information. On April 28, 2015, Plaintiff Dykes met with members of Waccamaw Management and the POA accountant, Jim Corbett, to review the draft of the 2014 Annual Audit. During this meeting, Plaintiff Dykes raised concerns about the Declarant Contribution Calculation. Plaintiff Dykes took issue with the CPA's calculation, specifically with the fact that bad debt was excluded from the "actual amount of actual operating expenditures incurred". Following deliberation and discussion, the Finance Committee commissioned Mr. Corbett to further review, investigate, and advise as to this decision. Mr. Corbett testified that he reviewed the Declaration and Generally Accepted Accounting Principles along with the other CPAs in his office. He also met with Jane Atkinson, the Chief Financial Officer of Waccamaw Management. Ms. Atkinson had never seen bad debt included as an "actual operating expenditure incurred" in her many years of Association accounting. Mr. Corbett took his conclusions back to the Finance Committee explaining that the Declarant cannot be held responsible for the unpaid assessments of members of the POA. Despite Plaintiff Dykes' objection, the Finance Committee and the Board of Directors relied on its accountant, and later the property manager, and continued to calculate Declarant dues as it had since 2007.

In 2011 and 2016, the Declaration was amended to extend the period of time for the payment option. The Amendments were passed by vote of the POA pursuant to and in strict

accordance with the procedures required by the Declaration. On November 9, 2011, the Board of Directors of the POA sent out official Notice to all Members of the POA, including Plaintiff Eisenhardt, giving notice that a Special Meeting of the Members had been called for November 21, 2011 to amend the Declaration. The Notice attached the proposed Amendment to the Declaration for each Member's review. Pursuant to the Notice, a special meeting was held and there was a vote of the membership. Plaintiff Eisenhardt was in personal attendance at the special meeting, and voted in favor of the Amendment. In fact, the membership voted unanimously in favor of the Amendment.

Plaintiff Dykes purchased his property in Wild Wing Plantation in 2013, after the 2011 Amendment had been filed of public record. Mr. Dykes' deed and title insurance policy, which he received in his closing documents, specifically provided that the property was subject to the Declaration and all amendments thereto.

In 2016, both Plaintiff Dykes and Plaintiff Eisenhardt received Notice of the Special Meeting to vote on the proposed Amendment. The Notice included the proposed Amendment and a letter explaining the proposed Amendment. On November 4, 2016, both Plaintiff Dykes and Plaintiff Eisenhardt voted against the Amendment. However, once again, the Amendment passed with the required two-thirds majority vote of the membership, including a majority of the Lot Owner Members voting in favor of the Amendment.

This Court finds that Plaintiffs' claims against the Declarant Defendants as to the Math fail because of the protection of the Business Judgment Rule, S.C. Code Ann. § 33-31-830 and the Statute of Limitations. Additionally, this Court finds that Plaintiffs claims against the Declarant Defendants as to the Amendments fail due to the validity of the Amendments under South Carolina law and the Statute of Limitations. For these and other reasons as further set forth below, Summary

Judgment is **GRANTED** for the Declarant Defendants and Plaintiffs' case is **DISMISSED WITH PREJUDICE**.

I. PLAINTIFF'S CLAIMS ARE BARRED BY THE BUSINESS JUDGMENT RULE.

A corporation can only "exercise the powers granted to it by law, its charter or articles of incorporation, and any bylaws made pursuant thereto." *Lovering v. Seabrook Island Prop. Owners Ass'n*, 289 S.C. 77, 82, 344 S.E.2d 862, 865 (Ct. App. 1986). When a corporation acts within its scope of authority, such conduct is considered *intra vires*. "Acts beyond the scope of a corporation's powers as defined by law or its charter are *ultra vires*." *Id.* In South Carolina, the business judgment rule operates to preclude judicial review of *intra vires* actions taken by a corporate governing board absent a showing of a lack of good faith, fraud, self-dealing or unconscionable conduct. *Dockside Ass'n, Inc. v. Detyens*, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987) (internal citation omitted).

In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the 'business judgment rule,' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action.

Goddard v. Fairways Dev. Gen. P'ship, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993).

"The burden of proving good faith is not on the governing board; the burden of proving a lack of good faith is borne, rather, by those challenging the board's actions." *Dockside Ass'n, Inc.*, 294 S.C. at 87, 362 S.E.2d at 874; *see also Fisher v. Shipyard Vill. Council of Co-Owners, Inc.*, 415 S.C. 256, 781 S.E.2d 903 (2016). "Under the business judgment rule, a court will not review the business judgment of a corporate governing board when it acts without corrupt motives and in good faith." *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 599, 538 S.E.2d 15, 25 (Ct. App. 2000).

S.C. Code Ann. § 33-31-830(a):

A director shall discharge his duties as a director, including his duties as a member of a committee in good faith; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director reasonably believes to be in the best interests of the corporation.

S.C. Code Ann. § 33-31-830(b) (2) provides that,

“in discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: legal counsel, *public accountants*, or *other persons as to matters the director reasonably believes are within the person's professional or expert competence.*”

Finally, S.C. Code Ann. § 33-31-830(d) states, “A director is not liable to the corporation, a member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.”

The acts of these Defendants identified by Plaintiffs as the basis for their claims against them are the calculation of the Declarant's contribution and the enactment of the 2011 covenant amendment. The Court finds the Wild Wing Covenants authorized the board to prepare and adopt annual budgets, to establish the means and methods to collect assessments, to make and amend rules and regulations, to employ professional management agents to assist them in carrying out their administration duties, and to employ certified public accountants. The Court also finds the Wild Wing Covenants provides a mechanism for its own amendment. The record reflects, and the Court finds, that the Board followed the procedures set forth in the Wild Wing Covenants to amend

the covenants and appropriately relied on professionals in determining the Developer shortfall. Accordingly, the Court finds that the acts of these Defendants were all *intra vires* acts.

Having ascertained that the acts complained of by Plaintiffs are *intra vires* acts, the Plaintiffs have the burden to show that the business judgment rule should not apply because the judgment of the directors was the product of bad faith, dishonesty, or incompetence. Plaintiffs have failed to make the required showing. Plaintiffs infer bad will on the part of these Defendants because they disagree with these Defendants' and the Association's decision to amend the Covenants, and in their acceptance of the Association's accountant's annual calculation of the Declarant contribution. This is insufficient to meet the Plaintiffs' burden at this stage of the litigation. The business judgment rule acknowledges that reasonable minds can differ with regards to the best course of action for an organization, and it exists to shield directors from litigation in those circumstances. The role of these Defendants in determining the calculation of the developer's contribution was limited to reviewing and approving the figures that were provided to them by the joint work of the Association's finance committee, the property management company and the accountants retained for that purpose. The Court finds that these Defendants' reliance on the finance committee, the property management company and the CPAs hired by the property management company was reasonable and appropriate under South Carolina law. Therefore, this Court finds that Plaintiffs' claims against these Defendants are barred pursuant to the application of the business judgment rule.

II. PLAINTIFF'S CLAIMS ARE BARRED BY THE SOUTH CAROLINA NONPROFIT CORPORATION ACT (S.C. CODE ANN. § 33-31-830).

As noted above, in conjunction with the Business Judgment Rule, the actions of the POA Board of Directors are also reviewed under S.C. Code Ann. § 33-31-830 of the Nonprofit Corporation Act. The applicability of S.C. Code Ann. § 33-31-830 is affirmed by the South

Carolina Homeowners Association Act, which states “No provision of this article may be construed to be in conflict with the provisions of the South Carolina Nonprofit Corporation Act.” S.C. Code Ann. § 27-30-170.

S.C. Code Ann. § 33-31-830 expressly insulates the POA Board of Directors when it relies on outside sources for guidance. Once the requirements of this section are met, review or second-guessing of the directors’ decisions is precluded. In the present case, the undisputed evidence shows compliance with S.C. Code Ann. § 33-31-830.

In discharging his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:... public accountants, or other persons as to matters the director reasonably believes are within the person’s professional or expert competence, [or] a committee of the board of which the director is not a member.

S.C. Code Ann. § 33-31-830(b).

By relying upon the POA property manager, the POA auditing accountant, and the POA Finance Committee, the Board of Directors discharged its duties in good faith and with the care of an ordinarily prudent person. Accordingly, this Court finds the actions taken by the POA Board in reliance upon the POA auditing accountant, the POA property manager, and the POA Finance Committee were in compliance with the Business Judgment Rule and S.C. Code Ann. § 33-31-830 and thus Summary Judgment is granted in favor of the Declarant Defendants.

III. PLAINTIFFS’ CLAIMS AGAINST THESE DEFENDANTS ARE BARRED BECAUSE PLAINTIFFS FAILED TO FILE THIS LAWSUIT WITHIN THE APPLICABLE STATUTE OF LIMITATIONS.

A two-year statute of limitations and three-year statute of repose applies to the claims brought by Plaintiffs against these Defendants, pursuant to S.C. Code Ann. § 33-31-830 (f) which states, “An action against a director asserting the director’s failure to act in compliance with this section and consequent liability must be commenced before the sooner of (i) three years after the

failure complained of or (ii) two years after the harm complained of is, or reasonably should have been discovered.” S.C. Code Ann. § 33-31-830 (f) reduces the three-year statute of limitations identified in S.C. Code Ann. § 15-3-530 (1) and (5) (providing for a three-year statute of limitations for actions arising “upon a contract, obligation, or liability, express or implied” and actions for “any injury. . . not arising on contract and not enumerated by law”).

South Carolina follows the “discovery rule,” which requires that an action “must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action.” S.C. Code Ann. § 15-3-535; *See e.g., Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994); *see also Republic Contracting Corp. v. S.C. Dep’t of Highways and Public Transp.*, 332 S.C. 197, 207, 503 S.E.2d 761, 766 (Ct. App. 1998). The language in S.C. Code Ann. § 33-31-830 (f) is substantially the same as S.C. Code Ann. § 15-3-535, and the discovery rule also applies. The relevant inquiry is not what Plaintiffs subjectively knew at specific points in time, but rather, at what point Plaintiffs objectively had “enough information such that [they] should have acted promptly to determine whether a cause of action might exist against [Defendants] for the injuries claimed in this case.” *Ashley River Indus., Inc. v. Mobil Oil Corp.*, 135 F. Supp. 2d 733, 742 (D.S.C. 2000), *aff’d* 245 F.3d 849 (4th Cir. 2001); *see also Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 333, 534 S.E.2d 672, 678 (2000).

Plaintiffs filed this case on June 30, 2017. It is clear that Plaintiffs had enough information prior to June 30, 2014 or June 30, 2015 such that they knew or should have known of the basis for their claims against these Defendants. Plaintiff Eisenhardt has been a property owner in Wild Wing Plantation since 2007, and she was one of the three founding members of the Association’s finance committee in 2012. Plaintiff Dykes has been a homeowner since 2013 and was appointed to the Association’s Finance Committee at the 2014 Annual Meeting.

All Association members, including the Plaintiffs, had access to the published audited financial statements each year, including the calculation of the declarant assessment exposure for those years. The audited financial statements for the year ending December 31, 2008 were published on July 6, 2009. The audited financial statements for the year ending December 31, 2009 were published on May 31, 2011. The audited financial statements for the years ending December 31, 2010 and December 31, 2011 were published on September 4, 2012. The audited financial statements for the years 2012 and 2013 were published on March 20, 2014. Each of these audited financial statements included a clear explanation of how the auditor calculated the declarant contribution. Plaintiffs knew or should have known how Declarant contributions were calculated well before June 30, 2014.

Furthermore, Plaintiff Eisenhardt was a homeowner at the time of the November 2011 vote to amend the Covenants. Ms. Eisenhardt received written notice of the proposed amendment from Wright Management on November 9, 2011. A vote was held on this amendment on November 21, 2011, and the minutes reflect that Ms. Eisenhardt was present at this vote. The votes were unanimous in favor of the amendment. Plaintiff Eisenhardt had sufficient information as early as November 2011 that she knew or should have known of the basis of the claims against these Defendants related to the 2011 vote to amend the Covenants. Despite knowing the purpose of the 2011 amendment and having an opportunity to vote on the adoption of the same, Plaintiff Eisenhardt waited until 2017, almost six years after the fact, to object. Plaintiff Dykes purchased his property within Wild Wing Plantation in 2013 with notice of the amendment. Property Owners are charged with constructive notice of instruments recorded in their chain of title. *S.C. DOT v. Horry County*, 391 S.C. 76, 84, 705 S.E.2d 21, (2011) (quoting *Binkley v. Rabon Creek Watershed Conservation Dist.*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001)). A party has constructive notice if the party knows of “facts and circumstances of an injury [that] would put a

person of common knowledge and experience on notice that some right... has been invaded or that some claim against another party might exist.” *Barr v. City of Rock Hill*, 330 S.C. 640, 645, 500 S.E.2d 157, 160 (1998). Failure of the injured party to comprehend the full extent of damages is immaterial. *Id.* “The date on which discovery should have been made is an objective, not subjective, question.” *Id.*

This Court finds that Plaintiffs’ claims against these Defendants, individually and derivatively, are barred pursuant to the applicable statutes of limitation.

IV. PLAINTIFF LACKS STANDING AND CLAIMS ARE BARRED PURSUANT TO THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT.

It is fundamental that before this Court can exercise jurisdiction over a case, the party bringing suit must have standing to do so. *See Anders v. S.C. Parole & Cmty. Corr. Bd.*, 279 S.C. 206, 211, 305 S.E.2d 229, 231 (1983). To possess standing, either the POA itself must have suffered a concrete, particularized injury or its members must have suffered such an injury and the other elements of associational standing must be satisfied. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 753 S.E.2d 846 (2014).

Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by § 39-5-20 may bring an action individually, *but not in a representative capacity*, to recover actual damages.

S.C. Code Ann. § 39-5-140(a) (Emphasis added).

“An unfair trade practices claim may not be brought in a representative capacity.” *Wogan v. Kunze*, 366 S.C. 583, 609, 623 S.E.2d 107, 121 (Ct. App. 2005).

This Court finds that the POA cannot satisfy the requirements to have standing on its own or for associational standing on behalf of its members. The POA itself does not possess standing because it has not suffered an injury-in-fact. The POA also fails to satisfy associational standing because the POA members have not suffered an injury-in-fact necessary to establish standing in

their own right and the damage claims are not common to the entire membership, nor shared equally. Plaintiffs presume to bring this lawsuit as representatives of the POA. Plaintiffs' Amended Complaint alleges a Cause of Action under the Unfair Trade Practices Act in a representative capacity. South Carolina law makes clear that Plaintiffs may not bring an action for unfair trade practices in a representative capacity.

CONCLUSION

For the reasons stated in this Order, following a hearing and review of the arguments and briefs submitted by all parties, this Court **GRANTS** the Motion for Summary Judgment of these Defendants and **DISMISSES** the claims of the Plaintiffs with prejudice.

IT IS SO ORDERED.

The Honorable R. Markley Dennis, Jr.
Judge of the South Carolina Business Court



Horry Common Pleas

Case Caption: C Barry Dykes , plaintiff, et al VS Wild Wing Company LLC ,
defendant, et al
Case Number: 2017CP2604187
Type: Order/Summary Judgment

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060

Electronically signed on 2021-07-12 09:21:23 page 18 of 18

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH
COUNTY OF HORRY	)	JUDICIAL CIRCUIT
	)	C/A NUMBER: 2017-CP-26-_____
	)	
C. BARRY DYKES and BARBARA	)	
EISENHARDT, individually and derivatively	)	
on behalf of the WILD WING PLANTATION	)	
PROPERTY OWNERS' ASSOCIATION,	)	
INC.,	)	
	)	
	)	SHAREHOLDER DERIVATIVE
Plaintiffs,	)	SUMMONS
	)	(Jury Trial Demanded)
vs.	)	
	)	
WILD WING COMPANY, LLC, RALPH R.	)	
TEAL, JR., SLV IV/SBI WILD WING, LLC	)	
WILD WING RESIDENTIAL	)	
DEVELOPMENT LLC, STRATFORD LAND	)	
MANAGER, SB INVESTMENTS LLC,	)	
GRAEME T. BLACK, H. GILFORD	)	
EDWARDS, FOUNDERS WILD WING LLC,	)	
FOUNDERS GROUP INTERNATIONAL	)	
LLC, DAN LIU and XIAN DOU	)	
	)	
Defendants.	)	
	)	
WILD WING PLANTATION OWNERS'	)	
ASSOCIATION, INC.	)	
	)	
Nominal Defendant.	)	

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscribers at their offices, Lyles & Lyles, LLC, 342 East Bay Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in the Complaint and will seek a default judgment against you.

[SIGNATURE PAGE TO FOLLOW]

LYLES & LYLES, LLC

s/Robert T. Lyles, Jr.
Robert T. Lyles, Jr. Esquire
S.C. Bar No. 10299
342 East Bay Street
Charleston, South Carolina 29401
T: (843) 577-7730
F: (843) 577-7172
rtl@lylesfirm.com

Attorneys for Plaintiffs

June 29, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH
COUNTY OF HORRY	)	JUDICIAL CIRCUIT
	)	C/A NUMBER: 2017-CP-26-_____
	)	
C. BARRY DYKES and BARBARA	)	
EISENHARDT, individually and derivatively	)	
on behalf of the WILD WING PLANTATION	)	
PROPERTY OWNERS' ASSOCIATION,	)	
INC.,	)	
	)	
Plaintiffs,	)	SHAREHOLDER DERIVATIVE
	)	COMPLAINT
	)	(Jury Trial Demanded)
vs.	)	
	)	
WILD WING COMPANY, LLC, RALPH R.	)	
TEAL, JR., SLV IV/SBI WILD WING, LLC	)	
WILD WING RESIDENTIAL	)	
DEVELOPMENT LLC, STRATFORD LAND	)	
MANAGER, SB INVESTMENTS LLC,	)	
GRAEME T. BLACK, H. GILFORD	)	
EDWARDS, FOUNDERS WILD WING LLC,	)	
FOUNDERS GROUP INTERNATIONAL	)	
LLC, DAN LIU and XIAN DOU	)	
	)	
Defendants.	)	
	)	
WILD WING PLANTATION OWNERS'	)	
ASSOCIATION, INC.	)	
	)	
Nominal Defendant.	)	

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiffs C. Barry Dykes and Barbara Eisenhardt for their derivative complaint on behalf of nominal defendant Wild Wing Plantation Property Owners' Association, Inc. make the following allegations upon Plaintiffs' personal knowledge with regard to themselves and their own acts and upon information and belief as to all other matters. Based on the allegations in this Complaint, Plaintiffs assert derivative claims for breach of fiduciary duty and unjust enrichment against the above named defendants as outlined below.

PARTIES AND JURISDICTION

1. Plaintiffs C. Barry Dykes and Barbara Eisenhardt (collectively “Plaintiffs”) are residents of Horry County, South Carolina, and are owners of real estate located in the Horry County subdivision known as Wild Wing Plantation.

2. Wild Wing Plantation Property Owners’ Association, Inc. (the “Wild Wing Association” or the “Association”), a nominal defendant, is a nonprofit corporation formed pursuant to the laws of South Carolina.

3. Defendant Wild Wing Company, LLC (“Wild Wing Company”) is a limited liability corporation organized pursuant to the laws of South Carolina.

4. Defendant Sunstar, LLC is a limited liability corporation organized pursuant to the laws of South Carolina.

5. Defendant Ralph R. Teal, Jr. (“Teal”) is a citizen and resident of Horry County, South Carolina.

6. SLV IV/SBI Wild Wing, LLC is a limited liability corporation organized pursuant to the laws of Texas and conducting business in Horry County, South Carolina.

7. Stratford Land Manager LP d/b/a Stratford Land is a limited partnership organized pursuant to the laws of Texas and conducting business in Horry County, South Carolina.

8. Defendant SB Investments, LLC is a limited liability corporation organized pursuant to the laws of South Carolina.

9. Wild Wing Residential Development LLC is a limited liability corporation organized pursuant to the laws of Delaware and conducting business in Horry County, South Carolina.

10. Defendant Graeme T. Black (“Black”) is a citizen and resident of Horry County, South Carolina.

11. Defendant H. Gilford Edwards (“Edwards”) is a citizen and resident of Horry County, South Carolina.

12. Defendant Founders Wild Wing LLC (“Founders Wild Wing”) is a limited liability corporation organized and existing pursuant to the laws of the state of South Carolina.

13. Founders Group International LLC (Founders Group International) a limited liability corporation organized and existing pursuant to the laws of the state of South Carolina.

14. Defendant Xian “Nick” Dou is a resident of Horry County, South Carolina and a managing member of Founders Wild Wing.

15. Defendant Dan Liu is a resident of Horry County, South Carolina and managed Founders Group International.

16. Plaintiff C. Barry Dykes (“Dykes”) purchased property located in Wild Wing Plantation in August 2013 and has been a member of the Association since August of 2013.

17. Plaintiff Barbara Eisenhardt (“Eisenhardt”) purchased property located in Wild Wing Plantation in 2007 and has been a member of the Association at all times herein.

18. Plaintiffs bring this action on behalf of themselves and derivatively on behalf of the Wild Wing Association and its members because the Association has failed to protect and enforce the rights of the Association and its members with respect to the matters alleged herein.

FACTUAL BACKGROUND

19. This lawsuit arises from the Defendants' underfunding of the Association through their failure to use generally accepted accounting procedures in the calculation of the amount of contributions owed to the Association by Declarants for unsold lots and their misuse of funds

intended to be used as reserves.

20. Wild Wing Company, as declarant, filed a Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation (the “Wild Wing Covenants”) on September 26, 2006. Wild Wing Company was the Declarant from 2006 until December 2010.

21. Wild Wing Company assigned all rights as declarant and any other rights it had to SLF IV/SBI Wild Wing, LLC by assignment dated December 22, 2010, which subsequently assigned its rights to Wild Wing Residential Development LLC by assignment dated November 9, 2011.

22. Stratford Land and SB Investments formed and controlled SLF IV/SBI Wild Wing and Wild Wing Residential Development LLC as joint ventures.

23. Wild Wing Residential Development, LLC was the third Declarant and acted as such from 2011 until 2015.

24. Upon information and belief, Teal, Black and Edwards served as members and/or officers of the Board of Directors of the Wild Wing Association until they resigned on or about June 17, 2015.

25. Defendants Teal, Black and Edwards also personally conducted the operations of the Association and the declarant entities prior to the assignment to Founders Wild Wing, and bear personal responsibility for those actions.

26. Wild Wing Residential Development LLC assigned all of its rights as declarant and any other rights it had to Founders Wild Wing, LLC by assignment dated April 13, 2015. Founders Wild Wing, LLC is the fourth and current Declarant.

27. Defendants Dou and Liu personally conduct the operations of Founders Wild

Wing, LLC, and Founders Group International and are personally liable for those actions.

28. Defendants Wild Wing Company, SLF IV/SBI Wild Wing, LLC, Wild Wing Residential Development LLC, Stratford Land, SB Investments, Founders Wild Wing, Teal, Black, Edwards, Dou and Liu are collectively referred to as “Defendants.”

29. Defendants Wild Wing Company, SLF IV/SBI Wild Wing, LLC, Wild Wing Residential Development LLC, Founders Wild Wing may be collectively referred to as “Declarants.”

30. The Wild Wing Covenants obligate owners of property located in Wild Wing Plantation to pay assessments to the Association, including annual assessments and special assessments.

31. The Declarants were the owners of all lots prior to their conveyance.

32. Pursuant to the Wild Wing Covenants, in lieu of paying the same assessments per lot that all other owners pay, the Declarants were required to pay the difference between actual operating expenditures and the amount of assessments collected from the owners. (See Article VI, Section 2, Wild Wing Covenants).

33. The Wild Wing Covenants require all books and records to be kept in accordance with generally accepted accounting principles (“GAAP”).

34. In calculating the contributions owed by the Declarant entities, the Defendants failed to utilize GAAP, which resulted in contributions by the Declarant that were substantially less than would be required had Defendants used GAAP.

35. Defendants’ failure to use GAAP has resulted in a substantial shortfall and underfunding of the Association’s operations.

36. As a result of the shortfall in the Association’s resources, monies designated for

reserves has been diverted to pay for operating expenses.

37. Based upon the information available to-date, the shortfalls resulting from Defendants' failure to use GAAP in calculating their contributions totals in excess of \$500,000.

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

38. Plaintiff reasserts and realleges the allegations contained in the above Paragraphs.

39. From its inception, Defendants have controlled the Board of Directors of the Association.

40. Defendants have a fiduciary relationship to the Plaintiffs and the Association by virtue of their capacity as developers of the Wild Wing Plantation community and their former or current capacity as controlling members of the Association's Board of Directors.

41. As such, Defendants owed the Association and its members the highest duties of good faith, fair dealing, due care, and loyalty.

42. Defendants breached their duty of loyalty by failing to comply with the requirements of the Regime Documents and failing to use GAAP in calculating their contributions to the Association, thereby elevating their own interests over the interests of the Association and the Association's members.

43. Defendants breached the fiduciary relationship by failing to disclose their breach of duty, by failure to enforce the Association's rights, and by self-dealing.

44. As a direct and proximate result of the Defendants' actions described herein, the Association has been deprived of Declarant contributions totaling more than \$500,000.

45. As a direct and proximate result of the Defendants' actions, the Association has been required to divert money intended for its reserves for operation of the Association and therefore, its reserve funds have been improperly wasted.

46. Plaintiffs are entitled to a judgment against the Defendants, together with prejudgment interest, attorneys' fees and such other and further relief as this Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)

47. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

48. By failure to pay the proper contributions to the Association, the Defendants have been unjustly enriched at the expense of the Plaintiffs, the Association, and those similarly situated.

49. The Plaintiffs on behalf of the Assembly should be permitted recovery of that amount the Defendants have been unjustly enriched at the expense of the Plaintiffs and the Association.

FOR A THIRD CAUSE OF ACTION
(Veil Piercing/Alter Ego/Amalgamation)

50. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

51. Upon information and belief, the SLF IV/SBI Wild Wing, LLC, Stratford Land, SB Investments, Wild Wing Residential Development LLC were operating together as joint venturers, members, and/or agents in the development, marketing, management and sale of the lots at Wild Wing Plantation. As such, these Defendants are amalgamated in a manner in which they were all operating as one in the same.

52. SLF IV/SBI Wild Wing, LLC, SB Investments, Stratford Land, Wild Wing Residential Development LLC failed to observe corporate formalities, were undercapitalized,

and/or were otherwise so intermingled that each has become the alter ego of the other or all are amalgamated so as to blur the legal distinctions of said entities.

53. SLF IV/SBI Wild Wing, LLC, SB Investments, Stratford Land, Wild Wing Residential Development LLC were owned and operated by substantially the same principals and/or used the same trade names at all times relevant to the development, marketing, management and sale of the lots at Wild Wing. Hence, these Defendants are so amalgamated so as to blur the legal distinctions of said entities.

54. Upon information and belief, Founders Group International LLC and Founders Wild Wing were operating together as joint venturers, members, and/or agents in the development, marketing, management and sale of the lots at Wild Wing Plantation. As such, these Defendants are amalgamated in a manner in which they were all operating as one in the same.

55. Founders Group International LLC and Founders Wild Wing failed to observe corporate formalities, were undercapitalized, and/or were otherwise so intermingled that each has become the alter ego of the other or all are amalgamated so as to blur the legal distinctions of said entities.

56. Founders Group International LLC and Founders Wild Wing are owned and operated by substantially the same principals and/or use the same trade names at all times relevant to the development, marketing, management and sale of the lots at Wild Wing. Hence, these Defendants are so amalgamated so as to blur the legal distinctions of said entities.

DERIVATIVE ALLEGATIONS

57. Plaintiffs bring this action derivatively to redress injuries suffered by the Association as a direct result of the Defendants' breaches of fiduciary duties and unjust

enrichment.

58. Plaintiffs are property owners at Wild Wing Plantation and members of the Association.

59. Plaintiffs will fairly and adequately represent the interests of the Association and its members in enforcing and prosecuting its rights and has retained competent and experienced counsel.

60. Plaintiffs previously demanded that the Association board, still controlled by Declarants, pursue recovery of the under-funded Declarant contributions but the Association board refused.

61. Thereafter Plaintiff Dykes sent the letter attached as Exhibit A dated January 23, 2017, to the Association board and received no response.

62. Because a majority of the current directors suffer from conflicts of interest and divided loyalties, which preclude them from exercising independent business judgment, demand is also futile.

63. The Association Board is incapable or unwilling to take the actions required to seek the relief requested in this complaint.

WHEREFORE, the Plaintiff prays for a judgment of this Court for themselves, the Association, and its members;

- A. Finding that the Defendants breached their fiduciary duties to the Association and awarding all damages, actual, consequential, special, statutory and punitive;
- B. Ordering the immediate disgorgement of all profits and benefits obtained by Defendants as a result of their breaches of fiduciary duties;
- C. Awarding the costs and disbursements of this action, including a reasonable allowance

for Plaintiff's attorneys' and experts' fees; and

D. Granting such other and further relief as may be just and proper.

LYLES & LYLES, LLC

s/Robert T. Lyles, Jr.
Robert T. Lyles, Jr. Esquire
S.C. Bar No. 10299
342 East Bay Street
Charleston, South Carolina 29401
T: (843) 577-7730
F: (843) 577-7172
rtl@lylesfirm.com

Attorneys for Plaintiffs

June 29, 2017

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

C. BARRY DYKES and BARBARA
EISENHARDT, individually and derivatively
on behalf of the WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION,
INC.,

Plaintiffs,

vs.

WILD WING COMPANY, LLC, RALPH R.
TEAL, JR., SLV IV/SBI Wild Wing, LLC
WILD WING RESIDENTIAL
DEVELOPMENT LLC, STRATFORD LAND
MANAGER, SB INVESTMENTS LLC,
GRAEME T. BLACK, H. GILFORD
EDWARDS, FOUNDERS WILD WING
LLC, FOUNDERS GROUP
INTERNATIONAL LLC, AND XIAN DOU

Defendants.

WILD WING PLANTATION OWNERS'
ASSOCIATION, INC.

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH
JUDICIAL CIRCUIT
C/A NUMBER: 2017-CP-____-_____

VERIFICATION

I, Barbara Eisenhardt, hereby verify, that the facts and allegations in the Shareholder
Derivative Complaint are made upon personal knowledge with regard to my own acts and upon
information and belief as to all other matters. I further verify that I was a member of the Wild
Wing Plantation Owners' Association, Inc. at the time of the acts complained of therein and
remain one today.



Barbara Eisenhardt

SWORN to and subscribed to me
This 22nd day of June, 2017


NOTARY PUBLIC FOR SOUTH CAROLINA

C. BARRY DYKES and BARBARA
EISENHARDT, individually and derivatively
on behalf of the WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION,
INC.,

Plaintiffs,

vs.

WILD WING COMPANY, LLC, RALPH R.
TEAL, JR., SLV IV/SBI Wild Wing, LLC
WILD WING RESIDENTIAL
DEVELOPMENT LLC, STRATFORD LAND
MANAGER, SB INVESTMENTS LLC,
GRAEME T. BLACK, H. GILFORD
EDWARDS, FOUNDERS WILD WING
LLC, FOUNDERS GROUP
INTERNATIONAL LLC, AND XIAN DOU

Defendants.

WILD WING PLANTATION OWNERS'
ASSOCIATION, INC.

Nominal Defendant.

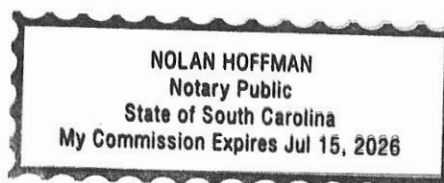
VERIFICATION

I, C. Barry Dykes, hereby verify, that the facts and allegations in the Shareholder
Derivative Complaint are made upon personal knowledge with regard to my own acts and upon
information and belief as to all other matters. I further verify that I became a member of the
Wild Wing Plantation Owners' Association, Inc. when I purchased my home in Wild Wing
Plantation in August 2013 and remain a member today.

C. Barry Dykes

SWORN to and subscribed to me
This 20th day of June, 2017


NOTARY PUBLIC FOR SOUTH CAROLINA



C. Barry Dykes
1423 Whooping Crane Drive
Conway, SC 29526
(843) 234-0013

January 23, 2017

Board of Directors
Wild Wing Property Owners Association
C/O Founders Wild Wing LLC
1000 Wild Wing Boulevard
Conway, SC 29526

RE: Wild Wing POA/Funding Shortfall

Dear Board Members:

I am hereby writing in my personal capacity as a member of the Wild Wing Property Owners Association ("POA").

As you know, a review of financial records of the POA clearly establishes that the developers, as declarants, failed to utilize generally accepted accounting procedures (GAAP) in calculating the difference between income and expenses of the POA for a number of years, which has resulted in a significant underfunding of the POA. The financial records of the POA establish that the amount of the underfunding totals \$519,801 through 2015.

This issue has been raised to you, the relevant accounting has been provided, and you informed me verbally that a decision has been made by the Board not to pursue an action against the declarant based upon the discovery of this erroneous accounting practice. Given the amount of money at issue, I disagree with the decision not to pursue recovery of the funds. I am also concerned that the Board's actions have been dictated by a conflict of interest between the Board, the prior developer and the current developer, both developers having declarant rights and responsibilities under the terms of Wild Wing's governing documents.

I hereby urge the Board to reconsider its decision not to pursue recovery of these funds. If the Board does not, I will have no choice but to file suit myself, on behalf of the Board, pursuant to Rule 23, *South Carolina Rules of Civil Procedure*, and will seek all legal remedies available.

Please let me have your response, in writing, no later than February 6, 2017.

Sincerely,



C. Barry Dykes

CC: Paul Skirchak, Community Association Manager,
Waccamaw Management, P.O. Box 51558, Myrtle Beach, SC 29579

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 City, State, ZIP+4®
CONWAY, SC 29526

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2017-CP-26-04187

C. Barry Dykes and Barbara Eisenhardt,)
individually and derivatively on behalf)
of the Wild Wing Plantation Property)
Owners' Association, Inc.,)

SUMMONS TO COUNTERCLAIM

on Behalf of

Plaintiffs,)

**Wild Wing Company, LLC;
SLF IV/SBI Wild Wing, LLC;**

V.

**Wild Wing Residential Development, LLC;
Stratford Land Manager, L.P.;**

Wild Wing Company, LLC; Ralph R.)
Teal, Jr.; SLF IV/SBI Wild Wing, LLC;)
Wild Wing Residential Development,)
LLC; Stratford Land Manager, L.P.; SB)
Investments, LLC; Graeme T. Black;)
Gilford Edwards; Founders Wild Wing,)
LLC; Founders Group International,)
LLC; Dan Liu, and Xian Dou,)

**SB Investments, LLC;
Founders Wild Wing, LLC;
Founders Group International, LLC; and
Dan Liu**

Defendants.)

Wild Wing Plantation Owners' Association, Inc.

Nominal Defendant.)

TO: Robert T. Lyles, Jr., Attorney for the Plaintiffs

YOU ARE HEREBY SUMMONED and required to answer the Counterclaim in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Counterclaim on the subscribers at their office at 1000 29th Avenue North, Myrtle Beach, South Carolina 29577, and to file your answer with the Clerk of Court for Horry County, all within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Counterclaim within the time afore-

said, the Defendants in this action will apply to the Court for judgment by default for the relief demanded in the Counterclaim and a judgment will be rendered against you.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843)448-2400
Attorneys for Defendants Wild Wing Company,
LLC; SLF IV/SBI Wild Wing, LLC; Wild Wing
Residential Development, LLC; Stratford Land
Manager, L.P.; SB Investment, LLC; Founders
Wild Wing, LLC; Founders Group
International, LLC; and Dan Liu

s/David B. Miller
David B. Miller, SC Bar #10296

Myrtle Beach, South Carolina

Dated: October 3, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2017-CP-26-04187

C. Barry Dykes and Barbara Eisenhardt,)
individually and derivatively on behalf)
of the Wild Wing Plantation Property)
Owners' Association, Inc.,)

Plaintiffs,)

v.)

Wild Wing Company, LLC; Ralph R.)
Teal, Jr.; SLF IV/SBI Wild Wing, LLC;)
Wild Wing Residential Development,)
LLC; Stratford Land Manager, L.P.; SB)
Investments, LLC; Graeme T. Black;)
Gilford Edwards; Founders Wild Wing,)
LLC; Founders Group International,)
LLC; Dan Liu, and Xian Dou,)

Defendants.)

Wild Wing Plantation Owners')
Association, Inc.)

Nominal Defendant.)

**Answer and
Counterclaim on Behalf of
Wild Wing Company, LLC;
SLF IV/SBI Wild Wing, LLC;
Wild Wing Residential Development, LLC;
Stratford Land Manager, L.P.;
SB Investments, LLC;
Founders Wild Wing, LLC;
Founders Group International, LLC; and
Dan Liu**

The Defendants, Wild Wing Company, LLC; SLF IV/SBI Wild Wing, LLC; Wild Wing Residential Development, LLC; Stratford Land Manager, L.P.; SB Investment, LLC; Founders Wild Wing, LLC; Founders Group International, LLC; and Dan Liu, (hereinafter collectively referred to as the "Defendants") by and through their undersigned attorneys, would hereby answer the Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

- 1) Each and every allegation of Plaintiffs' Complaint not hereinafter specifically admitted, modified, qualified, or denied is denied and strict proof demanded thereof.
- 2) The allegations of paragraphs 1 are admitted upon information and belief.
- 3) The allegations of paragraphs 2 and 3 are admitted upon information and belief.
- 4) Paragraph 4 asserts allegations against a Defendant "Sunstar, LLC", which such entity is not identified as a party Defendant in this action.
- 5) The allegations of paragraphs 5 are admitted upon information and belief.
- 6) As to the allegations of paragraph 6, the caption and this paragraph identify "SLV IV/SBI Wild Wing, LLC". The correct name of the entity is SLF IV/SBI Wild Wing, LLC. Subject to that clarification, the allegations of paragraph 6 are admitted upon information and belief.
- 7) The allegations of paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 are admitted upon information and belief.
- 8) The allegations of paragraphs 18 and 19 are denied and strict proof demanded thereof.

9) The allegations of paragraphs 20 and 21 are admitted upon information and belief.

10) The allegations of paragraph 22 are denied and strict proof demanded thereof. "Stratford Land" neither formed nor controls SLF IV/SBI Wild Wing, LLC or Wild Wing Residential Development, LLC. SLF IV/SBI Wild Wing, LLC and Wild Wing Residential Development, LLC are not joint ventures as they are properly organized, existing and operating pursuant to the Limited Liability Corporation provisions of the South Carolina Code of Laws.

11) The allegations of paragraphs 23 and 24 are admitted upon information and belief.

12) The allegations of paragraph 25 are denied and strict proof demanded thereof.

13) The allegations of paragraph 26 are admitted upon information and belief.

14) The allegations of paragraph 27 are denied and strict proof demanded thereof.

15) Paragraphs 28 and 29 are pleading paragraphs to which no response is required.

16) As to the allegations of paragraph 30, the Wild Wing Covenants speak for themselves and any allegation inconsistent therewith is denied and strict proof demanded thereof.

17) The allegations of paragraph 31 lack sufficient specificity to allow these answering Defendants to frame a response. As such, the allegations of paragraph 31 are denied and strict proof demanded thereof.

18) The allegations of paragraph 32 are denied and strict proof demanded thereof.

19) As to the allegations of paragraph 33, the Wild Wing Covenants speak for themselves. Any allegation of Plaintiffs' Complaint inconsistent therewith is denied and strict proof demanded thereof.

20) The allegations of paragraphs 34, 35, 36, and 37 are denied and strict proof demanded thereof.

21) Paragraph 38 is a pleading paragraph to which no response is required. To the extent paragraph 38 incorporates prior allegations, these answering Defendants crave specific reference herein.

22) The allegations of paragraphs 39, 40, 41, 42, 43, 44, 45, and 46 are denied and strict proof demanded thereof.

23) Paragraph 47 is a pleading paragraph to which no response is required. To the extent paragraph 47 incorporates prior allegations, these answering Defendants crave specific reference herein.

24) The allegations of paragraphs 48 and 49 are denied and strict proof demanded thereof.

25) Paragraph 50 is a pleading paragraph to which no response is required. To the extent paragraph 50 incorporates prior allegations, these answering Defendants crave specific reference herein.

26) The allegations of paragraphs 51, 52, 53, 54, 55, and 56 are denied and strict proof demanded thereof.

27) The allegations of paragraph 57 are denied and strict proof demanded thereof.

28) The allegations of paragraph 58 are admitted upon information and belief.

29) The allegations of paragraph 59 are denied and strict proof demanded thereof.

30) As to the allegations of paragraphs 60 and 61, it is admitted the Plaintiffs forwarded a letter dated January 23, 2017 which is attached to Plaintiffs' Complaint.

31) The allegations of paragraphs 62 and 63 are denied and strict proof demanded thereof.

FOR A SECOND DEFENSE

32) The allegations of the First Defense are incorporated herein and made a part and parcel of this Second Defense.

33) Plaintiffs' claims are barred in whole or in part by the applicable Statute of Limitations.

FOR A THIRD DEFENSE

34) The allegations of the First and Second Defenses are incorporated herein and made a part and parcel of this Third Defense.

35) Plaintiffs do not fairly and adequately represent the interests of the Members allegedly similarly situated pursuant to Rule 23, SCRPC.

FOR A FOURTH DEFENSE

36) The allegations of the First, Second and Third Defenses are incorporated herein and made a part and parcel of this Fourth Defense.

37) These answering Defendants plead payment as a complete and affirmative defense.

FOR A FIFTH DEFENSE

38) The allegations of the First, Second, Third, and Fourth Defenses are incorporated herein and made a part and parcel of this Fifth Defense.

39) These answering Defendants plead accord and satisfaction as a complete and affirmative defense.

FOR A SIXTH DEFENSE

40) The allegations of the First, Second, Third, Fourth, and Fifth Defenses are incorporated herein and made a part and parcel of this Sixth Defense.

41) These answering Defendants plead waiver and estoppel as a complete and affirmative defense.

FOR A SEVENTH DEFENSE

42) The allegations of the First, Second, Third, Fourth, Fifth, and Sixth Defenses are incorporated herein and made a part and parcel of this Seventh Defense.

43) Plaintiffs' Complaint seeks to impermissibly set aside the corporate identity of the various Corporate Defendants named herein. Each and every of these entities is independently organized and existing with strict attention to all requisite corporate formalities. There exist no circumstances which could result in confusion as regards each of the Corporate Defendants herein and Plaintiffs' allegations are not of the type or nature which could trigger "controlling person" liability under South Carolina Law. Plaintiffs' efforts to batch Defendants under various averments of wrongdoing is impermissible.

FOR AN EIGHTH DEFENSE

44) The allegations of the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Defenses are incorporated herein and made a part and parcel of this Eighth Defense.

45) These answering Defendants have fully complied with the requirements, obligations and administration of the Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation (hereinafter "Declaration"). To the contrary, various of the Plaintiff Members throughout the years have failed to comply and have violated the Declaration, including the failure to timely pay dues and assessments as required. To the extent Plaintiffs claim a representative capacity pursuant

to the Provisions of Rule 23, SCRCF, Plaintiffs come with unclean hands and are precluded from asserting any and all avenues of equitable relief.

FOR A NINTH DEFENSE

46) The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Defenses are incorporated herein and made a part and parcel of this Ninth Defense.

47) To the extent Plaintiffs claim a representative capacity pursuant to the Provisions of Rule 23, SCRCF, the alleged Declarant Contribution shortfalls, which such shortfalls are denied, stem and arise from failure on the part of Property Association Members to comply with and pay dues and assessments in accordance with the Declaration. Plaintiffs cannot now seek redress for their own bad acts.

FOR A FIRST COUNTERCLAIM

48) The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Defenses are incorporated herein and made a part and parcel of this First Counterclaim.

49) Plaintiffs, allegedly as Representatives of Wild Wing Plantation Owners' Association, Inc. (hereinafter "the Association") assert claims arising in whole or in part from the failure of various Association Members to pay dues and assessments in accordance with the Declaration.

50) Plaintiffs' allegations herein stem, in whole or in part, from actual and/or perceived rights, duties, and obligations within the Declaration. In response, these answering Defendants are required to enforce the provisions of the Declaration.

51) Article XII, Section 2 of the Declaration specifically provides that all costs of enforcement, "including a reasonable fee for Declarant's counsel" shall be paid by the owner of such lot or lots in breach thereof.

52) Plaintiffs and/or their representative breaching Members are liable to the Declarants for all costs and expenses of this action, including reasonable attorneys fees.

WHEREFORE, the Defendants, Wild Wing Company, LLC; SLF IV/SBI Wild Wing, LLC; Wild Wing Residential Development, LLC; Stratford Land Manager, L.P.; SB Investment, LLC; Founders Wild Wing, LLC; Founders Group International, LLC; and Dan Liu, having fully answered Plaintiffs' Complaint, these answering Defendants request an Order of this Honorable Court dismissing same with prejudice and for an Order of this Honorable Court awarding all costs and expenses, including a reasonable attorneys fee against Plaintiffs and/or their Represented Members, together with such other and further relief as this Honorable Court may deem just and proper.

[Signature block on following page]

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Attorneys for Defendants Wild Wing Company,
LLC; SLF IV/SBI Wild Wing, LLC; Wild Wing
Residential Development, LLC; Stratford Land
Manager, L.P.; SB Investment, LLC; Founders
Wild Wing, LLC; Founders Group
International, LLC; and Dan Liu

s/David B. Miller
David B. Miller, SC Bar #10296

Myrtle Beach, South Carolina

Dated: October 3, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
)
C. BARRY DYKES AND BARBARA)
EISENHARDT, INDIVIDUALLY AND)
DERIVATIVELY ON BEHALF OF THE)
WILD WING PLANTATION PROPERTY)
OWNERS' ASSOCIATION, INC.,)
)
PLAINTIFFS,)
)
VS.)
)
WILD WING COMPANY, LLC; SUNSTAR,)
LLC; RALPH R. TEAL, JR.; SLF IV/SBI)
WILD WING, LLC; SLF IV/SBI JV, LLC;)
SLF IV/SBI PROPERTIES MM, LLC; SLF)
IV/SBI DEVELOPMENT HOLDINGS, LLC;)
WILD WING RESIDENTIAL)
DEVELOPMENT, LLC; STRATFORD)
LAND MANAGER, L.P. D/B/A)
STRATFORD LAND; STRATFORD LAND)
FUND IV, L.P.; SB INVESTMENTS LLC;)
REALSTAR MANAGEMENT, LLC;)
GRAEME T. BLACK; H. GILFORD)
EDWARDS; FOUNDERS WILD WING,)
LLC; FOUNDERS GROUP)
INTERNATIONAL, LLC; DAN LIU; XIAN)
"NICK" DOU; RICK SCHULTZ; RICK)
TAYLOR AND THOMAS PLANKERS,)
)
DEFENDANTS.)
)
WILD WING PLANTATION OWNERS')
ASSOCIATION, INC.,)
)
NOMINAL DEFENDANT.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
C/A NUMBER: 2017-CP-26-04187

**AMENDED SHAREHOLDER
DERIVATIVE SUMMONS
(JURY TRIAL DEMANDED)**

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to Answer the Amended Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Amended Complaint on the subscribers at their offices, Lyles & Associates, LLC, located at 342 East Bay Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Amended Complaint

within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in the Complaint and will seek a default judgment against you.

LYLES & ASSOCIATES, LLC

s/Robert T. Lyles, Jr.

Robert T. Lyles, Jr. Esquire (S.C. Bar No. 10299)

Lee Anne Walters, Esquire (S.C. Bar No. 74984)

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ATTORNEYS FOR PLAINTIFFS

June 10, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
C/A NUMBER: 2017-CP-26-04187

C. BARRY DYKES AND BARBARA
EISENHARDT, INDIVIDUALLY AND)
DERIVATIVELY ON BEHALF OF THE)
WILD WING PLANTATION PROPERTY)
OWNERS' ASSOCIATION, INC.,)

**AMENDED SHAREHOLDER
DERIVATIVE COMPLAINT
(JURY TRIAL DEMANDED)**

PLAINTIFFS,)

VS.)

WILD WING COMPANY, LLC;)
SUNSTAR, LLC; RALPH R. TEAL, JR.;)
SLF IV/SBI WILD WING, LLC; SLF)
IV/SBI JV, LLC; SLF IV/SBI)
PROPERTIES MM, LLC; SLF IV/SBI)
DEVELOPMENT HOLDINGS, LLC;)
WILD WING RESIDENTIAL)
DEVELOPMENT, LLC; STRATFORD)
LAND MANAGER, L.P. D/B/A)
STRATFORD LAND; STRATFORD)
LAND FUND IV, L.P.; SB)
INVESTMENTS, LLC; REALSTAR)
MANAGEMENT, LLC; GRAEME T.)
BLACK; H. GILFORD EDWARDS;)
FOUNDERS WILD WING, LLC;)
FOUNDERS GROUP INTERNATIONAL,)
LLC; DAN LIU; XIAN "NICK" DOU;)
RICK SCHULTZ; RICK TAYLOR; AND)
THOMAS PLANKERS,)

DEFENDANTS.)

WILD WING PLANTATION OWNERS')
ASSOCIATION, INC.)

NOMINAL DEFENDANT.)

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiffs, C. Barry Dykes and Barbara Eisenhardt, for their derivative complaint on behalf of Nominal Defendant Wild Wing Plantation Property Owners' Association, Inc., make the following allegations upon Plaintiffs' personal knowledge, with regard to themselves and their own acts, and upon information and belief as to all other matters, assert derivative claims against the above-named Defendants as outlined below.

PARTIES AND JURISDICTION

1. Plaintiffs, C. Barry Dykes and Barbara Eisenhardt (collectively “Plaintiffs”), are residents of Horry County, South Carolina, and are owners of real estate located in the Horry County subdivision known as Wild Wing Plantation.

2. Wild Wing Plantation Property Owners’ Association, Inc. (“Wild Wing Association” or “Association”), a nominal defendant, is a nonprofit corporation formed pursuant to the laws of South Carolina.

3. Defendant, Wild Wing Company, LLC (“Wild Wing Company”), is a limited liability company organized pursuant to the laws of South Carolina.

4. Defendant, Sunstar, LLC, is a limited liability company organized pursuant to the laws of South Carolina.

5. Defendant, Ralph R. Teal, Jr. (“Teal”), is a citizen and resident of Horry County, South Carolina.

6. Defendant, SLF IV/SBI Wild Wing, LLC, is a limited liability company organized pursuant to the laws of Texas and conducting business in Horry County, South Carolina.

7. Defendant, SLF IV/SBI JV, LLC, is a limited liability company organized pursuant to the laws of Texas and conducting business in Horry County, South Carolina.

8. Defendant, SLF IV/SBI Properties MM, LLC, is a limited liability company organized pursuant to the laws of Texas and conducting business in Horry County, South Carolina.

9. Defendant Stratford Land Fund IV, L.P. (SLF) is a limited partnership organized pursuant to the laws of Delaware and conducting business in Horry County, South Carolina.

10. Defendant, Stratford Land Manager, L.P. d/b/a Stratford Land, is a limited partnership organized pursuant to the laws of Texas and conducting business in Horry County, South Carolina.

11. Defendant, SLF IV/SBI Development Holdings, LLC, is a limited liability company organized pursuant to the laws of Delaware and conducting business in Horry County, South Carolina.

12. Defendant, SB Investments, LLC, is a limited liability company organized pursuant to the laws of South Carolina.

13. Defendant, Wild Wing Residential Development, LLC, is a limited liability company organized pursuant to the laws of Delaware and conducting business in Horry County, South Carolina.

14. Defendant, RealStar Management, LLC, is a limited liability company organized pursuant to the laws of South Carolina and conducting business in Horry County, South Carolina.

15. Defendant, Graeme T. Black (“Black”), is a citizen and resident of Horry County, South Carolina.

16. Defendant, H. Gilford Edwards (“Edwards”), is a citizen and resident of Horry County, South Carolina.

17. Defendant, Founders Wild Wing, LLC (“Founders Wild Wing”), is a limited liability company organized and existing pursuant to the laws of the state of South Carolina.

18. Defendant, Founders Group International, LLC (“Founders Group International”), is a limited liability company organized and existing pursuant to the laws of the state of South Carolina.

19. Defendant, Xian “Nick” Dou, is a resident of Horry County, South Carolina and a managing member of Founders Wild Wing.

20. Defendant, Dan Liu, is a resident of Horry County, South Carolina and managed Founders Group International.

21. Defendant, Rick Schultz (“Schultz”), is a citizen and resident of Horry County, South Carolina and was appointed as an officer and member of the Board of the Association by Founders Group International.

22. Defendant, Rick Taylor (“Taylor”), is a citizen and resident of Horry County, South Carolina and was appointed as a member of the Board of the Association by Founders Group International.

23. Defendant, Thomas Plankers (“Plankers”), is a citizen and resident of Horry County, South Carolina and was appointed as a member of the Board of the Association by Founders Group International.

24. Plaintiff, C. Barry Dykes (“Dykes”), purchased property located in Wild Wing Plantation in August 2013 and has been a member of the Association since August 2013.

25. Plaintiff, Barbara Eisenhardt (“Eisenhardt”), purchased property located in Wild Wing Plantation in 2007 and has been a member of the Association at all times herein.

26. Plaintiffs bring this action on behalf of themselves and derivatively on behalf of the Wild Wing Association and its members.

FACTUAL BACKGROUND

27. This lawsuit arises from the Defendants’ failure to act in good faith and with due regard to the interests of the Wild Wing Association and its members.

28. Wild Wing Company, as Declarant, filed a Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation (the “Wild Wing Covenants”) on September 26, 2006. Wild Wing Company was the Declarant from 2006 until December 2010.

29. The members of Wild Wing Company were Sunstar, LLC (75%) and WMC Legacy, LLC/WHM-Jr. Legacy, LLC (25%) (Legacy entities are collectively the “Murphy

family”). Sunstar, LLC was a member and manager of Wild Wing Company and held 75% of the voting rights and 75% of the financial rights.

30. Wild Wing Company was managed by Sunstar, LLC and its members Edward Lawton Benton, Ralph Teal and Gilford Edwards.

31. Wild Wing Company assigned all rights as Declarant and any other rights it had to SLF IV/SBI Wild Wing, LLC by assignment dated December 22, 2010.

32. All of the individuals who were members of, or had rights in, Wild Wing Company also became members of, or had rights in, SLF IV/SBI Wild Wing, LLC and SLF IV/SBI JV, LLC.

33. Pursuant to its operating agreement, the members of SLF IV/SBI Wild Wing, LLC are SLF IV/SBI Properties MM, LLC (1%) and SLF IV/SBI JV, LLC (99%).

34. The members of SLF IV/SBI JV, LLC are Stratford Land Fund IV, L.P. (SLF) and SB Investments LLC.

35. SB Investments, LLC is the sole managing member of SLF IV/SBI Properties MM, LLC and of SLF IV/SBI JV, LLC.

36. SB Investments, LLC is managed by Ralph Teal and Jeff Turner. Turner, upon information and belief, works for the Murphy family.

37. RealStar Management, LLC, managed the assets of SLF IV/SBI JV, LLC, including the Wild Wing assets.

38. Graeme Black is an employee of RealStar Management, LLC. Black represented the interests of SLF IV/SBI JV, LLC and was appointed as its direction as a member and/or officer of the Board of Directors of the Wild Wing Association.

39. Gilford Edwards is a principal of RealStar Management, LLC. Gilford Edwards also served as a member and/or officer of the Board of Directors of the Wild Wing Association.

40. SLF IV/SBI Wild Wing, LLC assigned its rights to Wild Wing Residential Development, LLC (f/k/a Wild Wing Development, LLC) by assignment dated November 9, 2011. Wild Wing Residential Development, LLC was the third Declarant and remained so from 2011 until 2015.

41. The sole member of Wild Wing Residential Development, LLC is SLF IV/SBI Development Holdings, LLC, which is managed by SLF IV/SBI Properties MM, LLC. The sole managing member of SLF IV/SBI Properties MM, LLC is SB Investments, LLC, which (as alleged above) is managed by Ralph Teal and Jeff Turner.

42. Stratford Land and SB Investments, LLC formed and controlled SLF IV/SBI Wild Wing, LLC and Wild Wing Residential Development, LLC as joint ventures.

43. Ralph Teal, Graeme Black and Gilford Edwards served as members and/or officers of the Board of Directors of the Wild Wing Association until they resigned on or about June 17, 2015.

44. Ralph Teal, Graeme Black and Gilford Edwards personally conducted the operations of the Association (as board members and officers) and the declarant entities prior to the sale and assignment to Founders Wild Wing and bear personal responsibility for those actions.

45. In 2015, Wild Wing Residential Development, LLC and SLF IV/SBI Wild Wing, LLC granted the Wild Wing property to Founders Wild Wing, LLC.

46. Wild Wing Residential Development, LLC assigned all of its rights as Declarant, and any other rights it had, to Founders Wild Wing, LLC by assignment dated April 13, 2015. Founders Wild Wing, LLC is the fourth and current Declarant.

47. The members of Founders Wild Wing, LLC are Jiangsu Tianrui Danfo Commerce and Industry Co. Ltd. and Xian Dou.

48. Xian Dou and Dan Liu personally conduct the operations of Founders Wild Wing, LLC and Founders Group International, and are personally liable for those actions.

49. Rick Schultz, Rick Taylor and Tom Plankers served and/or are serving as members and/or officers of the Board of Directors of the Wild Wing Association as appointed by Founders Group International, LLC and Founders Wild Wing, LLC.

50. Defendants, Wild Wing Company, SLF IV/SBI Wild Wing, LLC, SLF IV/SBI JV, LLC, SLF IV/SBI Properties MM, LLC, Wild Wing Residential Development, LLC, Stratford Land, Sunstar, LLC, SB Investments, LLC, SLF IV/SBI Development Holdings, LLC, RealStar Management, LLC, Ralph Teal, Graeme Black, Gilford Edwards, Founders Wild Wing, LLC, Founders Group International, Xian Dou and Dan Liu, are collectively referred to as “Defendants.”

51. Defendants, Wild Wing Company, SLF IV/SBI Wild Wing, LLC, Wild Wing Residential Development, LLC, and Founders Wild Wing, may be collectively referred to as “Declarant” or “Declarants.”

52. The Wild Wing Covenants obligate owners of property (lots) located in Wild Wing Plantation to pay assessments to the Association, including annual assessments and special assessments.

53. Pursuant to the Wild Wing Covenants, as originally filed, the Declarant was exempt from paying assessments through December 31, 2010. In lieu of paying the same assessments, per lot, that all other owners pay, the Declarant (through December 31, 2010), was allowed to pay the difference between actual operating expenditures and the amount of assessments collected from the owners (*See* Article VI, Section 2, Wild Wing Covenants). Operating expenditures included any reserve for replacements or operating reserves.

54. The Wild Wing Covenants require all books and records to be kept in accordance with generally accepted accounting principles (“GAAP”).

55. In calculating the contributions owed by the Declarant, the Defendants failed to utilize GAAP, which resulted in contributions by the Declarant that were substantially less than would be required had Defendants used GAAP.

56. Defendants’ failure to use GAAP has resulted in a substantial shortfall and underfunding of the Association’s operations.

57. In addition, the Declarant twice filed amendments to the Wild Wing Covenants to extend the time period during which the Declarant was exempt from paying the assessments, paid by other lot owners.

58. One such amendment to the Wild Wing Covenants, extended the time period that the Declarant was exempt from paying the assessments per lot, as required by other lot owners, from December 31, 2010 until December 31, 2016, and applied retroactively.

59. This amendment also extended the time the Declarant was exempt from paying assessments per lot for additional phases from five years after filing of the declaration of the additional phase to ten years after filing of the declaration of the additional phase.

60. This same amendment extended the voting rights of the Declarant from December 31, 2015 until December 31, 2022, allowing the Declarant to retain control of the Board for an extended period of time.

61. This amendment was executed by Ralph Teal, as President of the Association, and also on behalf of Wild Wing Residential Development, LLC, by SLF IV/SBI Properties MM, LLC, its manager, by SB Investments, LLC, by Ralph Teal, its co-manager.

62. Another amendment to the Wild Wing Covenants extended the time period Declarant was exempt from paying the assessments per lot, as required by other lot owners, from December 31, 2016 to December 31, 2019. This amendment was signed by Founders Group International employee, Tom Plankers, as President of the Association, and by Nick Dou on behalf of Founders Wild Wing, LLC.

63. At the time of the amendments referred to above, the Declarant had controlling voting rights and proposed and passed the amendments without fully disclosing the effect of the amendments to the other HOA members. The amendments were also for the exclusive benefit of the Declarant which realized a substantial pecuniary benefit as the result of the amendments, which resulted in a corresponding pecuniary loss to the HOA.

64. The Declarants' failure to pay assessments, as paid by other lot owners, has resulted in a substantial shortfall and underfunding of the Association's operations.

65. As a result of the shortfall in the Association's resources, money designated for reserves has been diverted to pay for operating expenses.

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

66. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

67. From its inception, Defendants have controlled the Board of Directors of the Association.

68. Defendants have a fiduciary relationship to the Plaintiffs, including the Association, by virtue of their capacity as former or current developers of the Wild Wing Plantation community who have and/or continue to exercise and retain control over the Association.

69. Defendants have a fiduciary relationship to the Plaintiffs including the Association by virtue of their former or current capacity as controlling members of the Association's Board of Directors.

70. By reason of their position as officers, directors, and/or fiduciaries of the Association and because of their ability to control the declarant and associated entities, the Individual Defendants owed the Association and its members fiduciary obligations of good faith, loyalty and candor, and were required to use their utmost ability to control and manage the Association in a fair, just, honest and equitable manner. The Defendants were and are required to act in furtherance of the best interests of the Association and its members so as to benefit all members equally and not in furtherance of their personal interest or benefit.

71. Each former or current director or officer of the Association owes to the Association the fiduciary duty to exercise good faith and diligence in the administration of the Association's affairs and the highest obligations of fair dealing.

72. Defendants owe or owed the Association and its members the highest duties of good faith, fair dealing, due care, and loyalty.

73. Defendants owe or owed the Association and its members a duty to act in good faith and with due regard to the interests of the Association's members.

74. As developers in control of the Association, the Defendants were and are prohibited from making decisions that benefit the Defendants' own interest at the expense of the Association and its members.

75. As developers in control of the Association, the Defendants were and are prohibited from making use of the relationship with the Association and its members to benefit the Defendants' own interests.

76. Because of the Defendants' fiduciary duty, transactions involving the Association, particularly transactions which secure profit or advantage to the one or any of the Defendants at the expense of the Association or its members will be scrutinized by the court.

77. Defendants breached their duties by failing to use GAAP in calculating their contributions to the Association, thereby elevating their own interests over the interests of the Association and the Association's members.

78. Defendants breached their duties by amending the Wild Wing Covenants to extend the time period during which the Declarant was exempt from paying the assessments paid by other lot owners, thereby elevating their own interests over the interests of the Association and the Association's members.

79. Defendants breached their duties by amending the Wild Wing Covenants to extend the time period during which the Declarant controlled the Board of the Association.

80. Defendants breached their duties by making decisions that elevated the interests of the Declarants and their own interests over the interests of the Association and the Association's members.

81. Defendants breached their duties by failing to disclose their breaches of duty, by failure to enforce the Association's rights, and by self-dealing.

82. As a direct and proximate result of the Defendants' actions described herein, the Association has been deprived of Declarant contributions owed to it.

83. As a direct and proximate result of the Defendants' actions, the Association has been required to divert money intended for its reserves for operation of the Association and therefore, its reserve funds have been improperly wasted.

84. As a direct and proximate result of the Defendants' actions, the Association members have been required to pay increased assessments and have suffered other damages.

85. Plaintiffs and the Association are entitled to an award of damages against the Defendants in an amount to be determined by the trier of fact, an order declaring the amendments null and void and such other relief allowed by law.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)

86. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

87. By failure to pay the proper contributions to the Association, the Defendants have been unjustly enriched at the expense of the Plaintiffs, the Association, and those similarly situated.

88. By failure to pay the per lot assessments paid by other property owners to the Association, the Defendants have been unjustly enriched at the expense of the Plaintiffs, the Association, and those similarly situated.

89. The Plaintiffs on behalf of the Assembly should be permitted recovery of that amount the Defendants have been unjustly enriched at the expense of the Plaintiffs and the Association.

FOR A THIRD CAUSE OF ACTION
(Veil Piercing/Alter Ego/Amalgamation)

90. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

91. Wild Wing Company, Sunstar LLC, Teal and Black were operating together as joint venturers, members, and/or agents in the development, marketing, management and sale of the lots at Wild Wing Plantation and the creation and management of the Association such that each of these Defendants has become the alter ego of the other and/or the operations are intertwined such

that the actions of these Defendants should be regarded as those of an amalgamated or single business enterprise.

92. Wild Wing Company, Sunstar LLC, Teal and Black failed to observe corporate formalities, were undercapitalized, and/or were otherwise so intermingled such that each of these Defendants has become the alter ego of the other and/or the operations are intertwined such that the actions of these Defendants should be regarded as those of an amalgamated or single business enterprise.

93. Wild Wing Company, Sunstar LLC, Teal and Black failed to observe corporate formalities, were undercapitalized, and/or were otherwise so intermingled such that injustice would result if the entities' acts are not regarded as the acts of the principals.

94. Any liability imposed on one of these Defendants should be imposed on the other of these Defendants.

95. SLF IV/SBI Wild Wing, LLC, SLF IV/SBI JV, LLC, SLF IV/SBI MM LLC, Stratford Land, SB Investments, Wild Wing Residential Development LLC, SLF IV/SBI Development Holdings LLC, RealStar Management, LLC, Teal, Black and Edwards were operating together as joint venturers, members, and/or agents in the development, marketing, management and sale of the lots at Wild Wing Plantation and the management of the Association such that each has become the alter ego of the other and/or the operations are intertwined such that the actions should be regarded as those of an amalgamated or single business enterprise.

96. SLF IV/SBI Wild Wing, LLC, SLF IV/SBI JV LLC, SLF IV/SBI MM LLC, Stratford Land, SB Investments, Wild Wing Residential Development LLC, SLF IV/SBI Development Holdings LLC, and RealStar Management, LLC were owned and operated by substantially the same principals and/or used the same trade names at all times relevant to the

development, marketing, management and sale of the lots at Wild Wing and the management of the Association such that each of these Defendants has become the alter ego of the other and/or the operations are intertwined such that the actions of these Defendants should be regarded as those of an amalgamated or single business enterprise.

97. SLF IV/SBI Wild Wing, LLC, SLF IV/SBI JV, LLC, SLF IV/SBI MM LLC, Stratford Land, SB Investments, Wild Wing Residential Development LLC, SLF IV/SBI Development Holdings LLC, RealStar Management, LLC failed to observe corporate formalities, were undercapitalized, and/or were otherwise so intermingled such that each of these Defendants has become the alter ego of the other and/or the operations are intertwined such that the actions of these Defendants should be regarded as those of an amalgamated or single business enterprise.

98. SLF IV/SBI Wild Wing, LLC, SLF IV/SBI JV, LLC, SLF IV/SBI MM LLC, Stratford Land, SB Investments, Wild Wing Residential Development LLC, SLF IV/SBI Development Holdings LLC, and RealStar Management, LLC failed to observe corporate formalities, were undercapitalized, and/or were otherwise so otherwise so intermingled such that injustice would result if the entities' acts are not regarded as the acts of the principals.

99. Any liability imposed on one of these Defendants should be imposed on the other of these Defendants.

100. Founders Group International LLC, Founders Wild Wing, Dan Liu and Nick Dou were operating together as joint venturers, members, and/or agents in the development, marketing, management and sale of the lots at Wild Wing Plantation and in the management of the Associations such that each of these Defendants has become the alter ego of the other and/or the operations are intertwined such that the actions of these Defendants should be regarded as those of an amalgamated or single business enterprise.

101. Founders Group International LLC, Founders Wild Wing, Dan Liu and Nick Dou failed to observe corporate formalities, were undercapitalized, and/or were otherwise so intermingled such that injustice would result if the entities' acts are not regarded as the acts of the principals.

102. Founders Group International LLC and Founders Wild Wing are owned and operated by substantially the same principals and/or use the same trade names at all times relevant to the development, marketing, management and sale of the lots at Wild Wing such that each of these Defendants has become the alter ego of the other and/or the operations are intertwined such that the actions of these Defendants should be regarded as those of an amalgamated or single business enterprise.

103. As such, any liability imposed on one of these Defendants should be imposed on the other of these Defendants.

104. The Defendants created or caused to be created a complex web of entities and transactions in an effort to allow the principals and individuals to realize a profit at the expense of the Association and in bad faith.

105. The Defendants' actions as outlined above are in bad faith and have resulted in injustice at the expense of the Plaintiffs, the Association and its members.

FOR A FOURTH CAUSE OF ACTION
(S.C. Unfair Trade Practices Act)

106. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

107. Defendants were engaged in trade and commerce as defined by the South Carolina Unfair Trade Practices Act.

108. Defendants' above-described activities constitute unfair and deceptive practices in

conduct of their trade.

109. Defendants' above-described acts are capable of repetition and adversely affect the public interest.

110. Defendants knew or should have known their conduct was in violation of South Carolina Code Section 39-5-20.

111. Defendants' wrongs entitle the Plaintiffs to an award of treble damages, attorneys' fees and costs.

112. Plaintiffs are entitled to a judgment of the Court as a result of the Defendants' repetitive and multiple violations of SCUPTA, and to an award for damages, treble damages, and attorneys' fees for the prosecution of this action.

DERIVATIVE ALLEGATIONS

113. Plaintiffs bring this action derivatively to redress injuries suffered by the Association as a direct result of the Defendants' breaches of fiduciary duties and unjust enrichment.

114. Plaintiffs are property owners at Wild Wing Plantation and members of the Association.

115. Plaintiffs will fairly and adequately represent the interests of the Association and its members in enforcing and prosecuting its rights and has retained competent and experienced counsel.

116. Plaintiffs previously demanded that the Association Board, still controlled by the Founders entities, pursue recovery of the under-funded Declarant contributions but the Association board refused.

117. Thereafter Plaintiff Dykes sent the letter attached as Exhibit A dated January 23, 2017, and incorporated herein by reference, to the Association Board and received no response.

118. Alternatively, demand and/or any additional demand is futile and must be excused.

119. Because a majority of the directors suffer from conflicts of interest and divided loyalties that preclude them from exercising independent business judgment, it would be futile to demand that the Board of Directors, as currently constituted or previously, effectively bring claims against itself or its predecessors in interest.

120. The Chairman of the Association Board and a majority of its directors were and are representatives of the Founders' entities and/or the individuals who control those entities.

121. In January 2017, Founders Group International employees Tom Plankers, Rick Schultz and Rick Taylor served on the Board of Directors as appointed by Founders Group International. Plankers was employed by Founders Group International as General Manager and Vice President. Rick Taylor was employed by Founders Group International as Chief Executive Officer. Rick Schultz was employed by Founders Group International as General Manager.

122. In March 2017, after being fired by Founders Group International, Tom Plankers was removed from the Board and Dennis Gaboriault, an employee of Founders Group International, was appointed as a director of the Board by Founders Group International.

123. In July 2017, Rick Taylor was removed from the Board and Rick Schultz assumed the role of President as appointed by Founders Group International. Brad Crumling was appointed as Secretary/Treasurer by Founders Group International. Brad Crumling is employed by Founders Group International as a regional manager.

124. In 2017 and as it now exists, a majority of the Board members were appointed by and are controlled by Founders Group International.

125. A majority of the Board was and is incapable of disinterestedly and independently considering a demand to commence and prosecute this action.

126. Demand upon the Board is futile because the board members approved of or acquiesced to the insufficient declarant contributions and to the amendments outlined above.

127. Demand upon the Board is futile because the Board is already predisposed to refuse a demand as demonstrated by the failed response to the letter referenced above and because the Board is controlled by Founders Group International, Founders Wild Wing and the related entities and individuals.

128. Demand is futile because the principals of Founders Group International and Founders Wild Wing, which control the Board, are engaged in ongoing litigation alleging fraud and misappropriation.

129. Demand is futile and must be excused because the Board, as currently or previously composed, is incapable or unwilling to take the actions required to seek the relief requested through this litigation.

WHEREFORE, the Plaintiffs pray for a judgment of this Court for themselves, the Association, and its members;

- A. Finding that the Defendants breached their fiduciary duties to the Association and awarding all damages, actual, consequential, special, statutory and punitive;
- B. Finding that the amendments outlined above are null and void and directing the developer to pay per lot assessments and relinquish control of the Association;
- C. Ordering the immediate disgorgement of all profits and benefits obtained by Defendants as a result of their breaches of fiduciary duties;
- D. Awarding the costs and disbursements of this action, including a reasonable allowance for Plaintiff's attorneys' and experts' fees; and
- E. Granting such other and further relief as has been plead or is proper.

LYLES & ASSOCIATES, LLC

s/Robert T. Lyles, Jr.

Robert T. Lyles, Jr. Esquire (S.C. Bar No. 10299)

Lee Anne Walters, Esquire (S.C. Bar No. 74984)

342 East Bay Street

Charleston, South Carolina 29401

T: (843) 577-7730

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rtl@lylesfirm.com

lw@lylesfirm.com

ATTORNEYS FOR PLAINTIFFS

June 10, 2019

C. Barry Dykes
1423 Whooping Crane Drive
Conway, SC 29526
(843) 234-0013

January 23, 2017

Board of Directors
Wild Wing Property Owners Association
C/O Founders Wild Wing LLC
1000 Wild Wing Boulevard
Conway, SC 29526

RE: Wild Wing POA/Funding Shortfall

Dear Board Members:

I am hereby writing in my personal capacity as a member of the Wild Wing Property Owners Association ("POA").

As you know, a review of financial records of the POA clearly establishes that the developers, as declarants, failed to utilize generally accepted accounting procedures (GAAP) in calculating the difference between income and expenses of the POA for a number of years, which has resulted in a significant underfunding of the POA. The financial records of the POA establish that the amount of the underfunding totals \$519,801 through 2015.

This issue has been raised to you, the relevant accounting has been provided, and you informed me verbally that a decision has been made by the Board not to pursue an action against the declarant based upon the discovery of this erroneous accounting practice. Given the amount of money at issue, I disagree with the decision not to pursue recovery of the funds. I am also concerned that the Board's actions have been dictated by a conflict of interest between the Board, the prior developer and the current developer, both developers having declarant rights and responsibilities under the terms of Wild Wing's governing documents.

I hereby urge the Board to reconsider its decision not to pursue recovery of these funds. If the Board does not, I will have no choice but to file suit myself, on behalf of the Board, pursuant to Rule 23, *South Carolina Rules of Civil Procedure*, and will seek all legal remedies available.

Please let me have your response, in writing, no later than February 6, 2017.

Sincerely,



C. Barry Dykes

CC: Paul Skirchak, Community Association Manager,
Waccamaw Management, P.O. Box 51558, Myrtle Beach, SC 29579

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A NUMBER: 2017-CP-26-04187
	)	
C. Barry Dykes And Barbara Eisenhardt,	)	
Individually And Derivatively On Behalf Of	)	
The Wild Wing Plantation Property	)	
Owners' Association, Inc.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Wild Wing Company, LLC; Sunstar, LLC;	)	SUMMONS TO
Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing,	)	AMENDED SHAREHOLDER
LLC; SLF IV/SBI JV, LLC; SLF IV/SBI	)	DERIVATIVE COMPLAINT
Properties MM, LLC; SLF IV/SBI	)	(JURY TRIAL DEMANDED)
Development Holdings, LLC; Wild Wing	)	
Residential Development, LLC; Stratford	)	
Land Manager, L.P. d/b/a Stratford Land;	)	
Stratford Land Fund IV, L.P.; SB	)	
Investments LLC; Realstar Management,	)	
LLC; Graeme T. Black; H. Gilford	)	
Edwards; Founders Wild Wing, LLC;	)	
Founders Group International, LLC; Dan	)	
Liu; Xian "Nick" Dou; Rick Schultz; Rick	)	
Taylor And Thomas Plankers,	)	
	)	
Defendants.	)	
	)	
Wild Wing Plantation Owners' Association,	)	
Inc.,	)	
	)	
Nominal Defendant.	)	

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to Answer the Amended Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Amended Complaint on the subscribers at their offices, Lyles & Associates, LLC, located at 342 East Bay Street, Charleston, South Carolina 29401, within fifteen (15) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Amended

Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in the Complaint and will seek a default judgment against you.

LYLES & ASSOCIATES, LLC

s/Robert T. Lyles, Jr.

Robert T. Lyles, Jr., Esquire (S.C. Bar No. 10299)

1037 Chuck Dawley Blvd., STE G100

Mount Pleasant, South Carolina 29464

T: (843) 577-7730

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rtl@lylesfirm.com

ATTORNEYS FOR PLAINTIFFS

March 19, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A NUMBER: 2017-CP-26-04187
	)	
C. Barry Dykes And Barbara Eisenhardt,	)	
Individually And Derivatively On Behalf Of	)	
The Wild Wing Plantation Property	)	
Owners' Association, Inc.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	AMENDED SHAREHOLDER
	)	DERIVATIVE COMPLAINT
	)	(JURY TRIAL DEMANDED)
Wild Wing Company, LLC; Sunstar, LLC;	)	
Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing,	)	
LLC; SLF IV/SBI JV, LLC; SLF IV/SBI	)	
Properties MM, LLC; SLF IV/SBI	)	
Development Holdings, LLC; Wild Wing	)	
Residential Development, LLC; Stratford	)	
Land Manager, L.P. d/b/a Stratford Land;	)	
Stratford Land Fund IV, L.P.; SB	)	
Investments LLC; Realstar Management,	)	
LLC; Graeme T. Black; H. Gilford	)	
Edwards; Founders Wild Wing, LLC;	)	
Founders Group International, LLC; Dan	)	
Liu; Xian "Nick" Dou; Rick Schultz; Rick	)	
Taylor And Thomas Plankers,	)	
	)	
Defendants.	)	
	)	
Wild Wing Plantation Owners' Association,	)	
Inc.,	)	
	)	
Nominal Defendant.	)	

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiffs, C. Barry Dykes and Barbara Eisenhardt, for their derivative complaint on behalf of Nominal Defendant Wild Wing Plantation Property Owners' Association, Inc., make the following allegations upon Plaintiffs' personal knowledge, with regard to themselves and their own acts, and upon information and belief as to all other matters, assert derivative claims against the above-named Defendants as outlined below.

PARTIES AND JURISDICTION

The parties are as follows:

1. Plaintiffs C. Barry Dykes and Barbara Eisenhardt (collectively “Plaintiffs”) are residents of Horry County, South Carolina, and are owners of real estate located in the Horry County subdivision known as Wild Wing Plantation.

2. Wild Wing Plantation Property Owners’ Association, Inc. (“Wild Wing Association” or “Association”), a Nominal Defendant, is a nonprofit corporation formed pursuant to the laws of South Carolina.

3. Defendant Wild Wing Company, LLC (“Wild Wing Company”) is a limited liability company organized pursuant to the laws of South Carolina.

4. Defendant Sunstar, LLC (“Sunstar”) is a limited liability company organized pursuant to the laws of South Carolina.

5. Defendant Ralph R. Teal, Jr. (“Teal”) is a citizen and resident of Horry County, South Carolina.

6. Defendant SLF IV/SBI Wild Wing, LLC (“SLF IV/SBI Wild Wing”) is a limited liability company organized pursuant to the laws of Texas and conducting business in Horry County, South Carolina.

7. Defendant SLF IV/SBI JV, LLC (“SLF IV/SBI JV” or the “JV”) is a limited liability company organized pursuant to the laws of Texas and conducting business in Horry County, South Carolina.

8. Defendant SLF IV/SBI Properties MM, LLC (“SLF IV/SBI Properties MM”) is a limited liability company organized pursuant to the laws of Texas and conducting business in Horry County, South Carolina.

9. Defendant Stratford Land Fund IV, L.P. (“Stratford Land Fund” or “SLF”) is a limited partnership organized pursuant to the laws of Delaware and conducting business in Horry County, South Carolina.

10. Defendant Stratford Land Manager, L.P. d/b/a Stratford Land (“Stratford Land”) is a limited partnership organized pursuant to the laws of Texas and conducting business in Horry County, South Carolina.

11. Defendant SLF IV/SBI Development Holdings LLC (“SLF IV/SBI Development”) is a limited liability company organized pursuant to the laws of Delaware and conducting business in Horry County, South Carolina.

12. Defendant SB Investments, LLC (“SB Investments”) is a limited liability company organized pursuant to the laws of South Carolina.

13. Defendant Wild Wing Residential Development, LLC (“Wild Wing Residential Development”) is a limited liability company organized pursuant to the laws of Delaware and conducting business in Horry County, South Carolina.

14. Defendant RealStar Management, LLC (“RealStar Management”) is a limited liability company organized pursuant to the laws of South Carolina and conducting business in Horry County, South Carolina.

15. Defendant Graeme T. Black (“Black”) is a citizen and resident of Horry County, South Carolina.

16. Defendant H. Gilford Edwards (“Edwards”) is a citizen and resident of Horry County, South Carolina.

17. Defendant Founders Wild Wing LLC (“Founders Wild Wing”) is a limited liability company organized and existing pursuant to the laws of South Carolina.

18. Defendant Founders Group International, LLC (“Founders Group International”) is a limited liability company organized and existing pursuant to the laws of South Carolina.

19. Defendant Xian “Nick” Dou is a resident of Horry County, South Carolina and a managing member of Founders Wild Wing.

20. Defendant Dan Liu is a resident of Horry County, South Carolina and managed Founders Group International.

21. Defendant Rick Schultz (“Schultz”) is a citizen and resident of Horry County, South Carolina and was appointed as an officer and member of the Board of the Association by Founders Group International and/or Founders Wild Wing.

22. Defendant Rick Taylor (“Taylor”) is a citizen and resident of Horry County, South Carolina and was appointed as a member of the Board of the Association by Founders Group International.

23. Defendant Thomas Plankers (“Plankers”) is a citizen and resident of Horry County, South Carolina and was appointed as a member of the Board of the Association by Founders Group International.

24. Plaintiff C. Barry Dykes (“Dykes”) purchased property located in Wild Wing Plantation in August 2013 and has been a member of the Association since August 2013.

25. Plaintiff Barbara Eisenhardt (“Eisenhardt”) purchased property located in Wild Wing Plantation in 2007 and has been a member of the Association at all times herein.

26. Plaintiffs bring this action on behalf of themselves and derivatively on behalf of the Wild Wing Association and its members.

FACTUAL BACKGROUND

27. This lawsuit arises from the Defendants' failure to act in good faith and with due regard to the interests of the Wild Wing Association and its members.

28. On or about December 7, 2005, Wild Wing Company was organized. Sunstar, LLC was a member and manager of Wild Wing Company and held 75% of the voting rights and 75% of the financial rights. Teal managed Sunstar.

29. Sunstar and Teal completely controlled and managed Wild Wing Company. Sunstar, Teal and Wild Wing Company are collectively referred to herein as Developer One.

30. Where parties in the Complaint are referred to collectively, the actions of one are alleged to be the actions of all.

31. On or about June 14, 2006, Teal, as incorporator, formed the Wild Wing Association as a non-profit corporation.

32. On or about September 26, 2006, Developer One filed a Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation (the "Wild Wing Covenants").

33. Pursuant to the Wild Wing Covenants, the Wild Wing Association was governed by a Board of Directors. The initial Board of Directors included Ralph Teal, Lawton Benton and Carson Benton.

34. The Wild Wing Covenants obligate owners of property (lots) located in Wild Wing Plantation to pay assessments to the Association, including annual assessments and special assessments.

35. Within the Wild Wing Covenants, the term "Declarant" is used throughout and was, at the time of creation, synonymous for Developer One.

36. In the Wild Wing Covenants, the Declarant is vested with certain rights and obligations, including special rights relative to assessments and voting rights that effectively allow the Declarant to completely control the Wild Wing Association.

37. Pursuant to the original Wild Wing Covenants, the Declarant was granted an option with respect to the Declarant's obligations for funding of the Wild Wing Association. Specifically, *until December 31, 2010*, for the lots it had not sold, which still belonged to Declarant (a/k/a Developer One), Declarant was not required to pay the same assessments per lot that all other owners paid. Instead, at Declarant's option, the Declarant was allowed to pay the difference between actual operating expenditures of the Association and the amount of assessments collected from the owners of lots not owned by the Declarant (See Article VI, Section 2, Wild Wing Covenants). This funding option ended on December 31, 2010, at which time the Declarant (Developer One) was required to begin paying assessments on each lot it had not sold on the same basis as the other lot owners.

38. The funding option allowed the Declarant to pay substantially less to the Association that would have been required had the Declarant been required to pay assessments on a per lot basis as all other owners were required to do.

39. The Wild Wing Covenants also expressly require all books and records to be kept in accordance with generally accepted accounting principles ("GAAP").

40. In calculating the contributions owed by Declarant, Developer One failed to utilize GAAP, which resulted in contributions by Declarant that were substantially less than would have been required had Developer One used GAAP.

41. Developer One's failure to use GAAP proximately resulted in a substantial underfunding of the Association compared to what was required by GAAP.

42. On or about November 22, 2010, pursuant to an asset sale agreement with Synovus Bank, Teal, as a trustee for a yet to be formed joint venture, agreed to purchase certain assets including Wild Wing Plantation.

43. On or about November 24, 2010, SB Investments was formed with Teal as manager.

44. On or about November 29, 2010 SLF IV/SBI JV (the "JV") was formed. The members of SLF IV/SBI JV are Stratford Land Fund IV (SLF) and SB Investments. The JV is a joint venture between individuals involved with Developer One and Stratford Land.

45. On or about December 16, 2010, SLF IV/SBI Wild Wing was formed. The members of SLF IV/SBI Wild Wing are SLF IV/SBI Properties MM (1%) and the JV, (99%).

46. SB Investments is the sole managing member of SLF IV/SBI Properties MM and of the JV.

47. On or about December 22, 2010, Developer One assigned all rights as Declarant, and any other rights it had, to SLF IV/SBI Wild Wing, LLC ("Developer Two"). At that point, Developer Two assumed all rights and obligations of Declarant.

48. On or about December 27, 2010, Ralph Teal as manager of Sunstar and as manager of Wild Wing Company (Developer One) executed a Deed in Lieu of Foreclosure granting Wild Wing Company's interest in Wild Wing Plantation to SLF IV/SBI Wild Wing (Developer Two).

49. In the exchange, Developer One was left without assets and was insolvent, its assets having been conveyed to Developer Two.

50. As part of that transaction, Developer Two was granted and assumed all rights of Declarant under the Wild Wing Covenants.

51. All of the individuals who were members of, or had rights in, Wild Wing Company (Developer One) also became members of, or had rights in, SLF IV/SBI Wild Wing and the JV.

52. RealStar Management, LLC, assisted in managing the assets of the JV, including the Wild Wing assets.

53. Graeme Black is an employee of RealStar Management, LLC. Black represented the interests of the JV and was appointed, as its direction, as a member and/or officer of the Board of Directors of the Wild Wing Association.

54. Gilford Edwards is a principal of RealStar Management, LLC. Edwards also served as a member and/or officer of the Board of Directors of the Wild Wing Association.

55. On or about November 9, 2011, SLF IV/SBI Wild Wing, Developer Two, assigned its rights to Wild Wing Residential Development (f/k/a Wild Wing Development, LLC) and was left without assets. Wild Wing Residential Development, LLC, Developer Three, then assumed all rights and obligations as Declarant and remained so from 2011 until 2015.

56. The sole member of Wild Wing Residential Development is SLF IV/SBI Development Holdings, which is managed by SLF IV/SBI Properties MM. The sole managing member of SLF IV/SBI Properties MM is SB Investments, which (as alleged above) is managed by Ralph Teal.

57. Ralph Teal, Graeme Black and Gilford Edwards served as members and/or officers of the Board of Directors of the Wild Wing Association until they resigned on or about June 17, 2015.

58. As board members, Ralph Teal, Graeme Black and Gilford Edwards personally conducted the operations of the Association (as board members and officers) on behalf of, and

at the direction of, themselves and Developers One, Two, and/or Three as well as the persons and entities with interests in all related entities, including SBI Investments, the JV, and SLF/SBI MM. Ralph Teal, Graeme Black and Gilford Edwards each bear personal responsibility for those actions.

59. SLF IV/SBI Wild Wing, the JV, SLF IV/SBI Properties MM, Stratford Land, SLF, SB Investments, SLF IV/SBI Development Holdings, RealStar Management, Wild Wing Residential Development, Teal, Edwards and Black are the entities and people who owned and/or controlled Developers One, Two and/or Three and who directed and controlled the operations of the Wild Wing Association as Declarant.

60. During the time that Developers One, Two and Three owned and controlled Wild Wing and the Association as Declarant, Developers One, Two and Three failed to utilize GAAP, which resulted in contributions by Developers One, Two and Three that were substantially less than were required by GAAP. This failure to use GAAP proximately resulted in a substantial shortfall and underfunding of the Association's operations.

61. In November 2011, *ten months after the Declarant funding option expired and Declarant was required to begin paying per lot assessments per the Wild Wing Covenants, as originally filed*, the Wild Wing Association Board, run by officers and directors Teal, Black and Edwards, and controlled by Developers Two and Three, called a special meeting and held a vote to amend the Wild Wing Covenants to extend the Declarant funding option from December 31, 2010 until December 31, 2016, and applied the amendment retroactively to December 31, 2010. The effect of the amendment was to further delay the Declarant's obligations to pay assessments on a per lot basis which all other owners were required to pay. Under the Amendment, the

Declarant was not required to pay per lot assessments until January 1, 2017 (the “2011 Amendment”).

62. At the time the vote on the 2011 Amendment took place, all information relating to the amendment that was given to the other property owners was given by representatives of Developers Two and Three, which, as Declarant, had sufficient votes to pass the amendment regardless of how the other property owners voted.

63. The 2011 Amendment also extended the super voting rights of the Declarant from December 31, 2015 until December 31, 2022, allowing the Declarant to retain exclusive control of the Association and the Board for an additional 7 years beyond the point that control was to pass to the other owners.

64. The 2011 Amendment directly increased the value of Developer Two and Three’s interest in Wild Wing by giving Developers Two and Three continued complete control of Wild Wing and by minimizing Developer Two and Three’s expense/liability to Wild Wing, which could then be conveyed to a purchaser of their interests giving a potential purchaser the benefit of 1) the reduced Declarant funding obligations; and 2) would have Declarant control over the Wild Wing Association until 2022.

65. The 2011 Amendment was executed by Ralph Teal, as President of the Association, and by Ralph Teal (purportedly on behalf of Wild Wing Residential Development; by SLF IV/SBI Properties MM, its manager; by SB Investments, by Ralph Teal, its co-manager).

66. As a direct and proximate result of the 2011 Amendment, funding to the Association by the Declarant was greatly reduced compared to the funding that would have been required by Declarant had it been required to pay assessments on a per lot basis starting on January 1, 2011, as originally required.

67. At the time of the 2011 Amendment, the interests of Declarant and the other property owners were in direct conflict. Notwithstanding that conflict, and notwithstanding their fiduciary duties to the other property owners, Developers Two and Three, Teal, Edwards and Black failed to disclose that conflict to the other property owners, failed to fully disclose the effect of the amendment and knowingly elevated their own financial interests above the interests of the Association and its members.

68. In 2015, Developer Three sold the the Wild Wing property to entities controlled by Dan Liu.

69. On or about April 13, 2015, Developer Three assigned the rights of Wild Wing Residential Development, its rights and interest in Wild Wing, including its rights as Declarant, to Founders Wild Wing. After disbursement of the sales proceeds, Wild Wing Residential Development was left insolvent and without assets.

70. Founders Wild Wing (“Developer Four”) which assumed all rights and obligations as Declarant.

71. The members of both Founders Wild Wing and Founders Group International are Jiangsu Tianrui Danfo Commerce and Industry Co. Ltd. and Xian Dou.

72. Jiangsu Tianrui Danfo Commerce and Industry Co. Ltd. (“Jiangsu”) is a company organized under the laws of the People’s Republic of China, and Dan Liu is the U.S. representative of Jiangsu, which is owned by Liu and Dou.

73. Xian Dou and Dan Liu personally conduct or conducted the operations of Founders Wild Wing and Founders Group International and are personally liable for those actions.

74. Rick Schultz, Rick Taylor and Tom Plankers are or were employees of Founders Wild Wing, Founders Group International or a related entity and served and/or are serving as members and/or officers of the Board of Directors of the Wild Wing Association as appointed by and at the direction of Founders Group International and/or Founders Wild Wing.

75. Founders Wild Wing, Founders Group Interntional, Dou, Liu, Rick Schultz, Rick Taylor and Tom Plankers are collectively Developer Four.

76. With the the Declarant funding option, extended by the 2011 Amendment, set to expire at the end of December 2016, by yet another amendment Developer Four again extended the time the Declarant was exempt from paying the assessments per lot, as required by other lot owners, and created an amendment to the Wild Wing Covenants extending the deadline from December 31, 2016 to December 31, 2019. This amendment was signed on November 15, 2016 (the "2016 Amendment") by Founders Group International employee, Tom Plankers, as President of the Association, and by Nick Dou on behalf of Founders Wild Wing.

77. In other words, the Wild Wing Covenants as amended by the 2011 Amendment required the Declarant to begin paying assessments per lot on the same basis as other lot owners beginning January 1, 2017, and Developer Four amended the Wild Wing Covenants and voted the Declarant's class B votes in favor of an amendment to extend the time for it to begin paying per lot assessments from January 1, 2017 until January 1, 2020.

78. As had Develpers Two and Three, at the time of the 2016 Amendment, Developer Four had controlling voting rights as Declarant and proposed and passed the amendments without fully disclosing the effect of the amendment to the Association members. In doing so, Developer Four's interests directly conflicted with the interests of the other members of the Wild Wing Association. Despite that conflict of interest, and despite its fiduciary obligations to the

other members and property owners, Developer Four elevated its interests over those of the other members and property owners since the 2016 Amendment was also for the exclusive benefit of Developer Four, which realized a substantial pecuniary benefit as the result of the amendment, which proximately resulted in a corresponding pecuniary loss to the Association.

79. In 2015, when Wild Wing Plantation was purchased by Founders, no mortgage was placed on the unsold lots or other property.

80. In 2017, Dan Liu executed a number of documents in an effort to classify the investments for the purchase of Wild Wing by Founders as debt and to assign the “debt” to Dan Liu individually.

81. In February 2017, on behalf of Founders Wild Wing as mortgagor, Dan Liu and Nick Dou executed a note and mortgage in favor of Founders Group International and Founders Development LLC. On or about the following day, this mortgage was assigned to Jiangsu and then to Dan Liu personally.

82. According to an affidavit filed in litigation against Dan Liu, in 2017, Nick Dou questioned Founders Group International employees regarding Dou’s concerns that the proceeds from the sale of lots at Wild Wing did not appear to show up in the bank balances of the Founders’ entities.

83. Tom Plankers, who served on the Association Board, was General Manager and subsequently Vice-President at Founders Group International. In 2017, Tom Plankers was fired from his job at Founders Group International. In March 2017, after being fired by Founders Group International, Tom Plankers was removed from the Board and Dennis Gaboriault, an employee of Founders Group International, was appointed as a director of the Board by Founders Group International.

84. Rick Taylor, who was directed by Founders Group International/Founders Wild Wing to serve as President of the Association Board, was employed as General Manager for the Founders entities including Founders Group International. Taylor was also fired in 2017. According to Mr. Liu, Taylor was fired for taking money from the Founders' companies.

85. In July 2017, after he was fired, Founders Group International/Founders Wild Wing removed Rick Taylor from the Association Board and Rick Schultz assumed the role of President as appointed by Founders Group International/Founders Wild Wing. Brad Crumling was appointed as Secretary/Treasurer by Founders Group International/Founders Wild Wing. Brad Crumling is employed by Founders Group International as a regional manager.

86. Nick Dou, Founders' President, was fired in 2017 and litigation is pending between Nick Dou and Dan Liu.

87. During the time that Developer Four owned and controlled Wild Wing and the Association, Developer Four also failed to utilize GAAP, which resulted in contributions by Developer Four that were substantially less than would be required had they used GAAP. This failure to use GAAP resulted in an underfunding of the Association's operations and/or otherwise injured the Association.

88. The decision by Developer Four to amend the Wild Wing Covenants and failure to pay assessments, as paid by other lot owners, has decreased the Association's funding and operations.

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

89. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

90. From its inception, Defendants collectively, beginning with Developer One, and subsequently Developers Two, Three and Four, were developers of Wild Wing and controlled

the Association as Declarant through board members exclusively appointed by the developer and super voting rights.

91. Developer One, Two, Three and Four, as Declarant and as the persons and/or entities that controlled the Board, have or had a fiduciary relationship to the Plaintiffs, the Association and the other property owners.

92. Teal, Black, Edwards, Schultz, Plankers, and Taylor had a fiduciary relationship to the Plaintiffs, including the Association, by virtue of their former or current capacity as officers or directors of the Association's Board of Directors. As such Teal, Black, Edwards, Schultz, Plankers, and Taylor owed the Association and its members fiduciary obligations of good faith, loyalty and candor, and were required to use their utmost ability to control and manage the Association in a fair, just, honest and equitable manner.

93. By reason of their position as Developers, Declarant, officers, directors, and/or fiduciaries of the Association and because of their ability to control the operations of the Association, the Defendants collectively, beginning with Developer One, and subsequently Developer Two, Developer Three and Developer Four each owed the Association, its members and the other owners fiduciary obligations of good faith, loyalty and candor.

94. Defendants owe or owed the Association and its members the highest duties of good faith, fair dealing, due care, and loyalty.

95. Defendants owe or owed the Association and its members a duty to act in good faith and with due regard to the interests of the Association's members.

96. As Developers in control of the Association, as agents of the developer entities and/or as officers and directors of the Association Board, the Defendants were, and are prohibited

from, making decisions that benefited the Defendants' own interest above and at the expense of the Association, its members and the other property owners.

97. Developers One, Two, Three and Four each breached their duties by failing to use GAAP in calculating their contributions to the Association, thereby elevating their own interests over the interests of the Association and the Association's members.

98. Developers Two, Three and Four, including their agents and representatives Teal, Black, Edwards, Schultz, Plankers, as officers/directors of the Association's board, breached their fiduciary obligations by amending the Wild Wing Covenants to extend the time period during which the Declarant was exempt from paying the assessments paid by other lot owners, and by extending the Declarant voting rights, thereby elevating their own directly conflicting interests over the interests of the Association and the Association's members and the other property owners.

99. Defendants breached their duties by making decisions that elevated their own competing interests over the interests of the Association and the Association's members.

100. Developer Four further breached its duties to the Association by failing to enforce the Association's rights.

101. Developers One, Two, Three and Four, as Developers and Declarant, and Teal, Black, Edwards, Schultz, Plankers, and Taylor as agents of the Developers and as officers/directors breached their fiduciary duties in other particulars as may be proven at trial.

102. As a direct and proximate result of the Defendants' actions described herein, the Association has been deprived of the full amount of contributions owed to it by the Declarant which was, at all times, Developers One, Two, Three and Four.

103. As a direct and proximate result of the Defendants' actions, the Association has been required to divert money intended for its reserves for operation of the Association and, therefore, its reserve funds have been improperly wasted.

104. As a direct and proximate result of the Defendants' actions, the Association members have been required to pay increased assessments and have suffered other damages.

105. Plaintiffs and the Association are entitled to an award of damages against the Defendants in an amount to be determined by the trier of fact, an order declaring the amendments null and void and such other relief allowed by law.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)

106. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

107. By failure to pay the proper contributions to the Association, Developers One, Two, Three and Four were unjustly enriched at the expense of the Plaintiffs, and the Association.

108. By failure to pay the per lot assessments paid by other property owners to the Association, Developers One, Two, Three and Four have been unjustly enriched at the expense of the Plaintiffs, the Association, and those similarly situated.

109. The Plaintiffs on behalf of the Association should be permitted recovery of that amount the Developers One, Two, Three and Four have been unjustly enriched at the expense of the Plaintiffs and the Association.

FOR A THIRD CAUSE OF ACTION
(Veil Piercing/Alter Ego/Amalgamation)

110. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

111. Wild Wing Company, Sunstar LLC, Teal and Black were operating together as joint venturers, members, and/or agents in the development, marketing, management and sale of

the lots at Wild Wing Plantation and the creation and management of the Association such that each of them have become the alter ego of the other and/or the operations are intertwined such that the actions of these Defendants should be regarded as those of an amalgamated or single business enterprise.

112. Wild Wing Company, Sunstar, Teal and Black failed to observe corporate formalities, were undercapitalized, and/or were otherwise so intermingled such that each of them have become the alter ego of the other and/or the operations are intertwined such that their actions should be regarded as those of an amalgamated or single business enterprise.

113. Wild Wing Company and Sunstar failed to observe corporate formalities, were undercapitalized, transferred funds and/or otherwise acted in bad faith such that injustice would result if the entities' acts are not regarded as the acts of the principals.

114. With its disposition of its assets to Developer Two, Wild Wing Company was left assetless and insolvent by design so that any liability imposed on Wild Wing Company should be also be imposed on Sunstar and Teal.

115. SLF IV/SBI Wild Wing, SLF IV/SBI JV, SLF IV/SBI Properties MM, Stratford Land, SLF, SB Investments, Wild Wing Residential Development LLC, SLF IV/SBI Development Holdings LLC, RealStar Management, LLC, Teal, and Black were operating together as joint venturers, members, and/or agents in the development, marketing, management and sale of the lots at Wild Wing Plantation and in the management and control of the Association and have acted in bad faith such that each has become the alter ego of the other and/or the operations are intertwined such that the actions should be regarded as those of an amalgamated or single business enterprise.

116. SLF IV/SBI Wild Wing, SLF IV/SBI JV, SLF IV/SBI Properties MM, Stratford Land, SLF, SB Investments, Wild Wing Residential Development, and SLF IV/SBI Development Holdings were owned and operated by substantially the same principals and/or used the same trade names at all times relevant to the development, marketing, management and sale of the lots at Wild Wing and in controlling the Association.

117. SLF IV/SBI Wild Wing, SLF IV/SBI JV, SLF IV/SBI Properties MM, Stratford Land, SLF, SB Investments, Wild Wing Residential Development LLC, SLF IV/SBI Development Holdings LLC, RealStar Management, LLC failed to observe corporate formalities, were undercapitalized, transferred corporate funds and/or were otherwise so intermingled such that each of these has become the alter ego of the other and/or the operations are intertwined such that their actions should be regarded as those of an amalgamated or single business enterprise.

118. SLF IV/SBI Wild Wing, SLF IV/SBI JV, SLF IV/SBI Properties MM, Stratford Land, SLF, SB Investments, Wild Wing Residential Development, SLF IV/SBI Development Holdings, and RealStar Management should be regarded as an amalgamated or single business enterprise and liability imposed on any of them should be imposed on each of them.

119. SLF IV/SBI Wild Wing, SLF IV/SBI JV, SLF IV/SBI Properties MM, Stratford Land, SLF, SB Investments, Wild Wing Residential Development, SLF IV/SBI Development Holdings, RealStar Management, Teal and Edwards created or caused to be created a complex web of entities and transactions in an effort to allow the principals and individuals to realize a profit at the expense of the Association and in bad faith.

120. SLF IV/SBI Wild Wing, SLF IV/SBI JV, SLF IV/SBI Properties MM, Stratford Land, SLF, SB Investments, Wild Wing Residential Development, and SLF IV/SBI Development Holdings were all organized in such a manner where there is or are:

- a. A substantial relationship between SLF IV/SBI Wild Wing, SLF IV/SBI JV, SLF IV/SBI Properties MM, Stratford Land, SLF, SB Investments, Wild Wing Residential Development, SLF IV/SBI Development Holdings, RealStar Management, Teal Black and Edwards;
- b. Evidence that the entities are operated in such a manner where distinctions between the entities are blurred and should be amalgamated or treated as a single business enterprise for purposes of judgment.
- c. Evidence of injustice, wrongdoing and/or bad faith.

121. With the disposition of their assets SLF IV/SBI Wild Wing (Developer Two) and Wild Wing Residential Development (f/k/a Wild Wing Development, LLC) (Developer Three) were left assetless and insolvent, by design, so that any liability imposed on SLF IV/SBI Wild Wing should be imposed on SLF IV/SBI JV, SLF IV/SBI Properties MM, Stratford Land, SLF, SB Investments, SLF IV/SBI Development Holdings, RealStar Management, Teal and Edwards

122. Founders Group International LLC, Founders Wild Wing, Dan Liu, Nick Dou, Schultz, Plankers and Taylor were operating together as joint venturers, members, and/or agents in the development, marketing, management and sale of the lots at Wild Wing Plantation and in the management of the Association such that each of these them has become the alter ego of the other and/or the operations are intertwined such that the actions of these should be regarded as those of an amalgamated or single business enterprise.

123. Founders Group International LLC and Founders Wild Wing failed to observe corporate formalities, were undercapitalized, and/or were otherwise so intermingled such that injustice would result if the entities' acts are not regarded as the acts of the principals Dan Liu and Nick Dou.

124. Founders Group International LLC and Founders Wild Wing are owned and operated by substantially the same principals (Dan Liu and Nick Dou) and/or use the same trade names at all times relevant to the development, marketing, management and sale of the lots at Wild Wing such that each has become the alter ego of the other and/or the operations are intertwined such that the actions should be regarded as those of an amalgamated or single business enterprise.

125. Founders Group International, Founders Wild Wing, Dan Liu and Nick Dou created or caused to be created a complex web of entities and transactions in an effort to allow the principals and individuals to realize a profit at the expense of the Association and in bad faith.

126. Founders Group International and Founders Wild Wing were all organized in such a manner where there is or are:

- a. A substantial relationship between Founders Group International, Founders Wild Wing, Dan Liu and Nick Dou;
- b. Evidence that the entities are operated in such a manner where distinctions between the entities are blurred and should be amalgamated or treated as a single business enterprise for purposes of judgment.
- c. Evidence of injustice, wrongdoing and/or bad faith.

127. The Defendants' actions as outlined above are in bad faith and have resulted in injustice at the expense of the Plaintiffs, the Association and its members.

FOR A FOURTH CAUSE OF ACTION
(S.C. Unfair Trade Practices Act)

128. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

129. Defendants were engaged in trade and commerce as defined by the South Carolina Unfair Trade Practices Act ("SCUPTA").

130. Defendants' above-described activities, including numerous wilfull and continuous breaches of other obligations and developers and Declarant, failures to disclose conflicts of interest, and taking unfair advantage of voting rights, and wilfull disregard of GAAP requirements all of which was intended to 1) deprive the Wild Wing Association of funding that was due and owing; and 2) to enhance the value of the Defendants and their entities, constitute unfair and deceptive practices in conduct of their trade.

131. Defendants' above-described acts are capable of repetition and adversely affect the public interest.

132. Defendants knew or should have known their conduct was in violation of South Carolina Code § 39-5-20.

133. Defendants' wrongs entitle the Plaintiffs to an award of treble damages, attorneys' fees and costs.

134. Plaintiffs are entitled to a judgment of the Court as a result of the Defendants' repetitive and multiple violations of SCUPTA, and to an award for damages, treble damages, and attorneys' fees for the prosecution of this action.

DERIVATIVE ALLEGATIONS

135. Plaintiffs bring this action derivatively to redress injuries suffered by the Association as a direct result of the Defendants' breaches of fiduciary duties and unjust enrichment.

136. Plaintiffs are property owners at Wild Wing Plantation and members of the Association.

137. Plaintiffs will fairly and adequately represent the interests of the Association and its members in enforcing and prosecuting its rights and has retained competent and experienced counsel.

138. Plaintiffs previously demanded that the Association Board, still controlled by the Founders entities, pursue recovery of the under-funded Declarant contributions but the Association Board refused.

139. Thereafter, Plaintiff Dykes sent the letter attached as Exhibit A dated January 23, 2017, and incorporated herein by reference, to the Association Board and received no response.

140. Alternatively, demand and/or any additional demand is futile and must be excused.

141. Because a majority of the directors suffer from conflicts of interest and divided loyalties that preclude them from exercising independent business judgment, it would be futile to demand that the Board of Directors, as currently constituted or previously, effectively bring claims against itself or its predecessors in interest.

142. The Chairman of the Association Board and a majority of its directors were, and are, representatives of the Founders' entities and/or the individuals who control those entities.

143. In January 2017, Founders Group International employees Tom Plankers, Rick Schultz and Rick Taylor served on the Board of Directors as appointed by Founders Group International. Plankers was employed by Founders Group International as General Manager and Vice President. Rick Taylor was employed by Founders Group International as Chief Executive Officer. Rick Schultz was employed by Founders Group International as General Manager.

144. In March 2017, after being fired by Founders Group International, Tom Plankers was removed from the Board and Dennis Gaboriault, an employee of Founders Group International, was appointed as a director of the Board by Founders Group International.

145. In July 2017, Rick Taylor was removed from the Board and Rick Schultz assumed the role of President as appointed by Founders Group International/Founders Wild Wing. Brad Crumling was appointed as Secretary/Treasurer by Founders Group International/Founders Wild Wing. Brad Crumling is employed by Founders Group International as a regional manager.

146. In 2017 and as it now exists, a majority of the Board members were appointed by and are controlled by Founders Group International.

147. A majority of the Board was and is incapable of disinterestedly and independently considering a demand to commence and prosecute this action.

148. Demand upon the Board is futile because the board members approved of or acquiesced to the insufficient declarant contributions and to the amendments outlined above.

149. Demand upon the Board is futile because the Board is already predisposed to refuse a demand as demonstrated by the failed response to the letter referenced above and because the Board is controlled by Founders Group International, Founders Wild Wing and the related entities and individuals.

150. Demand is futile because the principals of Founders Group International and Founders Wild Wing, which control the Board, are engaged in ongoing litigation alleging fraud and misappropriation.

151. Demand is futile and must be excused because the Board, as currently or previously composed, is incapable or unwilling to take the actions required to seek the relief requested through this litigation.

WHEREFORE, the Plaintiffs pray for a judgment of this Court for themselves, the Association, and its members;

- A. Finding that the Defendants breached their fiduciary duties to the Association and awarding all damages, actual, consequential, special, statutory and punitive;
- B. Finding that the amendments outlined above are null and void and directing the developer to pay per lot assessments and relinquish control of the Association;
- C. Ordering the immediate disgorgement of all profits and benefits obtained by Defendants as a result of their breaches of fiduciary duties;
- D. Awarding the costs and disbursements of this action, including a reasonable allowance for Plaintiff's attorneys' and experts' fees; and
- E. Granting such other and further relief as has been plead or is proper.

LYLES & ASSOCIATES, LLC

s/Robert T. Lyles, Jr.

Robert T. Lyles, Jr., Esquire (S.C. Bar No. 10299)

1037 Chuck Dawley Blvd., STE G100

Mount Pleasant, South Carolina 29464

T: (843) 577-7730

F: (843) 577-7172

rtl@lylesfirm.com

ATTORNEYS FOR PLAINTIFFS

March 19, 2020

C. Barry Dykes
1423 Whooping Crane Drive
Conway, SC 29526
(843) 234-0013

January 23, 2017

Board of Directors
Wild Wing Property Owners Association
C/O Founders Wild Wing LLC
1000 Wild Wing Boulevard
Conway, SC 29526

RE: Wild Wing POA/Funding Shortfall

Dear Board Members:

I am hereby writing in my personal capacity as a member of the Wild Wing Property Owners Association ("POA").

As you know, a review of financial records of the POA clearly establishes that the developers, as declarants, failed to utilize generally accepted accounting procedures (GAAP) in calculating the difference between income and expenses of the POA for a number of years, which has resulted in a significant underfunding of the POA. The financial records of the POA establish that the amount of the underfunding totals \$519,801 through 2015.

This issue has been raised to you, the relevant accounting has been provided, and you informed me verbally that a decision has been made by the Board not to pursue an action against the declarant based upon the discovery of this erroneous accounting practice. Given the amount of money at issue, I disagree with the decision not to pursue recovery of the funds. I am also concerned that the Board's actions have been dictated by a conflict of interest between the Board, the prior developer and the current developer, both developers having declarant rights and responsibilities under the terms of Wild Wing's governing documents.

I hereby urge the Board to reconsider its decision not to pursue recovery of these funds. If the Board does not, I will have no choice but to file suit myself, on behalf of the Board, pursuant to Rule 23, *South Carolina Rules of Civil Procedure*, and will seek all legal remedies available.

Please let me have your response, in writing, no later than February 6, 2017.

Sincerely,



C. Barry Dykes

CC: Paul Skirchak, Community Association Manager,
Waccamaw Management, P.O. Box 51558, Myrtle Beach, SC 29579

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL
	)	CIRCUIT
		C/A NUMBER: 2017-CP-26-04187
C. BARRY DYKES AND BARBARA	)	
EISENHARDT, INDIVIDUALLY AND	)	
DERIVATIVELY ON BEHALF OF THE	)	
WILD WING PLANTATION PROPERTY	)	
OWNERS' ASSOCIATION, INC.,	)	
	)	Summons to Amended Counterclaim on
PLAINTIFFS,	)	Behalf of Wild Wing Company, LLC;
VS.	)	Sunstar, LLC; SLF IV/SBI Wild Wing,
WILD WING COMPANY, LLC;	)	LLC; SLF IV/SBI JV, LLC; SLF IV/SBI
SUNSTAR, LLC; RALPH R. TEAL, JR.;	)	Properties MM, LLC; SLF IV/SBI
SLF IV/SBI WILD WING, LLC; SLF	)	Development, LLC; Stratford Land
IV/SBI JV, LLC; SLF IV/SBI PROPERTIES	)	Manager, L.P.; Stratford Land Fund IV,
MM, LLC; SLF IV/SBI DEVELOPMENT	)	L.P.; SB Investments, LLC; Realstar
HOLDINGS, LLC; WILD WING	)	Management, LLC; Founders Wild
RESIDENTIAL DEVELOPMENT, LLC;	)	Wing, LLC; Founders Group
STRATFORD LAND MANAGER, L.P.	)	International, LLC; and Dan Liu
D/B/A STRATFORD LAND;	)	
STRATFORD LAND FUND IV, L.P.; SB	)	
INVESTMENTS, LLC; REALSTAR	)	
MANAGEMENT, LLC; GRAEME T.	)	
BLACK; H. GILFORD EDWARDS;	)	
FOUNDERS WILD WING, LLC;	)	
FOUNDERS GROUP INTERNATIONAL,	)	
LLC; DAN LIU; XIAN "NICK" DOU;	)	
RICK SCHULTZ; RICK TAYLOR; AND	)	
THOMAS PLANKERS,	)	
	)	
DEFENDANTS.	)	
WILD WING PLANTATION OWNERS'	)	
ASSOCIATION, INC.	)	
	)	
NOMINAL DEFENDANT.	)	

TO: Robert T. Lyles, Jr., Attorney for the Plaintiffs

YOU ARE HEREBY SUMMONED and required to answer the Amended Counterclaim in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Counterclaim on the subscribers at their office at 1000 29th Avenue North, Myrtle Beach, South Carolina 29577, and to file your answer with the Clerk of Court for Horry County, all within thirty (30) days after the service hereof; exclusive of the day of such service; and if

you fail to answer the Counterclaim within the time aforesaid, the Defendants in this action will apply to the Court for judgment by default for the relief demanded in the Counterclaim and a judgment will be rendered against you.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843)448-2400
Attorneys for Defendants Wild Wing Company,
LLC; Sunstar, LLC; SLF IV/SBI Wild Wing,
LLC; SLF IV/SBI JV, LLC; SLF IV/SBI
Properties MM, LLC; SLF IV/SBI
Development Holdings, LLC; Wild Wing
Residential Development, LLC; Stratford Land
Manager, L.P.; Stratford Land Fund IV, L.P.;
SB Investments, LLC; Realstar Management,
LLC; Founders Wild Wing, LLC; Founders
Group International, LLC; and Dan Liu

s/ Zachary J. Crawl
David B. Miller, SC Bar #10296
Zachary J. Crawl, SC Bar #103617

Myrtle Beach, South Carolina
Dated: April 14, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL
	)	CIRCUIT
		C/A NUMBER: 2017-CP-26-04187
C. BARRY DYKES AND BARBARA	)	
EISENHARDT, INDIVIDUALLY AND	)	
DERIVATIVELY ON BEHALF OF THE	)	
WILD WING PLANTATION PROPERTY	)	
OWNERS' ASSOCIATION, INC.,	)	Amended Answer and Counterclaim on
	)	Behalf of Wild Wing Company, LLC;
PLAINTIFFS,	)	Sunstar, LLC; SLF IV/SBI Wild Wing,
VS.	)	LLC; SLF IV/SBI JV, LLC; SLF IV/SBI
WILD WING COMPANY, LLC;	)	Properties MM, LLC; SLF IV/SBI
SUNSTAR, LLC; RALPH R. TEAL, JR.;	)	Development, LLC; Stratford Land
SLF IV/SBI WILD WING, LLC; SLF	)	Manager, L.P.; Stratford Land Fund IV,
IV/SBI JV, LLC; SLF IV/SBI PROPERTIES	)	L.P.; SB Investments, LLC; Realstar
MM, LLC; SLF IV/SBI DEVELOPMENT	)	Management, LLC; Founders Wild
HOLDINGS, LLC; WILD WING	)	Wing, LLC; Founders Group
RESIDENTIAL DEVELOPMENT, LLC;	)	International, LLC; and Dan Liu
STRATFORD LAND MANAGER, L.P.	)	
D/B/A STRATFORD LAND;	)	
STRATFORD LAND FUND IV, L.P.; SB	)	
INVESTMENTS, LLC; REALSTAR	)	
MANAGEMENT, LLC; GRAEME T.	)	
BLACK; H. GILFORD EDWARDS;	)	
FOUNDERS WILD WING, LLC;	)	
FOUNDERS GROUP INTERNATIONAL,	)	
LLC; DAN LIU; XIAN "NICK" DOU;	)	
RICK SCHULTZ; RICK TAYLOR; AND	)	
THOMAS PLANKERS,	)	
	)	
DEFENDANTS.	)	
WILD WING PLANTATION OWNERS'	)	
ASSOCIATION, INC.	)	
	)	
NOMINAL DEFENDANT.	)	

The Defendants, Wild Wing Company, LLC; Sunstar, LLC; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development, LLC; Stratford Land Manager, L.P.; Stratford Land Fund IV, L.P.; SB Investments, LLC; Realstar Management, LLC; Founders Wild Wing, LLC; Founders Group International, LLC; and Dan Liu, (hereinafter collectively referred to as the "Defendants") by and through their undersigned attorneys, would hereby answer the Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE
(General Objection)

1. Each and every allegation of Plaintiffs' Complaint not hereinafter specifically admitted, modified, qualified, or denied is denied and strict proof demanded thereof.

FOR A SECOND DEFENSE
(Reservation of Defenses and Claims)

2. The allegations of the prior Defense are incorporated herein and made a part and parcel of this Second Defense.
3. These answering Defendants reserve the right to assert, and do not waive, any additional or further defenses and/or claims as may be revealed by additional information that may be acquired in discovery, trial, or otherwise.

FOR A THIRD DEFENSE
(Specific Responses)

4. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Third Defense.
5. The allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 are admitted.
6. As to the allegations of Paragraph 19 regarding Xian "Nick" Dou's residency, these answering Defendants lack sufficient knowledge and information to form a belief thereto and therefore deny the same and demand strict proof thereof. The remaining allegations of Paragraph 19 are denied and strict proof demanded thereof.
7. As to the allegations of Paragraph 20, it is admitted that Dan Liu is a resident of Horry County, South Carolina. The allegations that Dan Liu managed Founders Group International are denied and strict proof demanded thereof.

8. As to the allegations of Paragraph 21, it is admitted that Rick Schultz is a citizen and resident of Horry County, South Carolina and was appointed as an officer and member of the Board of the Association by Founders Wild Wing.
9. As to the allegations of Paragraph 22, it is admitted upon information and belief that Rick Taylor is a citizen and resident of Horry County, South Carolina. The remaining allegations of Paragraph 22 are denied and strict proof demanded thereof.
10. As to the allegations of Paragraph 23, it is admitted upon information and belief that Thomas Plankers is a citizen and resident of Horry County, South Carolina. The remaining allegations of Paragraph 23 are denied and strict proof demanded thereof.
11. The allegations of Paragraphs 24 and 25 are admitted.
12. Paragraph 26 is a pleading paragraph requiring no response. To the extent Paragraph 26 avers the propriety of a derivative action the allegations are denied and strict proof demanded thereof.
13. The allegations of Paragraph 27 are denied and strict proof demanded thereof.
14. The allegations of Paragraph 28 regarding the organization and membership of Wild Wing Company, LLC are admitted. The allegations that Teal was the sole manager of Sunstar are denied and strict proof demanded thereof.
15. The allegations of Paragraph 29 are denied and strict proof demanded thereof. These answering Defendants further note that the collecting of individuals and entities as Developer One is improper.
16. Paragraph 30 is a pleading paragraph requiring no response. To the extent Paragraph 30 infers any wrongdoing or liability on behalf of these answering Defendants, the allegations are denied and strict proof demanded thereof.

17. The allegations of Paragraph 31 are admitted.
18. The allegations of Paragraph 32 are denied and strict proof demanded thereof.
19. As to the allegations of Paragraphs 33 and 34, the Wild Wing Covenants speak for themselves and any allegations inconsistent therewith are denied and strict proof demanded thereof.
20. The allegations of Paragraphs 35, 36, and 37 are denied and strict proof demanded thereof.
21. As to the allegations of Paragraphs 38 and 39, the Wild Wing Covenants speak for themselves and any allegations inconsistent therewith are denied and strict proof demanded thereof.
22. The allegations of Paragraphs 40 and 41 are denied and strict proof demanded thereof.
23. The allegations of Paragraph 42 are admitted.
24. As to the allegations of Paragraph 43, it is admitted that on or about November 24, 2010 SB Investments was formed with Teal as a manager.
25. The allegations of Paragraph 44 regarding the formation and initial membership of SLF IV/SBI JV, LLC are admitted. The remaining allegations are denied and strict proof demanded thereof.
26. The allegations of Paragraphs 45 and 46 are admitted.
27. The allegations of Paragraph 47 and 48 are denied and strict proof demanded thereof.
28. The allegations of Paragraph 49 are denied and strict proof demanded thereof.
29. As to the allegations of Paragraph 50, the Deed in Lieu of Foreclosure speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.

30. The allegations of Paragraph 51 that all individuals who were members of Wild Wing Company also became members of SLF IV/SBI Wild Wing and the JV are denied and strict proof demanded thereof. The remaining allegations lack sufficient specificity to frame a response thereto and therefore are denied and strict proof demanded thereof.
31. The allegations of Paragraph 52 that Realstar Management, LLC was a manager of the JV are denied and strict proof demanded thereof. The remaining allegations lack sufficient specificity to frame a response thereto and therefore are denied and strict proof demanded thereof.
32. As to the allegations of Paragraph 53, it is admitted that Graeme Black is an employee of RealStar Management, LLC. The remaining allegations of Paragraph 53 are denied and strict proof demanded thereof.
33. The allegations of Paragraph 54 are admitted.
34. The allegations of Paragraph 55 are denied and strict proof demanded thereof.
35. The allegations of Paragraphs 56 and 57 are admitted.
36. The allegations of Paragraphs 58, 59, and 60 are denied and strict proof demanded thereof.
37. As to the allegations of Paragraph 61, the first sentence is denied and strict proof demanded thereof. As to the remaining allegations, the Amendment speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
38. The allegations of Paragraph 62 are denied and strict proof demanded thereof.
39. As to the allegations of Paragraph 63, the Amendment speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.

40. The allegations of Paragraph 64 that Developers Two and Three had complete control of Wild Wing are denied and strict proof demanded thereof. As to the remaining allegations, the Amendment speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
41. As to the allegations of Paragraph 65, it is admitted that the Amendment was executed by the Association and acknowledged by Wild Wing Residential.
42. The allegations of Paragraphs 66, 67, and 68 are denied and strict proof demanded thereof.
43. As to the allegations of Paragraph 69, the first sentence is admitted. The remaining allegations are denied and strict proof demanded thereof.
44. The allegations of Paragraph 70, 71, 72, and 73 are denied and strict proof demanded thereof.
45. The allegations of Paragraph 74 are admitted with the clarification that Rick Shultz, Rick Taylor, and Tom Plankers were appointed to the Board of Directors by Founders Wild Wing.
46. Paragraph 75 is a pleading paragraph requiring no response. These answering Defendants further note that the term Developer Four has already been defined in Paragraph 70 and the collecting of individuals and entities as Developer Four is improper.
47. Paragraphs 76, 77, and 78 are denied and strict proof demanded thereof.
48. The allegations of Paragraph 79 are admitted.
49. The allegations of Paragraph 80 are denied and strict proof demanded thereof.
50. The allegations of Paragraph 81 are admitted.

51. As to the allegations of Paragraph 82, the Affidavit speaks for itself and any allegations inconsistent therewith are denied and strict proof demanded thereof.
52. The allegations of Paragraph 83 are admitted with the clarification that Dennis Gaboriault was appointed as a director of the Board by Founders Wild Wing.
53. The allegations of Paragraph 84 are admitted with the clarification that Rick Taylor was appointed by Founders Wild Wing to serve as President of the Association Board.
54. The allegations of Paragraph 85 are admitted with the clarification that Founders Wild Wing made the appointments to the Association Board.
55. The allegations of Paragraph 86, 87, and 88 are denied and strict proof demanded thereof.
56. Paragraph 89 is a pleading paragraph requiring no response. To the extent Paragraph 89 incorporates prior allegations, these answering Defendants crave specific reference herein.
57. The allegations of Paragraphs 90 and 91 are denied and strict proof demanded thereof.
58. The allegations of Paragraph 92 are not of or concerning these answering Defendants. Subject thereto, the allegations of Paragraph 92 are denied and strict proof demanded thereof.
59. The allegations of Paragraphs 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, and 105 are denied and strict proof demanded thereof.
60. Paragraph 106 is a pleading paragraph requiring no response. To the extent Paragraph 106 incorporates prior allegations, these answering Defendants crave specific reference herein.
61. The allegations of Paragraphs 107, 108, and 109 are denied and strict proof demanded thereof.

62. Paragraph 110 is a pleading paragraph requiring no response. To the extent Paragraph 110 incorporates prior allegations, these answering Defendants crave specific reference herein.
63. The allegations of Paragraphs 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, and 127 are denied and strict proof demanded thereof.
64. Paragraph 128 is a pleading paragraph requiring no response. To the extent Paragraph 128 incorporates prior allegations, these answering Defendants crave specific reference herein.
65. The allegations of Paragraphs 129, 130, 131, 132, 133, 134, and 135 are denied and strict proof demanded thereof.
66. The allegations of Paragraph 136 are admitted.
67. The allegations of Paragraph 137 are denied and strict proof demanded thereof.
68. As to the allegations of Paragraphs 138 and 139, it is admitted the Plaintiffs forwarded a letter dated January 23, 2017 which is attached to Plaintiffs' Amended Complaint.
69. The allegations of Paragraphs 140 and 141 are denied and strict proof demanded thereof.
70. As to the allegations of Paragraph 142, it is admitted that the Chairman of the Association Board and a majority of its directors were or are employees of the Founders' entities. As to the allegations that these members are representatives of Founders when serving in their capacities as members of the Association Board, those allegations are denied and strict proof demanded thereof.
71. The allegations of Paragraph 143 are denied and strict proof demanded thereof.
72. The allegations of Paragraph 144 are admitted with the clarification that Dennis Gaboriault was appointed as a director of the Board by Founders Wild Wing.

73. The allegations of Paragraph 145 are admitted with the clarification that Rick Schultz and Brad Crumling were appointed by Founders Wild Wing.

74. The allegations of Paragraphs 146, 147, 148, 149, 150, and 151 are denied and strict proof demanded thereof.

FOR A FOURTH DEFENSE
(Statute of Limitations)

75. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Fourth Defense.

76. Plaintiffs' claims are barred in whole or in part by the applicable Statute of Limitations.

FOR A FIFTH DEFENSE
(Accord and Satisfaction)

77. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Fifth Defense.

78. These answering Defendants plead accord and satisfaction as a complete and affirmative defense.

FOR A SIXTH DEFENSE
(Laches)

79. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Sixth Defense.

80. These answering Defendants plead laches as a complete and affirmative defense.

FOR A SEVENTH DEFENSE
(Good Faith Reliance on Professionals)

81. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Seventh Defense.

82. These answering Defendants relied in good faith upon the Wild Wing Plantation Property Owners' Association's accountants and property managers in paying the Declarant Contribution.

FOR AN EIGHTH DEFENSE

(Payment)

83. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Eighth Defense.

84. These answering Defendants plead payment as a complete and affirmative defense.

FOR A NINTH DEFENSE

(Waiver and Estoppel)

85. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Ninth Defense.

86. These answering Defendants plead waiver and estoppel as a complete and affirmative defense.

FOR AN TENTH DEFENSE

(Unclean Hands)

87. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Tenth Defense.

88. These answering Defendants have fully complied with the requirements, obligations and administration of the Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation. To the contrary, various of the Plaintiff Members throughout the years have failed to comply and have violated the Declaration, including the failure to timely pay dues and assessments as required. To the extent Plaintiffs claim a representative capacity pursuant to the Provisions of Rule 23, SCRCP, Plaintiffs come with unclean hands and are precluded from asserting any and all avenues of equitable relief.

FOR AN ELEVENTH DEFENSE
(Inadequate Derivative Representation)

89. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Eleventh Defense.

90. Plaintiffs do not fairly and adequately represent the interests of Members allegedly similarly situated pursuant to Rule 23, SCRCP.

FOR A TWELFTH DEFENSE
(Limitation of Punitive Damages)

91. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Twelfth Defense.

92. Any award of punitive damages is subject to the limitations set forth in S.C. Code Ann. § 15-32-530.

FOR A THIRTEENTH DEFENSE
(Impermissible to Set Aside the Corporate Identity)

93. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Thirteenth Defense.

94. Plaintiffs' Complaint seeks to impermissibly set aside the corporate identity of the various Corporate Defendants named herein. Each and every of these entities is independently organized and existing with strict attention to all requisite corporate formalities. There exist no circumstances which could result in confusion as regards each of the Corporate Defendants herein and Plaintiffs' allegations are not of the type or nature which could trigger "controlling person" liability under South Carolina law. Plaintiffs' efforts to batch Defendants under various averments of wrongdoing is impermissible.

FOR A FOURTEENTH DEFENSE

(Plaintiffs Seek Redress for Their Own Bad Acts)

95. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Fourteenth Defense.

96. To the extent Plaintiffs claim a representative capacity pursuant to the Provisions of Rule 23, SCRCP, the alleged Declarant Contribution shortfalls, which such shortfalls are denied, stem and arise from failure on the part of Property Owners' Association Members to comply with and pay dues and assessments in accordance with the Declaration. Plaintiffs cannot now seek redress for their own bad acts.

FOR A FIFTEENTH DEFENSE

(Failure to State a Claim)

97. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Fifteenth Defense.

98. Plaintiffs fail to state a claim against these answering Defendants upon which relief may be granted by this Court. The Complaint must be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A SIXTEENTH DEFENSE

(Condonation)

99. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Sixteenth Defense.
100. These answering Defendants plead condonation as a complete and affirmative defense.

FOR A SEVENTEENTH DEFENSE

(Record Notice)

101. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Seventeenth Defense.
102. Plaintiff Dykes and any other Members of the Association who purchased property in Wild Wing Plantation subsequent to the 2011 or the 2016 Amendments purchased property with Record Notice of the Amendments.

FOR AN EIGHTEENTH DEFENSE

(Limitation of Liability)

103. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Eighteenth Defense.
104. Article XII, Section 3 specifically provides, "The Declarant shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself."

FOR A NINETEENTH DEFENSE

(Business Judgment Rule)

105. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this Nineteenth Defense.
106. The business judgment rule precludes judicial review of the actions taken by the Board of Directors and the Committees of the Property Owners' Association.

FOR A FIRST COUNTERCLAIM
(Breach of the Declaration)

107. The allegations of the prior Defenses are incorporated herein and made a part and parcel of this First Counterclaim.
108. Plaintiffs, allegedly as Representatives of Wild Wing Plantation Owners' Association, Inc. assert claims arising in whole or in part from the failure of various Association Members to pay dues and assessments in accordance with the Declaration.
109. Plaintiffs' allegations herein stem, in whole or in part, from actual and/or perceived rights, duties, and obligations within the Declaration. In response, these answering Defendants are required to enforce the provisions of the Declaration.
110. Article XII, Section 2 of the Declaration specifically provides that all costs of enforcement, "including a reasonable fee for Declarant's counsel" shall be paid by the owner of such lot or lots in breach thereof.
111. Plaintiffs and/or their representative breaching Members are liable to the Declarants for all costs and expenses of this action, including reasonable attorneys fees.

WHEREFORE, the Defendants, Wild Wing Company, LLC; Sunstar, LLC; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development, LLC; Stratford Land Manager, L.P.; Stratford Land Fund IV, L.P.; SB Investments, LLC; Realstar Management, LLC; Founders Wild Wing, LLC; Founders Group International, LLC; and Dan Liu, having fully answered Plaintiffs' Complaint, these answering Defendants pray for the following relief:

- (a) That Plaintiff's Complaint be dismissed with prejudice and the relief requested therein be denied;
- (b) Award in favor of these answering Defendants and against Plaintiffs all available damages on the Counterclaim including costs, expenses, and a reasonable attorneys fee; and
- (c) Award to these answering Defendants and against Plaintiffs any such other, further, and additional relief as this Honorable Court may deem just and proper.

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Attorneys for Defendants Wild Wing Company,
LLC; Sunstar, LLC; SLF IV/SBI Wild Wing,
LLC; SLF IV/SBI JV, LLC; SLF IV/SBI
Properties MM, LLC; SLF IV/SBI
Development Holdings, LLC; Wild Wing
Residential Development, LLC; Stratford Land
Manager, L.P.; Stratford Land Fund IV, L.P.;
SB Investments, LLC; Realstar Management,
LLC; Founders Wild Wing, LLC; Founders
Group International, LLC; and Dan Liu

s/ Zachary J. Crowl
David B. Miller, SC Bar #10296
Zachary J. Crowl, SC Bar #103617

Myrtle Beach, South Carolina
Dated: April 14, 2020

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt,
individually and derivatively on behalf of the
Wild Wing Plantation Property Owners'
Association, Inc.,

Plaintiffs,

-vs-

Wild Wing Company, LLC, Sunstar, LLC,
Ralph R. Teal, Jr., SLF IV/SBI Wild Wing,
LLC, SLF IV/SBI JV, LLC, SLF IV/SBI
Properties MM, LLC, SLF IV/SBI Development
Holdings, LLC, Wild Wing Residential
Development, LLC, Stratford Land Manager,
L.P., d/b/a Stratford Land, Stratford Land Fund
IV, L.P., SB Investments, LLC, Realstar
Management, LLC, Graeme T. Black, H.
Gilford Edwards, Founders Wild Wing, LLC,
Founders Group International, LLC, Dan Liu,
Xian "Nick" Dou, Rick Schultz, Rick Taylor
and Thomas Plankers,

Defendants,

Wild Wing Plantation Owners' Association, Inc.

Nominal Defendant.

COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2017-CP-26-04187

**ANSWER OF DEFENDANTS RICK
SCHULTZ, RICK TAYLOR AND
THOMAS PLANKERS TO THE
AMENDED COMPLAINT**

NOW COME Defendants, Rick Schultz, Rick Taylor and Thomas Plankers (hereinafter, jointly, "Defendants"), by and through undersigned counsel, and answers the Plaintiffs' Amended Complaint filed March 19, 2020, denying all allegations not specifically admitted, as follows:

1. In Paragraphs 1 through 26, Plaintiffs attempt to allege facts relevant to the identity of the parties, jurisdiction, and venue. Defendants believe that jurisdiction and venue are proper in

this Court. Unless otherwise admitted, the remaining allegations in Paragraphs 1 through 26 of Plaintiff's Complaint are denied.

2. In Paragraphs 27 through 88 of Plaintiffs' Amended Complaint, Plaintiffs attempt to set forth factual allegations supporting their causes of action concerning their breach of fiduciary duty, unjust enrichment, veil piercing, alter ego, amalgamation, Unfair Trade Practices Act, and Derivative claims. To the extent that Plaintiffs' allegations concerning these claims are not supported by the record in this case, they are denied. To the extent that Plaintiffs claim that these facts establish a basis for any liability as to these Defendants, they are denied.

3. Unless otherwise admitted, the allegations in Paragraphs 27 through 88 are denied.

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

4. Defendants incorporate their responses to the allegations in Paragraphs 1 through 88 of Plaintiffs' Complaint as if fully set forth herein.

5. In Paragraphs 89 through 105, Plaintiffs attempt to set forth allegations supporting their claim for Breach of Fiduciary Duty. The allegations in Paragraphs 89 through 105 of Plaintiffs' Complaint are denied as to these Defendants.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)

6. Defendants incorporate their responses to the allegations in Paragraphs 1 through 105 as if fully set forth herein.

7. In Paragraphs 106 through 109, Plaintiffs attempt to set forth allegations supporting their claim for Unjust Enrichment. The allegations of Paragraphs 106 through 109 are denied as to these Defendants.

FOR A THIRD CAUSE OF ACTION
(Veil Piercing/Alter Ego/Amalgamation)

8. Defendants incorporate their responses to the allegations in Paragraphs 1 through 109 as if fully set forth herein.

9. In Paragraphs 110 through 127, Plaintiffs attempt to set forth allegations supporting their Veil Piercing, Alter Ego, and Amalgamation claims. The allegations of Paragraphs 110 through 127 are denied as to these Defendants.

FOR A FOURTH CAUSE OF ACTION
(S.C. Unfair Trade Practices Act)

10. Defendants incorporate their responses to the allegations in Paragraphs 1 through 127 as if fully set forth herein.

11. In Paragraphs 128 through 134, Plaintiffs attempt to set forth allegations supporting their claim for violations of the S.C. Unfair Trade Practices Act. The allegations of Paragraphs 128 through 134 are denied as to these Defendants.

DERIVATIVE ALLEGATIONS

12. Defendants incorporate their responses to the allegations in Paragraphs 1 through 134 as if fully set forth herein.

13. In Paragraphs 135 through 151, Plaintiffs attempt to set forth allegations supporting their claim to bring this matter as a derivative action. To the extent these paragraphs state conclusions of law, they do not require a response from these Defendants. To the extent these allegations are not supported by the record in this case, they are denied. To the extent that Plaintiffs claim that these allegations establish a basis for any liability against these Defendants, they are denied.

14. Unless otherwise admitted, the allegations of Paragraphs 135 through 151 are denied.

15. The final paragraph of the Complaint, contains subparagraphs (A) through (E), which begin with “Wherefore”, contain the prayer for relief of Plaintiffs to which no response is required. To the extent a response is deemed to be required, Defendants deny all allegations and claims for relief.

NOW, THEREFORE, having fully answered Plaintiffs’ Amended Complaint herein, the Defendants now set forth their Defenses and Affirmative Defenses:

FOR A FIRST DEFENSE

1. The Amended Complaint fails to state a claim against these Defendants upon which relief may be granted by this Court; therefore, the Complaint must be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND DEFENSE

2. At all times relevant to the matters set forth in the Amended Complaint, these Defendants acted within the authority and power granted to them through the governing documents of the Association.

FOR A THIRD DEFENSE

3. These Defendants acted reasonably and in good faith in their actions with regards to the allegations set forth in the Amended Complaint and in their interactions with the Plaintiffs.

FOR A FOURTH DEFENSE

4. Plaintiff’s claims are barred by the equitable doctrines of unclean hands, laches, and/or estoppel.

FOR A FIFTH DEFENSE

5. To the extent it seeks punitive or exemplary damages, the Amended Complaint violates the right of these Defendants for procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina.

FOR A SIXTH DEFENSE

6. At all times relevant to the matters complained of in the Amended Complaint, these Defendants complied with all policies, procedures, bylaws, guidelines, restrictive covenants, and other governing documents of the Association.

FOR A SEVENTH DEFENSE

7. Plaintiffs have failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damages, and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action of Plaintiffs.

FOR AN EIGHTH DEFENSE

8. Plaintiffs have failed to comply with Rules 23(b)(1), SCRCP; therefore, the Amended Complaint should be dismissed. Furthermore, Plaintiffs lack standing to prosecute a derivative claim pursuant to Rule 23(b)(1), SCRCP.

FOR A NINTH DEFENSE

9. Some or all of Plaintiffs' claims are barred by the applicable statute of limitations or the doctrine of laches.

FOR A TENTH DEFENSE

10. Plaintiffs cannot demonstrate that the acts or omissions of these individual Defendants are the proximate cause of Plaintiffs' alleged damages.

FOR AN ELEVENTH DEFENSE

11. Shultz, Taylor and Plankers are immune from liability related to the allegations set forth in the Complaint pursuant to S.C. Code Ann. § 33-31-834, and should be dismissed with prejudice.

FOR A TWELFTH DEFENSE

12. Defendants plead that any award of punitive damages is subject to the limitations set forth in South Carolina Code § 15-32-530.

FOR A THIRTEENTH DEFENSE

13. Plaintiffs' Unjust Enrichment claims against these Defendants must be dismissed because Plaintiffs cannot establish that these Defendants were enriched to the detriment of the Plaintiffs.

FOR A FOURTEENTH DEFENSE

14. Plaintiffs' Veil Piercing/Alter Ego/Amalgamation claims against these individual Defendants must be dismissed because Plaintiffs cannot establish the elements of such a claim as to these Defendants, to wit, that these Individual Defendants combined multiple corporate entities into a single business enterprise, or that the Individual Defendants did same in bad faith or to perpetuate an injustice or wrongdoing on the Plaintiffs.

FOR A FIFTEENTH DEFENSE

15. Plaintiffs' SCUTPA claims against these Defendants must be dismissed because Plaintiffs cannot demonstrate that these individual Defendants have committed conduct that was unfair or deceptive. Alternatively, Plaintiffs cannot demonstrate that any conduct complained of as to these individual Defendants is the proximate cause of their alleged damages.

FOR A SIXTEENTH DEFENSE

16. These Defendants reserve the right to assert any further defenses as may be revealed by additional information obtained during the course of discovery and investigation of the allegations set forth in the Amended Complaint.

WHEREFORE, having fully set forth their Answer, Defendants pray for an Order of this Court as follows.

1. The relief sought by Plaintiffs be denied in each and every respect;
2. The claims asserted by Plaintiff be dismissed in their entirety with prejudice; and
3. The Defendants be awarded costs and attorney's fees under any applicable case and statutory laws and such other and further relief as this Court may deem just and proper.

Signature page to follow

Dated this the 17th day of April, 2020.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.

/s/C. Cliff Rollins

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RICK TAYLOR AND THOMAS PLANKERS**

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt,
individually and derivatively on behalf of the
Wild Wing Plantation Property Owners'
Association, Inc.,

Plaintiffs,

VS.

Wild Wing Company, LLC, Ralph R. Teal, Jr., SLV IV/SBI Wild Wing, LLC, Wild Wing Residential Development LLC, Stratford Land Manager, SB Investments LLC, Graeme T. Black, H. Gilford Edwards, Founders Wild Wing LLC, Founders Group International LLC, Dan Liu and Xian Dou (Defendants) Wild Wing Plantation Owners' Association, Inc.,

Defendants.

Wild Wing Plantation Owners' Association,
Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-26-04187

**DEFENDANTS RALPH R. TEAL, JR.,
GRAEME T. BLACK, H. GILFORD
EDWARDS, AND WILD WING
PLANTATION OWNERS’
ASSOCIATION, INC.’S ANSWER TO
AMENDED SHAREHOLDER
DERIVATIVE COMPLAINT**

COME NOW Defendants Ralph R. Teal, Jr. (“Teal”), Graeme T. Black (“Black”), H. Gilford Edwards (“Edwards”), and Wild Wing Plantation Owners’ Association, Inc. (“the Association”) (hereinafter referenced individually or collectively as “these Defendants”), by and through the undersigned counsel, and hereby Answer the Amended Shareholder Derivative Complaint as follows:

FIRST DEFENSE

The Amended Complaint fails to state a claim against these Defendants upon which relief may be granted by this Court; therefore, the Amended Complaint must be dismissed pursuant to Rule 12(b)(6), SCRCF.

SECOND DEFENSE

At all times relevant to the matters set forth in the Amended Complaint, these Defendants acted within the authority and power granted to them through the governing documents of the Association.

THIRD DEFENSE

These Defendants acted reasonably and in good faith in their actions with regard to the allegations set forth in the Amended Complaint and in their interactions with Plaintiffs.

FOURTH DEFENSE

Plaintiffs' claims are barred by the equitable doctrines of unclean hands, laches, and/or estoppel.

FIFTH DEFENSE

To the extent it seeks punitive or exemplary damages, the Amended Complaint violates the right of these Defendants for procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina. In further response to Plaintiffs' claim for punitive damages, these Defendants specifically plead and invoke the protections afforded by S.C. Code § 15-32-520, *et. seq.*, which are applicable to claims for punitive and exemplary damages, including, but not limited to, limitation of recovery and bifurcation of punitive damages claims.

SIXTH DEFENSE

At all times relevant to the matters complained of in the Amended Complaint, these Defendants complied with all policies, procedures, bylaws, guidelines, restrictive covenants, and other governing documents of the Association.

SEVENTH DEFENSE

Plaintiffs have failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damages and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action of Plaintiffs.

EIGHTH DEFENSE

Plaintiffs have failed to comply with Rule 23(b)(1), SCRCPP; therefore, the Amended Complaint should be dismissed. Furthermore, Plaintiffs lack standing to prosecute a derivative claim pursuant to Rule 23(b)(1), SCRCPP.

NINTH DEFENSE

Some or all of Plaintiffs' claims are barred by the applicable statute of limitations or the doctrine of laches.

TENTH DEFENSE

There is no causal connection between the acts or omissions of these Defendants and Plaintiffs' alleged damages.

ELEVENTH DEFENSE

These Defendants plead the South Carolina Non Profit Corporation Act as a complete defense to Plaintiffs' claims.

TWELFTH DEFENSE

These Defendants reserve the right to assert any further defenses as may be revealed by additional information obtained during the course of discovery and investigation of the allegations set forth in the Amended Complaint.

THIRTEENTH DEFENSE

These Defendants respond to the numbered allegations set forth in the Amended Complaint as follows:

1. These Defendants deny all allegations not specifically admitted or otherwise responded to herein.

2. Upon information and belief, these Defendants admit the allegations in Paragraph 1 of the Amended Complaint.

3. These Defendants admit the allegations in Paragraph 2.

4. Upon information and belief, these Defendants admit the allegations in Paragraphs 3 and 4.

5. These Defendants admit the allegations in Paragraph 5.

6. Upon information and belief, these Defendants admit the allegations in Paragraphs 6, 7, 8, 9, 10, 11, 12, 13 and 14.

7. These Defendants admit the allegations in Paragraphs 15 and 16.

8. Upon information and belief, these Defendants admit the allegations in Paragraphs 17 and 18.

9. These Defendants lack sufficient information to form a belief as to the truth of the allegations in Paragraphs 19, 20, 21, 22 and 23; therefore, those allegations can neither be admitted nor denied at this time.

10. Upon information and belief, these Defendants admit the allegations in Paragraphs 24 and 25.

11. Paragraph 26 is a pleading paragraph requiring no response. To the extent Paragraph 26 avers the propriety of a derivative action, those allegations are denied and strict proof demanded thereof.

12. These Defendants deny the allegations in Paragraph 27.

13. The allegations of Paragraph 28 regarding the organization and membership of Wild Wing Company, LLC are admitted. The allegations that Teal was the sole manager of Sunstar are denied and strict proof demanded thereof.

14. The allegations of Paragraph 29 are denied and strict proof demanded thereof. These answering Defendants further note that the collective reference of individuals and entities as Developer One is improper.

15. These Defendants deny the allegations of Paragraph 30.

16. Upon information and belief, these Defendants admit the allegations of Paragraph 31.

17. Responding to Paragraph 32, upon information and belief, these Defendants admit only that on or about September 26, 2006, a Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation (the "Wild Wing Covenants") was filed. These Defendants deny any and all additional allegations set forth in Paragraph 32 and demand strict proof thereof.

18. In response to Paragraphs 33, 34, 35, 36, 37, 38 and 39, these Defendants admit the Association is governed by Covenants and other documents, and that said documents speak for themselves. These Defendants deny any additional or inconsistent allegations in Paragraphs 34, 35, 36, 37, 38 and 39, and demand strict proof thereof.

19. These Defendants deny the allegations of Paragraphs 40 and 41 and demand strict proof thereof.

20. Upon information and belief, these Defendants admit the allegations in Paragraph 42.

21. In response to the Paragraph 43, it is admitted that on or about November 24, 2010, SB Investments was formed with Teal as a manager.

22. In response to Paragraph 44, these Defendants admit only that on November 29, 2010 SLF IV/SBI JV (the "JV") was formed and consisted of members Stratford Land Fund IV (SLF) and SB Investments. These Defendants deny any additional or inconsistent allegations in Paragraph 44 and demand strict proof thereof.

23. Upon information and belief, these Defendants admit the allegations in Paragraphs 45 and 46.

24. The allegations of Paragraphs 47, 48 and 49 are denied and strict proof demanded thereof.

25. In response to Paragraph 50, the Deed in Lieu of Foreclosure speaks for itself and any allegations inconsistent therewith are denied and strict proof is demanded thereof.

26. These Defendants lack sufficient information to form a belief as to the truth of the allegations of Paragraph 51 and therefore, those allegations can neither be admitted nor denied.

27. Upon information and belief, these Defendants admit the allegations of Paragraph 52.

28. In response to Paragraph 53, these Defendants admit Black is an employee of RealStar Management, LLC. These Defendants deny as stated the remaining allegations contained in Paragraph 53.

29. These Defendants admit the allegations in Paragraph 54.

30. The allegations of Paragraph 55 are denied and strict proof demanded thereof.

31. Upon information and belief, these Defendants admit the allegations in Paragraph 56.

32. In response to Paragraph 57, these Defendants admit they served as members and/or officers of the Board of Directors of the Association at varying points prior to June 17, 2015. These Defendants deny the remaining allegations in Paragraph 57.

33. These Defendants deny the allegations in Paragraph 58.

34. These Defendants deny as stated the allegations in Paragraph 59.

35. These Defendants deny the allegations in Paragraph 60.

36. These Defendants deny as stated the allegations in Paragraph 61, 62, 63 and 64.

37. In response to Paragraph 65, it is admitted only that the Amendment was executed by the Association and acknowledged by Wild Wing Residential.

38. These Defendants deny the allegations in Paragraphs 66, 67 and 68.

39. Upon information and belief, these Defendants admit the first sentence of Paragraph 69. The remaining allegations are denied and strict proof demanded thereof.

40. These Defendants lack sufficient information to form a belief as to the truth of the allegations in Paragraphs 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87 and 88; therefore, those allegations can neither be admitted nor denied at this time.

41. In response to Paragraph 89, these Defendants refer to their responses to the preceding paragraphs of this Answer and incorporate the same as if fully set forth herein.

42. Responding to Paragraph 90, these Defendants deny any inference the individuals or entities referenced therein are liable for damages allegedly resulting from the actions or inactions set forth in the Amended Complaint. These Defendants lack sufficient information to admit or deny any allegations related to the Founders entities and individuals.

43. Paragraphs 91, 92, 93, 94 and 95 contain legal conclusions to which no response is required. To the extent a response is necessary, these Defendants admit to the existence of certain duties as established by the Covenants, other governing documents, and South Carolina

law. These Defendants deny any additional or inconsistent allegations in Paragraphs 91, 92, 93, 94 and 95. These Defendants lack sufficient information to admit or deny any allegations related to the Founders entities and associated individuals.

44. In response to Paragraph 96, these Defendants deny they made decisions benefitting their own interests at the expense of the Association and its members or any inference these Defendants engaged in such conduct. These Defendants deny the remaining allegations in Paragraph 96. These Defendants lack sufficient information to admit or deny any allegations related to the Founders entities and associated individuals.

45. In response to Paragraph 97, these Defendants deny they made use of the relationship with the Association and its members to benefit Defendants' own interests or any inference these Defendants engaged in such conduct. These Defendants deny the remaining allegations in Paragraph 97. These Defendants lack sufficient information to admit or deny any allegations related to the Founders entities and associated individuals.

46. These Defendants deny the allegations in Paragraphs 98, 99, 100, 101, 102, 103, 104 and 105.

47. In response to Paragraph 106, these Defendants refer to their responses to the preceding paragraphs of this Answer and incorporate the same as if fully set forth herein.

48. These Defendants deny the allegations in Paragraphs 107, 108 and 109.

49. In response to Paragraph 110, these Defendants refer to their responses to the preceding paragraphs of this Answer and incorporate the same as if fully set forth herein.

50. These Defendants deny the allegations in Paragraphs 111, 112, 113, 114, 115, 116, 117, 118 and 119.

51. These Defendants deny the allegations of Paragraph 120, including all sub-parts, and demand strict proof thereof.

52. These Defendants deny the allegations of Paragraph 121, and demand strict proof thereof.

53. Paragraphs 122, 123, 124, 125 and 126 of the Amended Complaint are directed to other parties such that no response is required from these Defendants. To the extent a response is deemed necessary, these Defendants lack sufficient information to form a belief as to the truth of the allegations in these paragraphs; therefore, these Defendants can neither admit nor deny the same at this time.

54. These Defendants deny the allegations in Paragraph 127.

55. In response to Paragraph 128, these Defendants refer to their responses to the preceding paragraphs of this Answer and incorporate the same as if fully set forth herein.

56. These Defendants deny the allegations in Paragraphs 129, 130, 131, 132, 133 and 134.

57. These Defendants deny the allegations of Paragraph 135.

58. Upon information and belief, the allegations of Paragraph 136 are admitted.

59. These Defendants deny the allegations of Paragraphs 137 and 138.

60. In response to Paragraph 139, and upon information and belief, these Defendants admit Dykes authored a letter dated January 23, 2017, attached as Exhibit A to the Amended Complaint, and that said document speaks for itself. These Defendants deny any additional or inconsistent allegations in Paragraph 139.

61. These Defendants deny the allegations of Paragraphs 140 and 141.

62. Paragraphs 142, 143, 144, 145, 146, 147, 148, 149 and 150 of the Amended Complaint are directed to other parties such that no response is required from these Defendants. To the extent a response is deemed necessary, these Defendants lack sufficient information to

form a belief as to the truth of the allegations in these paragraphs; therefore, these Defendants can neither admit nor deny the same at this time.

63. These Defendants deny the allegations of Paragraph 151.

64. These Defendants deny the allegations in unnumbered paragraph beginning “WHEREFORE” and Plaintiffs’ entitlement to any relief sought within the same.

WHEREFORE, having fully responded to the Amended Complaint, these Defendants hereby request the Court enter an Order dismissing the Amended Complaint with prejudice. These Defendants further request that all costs be taxed against Plaintiffs, and further seek any additional relief this Court deems just and proper.

This 20th day of April, 2020.

Respectfully submitted,

COPELAND STAIR KINGMA & LOVELL, LLP

By: s/Douglas W. MacKelcan
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State Bar No.: 76332
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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

-----x

C. BARRY DYKES,)
)
Plaintiff,)
)
vs.) Transcript of Record
) 2017-CP-26-04187
WILD WING COMPANY, LLC,)
)
et al.)
)
Defendants.)
)
-----x

March 4, 2021

B E F O R E:

The Honorable R. Markley Dennis, Jr., Presiding Judge

A P P E A R A N C E S:

Robert T. Lyles, Esq.
Attorney for the Plaintiff

David B. Miller, Esq.
Zachary J. Crowl, Esq.
Eugene H. Matthews, Esq.
C. Cliff Rollins, Esq.
Douglas W. MacKelcan, Esq.
Madison B. Suttie, Esq.
Scott F. Talley, Esq.
William Douglas Smith, Esq.
Attorney for the Defendants

Court Reporter: Phyllis Norton (Retired)

Transcribed by: Bobbi Fisher, RPR

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE</u>
Proceedings	3

E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceedings commenced as follows:)

THE COURT: Let me say this: I'm incorporating, Phyllis, all of the briefs that were filed verbatim, so you can rely on everything you have put in there. They're now a part of the record. If it becomes necessary to review the decision, you may rely fully on that without stating it on the record.

That being said, I will not -- I don't want you to feel like -- I want you to feel free to state whatever you need but just stress the points because I have read this and have read it several times, to be honest with you, and the reply briefs, I have that as well.

So let me hear from -- Robert, this is something I have come to -- that I'm starting to do in the criminal side too. I have got the basis of their motion for summary judgment. Let me hear from you as to why I shouldn't grant summary judgment, because, obviously, that's the key in this case, and then they can respond to your positions.

MR. LYLES: Yes, sir.

THE COURT: Okay?

MR. LYLES: And I appreciate you giving me some guidance on exactly what you want to hear.

As you noted in our last conversation about this case a couple of months ago, the case has two components. The first is that it's our contention that the declarants and the board

1 members appointed by the declarants failed to properly
2 calculate the declarant contributions for a period of, I
3 guess, 12 or 13 years after filing. And that resulted in a
4 substantial reduction in the declarant contributions, which is
5 a shortfall in the money that should have been paid to the
6 Wild Wing POA.

7 There is, at a minimum, a question of fact about that.
8 We have Barry Dykes, who is a uniquely positioned plaintiff in
9 that he is, in his own respects, I believe, would qualify as
10 an expert on the issue of accounting principles and accounting
11 and business.

12 And then we also have the testimony of Roy Strickland.
13 As I indicated in our briefs, Mr. Strickland was hired by us
14 before we filed our lawsuit. We asked him to review the
15 accounting and review regime documents, and Mr. Strickland's
16 opinions matched those identically of Mr. Dykes. And the
17 calculation error comes from the interpretation of the regime
18 documents by the declarants and their accountant, Mr. Jim
19 Corbett.

20 And as you know from reading the briefs, the issue is bad
21 debt meaning the sums that homeowners failed to pay as
22 homeowners, regime fees, other expenses. Is that -- is that
23 something that should have been considered a POA expense given
24 how the regime documents were calculated? And the answer to
25 that is yes, according to Mr. Dykes and according to

1 Mr. Strickland.

2 I believe that that's a total shortfall between the four
3 different declarants over the time period that's about just
4 shy of \$900,000. So there's a substantial shortfall.

5 In our last conversation, you asked me to address the
6 defendant's contention that the regime is fully funded, and I
7 tried to do that in our reply brief. The defendants have
8 argued that, oh, the regime doesn't owe any money and the
9 regime hadn't had any bills that didn't get paid and the
10 regime hadn't had any increase in dues and there's been no
11 special assessments.

12 And so that they have argued that that means that the
13 regime is quote/unquote "fully funded." But that's not their
14 obligation under the regime documents. The obligation under
15 the regime documents is to follow the formula that they
16 drafted and included in the regime documents. And by
17 definition, if they failed to do that and there was a
18 shortfall in the declarant contributions, the regime has not
19 been fully funded.

20 Mr. Dykes testified that that money, that shortfall is a
21 damage on behalf -- suffered by the POA, and Mr. Strickland
22 testified in his deposition, when asked whether or not he
23 thought the regime -- excuse me, the reserve fund was fully
24 funded, and he said, I will have to state that if the
25 contributions were not made according to my calculations then,

1 by definition, the reserves have not been fully funded because
2 there would be more money in the coffers of the POA.

3 So that issue, to me, is at least a question of fact and
4 we'd move for summary judgment on that issue ourselves.

5 Then the second part of our claim relates to this -- to
6 these amendments, which I think is a bit of a thornier issue.
7 And our case was really -- when the case was first filed, just
8 to give you some background, or when I was first retained by
9 Mr. Dykes and Ms. Isenhardt, I was told about the amendments.
10 It struck me as being a violation of the fiduciary obligations
11 of the declarants. To have amendments that you have, by
12 definition, and in the regime documents, the complete control
13 to pass and those amendments benefit only the declarants at
14 the expense of the POA. And that, to me, in 2017, smacked of
15 a breach of fiduciary duty to that potential claim. And then,
16 ultimately, we asserted it when we filed our lawsuit.

17 The Waubach (ph) case came out after that. And Waubach,
18 whom I think confirms what my instinct was about that issue.
19 The law recognizes that it's legal for an associate -- excuse
20 me, for a declarant, developers to control HOAs, and there's
21 nothing in the law that limits the amount of time that can
22 happen. Here at Wild Wing, it's happened for 14 years where
23 the declarants have been in literally complete control over
24 the functions of the POA through the right to appoint all
25 directors and the right to these superior voting rights, which

1 gives them the right to pass anything they want to pass. And
2 there's nothing illegal about that, but what Waubach says very
3 clearly is when a declarant is in that position, the declarant
4 cannot use that position for the declarant's financial benefit
5 at the expense of the POA, which is exactly what happened
6 here.

7 And notwithstanding the -- you know, I can talk more
8 about the statute of limitations and whatnot, but just on its
9 face, the -- under Waubach, I think that you have an
10 obligation to, as they say, zealously review those two
11 amendments to see whether or not the declarants did exactly
12 what the Waubach case says they can't do. Because I can tell
13 you that there is no evidence in this case at all that the POA
14 benefited any from those amendments. The benefit for those
15 amendments went exclusively to the declarants, and it's not an
16 insubstantial sum of money. It's over \$2 million, according
17 to Mr. Dykes' calculations. Over \$2 million in funding that
18 the declarants would have made since 2010 or 2011 until 2020
19 that was not made because the declarant continued to and
20 extended the right to use the declarant funding alternative
21 beyond its original expiration date at the end of 2010.

22 And so I think that, at least at summary judgment,
23 granting judgment on that issue would be improper because I
24 think that that's going to be the purpose of a trial is for
25 you to hear the evidence about those amendments. You'll be

1 able to hear what the declarants and their people say
2 justified those amendments, and you'll be able to weigh their
3 evidence -- excuse me, what they argue by the evidence in the
4 case. And I think what you'll conclude after a trial is that,
5 under Waubach, those declarants acted wholly inappropriately
6 in granting those amendments -- excuse me, in enacting those
7 amendments.

8 And so, in sum, I think that's the plaintiff's response
9 to the main substance of the summary judgment motions that
10 have been made by the defendants on the two types of claims
11 that we have asserted.

12 THE COURT: Okay. Thank you, Robert. I appreciate it.

13 MR. LYLES: Yes, sir.

14 THE COURT: Now, in response to that, tell me why I
15 should grant the summary judgment from your perspective.
16 Zach, why don't y'all go first or whatever.

17 MR. MILLER: Okay. Judge, I didn't know if there were
18 people --

19 THE COURT: Yeah.

20 MR. MILLER: -- wanted anyone particular on us to do it.
21 I'll do that. I'll jump around a little bit. I wasn't
22 exactly sure how this was going to go this morning, but the
23 foundation of the plaintiff's case -- all of the plaintiff's
24 case -- relies on this misstatement that the declarant is the
25 POA, that there is no POA independent of the declarant. They

1 are one and the same. They are not. They are two entities,
2 both organized and existing in law in the State of South
3 Carolina. The POA is the POA, and the declarant is the
4 declarant.

5 The POA board is seated per the declaration that was
6 there when every single person bought into this project, with
7 record knowledge and notice and copies of (inaudible). And
8 whether the declarant appoints a board member or whether the
9 membership elects a board member, when they sit down at that
10 board table, they are a board member of the POA. And that's
11 what they must do.

12 So this has been the fundamental misstatement in our
13 opinion that leads to everything here. If you look at how a
14 POA operates -- and this is -- I'm going to tie this back
15 pretty quickly to the case law -- the POA has the board, but
16 then the board hires the property manager. And I think
17 everybody in this group knows what the property manager does.
18 He's the one who runs the show. They do the accounting. They
19 hire the landscape guy. They keep the pool coordinated, and
20 they do all these things that an HOA does.

21 And, in addition to that, they hire -- the management
22 company hires an auditing accountant that works for the POA.
23 And Mr. Lyles just stated that it was the declarant's
24 accountant. It is not. It is the POA accountant, Jim
25 Corbett. And as an auditing accountant, I'm sure everybody in

1 this room knows, that is the highest standard that an
2 accountant has. They have different levels of care that they
3 owe to their clients, and there's really different levels of
4 functions, but as an auditing accountant, the highest level of
5 independence is required by the accounting standard. And
6 that's what these accountants were and are. They are auditing
7 accountants.

8 In addition to that, the POA has committees of which both
9 plaintiffs were members. So the finance committee, the
10 declarant does not hold a seat on the finance committee. It's
11 made of -- solely of members, and they meet and they review
12 work of the auditing accountant and recommendations of the
13 management company, all (inaudible) work for and are paid by
14 the property owner association.

15 Each year, they tick off presenting to the finance
16 committee a proposed budget. And, Judge, if I can, I'm going
17 to pull one up and show it to you.

18 THE COURT: You don't need to, David. I mean, you have
19 got all of this in the record. I have read all of this. I'm
20 with you along the way. You don't have to show me that.

21 MR. MILLER: That's fine. I was just going to point out
22 that the budget at the bottom line is zero. It's a zero
23 budget in those things. But --

24 THE COURT: All that's in the record that I have looked
25 at. So, I mean, the success of this operation is in the

1 record.

2 MR. MILLER: So when I go to the case law Waubach and the
3 other cases that are cited here, whether it be Goddard, what I
4 want to point out, Judge -- it may not be in front of you as
5 much as it should be -- is Section 33-31-830, which governs
6 the conduct and the standards that you are to apply when
7 looking at the non-profit board. And what the plaintiffs are
8 complaining about are the actions of the board. The standards
9 that have to apply here come out of this code section.

10 They want to say -- I think one way of viewing it that I
11 didn't write in the brief, as far as they want to say that the
12 declarant is vicariously liable for the actions of appointed
13 board members, like I would be responsible for my minor child.
14 There is no such law. We have searched the nation for such a
15 law, and there isn't one because that doesn't exist. Once
16 they sit at the board table, they're a board member, and
17 that's how their duties flow, and these good lawyers that
18 represent them can bridge that.

19 But the standard here is 33-31-830, and it says that
20 these directors, one, by relying on public accountants and
21 committees, are exonerated from this, and it says, number two,
22 than an action against them must be commenced the sooner of
23 three years after the failure complained of or two years after
24 discovery.

25 Well, let's take the amendments, for example. The

1 plaintiffs voted against the amendments more than two years
2 before they filed a relief on the amendments. They're barred
3 by this section. Likewise, the 2011 amendment, it was put in
4 many, many years before, but even the 2016 amendment was
5 passed more than two years, and the plaintiffs were there at
6 the meeting. So the discovery rule is triggered.

7 So we think that the standards that are being applied
8 are -- by Mr. Lyles are the wrong standards. The cases he's
9 relying on, Waubach and the others, those cases involve a
10 declarant putting a common element into the HOA, the
11 authentication of the common element. That's an independent
12 act that's done by the developer.

13 The facts that are complained of here are acts of the
14 HOA, and that's the difference. That's where you say, Well,
15 does Waubach apply or does it not apply? Well, the difference
16 is, is an act of the developer or is it an act of the HOA?
17 These are acts of the HOA. And the rules governing them
18 control the underlying question of: Is there any wrongdoing
19 at that level that can then somehow be ported up on a
20 vicarious theory to the declarant? And the answers are no,
21 no, and no.

22 So I don't want to go, I guess, any further at this
23 point, and to point those things out, you know, there's
24 100-plus pages of reading materials on these so --

25 THE COURT: No question about it.

1 MR. MILLER: -- I'll stop there. But I do believe that I
2 am guilty of not getting 33-31-830 enough -- we raised it in
3 our brief and --

4 THE COURT: You did.

5 MR. MILLER: -- I wished I would have talked more about
6 it, so...

7 THE COURT: Well, you didn't need to. You have raised it
8 in the brief and it's there, and certainly I have reviewed it
9 and, obviously, grasp the meaning of it and its effect in this
10 situation, at least in y'all's perspective. Okay?

11 Anyone else want to respond in connection with their
12 defendants?

13 Doug, that would be fine. You need to unmute, though.

14 MR. MacKELCAN: Just briefly, and I represent Ralph Teal,
15 Gilford Edwards, and Graham Black individually, and they
16 served on the board for the POA for a number of years
17 basically from the beginning until the sale to the Founders
18 Group.

19 And I do want to reiterate what David said about the
20 non-profit codes -- codification of the business judgment
21 rule, essentially, is what it is, and I have to -- have to
22 admit that I, too, may have glossed over Section F in the
23 past, which does appear to reduce the statute of limitations
24 for this type of case. I think that a regular three-year
25 statute of limitations is plenty sufficient to entitle my

1 clients to a dismissal, but with Code Section 33-31-830(f),
2 you know, I read that to be a two-year statute and a
3 three-year statute or repose. So, again, I would also like to
4 highlight that where it may not be as prominent in my briefs,
5 although the statute of limitations discussion certainly is.

6 But, so just briefly, to touch on a couple of items, the
7 claims against my clients as individuals all stem from their
8 activity as directors at Wild Wing Plantation. The pleadings
9 have -- again, the pleadings of alter ego and piercing the
10 corporate veil, but, you know, that seems to have been tabled
11 by the plaintiffs for the amalgamation theory. The case law
12 is fairly clear that amalgamation is only for corporate
13 entities and not for individuals. And, frankly, the evidence
14 just simply does not support a piercing the corporate veil or
15 alter ego. It just isn't there.

16 So any liability that my clients would face in this case
17 arise out of their acts or omissions as directors. And so
18 the -- just quick -- in talking -- I'm going to start the
19 other way. I'm going to start with the 2011 amendment because
20 that's the only one that applies to my clients. They were
21 gone by the second amendment.

22 As has been stated in the briefs, Plaintiff Isenhardt,
23 individually and now representatively, participated in that
24 meeting. The existing owners at the time were properly
25 noticed of the meeting. There has been no allegation that

1 they were -- any of the owners were prevented from financial
2 information at that time; that there was any misrepresentation
3 or any -- anything at all that would prevent a plaintiff from
4 knowing what they -- what action was taken at that time.

5 Ms. Isenhardt testified that she understood what was happening,
6 that she thought it made sense because she didn't think the 50
7 or so owners at the time in Wild Wings should bear the
8 expenses of the association.

9 So -- and that really touches on sort of the equitable
10 tolling arguments, which I don't think apply here. So I think
11 it's fairly clear that, as to the 2011 amendment, the statute
12 of limitations bars that claim by a lot.

13 Even if it gets past the statute of limitations as
14 discussed, I think the business judgment rule precludes
15 judicial review of it. Again, there is absolutely no showing
16 of bad faith or self-dealing or unconscionable conduct, which
17 is what's required to take an outside-of-the-business
18 judgment rule. The testimony from my clients was they were in
19 the midst of a devastating real estate economy. Now it's very
20 difficult for us, in 2011, to imagine or remember what that
21 was like because it's been quite a real estate economy. I
22 have looked at Zillow this weekend and can't believe the house
23 that I have only owned for about 15 months, they're claiming
24 it's worth what it is, but I don't have anywhere to go, so I'm
25 stuck where I am.

1 But joking aside, I mean, you know, the circumstances
2 were dire at the time, and in particular, Horry County took a
3 lot longer to recover than we did in Charleston. And there
4 were numerous communities that didn't make it. And the
5 testimony from my clients was they believe that was what was
6 in the best interest of the association. And, again, you
7 know, here, I think Plaintiffs would like you to believe that
8 the interest of the association and the interest of the
9 declarant are somehow mutually exclusive. Okay? And that's
10 not the case at all.

11 The testimony was the -- what's sort of "what's good for
12 the goose is good for the gander" type of idea, which is, hey,
13 we have got to both be moving forward or it's not going to
14 work. And I think, here, it is clear that it was good for the
15 association. It's been good for the ongoing development.
16 It's been good for property values. The amenities have been
17 maintained throughout. And Robert suggested that this fully
18 funded was not relevant to the analysis of the calculation.

19 I think where the relevance comes in as to my clients and
20 the decisions that they are being criticized of and what we
21 believe support the business judgment rule defense and that is
22 they were doing things the right way. They weren't hiding the
23 ball from the owners. They weren't increasing the
24 assessments. They were forcing the declarant to pay the
25 shortfall. Okay?

1 The declarant did pay a shortfall. Okay? The reserves
2 were funded. Those things were done. And then, of course,
3 clearly, they were relying on the experts as they're entitled
4 to do. Okay?

5 This is really a case against the accountant. I mean, in
6 many ways, on the math side of it, not on the amendment side
7 of it. And they are both entitled to rely on the accountant,
8 and I think, in this case, it was appropriate for them to do
9 so as this calculation -- as was testified by many people is
10 how every development operates in terms of calculating a
11 shortfall.

12 And just -- I think I have sort segued already into the
13 declarant funding obligation. I think the only thing I would
14 add there, Your Honor, is, for my clients and their
15 entitlement to summary judgment right now, it really doesn't
16 matter what the math is, if they were right or if they were
17 wrong. We think it was right, okay, but it really doesn't
18 matter because they are entitled to rely on the experts. They
19 did. It was never raised by anyone until Mr. Dykes raised it
20 in '14 or '15. At that time, what they did was they went back
21 and said, Hey, please take another look at this. It wasn't
22 just a, "No, go home." And then that series of communications
23 ensued between Mr. Dykes and Mr. Corbett.

24 So they met their duty, which of course is not a
25 fiduciary duty. All right? That's very clear from the case

1 law and from the code that it is not a fiduciary duty as
2 directors. And they met that duty by relying on those experts
3 and the calculations, and, again, forcing the declarant to pay
4 based on what the expert calculated they were required to pay.

5 So I think, in sum, that's really the -- our argument,
6 and, again, obviously, there's a lot more in the briefs, but I
7 do believe at this stage summary judgment is appropriate for
8 Mr. Teal and Mr. Edwards and Mr. Black individually. And
9 thank you.

10 THE COURT: Thank you very much.

11 All right. Cliff, either you or Scott, it doesn't matter
12 one wants to go.

13 MR. TALLEY: I'm happy to --

14 THE COURT: Go ahead, Scott.

15 MR. TALLEY: -- jump in, Judge. Thank you. And I'll be
16 brief. I join the arguments, for the record, of fellow
17 defense counsel. The motion that I have before you today on
18 behalf of the two named Stratford entities is a little bit
19 different. And just to touch on that --

20 THE COURT: Sure.

21 MR. TALLEY: -- as Mr. Lyles said and you see from your
22 review of the documents, whether it's CPA, whether it's
23 declarants, whether it's board members that the complaint is
24 against in this matter, my two entity clients are none of the
25 above.

1 THE COURT: Right.

2 MR. TALLEY: And so I think, if the case goes to trial,
3 you'll look at some of the evidence that the plaintiffs
4 learned of the existence of my clients through a news article
5 when there was development being done and funding mechanisms.
6 So, simply put, that's the basis of our motion is that the two
7 named Stratford entities are not declarants. They are not
8 board members. They are not CPAs. They are joint venture
9 partners through another entity, which is an issue for down
10 the road if the case goes to trial that we can address at that
11 point. But we don't believe they're proper named parties, and
12 I would just leave it at that for now.

13 THE COURT: Okay. Thank you, Scott.

14 Cliff, for your clients? Cliff, you need to unmute. I'm
15 sorry.

16 MR. ROLLINS: I'm sorry, I thought I hit it.

17 THE COURT: That's all right. No problem.

18 MR. ROLLINS: The -- Your Honor, I will -- a lot of the
19 arguments that Attorney MacKelcan made with regards to these
20 individual defendants I think also apply to mine, so I join
21 those and won't belabor that point.

22 I will say my individual board members are
23 chronologically in this case the last ones to come on board.
24 And with regards to Plaintiff's claims, Robert's claims, as he
25 outlined at the beginning of this motion, you know, the

1 business judgment rule has been the lynchpin of our defense,
2 and the -- and, at this point, I mean, this is the -- the case
3 is now ripe for summary judgment motions, and that's why we're
4 here today.

5 And it's clear, under the business judgment rule, that
6 the burden is on the plaintiffs to come forward with evidence
7 of dishonesty or bad faith on the part of my clients, and I
8 will submit to you that the record simply does not provide
9 that. They were -- the plaintiffs were deposed or asked at
10 numerous points, you know, do you have any evidence of this
11 bad faith or this dishonesty, and the answer was, no, they did
12 not.

13 There is conjecture. There is inference. But those
14 things do not suffice at the stage of summary judgment. And
15 let me just say, in light of the plaintiffs in this case,
16 their attempts to sort of put forth their inferences and so
17 forth, what my clients have testified to is, you know, we
18 are -- we are golf guys. We're not professional property
19 managers. We run golf courses. Our golf courses got bought
20 up and we got told, guess what, there's an additional duty,
21 you're now on the board.

22 And so, going forward, they found themselves perhaps more
23 than any other individual defendants in the case, needing to
24 rely on the advice of professionals like folks at Waccamaw
25 Management, like the accountant -- like the attorneys that

1 they talked to about whether they could extend the deference
2 funding option or not. And their stated reason -- you know,
3 their testimony is we were not told that this is what we had
4 to do. Our marching orders were to go forward and make this a
5 successful development, make it the best on Highway 501. And
6 they're coming into a situation where, along with the earlier
7 comments about the great recession.

8 I think you can say there was a -- if not a stink of
9 death, a stink of possible death hanging around this
10 development at that time. It had been handed off through a
11 series of declarants like a hot potato, and their idea was, we
12 think the best thing we can do is to make it look like we're
13 succeeding until we succeed. And, you know, how can we do
14 that? We can try to make it easier for the declarant to sell
15 lots and get people in here and get activity going until we
16 can make it. And that's what they said they did. That's what
17 they said their motivation was. And the plaintiffs simply
18 have not provided any evidence that that's not what their
19 motivation was. And there's been an attempt all along to sort
20 of conflate all of the defendants into one amorphous mass.

21 And as Mr. Miller pointed out, that's not appropriate.
22 That's not correct.

23 So that would essentially be my case. The only thing I
24 would mention -- and I don't think I really mentioned it in
25 the brief, but I did mention it as an affirmative answer in my

1 initial pleadings is the effect of 33-31-834, which provides
2 the records of not-for-profit cooperatives are viewed from
3 suit arising from the conduct of their affairs of the
4 not-for-profit, and that's not removed unless there is conduct
5 that amounts to gross or wanton or willful negligence. And I
6 don't believe that's been shown either in the case. So thank
7 you.

8 THE COURT: Thank you. I appreciate it.

9 All right. In reply to everything that's been said, I'll
10 give you a chance to respond to that -- to their arguments.

11 MR. LYLES: And there's a fair amount to say. First of
12 all, what -- it's been interesting, Judge, to hear the
13 arguments because you have heard what I have heard for the
14 last three years. You hear the declarants say, Yeah, we
15 controlled the HOA, we have superior voting rights, we can
16 pass anything we want to pass, and we solely have the right to
17 appoint all of the directors. And to be very clear, these
18 homeowners, the members of the POA, have never, ever had the
19 opportunity to vote on a declarant -- excuse me, on a
20 director. They have all been appointed by the declarant.

21 But what the declarant says is, you know, we have all
22 this control. We appoint the board. They're under our
23 control. We put them on when we want to put them on. We take
24 them off when we want to take them off. We hire the property
25 management company, or our board does. We hire the

1 accountant, or our board does. But none of this is our fault,
2 says the declarants. We're just innocent. We pay the bills
3 that they give us.

4 And the fact that now what they're saying is, well, maybe
5 the accountant messed all this up and that that benefitted the
6 declarants to the tune of about \$900,000, you should just
7 ignore that; it's really not the declarant's fault at all.

8 But then we listen to the board members. And what do the
9 board members say? Well, the board members say, Well, gee,
10 all we are board members. We're not the declarant. You can't
11 sue us for any of this. And one of the reasons you can't sue
12 us for any of this, Mr. Lyles, is because none of these
13 decisions benefitted us. We're just board members. And we're
14 not the declarant.

15 And, yeah, all of the accounting errors went in favor of
16 the declarant. And, yeah, the amendments all benefitted the
17 declarant. They didn't benefit us. We're just board members.
18 That's their whole argument. It's a shell game.

19 Today what they tell you is, if there's a problem in this
20 case, it's really the fault of the accountant. The accountant
21 hired by the board, the board that was controlled by the
22 declarants, the property management firm that was hired by the
23 board, which was controlled by the declarants. But the
24 declarants got the money. And whether it's an accountant
25 error or not, they can't keep the money. They got -- if

1 there's an issue that they want to take up with the accountant
2 that they hired and they relied on, then they need to do that.

3 The effort to everybody saying, "No, it's that guy over
4 there" also doesn't match up with the facts, Your Honor.

5 Mr. MacKelcan and Mr. Miller will tell you, Oh, well, you have
6 a declarant. The declarant is separate from the board. And
7 Mr. MacKelcan tells you, Oh, the board's completely separate
8 from the declarant. So if the declarant was getting all this
9 money or wasn't paying all this money, it's not the board
10 members' fault.

11 But for Mr. MacKelcan and for the pre-founder declarants,
12 they're one and the same. Mr. Teal and Mr. Edwards were both
13 the declarant through a company called Sun Star. Mr. Black,
14 who came on in 2010 and was the architect at least from the
15 perspective of the homeowners of the 2011 amendment, was on
16 the board until 2015. Well, he worked for a company called
17 Real Star. Well, Your Honor, as our materials have pointed
18 out to you, who owns Real Star? Well, Mr. Edwards. Mr. Teal.
19 Real Star supplies management for all of Mr. Teal and
20 Mr. Edwards and Sun Star's HOAs.

21 And so to act as though the declarant is somehow some
22 suffered entity who has no responsibility at all for the board
23 that the declarant happened to appoint in toto, a board who
24 acts in such a way who benefits directly the declarant, seems
25 to me to be non-sense. And Mr. Rollins says that inferences

1 don't work at summary judgment. They do. And the inference
2 that you can draw from the evidence that we have put before
3 you is that the declarants and the board were acting in
4 concert with one another to benefit the declarants. And, to
5 me, that's as plain as the nose on my face.

6 The representations that were made to you about, "Oh,
7 gee, when this was first pointed out to us in 2014, we all
8 looked into it." And the accountant told us that was just
9 hunky-dorry and everything would have been done the right way.
10 It's just not true.

11 And Mr. Dykes said that in his affidavit. It's just not
12 true. He raised the issue with the pre-founder's board, who
13 also happened to be the pre-founder's declarants, and they did
14 nothing. And of course they did nothing because they were
15 about to sell it to Founders. And then when Founders got it,
16 Mr. Dykes complained to the board that Founders had a point
17 (ph). And he laid out his case. And they said, We're not
18 going to do anything about it. So I don't think that that --
19 I don't think that that works.

20 The finance committee, as Ms. Isenhardt said in her
21 affidavit, as Mr. Dykes supported in his affidavit, the
22 finance committee did nothing. It did nothing. For years, it
23 did nothing. They were excluded from executive sessions.
24 They were deprived of financial information. It wasn't until
25 Mr. Dykes showed up in 2014 and got put on the finance

1 committee and started asking the hard questions that the data
2 became available, and that's when he raised the issue.

3 You know, and I guess with respect to Mr. Tally and his
4 arguments and, to a certain extent, Mr. Rollins -- Mr. Rollins
5 actually, he articulated it better than I have. What he told
6 you is that, before Founders bought this in 2015, this
7 association was passed around like a hot potato -- his
8 words -- among various declarants. There were three of them,
9 all owned and controlled by the same people with the exception
10 of Stratford. Stratford was there for the second and third
11 declarant. But the same Myrtle Beach Sun Star, Mr. Edwards,
12 Mr. Teal, that crowd, they were involved in all three of them.

13 Why did they change the name? Why did they have three
14 different development entities or declarant entities? Why
15 were they passing this association around like a hot potato
16 from one to the next, and, by the way, leaving all of those
17 declarants judgment-proof?

18 The board members say, "It's not us doing anything.
19 We're just controlled by the declarant. We didn't get any
20 money. The declarant's got all the money."

21 Declarant says, "I didn't do anything wrong. This was
22 all really the board." And guess what? There's nobody there
23 to answer for any of it at this point.

24 The sale of Founders in 2015 netted \$11 million. The
25 declarants got nothing. Mr. Tally says, "Well, gee, you know,

1 my folks, they weren't declarants. They weren't anything."
2 Well, he's right. They weren't. But what they were was
3 members of declarants. And what they were is joint ventures
4 with entities, including one called the JV, which actually got
5 most of the \$11 million. The JV was never the declarant. The
6 JV never put anybody on the board.

7 So how could the JV possibly have any liability in this
8 case? But the JV ended up with all the money.

9 So that's where we are. Mr. Rollins is exactly right.
10 We fully believe that, between the board members and these
11 various shell declarant entities and the members, that they
12 were all one and the same. And they acted one and the same,
13 all for the benefit of the declarant entities and ultimately
14 for the members of the declarant entities. And that's what
15 the evidence in the case shows.

16 So that's -- that's my response to the arguments I have
17 heard today.

18 THE COURT: Okay. All right. Thank you all. Appreciate
19 it. And I brought up -- I said it was just a motion -- their
20 motion for summary judgment. You filed a motion for summary
21 judgment also.

22 UNIDENTIFIED SPEAKER: Yes.

23 THE COURT: That's denied -- we're going to deny that one
24 I think from the -- the best light of everybody, the issue of
25 fact.

1 But from the standpoint of the motion of the defendants,
2 I will grant summary judgment for the reasons stated
3 (inaudible) as is stated in your memorandums, limitation of
4 (inaudible) those sections cited (inaudible) the
5 not-for-profit (inaudible) corporation. So if you each will
6 prepare an appropriate order (inaudible). Thank you all very
7 much.

8 (The above hearing concluded.)
9
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1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: C. Barry Dykes v. Wild Wing Co. LLC

3 2017-CP-26-04187

4 DATE OF PROCEEDING: May 5, 2021

5 COURT REPORTER: Phyllis Norton (retired)

6
7 I, Bobbi J. Fisher, do hereby certify that the
8 foregoing transcript is a true and correct record of the
9 recorded proceedings; **that said proceedings were transcribed**
10 **to the best of my ability from the audio recording and**
11 **supporting information**, and that I am neither counsel for,
12 related to, nor employed by any of the parties to this case,
13 and I have no interest, financial or otherwise, in its
14 outcome.

15 17 _____
18 Bobbi J. Fisher, RPR

19 NCRA Registered Professional Reporter (RPR)

20 Prepared: December 6, 2021

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt,
Individually and derivatively
on behalf of the Wild Wing Plantation
Property Owners' Association, Inc.,

Plaintiff(s),

vs.

CIVIL ACTION NO.
2017-CP-26-04187

Wild Wing Company, LLC,
Ralph R. Teal, Jr.,
SLF IV/SBI Wild Wing, LLC,
Wild Wing Residential Development LLC,
Stratford Land Manager,
SB Investments LLC,
Graeme T. Black, Gilford Edwards,
Founders Wild Wing, LLC,
Founders Group International, LLC,
Dan Liu, and Xian Dou,

Defendant(s).

Wild Wing Plantation
Owners' Association, Inc.

Nominal Defendant.

DEPOSITION OF: C. BARRY DYKES

DATE: Wednesday, December 5, 2018

TIME: 9:45 a.m. through 1:32 p.m.

LOCATION: BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Defendant(s)

COURT REPORTER: MADONNA M. FARRELL
Registered Professional Reporter
Certified Livenote Reporter
CaseViewNet Realtime Reporter

1 were, you looked for names that -- that some
2 document that they showed up on. I don't remember
3 which one.

4 Q. How about Stratford Land Manager? who do
5 you think that is?

6 A. I believe they were involved with the second
7 developer.

8 Q. How about SB Investments, LLC? who do you
9 think that is?

10 A. I believe they were involved with the second
11 developer.

12 Q. And Graeme Black and Gilford Edwards?

13 A. Yes. They were part of the second
14 developer. They were board members.

15 Q. How about Founders Wild Wing LLC?

16 A. They're the third developer/declarant.

17 Q. How many do you think there have been?

18 A. Three.

19 Q. How about Founders Group International LLC?

20 A. They're part of the Founders Group. I
21 believe they're the parent company of Founders Wild
22 Wing LLC.

23 Q. And how about Dan Liu?

24 A. He is one of the principals, or was one of
25 the principals in Founders Group.

1 THE DEPONENT: You're talking -- you're
2 asking me a legal question and, as I've
3 already told you, I'm not a lawyer. I'm
4 telling you my understanding is people that
5 were involved and may have been involved in
6 the decision-making around these kind of
7 things, we tried to identify them and name
8 them in the lawsuit. I guess we'll find
9 out.

10 BY MR. MILLER:

11 Q. Well, what I'm asking you then is: Was it
12 your intent just to sue the declarants, or did you
13 intend to sue more than just the declarants?

14 MR. LYLES: Object to the form of the
15 question.

16 THE DEPONENT: Anyone who was involved
17 in the decision-making, whether in a
18 personal or corporate capacity, that could
19 be liable for this, we tried to identify.
20 So some of them were declarants, some of
21 them before board members of the POA that
22 were making decisions that -- again, I've
23 already told you that I think they were
24 indistinguishable, and I think the whole
25 structure here is confusing to a layman.

1 BY MR. MILLER:

2 Q. Do you know what your theory of damages is
3 that you're suing for here?

4 A. Tell me what "theory of damages" means.

5 Q. Well, who are you suing for what?

6 A. I'm suing the declarant.

7 Q. Okay.

8 A. Declarants.

9 Q. And there have been four?

10 A. I'm suing the declarants for underpaying
11 their obligation under the documents.

12 Q. Okay. And are you suing one of the
13 declarants because another one didn't pay, or are
14 you just suing each for their respective time that
15 they served?

16 A. We're suing the group for underpaying, and I
17 don't know, because we don't have all the
18 documents, as to who's responsible for what.

19 Q. Do you have any evidence to show that one
20 declarant is somehow responsible for the time
21 served of another declarant? Do you have any
22 evidence to show that?

23 A. I don't know what you mean by "evidence."

24 Q. I mean testimony, documents, anything that
25 you have to somehow make one declarant responsible

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt,
 individually and derivatively on behalf of the
 Wild Wing Plantation Property Owners'
 Association, Inc.,

Plaintiffs,

vs.

Wild Wing Company, LLC; Sunstar, LLC;
 Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing,
 LLC; SLF IV/SBI JV, LLC; SLF IV/SBI
 Properties MM, LLC; SLF IV/SBI Development
 Holdings, LLC; Wild Wing Residential
 Development LLC; Stratford Land Manager,
 L.P. d/b/a Stratford Land Fund IV, L.P.; SB
 Investments, LLC; Realstar Management, LLC;
 Graeme T. Black; H. Gilford Edwards;
 Founders Wild Wing, LLC; Founders Group
 International, LLC; Dan Liu; Xian "Nick" Dou;
 Rick Schultz; Rick Taylor; and Thomas
 Plankers,

Defendants.

Wild Wing Plantation Owners' Association,
 Inc.,

Nominal Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2017-CP-26-04187
)

**DEFENDANTS RALPH R. TEAL, JR.,
 GRAEME T. BLACK, AND H. GILFORD
 EDWARDS'**

**MOTION FOR SUMMARY JUDGMENT
 AND MEMORANDUM IN SUPPORT**

PLEASE TAKE NOTICE that Defendants Ralph R. Teal, Jr., Graeme T. Black, and H. Gilford Edwards (hereinafter collectively referred to as "these Defendants"), by and through their undersigned counsel and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will move before the presiding judge on the tenth (10) day after service hereof, or at such other time and place as is convenient for the Court and counsel, for an Order granting summary judgment on the grounds that Plaintiffs are unable to establish there is a genuine issue of material fact on one or more elements of its causes of action. Counsel for these Defendants respectfully submit this

Motion and Memorandum in Support, reserving the right to supplement and amend prior to a hearing on this Motion.

STATEMENT OF FACTS

This lawsuit arises from a dispute between certain property owners at Wild Wing Plantation and various Declarant entities associated with the Wild Wing Plantation Owners' Association, Inc. ("the Association"), a nonprofit corporation formed pursuant to the laws of South Carolina. Plaintiffs Barry Dykes ("Dykes") and Barbara Eisenhardt ("Eisenhardt") (hereinafter referenced individually or collectively as "Plaintiffs") are members of the Association, and have brought this action as a shareholder derivative lawsuit. The claims asserted arise from or are related in some way to Plaintiffs' membership in the Association.

Development History

In order to fully understand the involvement of the various named Defendants during the relevant time periods, it is important to briefly describe the history of the Wild Wing Plantation development. Wild Wing Plantation is a residential development located near the border of Conway and Myrtle Beach, South Carolina. The Association was formed on June 14, 2006 as a non-profit corporation. Since its inception, several entities have served as the Developer, maintaining Declarant's rights within Wild Wing Plantation pursuant to the Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation ("the Wild Wing Covenants") and other governing documents (collectively "the Governing Documents"). The initial declarant, Wild Wing Company, LLC ("WWC" or "Developer One") was organized on or around December 7, 2005. *See* Am. Compl. at 5, ¶ 28. Sunstar, LLC was the managing member of WWC and held 75% of the voting and financial rights. Ralph Teal managed Sunstar. *Id.* On or about September 26, 2006, Developer One filed the Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation (the

“Wild Wing Covenants”). *See* Wild Wing Covenants dated September 26, 2006, attached hereto as Exhibit A. Pursuant to these Covenants, the Association was to be governed by a Board of Directors. The Covenants use the term “Declarant” to refer to the Developer, and vest in the Declarant certain rights and obligations. *Id.* at 3, ¶ (e).

WWC was the Declarant from September 2006 and throughout the unstable economic climate and real-estate downturn that began shortly thereafter and lasted for a few years. On December 22, 2010, WWC assigned its Declarant rights to SLF IV/SBI Wild Wing Company, LLC (“Developer Two”). SLF IV/SBI Wild Wing Company, LLC was formed in December 2010 and jointly owned by SLF IV/SBI Properties and SLF IV/SBI JV, both of which were managed by Stratford Land/SB Investments, LLC, an entity formed in November 2010 and managed by Ralph Teal. Real Star Management, LLC assisted in managing the assets of SLF IV/SBI IV, including the Wild Wing Plantation assets. Gilford Edwards is a principal of Real Star Management, and also served on the Association Board. Graeme Black is an employee of Real Star Management and similarly was appointed to serve on the Association Board. SLF IV/SBI Wild Wing, LLC was the Declarant from December 22, 2010 until November 9, 2011.

On November 9, 2011, SLF IV/SBI Wing Wing, LLC assigned its Declarant rights to Wild Wing Residential Development, LLC (“Developer Three”). Developer Three served as Declarant from November 9, 2011 until April 13, 2015. The Complaint avers that the sole member of Developer Three is SLF IV/SBI Developmental Holdings, an entity managed by SLF IV/SBI Properties. On April 13, 2015, Wild Wing Residential Development, LLC assigned Declarant rights to Founders Wild Wing, LLC, and this entity remains the Declarant to date. Each Declarant entity is named as a Defendant in this lawsuit. The individually named Defendants Ralph R. Teal, Jr., Graeme T. Black and H. Gilford Edwards (hereinafter referred to as “these Individual

Defendants”) were members of the Association’s Board of Directors at various times until Declarant rights were assigned to Founders Wild Wing, LLC in April 2015.

Wild Wing Covenants and the Declarant’s Assessment

The allegations of Plaintiffs’ Amended Complaint generally rely upon the language in Article VI, Section 2 of the Wild Wing Covenants. See Exhibit A at 17 – 19. This section of the Covenants broadly covers the Association’s right to levy assessments on property owners within the Wild Wing Plantation to promote the goals of “health, safety and welfare” of all residents. *Id.* This includes annual assessments, and as needed, special assessments. Article VI, Section 2 exempts the Declarant from payment of assessments of lots it owns within Wild Wing Plantation. *Id.* In lieu of payment of a per-lot assessment, the Covenants provide for a single annual assessment of “a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made by the Association against owners of lots other than those owned by the Declarant.” *Id.* at 18. Simply stated, the Declarant was (and remains) charged with funding the difference between the Association’s actual operating expenditures and “assessments made” by the Association against all other owners – funding the shortfall.

As detailed above, the single issue in this case is the funding requirements of the Declarants and the calculation of these amounts over the course of several years. An overview of the process through which the annual funding options were calculated and paid by the Declarants reveals the limited role of these Individual Defendants – and all other members of the Board of Directors – in decisions relative to the annual funding requirement.

At the beginning of each fiscal year, the Association's Finance Committee, with the assistance of the property management group hired by the Association¹, created an annual budget. *See* G. Black Dep., 59:18-21. This annual budget projected annual expenses and annual revenues for the Association. The annual budget also projected a "shortfall" – or the deficit potentially owed by the Declarant at the end of the fiscal year pursuant to the operative language in the Declaration. *See* G. Black Dep., 75:7-24. During the course of the fiscal year, the Declarant made installment payments to fund the projected shortfall. *See* G. Black Dep. 76:13-77:2.

At the end of each fiscal year, the Association hired an accounting firm to audit the Association's financial statements. In conjunction with the audit, the accounting firm also prepared a "Developer Assessment" worksheet. This worksheet applied certain relevant figures from the audited annual financial statements to the Declarant funding options as set forth in the Declaration. This yielded two options: (1) the Declarant could fund the shortfall (i.e., the difference between the actual amount of actual operating expenditures incurred by the Association ... less an amount equal to the total assessments made); or (2) the Declarant could pay an assessment for all lots it owned within Wild Wing Plantation. As permitted by the Declaration, the Declarant then selected its funding mechanism, and, when required, paid the identified amount to the Association.

Ultimately, the Board of Directors – and these Individual Defendants – only reviewed and approved annual budgets as prepared by the Finance Committee and property management groups. These Individual Defendants were not directly involved in the process of preparing the annual budgets, auditing the annual financial statements, or determining the Declarant's shortfall contribution amount as presented in the "Developer Assessment" worksheet. Instead, the Board of Directors relied upon the Finance Committee, the property management group, and accounting

¹ The Association initially retained Wright Management, Inc., then Waccamaw Management, LLC.

professionals to prepare budgets, track the Association's finances, perform annual audits, and determine the appropriate Declarant "shortfall" contribution.

2011 Amendment of the Covenants

In November 2011, the Association's Board of Directors, including these Individual Defendants serving as Board members, called a special meeting for the purpose of voting to amend the Covenants to extend the Declarant funding option from December 31, 2010 until December 31, 2016. *See* Amendment to Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens for Wild Wing Plantation, attached hereto as Exhibit B. Pursuant to the allocation of voting rights per the Covenants, the Declarant had sufficient votes to pass this amendment.

PROCEDURAL HISTORY

Plaintiffs filed the Summons and Complaint on June 30, 2017, setting forth three causes of action against these Defendants: (1) Breach of Fiduciary Duty; (2) Unjust Enrichment; and (3) Veil Piercing/Alter Ego/Amalgamation. On March 19, 2020, after nearly two years of discovery and numerous depositions, Plaintiffs amended their Complaint to add additional corporate and developer defendants. The amendment also added an additional cause of action for violations of the S.C. Unfair Trade Practices Act. The Amended Complaint generally alleges the Defendants – as the Declarants of Wild Wing Plantation – underfunded the Association by failing to utilize generally accepted accounting procedures ("GAAP") when calculating the amount of contributions owed by the Declarant in accordance with the Covenants, Conditions, and Restrictions ("the Covenants"), and improperly amended the Covenants to delay the declarant's obligation to pay assessments on a per lot basis.

As a preliminary matter, the allegations in the Amended Complaint fail to separate Plaintiffs' claims against these Defendants, the capacity in which these Defendant are being sued,

and the various Declarant entities named as Defendants. Instead, Plaintiffs simply assign to all Defendants conduct supporting their claim for Breach of Fiduciary Duty. Plaintiffs' alleged claim for Breach of Fiduciary Duty is based solely on the allegation that the Developer Defendants, and the Individual Defendants as agents of the Developers and as officers/directors, failed to comply with the Governing Documents in using GAAP for calculating their contributions to the Association, thereby elevating their own interests over the interests of the Association and the Association's members. *See* Complaint, Paragraph 42. To the extent Plaintiffs' claims against "Defendants" center on the Declarant entities or these Defendants' conduct as members, employees, or agents of the Declarant entities, such alleged liability, if any at all, would fall to others.

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear that the moving party is entitled to a judgment as a matter of law. S.C. R. Civ. P. 56(c); *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009). In determining whether any triable issue of fact exists so as to preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). "If evidence favoring the non-moving party is merely colorable . . . or is not significantly probative . . . summary judgment may be granted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 59, 518 S.E.2d 301, 305 (Ct. App. 1999).

The plain meaning of Rule 56(c), SCRCP, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case. *Id.* In such a situation, the moving party is entitled to judgment as a matter of law because the non-moving party has failed to demonstrate a genuine issue of material fact as to a necessary part of that party's claim. *Id.* "When a motion for summary judgment is made and properly supported, an adverse party may not rest solely upon the allegation or denials in his pleadings, but must set forth specific facts showing that there is a genuine issue of fact for trial." *Jones v. Enterprise Leasing Company-Southeast*, 383 S.C. 259, 267, 678 S.E.2d 819, 823 (Ct. App. 2009).

LEGAL ARGUMENT

I. PLAINTIFFS' CLAIMS AGAINST THESE DEFENDANTS ARE BARRED BECAUSE PLAINTIFFS FAILED TO FILE THIS LAWSUIT WITHIN THE APPLICABLE STATUTE OF LIMITATIONS.

Plaintiffs' claims against these Defendants are barred by the applicable three-year statute of limitations governing claims for breach of fiduciary duty, unjust enrichment, and for damages arising under the SCUTPA.

A three-year statute of limitations applies to the claims brought by Plaintiffs against these Individual Defendants in this lawsuit. *See* S.C. Code Ann. § 15-3-530 (1) and (5) (providing for a three-year statute of limitations for actions arising "upon a contract, obligation, or liability, express or implied" and actions for "any injury. . . not arising on contract and not enumerated by law"). South Carolina follows the "discovery rule," which requires that an action "must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535; *See e.g., Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994); *see also Republic Contracting Corp. v. S.C. Dep't of Highways and Public Transp.*, 332 S.C. 197, 207, 503 S.E.2d 761, 766 (Ct. App.

1998). The relevant inquiry is not what Plaintiffs subjectively knew at specific points in time, but rather, at what point Plaintiffs objectively had “enough information such that [they] should have acted promptly to determine whether a cause of action might exist against [Defendants] for the injuries claimed in this case.” *Ashley River Indus., Inc. v. Mobil Oil Corp.*, 135 F. Supp. 2d 733, 742 (D.S.C. 2000), *aff’d* 245 F.3d 849 (4th Cir. 2001); *see also Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 333, 534 S.E.2d 672, 678 (2000).

Plaintiffs filed the present action on June 30, 2017. It is clear that Plaintiffs had enough information prior to June 30, 2014 such that they knew or should have known of the basis for their claims against these Defendants. Plaintiff Eisenhardt has been a property owner in Wild Wing Plantation since 2007 and she was one of the three founding members of the Association’s finance committee in 2012. *See* B. Eisenhardt Dep., 10: 19-25. Plaintiff Dykes has been a homeowner since 2013 and was appointed to the Association’s Finance Committee at the 2014 Annual Meeting. *See* B. Dykes Dep., 14: 16-17. Association auditor Jim Corbett testified in his deposition that both Plaintiffs were privy to the annual audits and were familiar with the manner in which the Declarant’s annual contribution was calculated. *See* Corbett Dep., 27: 4-14. All Association members, including the Plaintiffs, had access to the published audited financial statements each year, including the calculation of the declarant assessment exposure for those years. The audited financial statements for the year ending December 31, 2008 were published on July 6, 2009. The audited financial statements for the year ending December 31, 2009 were published on May 31, 2011. The audited financial statements for the years ending December 31, 2010 and December 31, 2011 were published on September 4, 2012. The audited financial statements for the years 2012 and 2013 were published on March 20, 2014. *See* Audited Financial Statements and Declarant Assessment Exposure Calculations, attached hereto as Exhibit C. Each of these audited financial statements included a clear explanation of how the auditor calculated the declarant

contribution. Plaintiffs knew how Declarant contributions were calculated well before June 30, 2014, but nevertheless did not file suit registering their objection to the same until 2017.

Furthermore, Plaintiff Eisenhardt was a homeowner at the time of the November 2011 vote to amend the Covenants to extend the declarancy period. Ms. Eisenhardt received written notice of the proposed amendment from Wright Management on November 9, 2011. A vote was held on this amendment on November 21, 2011 and the minutes reflect that Ms. Eisenhardt was present at this vote. *See* B. Eisenhardt Dep. 19: 11-18. The votes were unanimous in favor of amendment. Plaintiff Eisenhardt had sufficient information as early as November 2011 such that she knew or should have known of the basis of the claims against these Defendants related to the 2011 vote to amend the Covenants. Despite knowing the purpose of the 2011 amendment and having an opportunity to vote on the adoption of the same, Plaintiff Eisenhardt waited until 2017, almost six years after the fact, to object.

Accordingly, these Defendants are entitled to summary judgment as to Plaintiffs' causes of action and resulting alleged damages to the extent that they knew or should have known the basis for their claims on or before June 30, 2014.

II. PLAINTIFFS CANNOT ESTABLISH, AS A MATTER OF LAW, ANY CLAIM AGAINST THESE DEFENDANTS FOR BREACH OF FIDUCIARY DUTY.

A corporation can only "exercise the powers granted to it by law, its charter or articles of incorporation, and any bylaws made pursuant thereto." Lovering v. Seabrook Island Prop. Owners Ass'n, 289 S.C. 77, 82, 344 S.E.2d 862, 865 (Ct. App. 1986). When a corporation acts within its scope of authority, such conduct is considered *intra vires*. "Acts beyond the scope of a corporation's powers as defined by law or its charter are *ultra vires*." *Id.* In South Carolina, the business judgment rule operates to preclude judicial review of *intra vires* actions taken by a corporate governing board absent a showing of a lack of good faith, fraud, self-dealing or

unconscionable conduct. Dockside Ass’n, Inc. v. Detyens, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987) (internal citation omitted).

“In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the ‘business judgment rule,’ and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action.” Goddard v. Fairways Dev. Gen. P’ship, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993). “The burden of proving good faith is not on the governing board; the burden of proving a lack of good faith is borne, rather, by those challenging the board’s actions.” Dockside Ass’n, Inc., 294 S.C. at 87, 362 S.E.2d at 874; *see also Fisher v. Shipyard Vill. Council of Co-Owners, Inc.*, 415 S.C. 256, 781 S.E.2d 903 (2016). As applied to the present case, the business judgment rule operates to preclude judicial review of all Board action within the scope of the Board’s authority as established by South Carolina law, the applicable Covenants, Bylaws and other governing documents.

There is no evidence, nor is there any allegation, these Defendants acted in contravention of the accounting work performed by the Finance Committee, the property management group, or the accounting firm who prepared the annual audits or “Developer Assessment” worksheets. Furthermore, there was never any dispute regarding the validity of the annual “shortfall” contributions at the time they were made or any suggestion from anyone – including Plaintiff Barry Dykes as a member of Finance Committee – that the amounts were insufficient or improperly calculated. The Board of Directors simply accepted the “shortfall” contributions when tendered by the Declarant.

In doing so, these Defendants acted within the scope of their authority as members of the Board of Directors and in reasonable reliance upon the Finance Committee, the property management group, and the accounting firm properly charged with responsibility for matters

relative to calculating the Declarant's annual funding obligation. The use of, and reliance upon, these individuals and professionals is consistent with the Governing Documents and South Carolina law. Specifically, Article V, Section 1 of the Association's Bylaws provides that the Board of Directors may "establish Committees to perform such tasks for such periods as may be designated by a majority of the Directors." Similarly, Article VI, Section 5 of the Declaration authorizes the Board of Directors to "employ a professional manager or managerial work to supervise all work, labor, services and material required in the ... discharge of the Association's duties throughout the Community." Finally, S.C. Code Ann. § 33-31-830(b)(2) provides that, "in discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: legal counsel, *public accountants*, or *other persons as to matters the director reasonably believes are within the person's professional or expert competence.*"

The delegation of these decisions, and acceptance of certain funds from the Declarant, falls squarely within the business judgment rule and should not be subject to judicial review by this Court.

In attempt to further define and separate these Defendants' conduct as Board members versus conduct as members, employees, or agents of the Declarant entities, Plaintiffs were questioned about the nature of their alleged claims against these Individual Defendants. When specifically asked why these Defendants were included in this lawsuit, Plaintiff Barry Dykes testified as follows:

Q: Is that because of their prior role on the board of the POA or because of their role as members of various corporate defendants?

A: Both, actually. But...

Q: And can you make a distinction between their role as a member of the POA board and their role as a member of the various corporate defendants?

A: Not at this time.

(Dykes Dep., 143:7-14).

In fact, on a more basic level, and nearly two years after filing the Complaint, Plaintiffs have not – and cannot – articulate why these Individual Defendants are named in the lawsuit:

Q: As we sit here today, do you know anything that Mr. Teal did in an individual capacity that gives rise to liability through your lawsuit?

A: I have no knowledge of the details of that. That's what I think we'll find out in the process here.

Q: Same question for Mr. Edwards?

A: Same answer.

Q: Same question for Mr. Black?

A: Same answer.

[...]

Q: Do you know what part of that decision-making process these individuals – Mr. Black, Mr. Edwards, or Mr. Teal – specifically had?

A: Not yet, no.

(Dykes Dep., 144:22-145:6; 150:23-151:2).

The lack of specificity as to the allegations is indicative of why the inclusion of these Defendants is unnecessary and unfounded under South Carolina law. The issue in this case is straightforward – the Association and the Declarants dispute the Declarants' funding requirements as defined the Declaration. As detailed above, the Board of Directors, which would have consisted of these Defendants and others at varying points in the history of Wild Wing Plantation, simply were not involved in the accounting affairs of the Association. These duties were properly charged to the Finance Committee, the Association's property management group, and the Association's accounting firm.

Each year, following the preparation of annual audits by the Association's accounting firm, the Declarant was presented with certain funding options as defined by the clear language of the Declaration. The Declarant – not these Defendants nor the Association – would then choose a funding mechanism as the options were presented by the annual audits. There is no evidence these Individual Defendants ever failed to account for the Declarant's annual "shortfall" obligation, failed to collect amounts owed (as identified by others), or were ever presented with "alternative" methods of calculating the annual "shortfall" obligation when the amounts were tendered.

Furthermore, the Plaintiffs have failed to establish evidence beyond mere conjecture to support the allegation that these Defendants acted in bad faith related to the 2011 vote to amend the Covenants to extend the declarant contribution period. Plaintiffs claim that the extension of the declarancy period was self-interested, but when asked specifically what evidence or information they have in support of that allegation, they have testified to the contrary. Plaintiffs have failed to show how the decision to extend the 2011 declarancy period was harmful to the Association other than arguably lowering the declarant contribution. In the absence of such evidence of bad faith required to overcome the business judgment rule, Plaintiffs' claim for Breach of Fiduciary Duty as to these Defendants fails a matter of law.

III. PLAINTIFFS HAVE NO EVIDENCE TO SUPPORT AND CANNOT ESTABLISH, AS A MATTER OF LAW, A CLAIM FOR UNJUST ENRICHMENT AGAINST THESE DEFENDANTS.

"Unjust enrichment is an equitable doctrine, which permits the recovery of the amount that the defendant has been unjustly enriched at the expense of the plaintiff." *Chase Home Finance, LLC v. Risher*, 405 S.E.2d 202, 746 S.E.2d 471 (Ct App. 2013) (internal citation omitted). "To recover on a theory of restitution, the plaintiff must show (1) that he conferred a non-gratuitous benefit on the defendant; (2) that the defendant realized some value from the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its

value.” *Niggel Assoc., Inc. v. Polo’s of North Myrtle Beach, Inc.*, 296 S.C. 530, 374 S.E.2d 507 (Ct. App. 1988).

There is no evidence that these Defendants have retained any benefit conferred by Plaintiffs and/or the Association under conditions that make it unjust to retain. Specifically, Plaintiffs contend that the Declarants’ alleged miscalculation of the Declarant Contribution has resulted in an underfunding of the Association, unjustly enriching the Defendants at the expense of the Association. To the contrary, when specifically asked if Plaintiffs allege these Defendants derived improper personal benefit at the expense of the Association, Plaintiff Barry Dykes testified as follows:

Q: Sure. Do you contend that Mr. Teal, Mr. Black, or Mr. Edwards have personally collected \$500,000 that should have been allegedly paid into the association?

A: I don’t know.

Q: Going to Page 7, similar question regarding your second cause of action for unjust enrichment. Do you know whether the individual defendants, Mr. Black, Mr. Teal, or Mr. Edwards, were personally unjustly enriched at the expense of the plaintiffs?

A: I don’t know.

(B. Dykes Dep., 151:8-20).

The voluminous amount of evidence exchanged in discovery to date is equally void of any indication or suggestion these Defendants derived any improper personal benefit related to the Declarant “shortfall” funding. To the extent the funding mechanism exercised by the Declarant entities was insufficient, an allegation which is explicitly denied, it is the Declarant entities – also Defendants in this case – who may bear liability for resulting damages, not these Defendants. Furthermore, the Plaintiffs have failed to establish evidence beyond mere conjecture to support the allegation that these Defendants derived improper personal benefit related to the 2011 vote to amend the Covenants to extend the declarant contribution period. Accordingly, there is no

evidence to support Plaintiffs' unjust enrichment claim and these Defendants are entitled to summary judgment as a matter of law.

IV. PLAINTIFFS' SCUTPA CLAIM MUST FAIL BECAUSE PLAINTIFFS HAVE NOT SUFFICIENTLY ALLEGED AN UNFAIR ACT OR PRACTICE IMPACTING THE PUBLIC INTEREST.

Under the SCUTPA, "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are [] declared unlawful. S.C. Code Ann. § 39-5-20(a) (1985). In order to establish a claim for violation of the SCUTPA, "a plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *RFT Management Co., LLC v. Tinsley & Adams, LLP*, 399 S.C. 322, 336-37, 732 S.E.2d 166, 173 (2012).

In order to sustain their SCUTPA claim, Plaintiffs must show that the complained-of conduct affects the public interest. "The act is not available to redress a private wrong where the public interest is unaffected." *Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 477-79, 351 S.E.2d 347, 349-50 (Ct. App. 1986). "Therefore, conduct which only affects the parties to the transaction provides no basis for a UTPA claim." *Jefferies v. Phillips*, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994). As the Fourth Circuit has noted:

While every private dispute doubtless has remote public ramifications, these cannot be held to satisfy the element of injury to the public interest which is a prerequisite to any recovery under the UTPA. Were the rule otherwise, every ordinary commercial dispute would become a candidate for the extraordinary remedies provided by the Act.

Omni Outdoor Adver., Inc. v. Columbia Outdoor Adver., Inc., 974 F.2d 502, 507-08 (4th Cir. 1992).

The private right of action under the Act is limited to those unfair or deceptive acts or practices that affect the public interest; thus, "[a]n unfair or deceptive act or practice that affects

only parties to a trade or commercial transaction is beyond the act's embrace" *Noack*, 290 S.C. at 479, 351 S.E.2d at 349-50. "An unfair or deceptive trade practice has an impact upon the public interest if it has the potential for repetition." *Haley Nursery Co. v. Forrest*, 298 S.C. 520, 381 S.E.2d 906, 908 (1989). "The potential for repetition may be demonstrated in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts." *Wright v. Craft*, 372 S.C. 1, 30, 640 S.E.2d 486, 502 (Ct. App. 2006). Further, and importantly, a showing of public interest requires proof of *specific facts*. *Jefferies v. Phillips*, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994) (emphasis added).

The essence of Plaintiffs' vaguely-pled SCUTPA claim is that "Defendants' [] activities, including numerous willful and continuous breaches of other obligations and developers and Declarant, failures to disclose conflicts of interest, and taking unfair advantage of voting rights, and willful disregard of GAAP requirements all of which was intended to 1) deprive the Wild Wing Association of funding that was due and owing; and 2) to enhance the value of the Defendants and their entities" and that this conduct constitutes unfair and deceptive practices in the conduct of their trade. *See* Am. Compl. at 22, ¶ 130. Notably, nowhere within this SCUTPA claim do Plaintiffs specifically allege what unfair or deceptive act or practice they are referring to. Nevertheless, Plaintiffs vaguely allege that the "above-described acts are capable of repetition and adversely affect the public interest." *Id.* at ¶ 131. This is not sufficient to allege an impact to the public interest, as the only allegations Plaintiffs have made relate to the collective Defendants' alleged interactions with the Association and Plaintiffs, not the public at large. Additionally, Plaintiffs cannot provide any evidence that the same alleged acts have occurred in the past or that they create a potential for repetition of the same alleged acts. Therefore, this claim must fail.

In South Carolina, a pleading setting forth a cause of action “*shall contain . . . a short and plain statement of the facts showing that the pleader is entitled to relief.*” Rule 8(a), SCRCP (emphasis added). Here, because Plaintiffs merely state that these Defendants’ conduct amounts to unfair trade practices and that it has an impact upon the public interest without alleging any particularized facts showing they are entitled to relief under SCUTPA, their claim must be dismissed. *See Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 455 n.9, 814 S.E.2d 643, 656 (Ct. App. 2018).

V. PLAINTIFFS DO NOT HAVE EVIDENCE TO SUPPORT THEIR ALTER EGO, AMALGAMATION AND VEIL PIERCING CLAIMS AGAINST THESE DEFENDANTS.

Plaintiffs allege that there existed a joint venture between the individuals and entities comprising Developer One, the individuals and entities involved in Developer Two, and the individuals and entities involved in Developer Three, such that all members of Developer One became members and had rights in Developer Two, and in turn became members and held rights in Developer Three. Specifically, the Amended Complaint alleges that Wild Wing Company, LLC, Sunstar LLC, Teal and Black were “operating together as joint venturers, members and/or agents” and have failed to observe corporate formalities, were undercapitalized and/or operations were intertwined such that “they should be regarded as those of an amalgamated or single business enterprise.” Am. Compl. at 17-19, ¶ 111 - 113. Plaintiffs further allege that a “substantial relationship” existed between SLF IV/SBI Wild Wing, SLF IV/SBI JV, SLF IV/SBI Properties MM, Stratford Land, SLF, SB Investments, Wild Wing Residential Development LLC, SLF IV/SBI Development Holdings LLC, RealStar Management, LLC, Teal, Black and Edwards, and that the entities and these Defendants “operated in such a manner where distinctions between the entities are blurred and should be amalgamated or treated as a single business enterprise for purposes of judgment.” Am. Compl. at 20, ¶ 120. While not perfectly clear, the Amended

Complaint appears to allege alternative bases for disregarding the corporate forms of these Defendant entities based on three theories: alter ego, joint enterprise, and amalgamation. As will be seen, Plaintiffs have failed to adduce evidence supporting any of these three theories.

1. Plaintiffs Have Failed to Identify Evidence in Support of their Alter Ego Allegations.

“An alter-ego theory requires a showing of (1) total domination and control of one entity by another and (2) inequitable consequences caused thereby.” *Oskin v. Johnson*, 400 S.C. 390, 400, 735 S.E.2d 459, 465 (2012); *Colleton County Taxpayers Ass’n v. School District of Colleton County*, 371 S.C. 224, 237, 638 S.E. 685, 692 (2006). “When a parent company controls the business decisions and actions of its subsidiary, the subsidiary becomes an alter ego of the parent.” *Jones v. Enterprise Leasing Company-Southeast*, 383 S.C. 259, 267, 678 S.E.2d 819, 823 (Ct. App. 2009). “Control may be shown where the subservient entity manifests no separate interest of its own and functions solely to achieve the goals of the dominant entity.” *Oskin*, 400 S.C. at 400. “However, this theory does not apply in the absence of fraud, injustice, or contravention of public policy.” *Id.* “[C]ommon officers and/or directors and public identification of one corporation as the other’s subsidiary do not, without more, support the conclusion the subsidiary is the parent’s alter ego or agent for the transaction of business.” *Jones*, 383 S.C. at 267.

The Plaintiffs have failed to identify any evidence supporting the allegation that any of the named entities and these Defendants are “alter egos” of each other, other than an unsupported allegation of common ownership. “When a motion for summary judgment is made and properly supported, an adverse party may not rest solely upon the allegation or denials in his pleadings, but must set forth specific facts showing that there is a genuine issue of fact for trial.” *Jones*, 383 S.C. at 268 (citation omitted). To support their alter ego argument, Plaintiffs rely solely on speculation and conjecture, and have failed to identify specific facts sufficient to raise a triable issue on this theory. The fact that one person, Ralph Teal, has served in an officer capacity for various

developer entities does not justify a finding that any of these entities are an “alter ego” of the other. No evidence to justify a finding of an alter-ego relationship between these Defendants and the corporate Developer Defendants can be identified by Plaintiffs.

2. Plaintiffs Have Failed to Produce Evidence in Support of their Piercing the Corporate Veil Theory against these Defendants.

“[A]n attempt to pierce the corporate veil is not itself a cause of action but rather a means of imposing liability on an underlying cause of action.” *Drury Development Corp. v. Foundation Ins. Co.*, 380 S.C. 97, 103 (2008) (citation omitted). Here, Plaintiffs are seeking to impose any finding of liability against the corporate developer entities on these Defendants.

“An action to pierce the corporate veil is one in equity.” *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 192, 463 S.E.2d 641, 643 (Ct. App. 1995); *see Sturkie v. Sifly*, 280 S.C. 453, 456-57, 313 S.E.2d 316, 318 (Ct. App. 1984). It is generally recognized that a corporation is an entity that is separate and distinct from, and its debts are not the individual debts of, its officers and stockholders. *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co.*, 540 F.2d 681, 683 (4th Cir., 1976). Courts are generally reluctant to disregard the corporate entity:

If any general rule can be laid down, it is that a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears; but when the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons.

Sturkie, 280 S.C. at 457, 313 S.E.2d at 318. Thus, courts generally disregard the corporate entity only where equity requires piercing the corporate veil to assist a third party. *Woodside v. Woodside*, 290 S.C. 366, 370, 350 S.E.2d 407, 410 (Ct. App. 1986). The burden of proof is on the party asserting that the corporate veil should be pierced. *Id.*

South Carolina courts have outlined a two-prong test to determine whether a corporate veil should be pierced. The first part of the test requires an eight-factor analysis and looks to observance of the corporate formalities by the dominant shareholders. *Sturkie*, 280 S.C. at 457-

58, 313 S.E.2d at 318. “The second part requires that there be an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as the acts of the individuals.”

Id. In the first part of the test, eight factors were delineated in *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 463 S.E.2d 641 (Ct. App. 1995), which question:

- (1) Whether the corporation was grossly undercapitalized;
- (2) Failure to observe corporate formalities;
- (3) Non-payment of dividends;
- (4) Insolvency of the debtor corporation at the time;
- (5) Siphoning of funds of the corporation by the dominant stockholder;
- (6) Non-functioning of other officers or other directors;
- (7) Absence of corporate records; and
- (8) The fact that the corporation was merely a façade for the operations of the dominant stockholder.

Plaintiffs make vague and general allegations regarding some of the above factors in the Amended Complaint. *See generally*, Am. Compl. at 17 – 20. Plaintiffs’ general allegations are insufficient, and their failure to include only vague and conclusory allegations are fatal to Plaintiffs’ attempt to pierce the corporate veil. Both Plaintiffs have testified that they have no specific evidence or information to support any of the aforementioned factors. Neither Plaintiff has specific evidence or information to show that these Defendants failed to keep their personal assets separate from company assets, misused corporate assets, or that any of the corporate developer entities were undercapitalized. *See* (B. Dykes Continued Dep., 110:10-25, 111: 1 – 9; B. Eisenhardt Continued Dep., 41: 1 - 9). Accordingly, Plaintiffs have failed to produce information or evidence which would establish that these Defendants and the developer corporate entities with which they were associated failed to observe corporate formalities.

The main purpose of piercing the corporate veil is to prevent the likelihood of injustice or unfairness if the limited liability enjoyed by the corporate entity is sustained. *Sturkie*, 280 S.C. at 458-59, 313 S.E.2d at 318. Plaintiffs have failed to allege any facts or produce evidence to support the accusation that the Developer entities were undercapitalized or failed to observe corporate formalities. Plaintiffs have also failed to produce information or evidence supporting the allegation that these Defendants engaged in self-serving behavior and acted in bad faith such that the corporate veil should be pierced. Plaintiffs have established no facts or evidence regarding the fundamental unfairness prong of the *Sturkie* test, and therefore the corporate veil should not be pierced and these Defendants should not be held personally liable. Accordingly, summary judgment should be granted as to the claims against these Defendants as there is insufficient evidence to support Plaintiffs' claim for piercing the corporate veil.

3. Plaintiffs Have Failed to Produce Evidence in Support of their Amalgamation Theory Against These Individual Defendants

Although not a separate cause of action and more properly labeled a “theory of liability” – “South Carolina case law allows liability to be shared between separate entities when the evidence has revealed an amalgamation of the corporate interests, entities, and activities so as to blur the legal distinction between the corporations and their activities.” *Martin v. A. Celli Nonwovens Spa*, No. 7:14-cv-03508, 2014 WL 5488423, at *5 (D.S.C. Oct. 29, 2014). In essence, amalgamation deals with horizontal veil piercing and involves combining separate but related entities into one entity for the purpose of liability. See *Kincaid v. Landing Dev. Corp*, 344 S.E.2d 869, 874. Amalgamation serves to hold an entity or entities liable – not an individual. Plaintiffs’ amalgamation theory that seeks to hold these Individual Defendants personally liable thus fails as a matter of law.

CONCLUSION

Based on the foregoing, these Defendants hereby request the Court grant their Motion for Summary Judgment as to all causes of action. These Defendants further request the Court award them all fees and costs associated with this Motion and any additional relief this Court deems just and proper.

This 24th day of September, 2020.

Respectfully submitted,

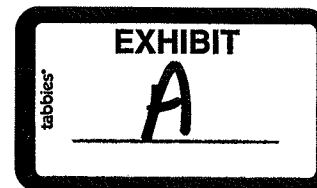
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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) DECLARATION OF PROTECTIVE COVENANTS,
) RESTRICTIONS, EASEMENTS, CHARGES
) AND LIENS FOR WILD WING PLANTATION

THIS DECLARATION made this 26th day of September, 2006, by **Wild Wing Company, LLC, a South Carolina Limited Liability Company**, with its principal place of business located in Myrtle Beach, South Carolina, hereinafter referred to as the "Declarant":

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property more particularly described in Exhibit "A" of this Declaration, which Exhibit "A" is made a part and parcel hereof by this reference and desires to develop thereon a residential subdivision to be known as "Wild Wing Plantation"; and

WHEREAS, the Declarant, in its discretion, may incorporate additional real property as additional phases of this development and bring same under this Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation, but shall be under no obligation to do so; and,

WHEREAS, the Declarant is desirous of maintaining design criteria, location and construction specifications, and other controls to assure the integrity of the development; and,

WHEREAS, each owner of a Lot in Wild Wing Plantation will be required to maintain and construct homes in accordance with the design criteria herein contained; and,

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in such development and for the maintenance of common lands and facilities, if any, and to this end, desires to subject the real property described in Exhibit "A", to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and,

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in such community, to create an agency to which will be delegated and assigned the powers of maintaining and administering the Development (as defined hereinafter), promulgating rules and regulations for the usage of common areas in accordance with this Declaration, administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, the Declarant has caused to be incorporated under the laws of the State of South Carolina, as a Not-for-Profit corporation to be known as the Wild Wing Plantation Property Owner's Association, Inc. for the purpose of exercising the aforesaid functions,

NOW THEREFORE, the Declarant declares that the real property described in Exhibit "A", annexed hereto and forming a part hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

RETURN TO
BELLAMY, RUTENBERG, COPELAND
EPPS, GRAVELY & BOWERS, P.A.
POST OFFICE BOX 367
MYRTLE BEACH, SC 29578
843-448-2400 *mlb/mem*

3164-361
0230

ARTICLE I

Definitions

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Annual Assessments" or "Assessments" shall mean an assessment established by the Board of Directors for common expenses as provided for herein or by a subsequent amendment which shall be used for the purpose of promoting the recreation, common benefit and enjoyment of the Owners and occupants of all Lots and the operation, maintenance and repair of the Common Area.

(b) "Architectural Review Board" or "A.R.B." shall mean and refer to that committee or board of Association (as hereinafter defined) created for the purpose of establishing and enforcing criteria for the construction of improvements (including landscaping) within the Properties. Initially, Declarant shall appoint all members of the Architectural Review Board until such rights of Declarant terminate or are transferred to Association in accordance with Article VII of this Declaration.

(c) "Association" shall mean and refer to Wild Wing Property Owners Association, Inc., its Successors and Assigns.

(d) "Common Area" shall mean and refer to those areas of land, including the facilities to be constructed thereon, if any, shown and specifically designated as such on any subdivision map of The Properties filed by Declarant or by any other means so designated by Declarant and shall include an easement (as hereinafter provided) over the Lake and Lake Areas. Such areas are intended to be devoted to the common use and enjoyment of the members of the Association as herein defined, and are not dedicated for use by the general public. However, no general plan or plat of the Properties showing adjoining areas which may later be developed as additional phases of the Development shall be included as Common Areas nor shall the Association or any Owner be entitled to any right, title or interest therein unless and until such adjoining areas shall have been formally included as a part of the Development by the Declarant pursuant to the terms hereinafter contained. Declarant reserves the right, but shall be under no obligation, to build a swimming pool, clubhouse, playground, two (2) tennis courts, beach area, boat docking slips and boat landing, as well as such other amenities as Declarant may, in its sole discretion, determine to construct and dedicate same as a Common Area. As to all conveyances of Common Areas by Declarant to Association, Association agrees to accept title to such areas upon execution and delivery of a quit-claim deed of conveyance provided (i) said Common Areas have been completed and are, subject to normal wear and tear, in reasonable repair and condition, and (ii) reasonable provisions have been made for the establishment of a reserve fund budgeted for normal maintenance thereof which such fund has been turned over to the Association.

Provided however, the recording and reference to said plat shall not in and of itself be construed as creating any dedications, rights or easements (negative reciprocal or otherwise), all such dedications, rights and/or easements being made only specifically by this Declaration, any amendment or supplement hereto or any deed of conveyance from Declarant, its successors or assigns, as developer.

(e) "Declarant" shall mean and refer to Wild Wing Company, LLC, its Successors and Assigns in the development of the Properties, but shall not include an Owner of an individual Lot located within the Properties.

(f) "Declaration" shall mean and refer to this Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation.

(g) "Design Criteria", "Plans", and "Specifications", and such like terms shall refer to and encompass the Plans, Specifications, Elevations, and Designs, including but not limited to, exterior finishes and textures, and exterior colors and materials for dwellings and improvements to be constructed upon Lots within the Project as well as setbacks, locations, etc. contained hereinafter in this Declaration.

(h) "Development", "Project" "Wild Wing" and "Community" shall all mean and refer to the project known as Wild Wing Plantation as hereafter developed by the Declarant.

(i) "Lot" shall mean and refer to any plot of land intended for residential use, with delineated boundary lines appearing on any recorded subdivision map of the Properties with the exception of any Common Area shown on a recorded map. In the event any Lot is increased or decreased in size by resubdivision, the same shall nevertheless be and remain a Lot for the purpose of this Declaration. This definition shall not imply, however, that a Lot may be subdivided if prohibited elsewhere in this Declaration. In the event that an Owner desires to combine two (2) or more adjoining Lots for the purpose of constructing and maintaining a single residence thereon, the resulting combined Lots shall from that date forward be deemed one (1) Lot for the purposes of this Declaration, including for the purpose of determining Assessments in accordance with this Declaration.

(j) "Lake" and "Lake Areas" means any Common Area or portion of a Lot or Lots on which a Lake now exists or is later constructed by Declarant and "Lake" means a body of water which now exists or is later constructed by Declarant and so designated.

(k) "Lake Maintenance Easement" means those areas identified on the recorded plat(s) of the Property as "Lake Access/Maint Easmt (typ)" or similar designation which shall be reserved to the Association for the purpose of performing maintenance of the Lakes in accordance with the terms and provisions of this Declaration.

- (l) "Member" shall mean and refer to all those Owners who are members of the Association, as provided in Article IV hereof.
- (m) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee-simple title to any Lot(s), but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure. Said term "Owner" shall also refer to the heirs, successors and assigns of any Owner.
- (n) "Properties" or "Property" shall mean and refer to all property including Lots and Common Areas, as are subject to this Declaration, and which are described in Exhibit "A" together with any additional phases that may be developed and specifically submitted to the provisions of this Declaration pursuant hereto.
- (o) "Personal watercraft" means a boat less than sixteen feet in length which: (i) has an outboard motor or an inboard motor which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion, (ii) is designed with the concept that the operator and passenger ride on the outside surfaces of the vessel as opposed to riding inside the vessel; (iii) has the probability that the operator and passenger, in the normal course of use, may fall overboard. Personal watercraft includes, without limitation, a vessel where the operator and passenger ride on the outside surfaces of the vessel, even if the primary source of motive propulsion is a propeller, and a vessel commonly known as a "jet ski".
- (p) "Setback" shall mean an area along the boundary of a Lot where no building or other structures such as swimming pools or decks shall be permitted, without the express written permission of Declarant or the Architectural Review Board. However, the location of normal air handling and heat, ventilation and air conditioning units (and the associated approved screening for such units) within such Setback area shall be permissible so long as it is in conjunction with an approved residential structure located on a Lot.
- (q) "Subsequent Amendment" or "Supplemental Declaration" shall mean an amendment to this Declaration which adds property to this Declaration and makes it subject to the Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations and/or modifications to these Restrictions on the land submitted by that Subsequent Amendment to the provisions of the Declaration.
- (r) "Special Assessments" shall mean an assessment established by the Board of Directors from time to time for capital improvements, unique costs or expenses, extraordinary budget or expense items and the like.

ARTICLE II

Uses of Property

Section 1. Conformity and Approval of Structures. No structure, fence, sidewalk, wall, swimming pool, boat docking slip, bulkhead wall, landscaping (other than replacement of landscaping in accordance with an approved plan) or other improvement shall be placed or altered on any Lot except in accordance with the provisions of this Declaration and after approval of the Architectural Review Board as hereinafter provided in Article VII of this Declaration.

Section 2. Subdivision of Lot. No Lot shall be subdivided except as hereinafter provided and no building or residence, including porches, swimming pools or projections of any kind, shall be erected so as to extend over or across any of the building lines as hereinafter established except as herein provided. Provided, however, two or more Lots may be combined to provide one building site in accordance with this Declaration, subject to the limitations contained in Article I of this Declaration.

Section 3. Increased Size of Lots. A Lot or Lots may only be subdivided provided the effect is to increase the size of both of the adjoining Lots. In such cases, the Declarant may alter the building lines to conform. Should the Owner or Owners of any Lots and/or portions of Lots which have been combined for a single building site subsequently wish to revert to the original plan of subdivision, or make any other combination which would not be in violation of this restriction, such may be done only if the written consent of the Declarant is first had and obtained. In such instances, the adjoining Lot Owners, or other Owners in the subdivision do not have the right to review, pass on or interfere with such rearrangement of Lots, as such rights shall be exclusively that of the Declarant or any successors or assigns to whom the Declarant may expressly have transferred such rights, but the purchaser of any other Lot in the subdivision does not, by virtue of his status as a purchaser, become any such successor or assign.

Section 4. Alteration of Setback Lines in the Best Interest of Development. Where because of size of Lot, shape of Lot, natural terrain, or any other reason in the sole opinion of the Declarant, that the Setback lines of any Lot(s) should be altered or changed, then the Declarant reserves unto itself, its successors or assigns, and no other, the right to change said Setback lines to meet such conditions. The Declarant specifically reserves the right to transfer and assign this right of approval to the Architectural Review Board hereinafter established.

Section 5. Completion of Improvements. The exterior of all dwellings and other structures constructed upon any Lot must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergencies or natural calamities. No building under initial construction shall be occupied until construction is completed, and all necessary approvals of any governmental authorities have been obtained, and the Architectural

Review Board has issued its certificate of completion in accordance with guidelines promulgated by the Architectural Review Board.

Section 6. Residential Use of Lots. Except as provided herein, all Lots shall be used for residential purposes exclusively. No structures, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family dwelling constructed in accordance with the Plans and Specifications herein defined in Article III. No timesharing, interval ownership or other related ownership scheme shall be permitted. No separate storage or other out building shall be permitted; all storage rooms must be attached to, form a part of and conform to the architectural scheme and appearance of the dwelling. In addition, no leasing or rental of any dwelling shall be permitted having a duration of less than six (6) months. However, Declarant or its assignee may maintain sales offices, models and construction offices upon one or more Lots until all Lots located or to be located within the Properties (including all subsequent phases) have been sold to third parties or Declarant no longer has the right to incorporate additional property under the terms of this Declaration. Easements are hereby reserved through the Common Area, including, without limitation, the easements shown on the plat (s) of the Property for use by Developer, for its use and the use of its agents, employees, licensees and invitees, for all purposes in connection with the use, development and sales of the Property, including, without limitation, for the erection and maintenance of signage.

Section 7. Maintenance of Lots. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly, or unkept condition of buildings or grounds on such Lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area. Each Owner shall maintain his Lot and shall keep underbrush and weeds mowed, which shall include, without limitation, the mowing of Lots on which no residence has been built not less than twice annually in October and May of each year.

Section 8. Nuisances. No noxious, unlawful or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood. No plants, poultry, animals (other than household pets) or devices or things of any sort, the normal activities or existence of which are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood shall be placed, kept or maintained on any Lot. Without limiting the foregoing, exterior lighting may not be so installed on any Lot as to illuminate any portion of a neighboring Lot or to shine into any window or otherwise enter a dwelling located on an adjoining Lot. Garage doors must be closed except when in use.

Section 9. Exclusion of Above Ground Utilities. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission or receiving antenna shall be erected, placed or maintained on any part of the premises. Provided, however, that the normal service pedestals, and similar equipment, used in conjunction with such underground utilities shall be permitted within the development. Overhead utilities shall be permitted during the construction period and until utility

companies can place them underground. Except as hereinafter provided, no Owner shall install any receiving or transmitting device which requires any exterior protrusion, nor shall any antennas or other receiving or transmitting devices be located on any Lot. Notwithstanding the foregoing, the following types of antennas may be installed, but only in accordance with reasonable rules and regulations to be promulgated by the Architectural Review Board, which rules and regulations shall include, without limitation, restrictions as to location, color and screening:

a dish antenna that is one (1) meter or less in diameter and is designed to receive direct broadcast satellite service, including direct to home satellite service; (B) an antenna that is one (1) meter or less in diameter or diagonal measurement and is designed to receive video programming services via multi-channel multi-point distribution (wireless cable) providers (MMDS); or (C) an antenna that is designed to receive television broadcast signals.

Section 10. Signs. Except as required by law, no billboards, posters or advertising signs of any kind or character (specifically including "for sale" or "for rent" signs or posters) shall be erected, placed, permitted, maintained or allowed to remain on any lot or improvement thereon (including in any window) except for signs designating the Lot Owner and contractor on any Lot on which a residence is then under construction. Such signs shall be of a uniform type and color as approved by the Architectural Review Board and shall be supplied by Association upon payment of a fee for same by Owner. However, it shall be permissible for the Association to have a sign located on the Common Area, if the design, size and location of such sign is approved by Declarant, prior to its erection. No other sign of any kind or design shall be allowed. Declarant reserves the right to erect temporary or permanent signs identifying and/or advertising the Project on the Common Area.

Section 11. Prohibition Against Business Activity. Except as hereinafter provided, no business activity, including but not limited to, a rooming house, boarding house, gift shop, antique shop, professional office or beauty shop or the like or any trade of any kind whatsoever shall be carried on upon a Lot or Lots. Nothing herein shall be construed to prevent a "home office" so long as all activities are conducted within the residence and no customers, employees, clients or others enter the Properties relative to such business activity. Provided, however, that nothing contained herein shall be construed so as to prohibit the construction of houses to be sold on said Lots or the showing of said houses for the purpose of selling houses in the subdivision. Nothing herein shall be construed to prevent the Declarant from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and sales in the subdivision.

Section 12. Mining and Drilling. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the premises, nor shall any oil, natural gas, petroleum, asphalt or hydrocarbon products or materials of any kind be produced or extracted from the premises.

Section 13. Garbage Disposal. Each Lot Owner shall provide garbage receptacles or

similar facilities in accordance with reasonable standards established by the Declarant, or a roll-out garbage rack of the type approved by the Declarant, which shall be visible from the streets on garbage pickup days only. No garbage or trash incinerator shall be permitted upon the premises. No burning, burying or other disposal or garbage on any Lot or within the Project shall be permitted. Provided that the Declarant shall be permitted to modify the requirements of this Section 13 where necessary to comply with orders of governing bodies.

Section 14. Temporary Structures. No structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractors during construction of the main dwelling house, it being clearly understood that the latter temporary shelters may not, at any time, be used for a residence or permitted to remain on the Lot after completion of construction.

Section 15. Other Structures. No home, tent (other than small overnight tents used by children which remain in place for less than 24 hours), barn, tree house or other similar out-building or structure shall be placed on any Lot at any time either temporarily or permanently, except as provided in Section 14 above.

Section 16. Storage Receptacles. No fuel tanks or similar storage receptacles may be located on the Lots (with the exception of small portable tanks for supplying fuel to gas grills and gas logs for fireplace) nor may any such tanks or storage receptacles be buried underground.

Section 17. Clotheslines. No clotheslines or drying yards shall be located upon the premises so as to be visible from any Common Area or from any adjoining property or Lot.

Section 18. Water and Irrigation Systems. No individual water supply system shall be permitted upon any Lot. Furthermore, no wells may be drilled upon any Lot or Common Area for supplying water, whether the same shall be used for lawn irrigation or otherwise. No drawing of water from any lake or pond shall be permitted.

Section 19. Off-Street Parking. Adequate off-street parking shall be provided by the Lot Owner herein for the parking of automobiles or other vehicles owned by said Owner and said Owner agrees not to park his automobile or other vehicles on the Streets or Common Areas in the subdivision. No travel trailers or mobile homes, campers or other habitable motor vehicles of any kind, whether self-propelled or not, school buses, trucks (other than non-commercial pickup trucks) or commercial vehicles, or boat trailers or boats shall be kept, stored or parked overnight, either on any Common Area, any streets, or any Lot, except within enclosed approved garages or sheltered from view from neighboring Lots, any adjacent property which is not part of the project or Common Areas or within a portion of the Common Areas which may be hereafter specifically designated for such use. Furthermore, no non-operative or junked vehicles (or parts thereof) may be kept on the Properties. It shall not be permissible to make repairs to or "work on" vehicles, boats or other watercraft while same are located on the Properties.

Section 20. Sewer System. No surface toilets are permitted on the Properties. The Grantee of any Lot assumes all responsibility for obtaining the necessary permits for attaching to the public sanitary sewer and water system for the project, developer making no warranties or representations thereabout.

Section 21. Firearms and Fireworks. No firearms or fireworks of any variety shall be discharged upon the Lots or Common Areas.

Section 22. Pets. No pet shall be permitted off of its owner's Lot when not on a leash.

Section 23. Lakes and Lake Area(s). Subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration and except as otherwise provided, no individual using a Lake, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association or within a Lake Area. Notwithstanding the foregoing, Declarant, the Association and each and every Owner (subject to restrictions contained in this Declaration with regard to the simultaneous use of Common Areas by multiple Owners of a single Lot), their respective successors, heirs and assigns, shall have a right and easement over all Lakes and Lake Areas for entry thereon and the use thereof by Declarant or any Owner and such Owner's guest(s) when accompanied by an Owner in accordance with the Association's rules and regulations, whether or not such Lake or Lake Area (or portions thereof) is actually located upon a Lot or Lots. No Owner shall have the right to exclude Declarant or any Owner and such Owner's accompanied guest(s) from any Lake or Lake Area because of such Lake or Lake Area being partially located within the bounds of any Lot(s). Such easements shall be appurtenant to, and pass with, the title to each Lot. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. No docks, piers or other structures may be erected in, over or adjoining any Lake, except for a boat dock slip and associated bulkhead walls constructed in strict accordance with guidelines promulgated by the Architectural Review Board. Furthermore, no Lake may be used by any Owner for the purpose of providing water for irrigation purposes. A Lake may be used for swimming, boating, and other recreational purposes only in accordance with rules and regulations promulgated by Association, as such rules and regulations may now or hereafter be adopted, amended and/or modified. Such rules and regulations may include restrictions as to type, length and horsepower of any boats to be used upon such Lake(s). Furthermore, no personal watercraft (as defined in this Declaration) may be used or located upon any Lake or Lake Areas. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any lake or Lake Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

Declarant reserves unto itself, its designated successors and assigns, the right to increase or decrease the level of the waters of any Lake, from time to time, without obtaining the consent or approval of Association or any Owner(s) and without liability for such actions.

ARTICLE III

Construction in Accordance with Plans and Specifications

Section 1. General. All structures of every type and description shall be constructed, placed or erected within the Development in accordance with the provisions of this Article III together with other applicable provisions of this Declaration.

Section 2. Size of Residences and Lot Coverage. All residences to be constructed upon any Lot shall have a minimum of 2,000 square feet of enclosed heated floor space for single level dwellings, exclusive of porches, decks and garages, and a minimum of 2,400 square feet of enclosed heated floor space in multi-level dwellings (with not less than 1,600 square feet of enclosed heated floor space on the first level), exclusive of porches, decks and garages as herein defined. For purposes of this Declaration, a single level or one story dwelling shall be a dwelling having living areas on only one level while a multi-level or two story dwelling shall be a dwelling having living areas located on more than one level within the dwelling. In addition, each residence must include an enclosed garage. While Declarant may not modify the provisions of this Section with regard to the Property being hereby submitted to the terms and provisions of this Declaration as Phase I, Declarant expressly reserves the right, in its sole discretion, to modify the terms of this Section as to any subsequent property submitted to the terms of this Declaration as additional phase(s) by subsequent amendment or supplemental declaration. Such subsequent amendment or supplemental declaration shall specify the modifications of this Section (if any) applicable to such additional property or phase so incorporated under the terms of this Declaration.

Section 3. Setbacks. No building or structure, including porches, swimming pools or projections of any kind, shall be erected so as to extend over or across any of the Setback lines so as to be nearer to the Lot boundary line than such Setback line. The Setback lines for each Lot shall be as follows:

Front Setback Line - 35 feet from front Lot Boundary Line
(As to all Lots except as otherwise specifically provided in this section)

Front Setback Line
(Lots 248 through 251,
Lots 265 through 297 and Lots
305 through 331, inclusive) - 20 feet from front Lot Boundary Line

Side Setback Line - 10 feet from each side Boundary Line of the Lot
(As to all Lots except as otherwise specifically provided in this section)

Rear Setback Line - 35 feet from the Rear Lot Boundary Line
(On Lots which do not adjoin a Lake or Lake Area and are not otherwise specifically provided for in this section)

Rear Setback Line - 23 feet measured from the Lake Maintenance Easement boundary line on the upland or high ground side of the Lake Maintenance Easement
(On Lots which adjoin a Lake or Lake Area and are not otherwise specifically provided for in this section)

Rear Setback Line (Lots 248 through 251, Lots 265 through 297 and Lots 305-331, inclusive) - 20 feet measured from the Lake Maintenance Easement boundary line on the upland or high ground side of the Lake Easement

However, (a) the location of normal air handling and heat, ventilation and air conditioning units and associated approved screening within such Setback area shall be permissible so long as it is in conjunction with an approved residential structure on said Lot, (b) roof overhangs not to exceed twenty-four (24") inches from and as a part of the main dwelling may extend unto the Setback area, and (c) boat dock slips and bulkheads constructed in strict accordance with plans approved by the Architectural Review Board may extend into setback and Lake maintenance easement areas.

Notwithstanding the foregoing, Declarant reserves the rights provided in Article II, Section 4 of this Declaration to modify said setback lines.

ARTICLE IV

Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is an Owner of any Lot which is subjected by this Declaration to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.

Section 2. Articles of Incorporation and Bylaws. A copy of the Articles of Incorporation of the Association and Bylaws of the Association are attached hereto as Exhibit "B" and Exhibit "C", respectively, and made a part and parcel hereof.

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership.

Class A. Class A Members shall be all Owners excepting the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 1 above. When more than one person holds such interest or interests in any Lot, the vote attributable to such Lot shall be exercised as such persons mutually determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to total votes in an amount equal to twice the number of the class A votes plus one. The Class B membership shall cease and become converted to Class A membership upon the conveyance to Lot Owners of all Lots subject to this Declaration, or December 31, 2015, whichever first occurs. In addition, Declarant may terminate the Class B membership upon written notice to Association.

When a purchaser of an individual Lot or Lots takes title thereto from the Declarant, he automatically becomes a Class A Member.

ARTICLE V.

Property Rights in the Common Areas

Section 1. Member's Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Member shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot. This right and easement shall be for use in common with all other such members, their tenants, guests and invitees. In the event that Declarant incorporates additional land under the provisions of this

Declaration pursuant to Article IX of this Declaration, all Owners of Lots within such additional phases shall have the same rights and privileges with regard to use of the Common Areas as the Owners of Lots originally made subject to this Declaration.

Furthermore, and notwithstanding anything in this Declaration to the contrary, any owner of a lot within the subdivision located near to the Property which is known as "The Sanctuary at Wild Wing" (the "Sanctuary") may use the swimming pool, tennis court(s) and Owner's Clubhouse facilities (at such time as the same may be constructed) located within the Common Areas of the Development upon payment by such owner of an annual fee to the Association, which fee shall be equal to thirty-five (35%) percent of the regular annual assessment assessed by the Association against each Lot (and the Owner thereof) within the Development, as the same changes from time to time. Such usage shall be in accordance with the rules and regulations promulgated by the

Association for the members thereof. However, nothing herein shall create any ownership or membership rights in the owners of lots within the Sanctuary nor shall any of such owners within the Sanctuary have any rights to vote or otherwise manage the Association of the Common Areas.

Section 2. Title to Common Areas. Subject to the provisions of Article I, Section C, the Declarant hereby covenants for itself, its successors and assigns, it will convey to the Association, by Quit-Claim Deed, fee simple title to the Common Areas (excluding any portions of Lakes and Lake Areas which are located within the bounds of any Lot) upon the conditions set forth herein, free and clear of all encumbrances and liens, except those created by or pursuant to this Declaration and except for those rights reserved unto the Developer pursuant to this Declaration. Association shall accept such conveyance of the Common Areas (which may include streets, roads and drainage facilities).

In lieu of the conveyance provided for herein with regard to the streets, roads, and/or drainage facilities. Declarant may cause such streets, roads and/or drainage facilities to be dedicated to any governmental entity, as provided for in Section 3(a) hereof.

Section 3. Extent of Member's Easements. The rights and easements created hereby shall be subject to the following:

- (a) The right of the Declarant, and/or of the Association, to dedicate, transfer or convey all or any part of the Common Areas, with or without consideration, to any governmental body, district, agency or authority, or to any utility company, provided that no such dedication, transfer or conveyance shall adversely limit the use of the Common Areas by the Members of the Association;
- (b) The right of the Declarant, and/or of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage and other utilities and services, including, without limitation, a cable (CATV) or community antenna television system and irrigation or lawn sprinkler systems, and the right of the Declarant to grant and reserve easements and rights-of-way through, over and upon and across the Common Areas for the completion of the Development, and for the operation and maintenance of the Common Areas;
- (c) The right of the Association, as provided in its By-Laws, to suspend the enjoyment rights of any Owner in the Common Areas for any period during which any assessment remains unpaid, and for any period during which the Owner is in violation of this Declaration or the rules and regulations of the Association and in addition thereto (and without limiting the foregoing periods) for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.

(d) The rights of the Association, in accordance with law, its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas and in pursuance thereof, to mortgage the same.

(e) Restrictions and easements contained on any plat or other instrument filed of record with respect to the Properties.

(f) The right of Declarant to grant and/or dedicate non-exclusive easements across the Common Area in favor of other property of Declarant.

(g) The right of Declarant to develop Wild Wing Plantation, which may or may not include additional property, in such manner as it may determine, in its sole discretion.

Section 4. Maintenance. Subject to the provisions herein contained, the Association shall at all times maintain all Common Areas, Lakes and Lake Areas in good repair, and shall repair or replace as often as necessary, the paving, drainage structures, street lighting fixtures, landscaping, entrance signage, and other amenities (except utilities) situated on the Common Areas. Association shall also cause the landscaping, entrance features and signage at the entrance to the Property to be maintained at Association's expense. Notwithstanding the foregoing, it shall be the responsibility of each Owner of a Lot located adjacent to a Lake or Lake Area to maintain that portion of the bank of the Lake or Lake Area bordering such Owner's Lot, at such Owner's sole expense, in a manner to prevent erosion of the Lake bank and in accordance with rules and regulations to be promulgated by the Board of Directors of Association. The Board of Directors acting on a majority vote shall order all work to be done and shall pay for all expenses including all electricity consumed by the lighting located in the Common Areas and all other common expenses. All work pursuant to this Section and all expenses hereunder shall be paid for by such Association through assessments imposed in accordance with this Declaration. Nothing herein shall be construed as preventing the Association from delegating or transferring its maintenance obligations to the governmental authority under such terms and conditions as the Board of Directors may deed in the best interest of the Association.

Section 5. Additional Structures. Neither the Association nor any Owner or any group of Owners shall, without the prior written approval of Declarant, erect, construct or otherwise locate any structure or other improvement in the Common Areas.

Section 6. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised by members of the Owners' family who occupy the residence of the Owner within the properties.

(b) Tenants. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants who occupy a residence within the Properties.

(c) Guests. Recreational facilities, if any, situated upon the Properties may be utilized by guests of an Owner accompanied by such Owner or tenants subject to the rules and regulations of the Association governing said use and as established by its Board of Directors.

Section 7. Rules and Regulations. The use of the Common Areas by an Owner or Owners, and all other parties authorized to use same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established by the Association governing such use, or which may hereafter be prescribed and established by the Association. Such rules and regulations shall include a limitation on use of amenities within Common Areas (including Lakes) to a designated Owner and such Owner's family and/or significant other in cases of Lots owned by multiple Owners who are not members of the same family. For purposes of this section, "family" shall mean and refer to a group of persons, each of whom is related to each other member of the group through blood or marriage either as siblings or in direct lines of ancestry or descent. Such designation of the Owner for purposes of use of the Common Areas may not be changed more often than six (6) months and shall be made in writing to Association.

Section 8. Easement for Utilities and Lake Maintenance. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and reasonable easement and right of ingress and egress, over, upon, across and under the Setback areas and easement areas on each Lot as shown on the recorded map of the Properties and/or as set forth herein and over, upon, across and under the Common Area for the erection, maintenance, installation and use of electrical and telephone wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public convenience or utilities, including an easement for privately owned television and other communications cable and equipment and for the construction and maintenance of the Lakes and Lake Areas located (or to be located as shown on the recorded plats of the Property) upon the Property. The Declarant may further cut drainways for surface water when such action may appear to the Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of soil, or to take any other similar action reasonably necessary to provide economical and safe utility or other installations and to maintain reasonable standards of health, safety and appearance. Declarant further reserves the right to locate wells, pumping stations, and tanks within residential areas on any Lot owned by Declarant. It shall not be necessary to obtain the consent of Owners of Lots adjoining the existing utilities and pump station. Such rights may be exercised by the licensee of the Declarant but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility service. No structures or other items, including walls, fences, paving or planting shall be erected upon any part of the property which will interfere with the rights of ingress and egress provided for in this paragraph. Specifically, except as herein provided, no Owner shall erect any structure, including, without limitation, walls, fences, paving or planting within the areas designated on the Plat of the

Properties as a "Drainage Easement", "Lake Maintenance Easement" or words of similar import nor shall any Owner change the grade of any such easement area. In that regard, an easement for ingress and egress for the maintenance of the Lakes and Lake Areas is hereby reserved for the benefit of the Association over all Lake Maintenance Easements. However, nothing herein shall restrict or prevent the location of boat docking slips and bulkhead walls in accordance with plans approved by the Architectural Review Board within any such easement or setback area. In the event that any such approved boat docking slip is constructed within any Lake Maintenance Easement on any Lot, the Owner of such Lot shall make provision for such additional access around such boat docking slip as is reasonably necessary for the purpose of Lake Maintenance as is reasonably acceptable to Association. Each Owner shall keep drainage ditches and swales located on his/her Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon such Lot as may be reasonably required for proper drainage. Declarant may, at its sole option, convey any such drainage easements to an appropriate governmental entity and/or the Association. The easements referred to in this paragraph are, without limitation, those shown upon the recorded plat of the Properties; as set out in easements of record; upon the plans of the Development; or which are located on or under the ground.

In addition to the foregoing rights reserved to Declarant, and not in limitation thereof, Declarant further reserves unto itself, its successors and assigns, a perpetual, alienable commercial easement and right of ingress and egress over, upon, across and under the Common Areas and all streets and roads within the Properties for the purpose of providing drainage and utility installation, construction, reconstruction, and maintenance to adjacent property now or hereafter owned by Declarant and for the installation and maintenance of any pipes, drainways or other installations necessary for the foregoing and further for the installation, maintenance, repair, replacement and operation of water lines and other utilities which serve or shall serve property presently owned by Declarant. Declarant, its agents, contractors, servants, employees and assignees may enter upon the easement areas for the purposes of maintaining, repairing, replacing and operating such water lines and other utilities and drainage facilities and for the purpose of installing additional utilities and drainage facilities. Declarant further reserves unto itself, its successors and assigns, a perpetual, alienable easement and right-of-way over, under and across those areas designated as "Drainage Easement" or like wording on the plat of the Properties referred to in Exhibit "A" hereto for the purpose of providing drainage of the Properties and lands adjacent to the Properties and for the installation, repair and maintenance of pipes and other facilities necessary for such drainage. Declarant, its agents, contractors, servants, employees and assignees may enter upon any of the easement areas so designated on the recorded plat of the Properties for the purpose of maintaining, repairing, replacing and operating any of the drainage facilities, pipes, ditches, and drainage areas located thereon. The Owners of Lots on which such easements are located shall not interfere in any manner with such easements or any of the facilities located therein or the access thereto. Except for boat docking slips and bulkheads constructed in accordance with plans approved by the Architectural Review Board, no Owner shall erect any structure or fence within such easement areas without the prior written consent of Declarant. Declarant, its agents, employees and assignees shall have no liability for damage which may occur to any structures or other items which may be located in such utility and drainage easements and Declarant shall have no obligation to replace any such structures

which may be removed or damaged due to maintenance, repair or other work performed in such easement areas. Declarant further specifically reserves unto itself, its successors and assigns, a perpetual, alienable, commercial easement and right of ingress and egress over all Lots along an area 5 feet in width inside each boundary line of each Lot and along any Lot boundary line which adjoins any of the streets of the Project. This easement is for the purpose of installation, maintenance and repair of utilities and utility systems and access. This easement shall be in addition to, and not in limitation of, any and all other easements reserved unto the Declarant herein. Declarant further reserves an easement of ingress and egress over and across all streets and roads of the Project which such easements are and shall be for the purpose of ingress and egress to any property now owned or hereafter acquired by Declarant, its successors and assigns whether or not such property is made a part of the Project and whether or not such property adjoins the Project.

Section 9. Sidewalk Easements on Lots. Declarant reserves for itself and the Association, their successors, assigns and agents, a sidewalk easement ten (10) feet in width across all Lots for use and enjoyment by the Owners of Lots and others, only under such rules as may be promulgated by the Association from time to time. The sidewalk easement is ten (10) feet in width, lies on the Lots adjacent to the boundaries between Lots and all road rights-of-way, and includes the right to usual and necessary access for purposes of construction, maintenance, repair, removal and replacement of sidewalks. The provisions in this paragraph shall not be construed as an obligation on the part of Declarant or the Association to undertake construction of any sidewalks. In the event sidewalks are constructed on the easements reserved herein or in the road rights-of-way adjacent to the Lots, the Association shall be responsible for the maintenance and management of such sidewalks.

ARTICLE VI.

Assessments for the Maintenance and Operation of Common Areas and Facilities

Section 1. Initial Contribution. Upon the closing of the initial sale of each lot by the Declarant, the purchaser of each Lot shall pay an initial contribution to the Association of One Hundred and No/100 (\$100.00) Dollars to provide initial reserve funds for the Association. Such payment shall not in any way be considered a prepayment of any regular or special assessment. Such funds may be used by the Association in such manner as the board of directors thereof shall direct.

Section 2. Assessments, Liens and Personal Obligations Therefor, and Operation Maintenance of Common Areas Solely by the Association.

- (a) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses,

extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such lot or Lots at the time when the assessment fell due. Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2010, each Lot within The Properties shall be exempt, at Declarant's option, from the assessments herein provided for (both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made by the Association against Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing January 1, 2011, the Declarant shall be subject to assessments as provided for in this Declaration so that it will pay assessments on the same basis provided for in this Declaration for other Lot Owners. In the event that additional phases are subjected to the provisions of this Declaration, then it is declared that until the later of: (1) January 1, 2011; or (5) five years after the date the amendments or supplemental declarations submitting such additional phase(s) are filed for record in the public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the lot is conveyed by the Declarant to an Owner other than the Declarant. Until such time as a lot in such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less an amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lot Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.

(b) The Assessment levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Development, and in particular for the improvement and maintenance of the Common Areas, Lakes and Lake Areas, now or hereafter designated or existing, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereof, the cost of labor, equipment, materials, management and supervision thereof, and the cost of lawn and landscaping maintenance, maintenance of the fencing and/or signage, the employment of attorneys to represent the Association when necessary and such other needs as may arise. In the event that Declarant performs any of the foregoing services for Association, including,

but not limited to, accounting and bookkeeping services, it shall have the right to receive a reasonable fee therefore and such shall not be deemed to be a conflict of interest.

Section 3. Amount and Payment of Annual Assessment. The Board of Directors of the Association shall at all times fix the amount of the annual Assessment at an amount sufficient to pay the costs of maintaining and operating the Common Areas and performing the other exterior maintenance required to be performed by the Association under this Declaration including adequate reserves. The Board shall also fix the date of commencement and the amount of the Assessment against each Lot for each Assessment period (which shall be based on a calendar year), and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto, which shall be kept in the Office of the Association and shall be open to inspection by any Owner. Written notice of the Assessment shall thereupon be sent to every Owner subject thereto. In the event that any Lot is subject to an assessment for only part of a calendar year, then the amount of such assessment shall be prorated based on the portion of the assessment period for which such Lot is subject to an assessment.

Each annual Assessment shall be fully payable in advance on the 1st day of January each year, but the Board of Directors of the Association shall have the option to permit monthly or quarterly payments. The exact amount of each annual Assessment shall be fixed by the Board of Directors of the Association.

The Association shall, upon demand at any time, furnish to any Owner liable for any assessment, a certificate in writing, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be in recordable form and shall be conclusive evidence of payment of any assessment therein stated to have been paid.

This Section shall not be amended as provided in this Declaration to eliminate or substantially impair the obligation to fix the assessment at an amount sufficient to properly maintain and operate the Common Areas and perform the exterior maintenance required to be performed by the Association under this Declaration.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments, the Board of Directors of the Association, on behalf of the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying unexpected repair or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto. The due date of any specified assessment shall be fixed in the Resolution of the Board of Directors authorizing such assessment.

Section 5. Paid Professional Manager. The Board of Directors of the Association may employ a professional manager or managerial firm to supervise all the work, labor, services and material required in the operation and maintenance of the Common Areas and in the discharge of the Association's duties throughout the Community.

Section 6. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner: The Lien. Remedies of Association. If any assessment is not paid on the date when due, then such assessment shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof as are hereinafter provided, continue as a lien on the Lot or Lots, which shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such assessment or reimbursement, however, shall remain his personal obligation and will also pass on to his successor in title.

If the assessment or reimbursement is not paid within thirty (30) days after the due date, a late charge in an amount to be specified by the Board of Directors of the Association may be assessed and furthermore, the assessment shall bear interest from the date of delinquency at the rate of eighteen (18%) percent per annum. In addition, the Association may bring legal action against the then Owner personally obligated to pay the same or may enforce or foreclose the lien against the Lot or Lots in the same manner as a mortgage is foreclosed; and in the event a judgment is obtained, such judgment shall include interest on the assessment or reimbursement as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. The Association may further file a notice of lien in the office of the Register of Deeds for Horry County, South Carolina.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments (and reimbursement) provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon any Lot subject to assessment and reimbursement; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments or reimbursements thereafter becoming due, nor from the lien of any subsequent assessment or reimbursement.

Section 8. Exempt Property. All Common Areas subject to this Declaration shall be exempted from the assessments, charges and liens created herein.

ARTICLE VII.

Architectural and Landscape Control

Section 1. Architectural Review Board. The Architectural Review Board shall have the right to approve or disapprove all architectural and landscaping plans and the location of any proposed Improvements. The Architectural Review Board may, in its sole discretion, impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning or other governmental codes.

Section 2. The Architectural Review Board shall be a permanent committee of the Association and shall administer and perform the architectural and landscape review and control functions of the Association. The Architectural Review Board shall consist of five (5) voting members who shall initially be named by the Declarant and who shall hold office at the pleasure of the Declarant. Until termination of Declarant's Class B membership status in the Association, as defined in this Declaration, the Declarant shall have the right: to change the number of members on the Architectural Review Board provided, however, that the Architectural Review Board shall at all times consist of at least three (3) members; to appoint all members of the Architectural Review Board; and to remove and replace all members appointed to the Architectural Review Board. The Declarant shall determine which member of the Architectural Review Board shall serve as its Chairman, or which members of the Architectural Review Board shall serve as Co-Chairmen. In the event of the failure, refusal or inability to act of any of the members appointed by the Declarant, and in the event that the Declarant fails to fill any such vacancy within thirty (30) days of such occurrence, the remaining members of the Architectural Review Board shall fill such vacancy by appointment. At such time as Declarant's Class B membership status terminates or at such earlier date as Declarant may decide, the Declarant shall assign to the Association the rights, powers, duties and obligations of the Architectural Review Board, whereupon the Board of Directors shall determine how many persons shall serve on the Architectural Review Board, provided that the Architectural Review Board shall at all times consist of not less than three (3) members, shall appoint the members of the Architectural Review Board shall provide for the terms of the members of the Architectural Review Board, and shall determine which member of the Architectural Review Board shall serve as its Chairman. There shall be no requirement that any of the members of the Architectural Review Board be a member of either the Association or an Owner within Wild Wing Plantation. Any three (3) members of the Architectural Review Board shall constitute a quorum to transact business at any meeting, and the action of the majority present shall constitute the action of the Architectural Review Board.

Section 3. Buildings, fences, walls, etc. No building, fence, wall, boat docking slip, landscaping or other improvements, and no change in topography, landscaping or any other item originally approved by the Architectural Review Board shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change be made until the plans and specifications showing the nature, kind, texture, shape, height, materials, color and locations of the same shall have been submitted to and approved in writing as to the harmony of the external design and location in relation to the surrounding structures and topography by the Architectural Review Board. The right of approval herein reserved and granted shall include, without limitation, the right to designate or re-designate which Lot line shall be the "front" in the case where a Lot is bordered by more than one street. In the event the Architectural Review Board fails to approve or disapprove any request within sixty (60) days after complete plans and specifications have been submitted to it in accordance with the guidelines promulgated by the Architectural Review Board, the same shall be deemed approved, and this Article shall be deemed to have been fully complied with, provided, however, that no such failure to act shall be deemed an approval of any matters specifically prohibited by any other provision of this Declaration. Refusal of approval of plans, specifications and plot plans or any of them may be based on any grounds, including purely aesthetic grounds,

which in the sole and uncontrolled discretion of the Declarant or the Architectural Review Board may seem sufficient. Any change in exterior appearance of any building, wall, fence or other structural improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval.

All construction of any nature shall further be subject to the provisions and requirements of Article XV RESTRICTIVE COVENANT.

Section 4. Lot Filling. No Lot may be cleared, graded cut or filled for any reason until the Architectural Review Board has reviewed and approved the application for approval of the proposed improvement. The site plan, along with the tree survey and other documents required by the Architectural Review Board, must clearly delineate the extent of clearing, grading, cutting and filling.

Section 5. Fee Schedule. The Architectural Review Board may adopt a schedule of reasonable fees for processing requests for approval. Such Fees, if any, shall be payable to the Association at the time that the plans and specifications and other documents are submitted to the Architectural Review Board. The payment of such fees, as well as other expenses of the Architectural Review Board required to be paid, shall be deemed to be an individual Assessment, enforceable against the Owner and the Lot as provided hereinabove. The Architectural Review Board is expressly reserved the right and power, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the Architectural Review Board in its review of any plans or specifications, and the cost of such consulting services shall be the responsibility of the respective applicant or Owner of the subject property.

Section 6. Defects or Damages. Neither the Declarant, the directors or officers of the Association, the members of the Architectural Review Board, nor any person acting on behalf of any of them, shall be liable for any costs or damage incurred by an Owner or Association or any other party whatsoever, due to any mistakes in judgment, negligence or any action of the Architectural Review Board in connection with the approval or disapproval of plans and specifications. Each Owner or Association and occupant of any property within Wild Wing Plantation agrees, as do their successors and assigns by acquiring title thereto or an interest therein, or by assuming possession thereof, that they shall not bring any action or suit against the Declarant, the directors or officers of the Association, the members of the Architectural Review Board, or their respective agents, in order to recover any damages caused by the actions of the Architectural Review Board. The Association shall indemnify, defend and hold the Architectural Review Board and each of its members harmless from all costs, expenses and liabilities, including attorneys' fees, of all nature resulting by virtue of the acts of the Architectural Review Board or its members. Neither the Declarant, the directors or officers of the Association, the members of the Architectural Review Board, nor any person acting on behalf of any of them, shall be responsible for any defects in any plans and specifications, nor for any defects in any Improvements constructed pursuant thereto. Each party submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

ARTICLE VIII.

Exterior Maintenance, Reasonable Access and Maintenance of Common Areas

Section 1. Exterior Maintenance. The Owner shall maintain the structures and grounds on each Lot at all times in a neat and attractive manner. Upon the Owner's failure to do so, the Declarant, or the Association (after the termination of Class B membership status of Declarant) may, at its option, after giving the Owner ten (10) days written notice sent to his last known address, or to the address of the subject premises, have the grass, weeds, shrubs and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed from such Lot, and replaced, and may have any portion of the Lot resodded or landscaped, all of which shall not be deemed a trespass, and all expenses of the Association under this provision shall be a lien and charge against the Lot on which the work is done and the personal obligation of the then Owner of such Lot. The Declarant or the Association, and its assigns, may likewise, after giving the owner ten (10) days written notice sent as aforesaid, enter upon such Lot(s) to remove any trash, debris or garbage which has collected on said Lot(s) without such entrance and removal being deemed a trespass, all at the expense of the owner of said Lot. Upon the Owner's failure to maintain the exterior of any structure in good repair and appearance, the Association may, at its option, after giving the Owner thirty (30) days written notice sent to his last known address, make repairs and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Lot and shall constitute an assessment against the Lot on which the work was performed, collectible in a lump sum secured by a lien against the Lot as herein provided.

Section 2. Access at Reasonable Hours. For the purpose of performing its function under this or any other Article of the Declaration, and to make necessary surveys in connection therewith, the Association, by its duly authorized agent and employees, or the Declarant during the period of development, shall have the right to enter upon any Lot at reasonable hours, on any day except Sundays and holidays, on reasonable prior notice.

Section 3. Maintenance of Common Areas. It shall be the responsibility of the Association to maintain the Common Areas. However, should the Declarant (prior to conveyance to the Association) or the Association (after the termination of the Class B status of Declarant), decide to transfer any portion or all of the areas designated or to become, by conveyance, Common Areas to governmental authority, as they have the right to do, such duty to maintain same shall cease as to that portion so transferred.

ARTICLE IX.

Phased Development

Section 1. Phase I. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Horry County, South Carolina, and is more particularly described on Exhibit "A" attached hereto and made a part and parcel hereof.

Section 2. Additional Phases. The Declarant may, at its option, from time to time bring other land under the provisions hereof by recording a Supplemental Declaration(s) or amendment stating its intention to so incorporate additional real estate. Declarant may incorporate such additional land under the provisions hereof in any number of additional phases as it may so desire. Such Supplemental Declaration(s) or amendment shall not require the vote or consent of the association or any Owner. Any such Supplemental Declaration(s) shall be effective upon the filing thereof in the public records of Horry County, South Carolina. Such Supplemental Declaration shall describe the real property to be brought under the provisions hereof. Any such property to be brought under the provisions of this Declaration must be contiguous or near to property already subjected to the provisions of this Declaration at that time and must be owned by Declarant or its successors and assigns as developer. Declarant may bring such additional real estate under the terms hereof either in whole or in part and may do so in multiple phases. Upon the Declarant's election to incorporate additional real estate hereunder, all of such real estate so incorporated shall be as fully covered hereby as if a part of the original Development. However, Declarant reserves the right unto itself to change or modify the restrictions applicable to such additional phases by such supplemental declaration, which changes or modifications may include, without limitation, increasing or decreasing the size of Lots within such phases(s), modifying the building setback lines within such phases(s) and changing architectural and material requirements and minimum home size requirements within such phase(s). Subject to the foregoing, all property so incorporated shall be subject to all the declarations, covenants, easements, liens, restrictions and duties as herein contained, together with such additional restrictions and obligations or modifications to these Restrictions as Declarant may impose on the land being submitted to the provisions of this Declaration by such Supplemental Declaration(s). Declarant shall have the unilateral right to transfer to any other person or entity the said right to submit additional property to the provisions of this Declaration. Declarant shall have no obligation to develop any land adjoining the Properties in accordance with this Declaration and may develop same in any manner it may desire and further, Declarant, in the event that it should decide to develop any additional land located adjacent to the Properties, in its sole discretion, shall have no obligation to make same a part of this Project or subject to this Declaration. THE DECLARANT SHALL BE UNDER NO OBLIGATION TO DEVELOP ADDITIONAL PHASES AND NONE OF THE REMAINING PORTION OF THE PROPERTY DESCRIBED HEREIN SHALL BE DEEMED A PART OF ANY SCHEME OF DEVELOPMENT UNTIL ACTUALLY BROUGHT UNDER THESE RESTRICTIONS AS HEREIN PROVIDED.

Section 3. Reservation of Additional Easements and Rights. Declarant reserves for itself and its successors and assigns as developer (and all conveyances by Declarant to Association of Common Areas shall be deemed to automatically reserve) easements over, under and across all Common Areas for ingress and egress and for construction and completion of construction and development of this phase and all future phases of the Development and/or for the construction and development of other property of Declarant, whether or not such other property is submitted to the terms and provisions of this Declaration, including, without limitation, easements for the installation, construction, reconstruction, repair, maintenance and operation of all utility services; said easements to be in addition to and not in lieu of any other rights or easements reserved by Declarant herein or in any supplement hereto or any other conveyance by or to Declarant or its predecessors in title.

ARTICLE X.

Rights of Mortgagees

Rights of Mortgagees or Third Parties. Should a mortgagee or third party acquire the rights of Declarant, by way of foreclosure or otherwise in adjoining or neighboring property contained within the property contiguous to the property subject to this declaration, as same may exist from time to time, it shall be allowed full use of all rights, easements, rights-of-way and utilities contained within The Properties for the purpose of serving such adjoining or neighboring areas. These rights shall also inure to the benefit of Declarant should it retain or be the Owner of any portion of said property. Any of such parties may elect to bring additional phases under this Declaration.

ARTICLE XI.

Insurance and Casualty Losses

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount (as determined by the insurance underwriter) sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Area, Buffer area and any other areas Association is permitted to enter upon, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million and No/100 (\$1,000,000.00) Dollar single person limit as respects bodily injury and property damage, a One Million and No/100 (\$1,000,000.00) Dollars limit per occurrence, and a Five Hundred Thousand and No/100

(\$500,000.00) Dollar minimum property damage limit.

Cost of insurance coverage obtained by the Association for the Common Area shall be included in the Assessment.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefitted parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in South Carolina which holds a Best's rating of A or better as is assigned a financial size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area and fencing referred to above shall be for the benefit of the Association and Declarant shall be named as additional insured.

(c) Exclusive authority to adjust losses under policies in force on the Common Areas and said fencing obtained by the Association shall be vested in the Association's Board of Directors.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) that no policy may be cancelled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, its Owner, or mortgagee;

(iii) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(iv) That no policy may be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

Association, its successors and assigns, members, officers and directors do hereby knowingly and voluntarily forever release and discharge Declarant, its principals, officers, managers, members, employees, agents and/or contractors, their heirs, successors and assigns, from any and all claims at law or equity, including, without limitation, indemnification and/or subrogation, in anyway arising from our related to conditions of the Property, accidents, personal injury, occurrences or the like, in anyway relating to or arising from the prior use of the Property as part of the Bombing and Gunnery Range, to specifically include, without limitation, active or inactive ordnance upon the Property.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. However, no fidelity bond shall be required as long as the class B Member exists. The amount of fidelity coverage shall be determined in the directors' best business judgment but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

The Association may purchase officers and directors liability insurance, if reasonably available and the Board of Directors of the Association approves the purchase of same. However, every Director and every officer of the Property Owners Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or Officer of the Association, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty or willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the Director or Officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

Section 2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

(b) If it is determined, as provided for in Section 4 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in Section A above. However, repair or replacement of the affected Common Area must be made unless prevented by law or governmental rule or regulation.

Section 3. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Board of Directors of the Association, shall decide within thirty (30) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the Common Area damaged or destroyed shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Area shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

Section 4. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners in proportion to the number of Lots owned, provided, if the damage or destruction involves a Lot or Lots only Owners of the affected Lots shall be subject to such assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Section 5. Declarant has contracted and paid for Pollution Legal Liability Policy #PLS 1959333 written by American International Specialty Lines Insurance Company (the "Policy", which term shall include substitute policies, renewals, replacement policies or the like), which such policy is procured responsive to portions of the Development, Project, Wild Wing, Community, Properties

or Property, as defined herein, having been determined by the United States Army Corps of Engineers to be within the former Conway Bombing and Gunnery Range. See Articles XV and XVI herein. The effective anniversary dates of the Policy are December 27, 2005 thru December 27, 2015, after which the Association Board of Directors may, in its discretion, elect to renew, extend, replace or discontinue such coverage. The Association Board of Directors shall not discontinue such coverage at any time prior to the expiration of the original effective anniversary date recited above.

The Policy has or shall be amended to include the Association as an Additional Named Insured. Immediately thereupon, The Association agrees and hereby does accept contractual liability obligations to indemnify and hold harmless Declarant, Members, Owners, their successors, heirs and assigns, their guests, licensees, invitees or others upon the Development, Project, Wild Wing, Community, Properties or Property, as defined herein, to the full extent coverage exists, and only to such extent, pursuant to the terms and conditions of the Policy.

The Association shall report, notice and facilitate the handling and management of any such claims and shall and hereby does assume responsibility for any Self Insured Retention (deductible) applicable thereto. Any and all Self Insured Retention amounts shall be borne by the Association and charged to the Members as a portion of Annual Assessments and/or Special Assessments as defined herein.

In the event Insurance Coverage in these regards is unavailable for any reason, including inapplicability, non-renewal, lapse or otherwise, Member and/or Owner, its, his, her or their (as the case may be) heirs, successors and assigns, do hereby knowingly and voluntarily forever release and discharge Association, its principals, officers, managers, members, employees, agents and/or contractors, their heirs, successors and assigns, from any and all claims at law or equity in any way arising from or related to conditions of the Property, accidents, personal injury, occurrences or the like in any way related to or arising from the prior use of the Property as part of the Bombing and Gunnery Range, to specifically include, without limitation, active or inactive ordnance upon the Property.

ARTICLE XII.

General Provisions

Section 1. Time of Essence. It is agreed that time is of the essence with regard to these restrictions, protective covenants, limitations and conditions.

Section 2. Enforcement. In the event of a violation or breach of any of these restrictions by any Owner, or agent, or agent of such Owner, the Owners of Lots in the subdivision, or any of them, jointly or severally, the Declarant and/or the Association shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any such event or to recover damages. In addition to the foregoing, the Declarant, its successors and assigns, shall have the right, but shall be under no obligation whenever there shall have been built

on any lot in the subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the Owner, if, after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservation, restriction or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the rights to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should Declarant or Association employ Counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for Declarant's Counsel shall be paid by the Owner of such lot or Lots in breach thereof. Any amount assessed hereunder shall constitute a lien on such lot and shall be enforceable as herein provided. Failure of Declarant, the Association or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter.

Section 3. Responsibility of Declarant. The Declarant herein shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself. In addition, nothing contained in this Declaration shall be deemed to be a representation by Declarant with regard to the requirements of any governmental authority and it shall be the duty of each Owner to comply with any such requirements in addition to the provisions of this Declaration.

Section 4. Rule Against Perpetuities. In the event that any of the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event, such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of South Carolina, and such provision shall be fully effective for said reduced period of time.

Section 5. Binding Effect. All covenants, conditions, limitations, restrictions, easements and affirmative obligations set forth in this declaration shall be binding on the Owners of the Lots, and their respective heirs, successors and assigns and run with the land. All rights, easements and agreements reserved by or granted to Declarant shall inure to the benefit of Declarant, its successors and assigns including, without limitation, the right to develop and submit additional phases. Declarant reserves the right in addition to all other rights of Declarant, to assign its rights of consent and approval as set out in this Declaration and any amendment hereto or supplement hereof, to Association, or to any assignee of Declarant's development rights.

Section 6. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant, the Association, or the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns.

Section 7. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered

or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 8. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in nowise effect any other provisions which shall remain in full force and effect.

Section 9. Amendment. In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges and liens of this agreement may be amended, changed, added to, derogated or deleted at any time and from time to time upon the execution and recordation of any instrument executed by Owners holding not less than two-thirds (2/3) vote of the membership in the Association, provided, that so long as the Declarant is the Owner of any Lot affected by this Declaration the Declarant's consent must be obtained. Provided, further, that the provisions for voting of Class A and Class B Members as hereinabove contained in this Declaration shall also be effective in voting for changes in this Declaration.

Section 10. Amendment Prior to Sale by Declarant. At any time prior to the closing of the first sale of a Lot by Declarant, the Declarant, and any mortgage holder, if any, may amend this Declaration by mutual consent. The closing of the first sale shall mean transfer of title and delivery of a deed and not execution of a Contract of Sale or a like document.

Section 11. Effective Date. This Declaration shall become effective upon its recordation in the Office of the Register of Deeds for Horry County, South Carolina.

Section 12. Plat. Reference to Exhibit A, "plat", "map" other term synonymous therewith shall mean and include Exhibit A as recorded herewith and all subsequent revisions thereof, together with any and all additional plats or maps filed as any additional phases, if any, are submitted to this Declaration as and when recorded in the Office of the Register of Deeds for Horry County, South Carolina.

ARTICLE XIII.

Additional Matters Dealing with Phased Development

Section 1. Voting Rights. As each phase, if any, is added to the Development, the Lots comprising such additional phase shall be counted for the purpose of voting rights.

ARTICLE XIV

Special Restrictions for Golf Course Lots

Section 1. Golf Course Property. A golf course is currently located adjacent to portions of the Property. Although the golf course is currently owned by Declarant, the golf course is not, and is not intended to be, a Common Area of the Project. Purchase of property in the Subdivision does not guarantee or vest in the purchaser or Owner the right to use of the golf course. Each Owner, by acceptance of a deed to a Lot acknowledges that no Owner acquires any interest in the golf course by virtue of taking title to property within the Project. Each Owner acknowledges that no representations or warranties, either verbal or written have been made by the Declarant or any other person regarding the continued ownership or operation of, or rights in the golf course, or that the golf course will become Common Area to the Association.

Section 2. Easements. Until such time as a residence is constructed on a Lot bordering the golf course, Declarant hereby reserves unto itself, its successors and assigns, an easement to permit and authorize registered golf course players to enter upon such Lot to recover a ball or play a ball, without such entering and playing being deemed a trespass.

Every Lot bordering a golf course and any Common Area bordering the golf course are burdened with an easement to come upon the Lot or Common Area immediately adjacent to the golf course for the purposes related to the playing of golf and the normal operation of the golf course and for golfers at reasonable times and in a reasonable manner to come upon the exterior portions of such Lot or Common Area in order to retrieve errant golf balls. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. However, under no circumstances shall the Declarant or the Association be held liable for any damages or injury caused from errant golf balls or the exercise of this easement.

Section 3. Golf Course Maintenance. Each Owner, occupant or other person acquiring an interest in a Lot within the Project is hereby deemed to acknowledge being aware that for such period of time as the golf course is being used as a golf course, it can be expected that (a) maintenance activities on the golf course shall begin early in the morning and extend until late into the evening; (b) during certain periods of the year the golf course will be heavily fertilized; and (c) golf balls are not susceptible of being easily controlled and accordingly may land or strike beyond the golf course boundaries. Neither the Declarant, nor any employee or agent of the Declarant, shall be liable for personal injury or property damage caused by errant golf balls.

Section 4. Actions of Lot Owners. Owners or occupants of Lots bordering the golf course fairways shall be obligated to refrain from any actions which would detract from the playing qualities of the golf course or unreasonably distract golfers from the playing of golf.

ARTICLE XV

Restrictive Covenant

No excavation of any portions of the property shall be made which exceed four (4) feet in depth below the grade level of the property without the prior written approval of Declarant (or its assignee or designee). Furthermore, swimming pools or other similar improvements shall not be installed without the prior written approval of Declarant (or its assignee or designee). The approval of Declarant (or its assignee or designee) may be conditioned upon the Lot Owner providing Declarant (or its assignee or designee) with the written results of an examination of the area in which such excavation is to occur, which examination shall be performed by EODT (as hereafter defined, or such other party approved by Declarant or its assignee or designee), confirming that the area is clear of any ordnance or explosive materials.

ARTICLE XVI

Disclosure

The undersigned understands that this property has been determined by the U.S. Army Corps of Engineers to be within either Area A or Area A-1 of the former Conway Bombing and Gunnery Range. Seller has contracted with EOD Technology, Inc ("EODT") to conduct subsurface clearance within Area A in accordance with U.S. Army Corps of Engineers Guidelines of ordnance/explosive materials detected within Area A. In addition, Seller has contracted with EODT for an investigation of the property within Area A-1. EODT has conducted a preliminary site investigation and has issued a report (the Report") detailing the results of its preliminary site investigation and the work performed relative thereto. The Report is available for inspection and copying at the office of Seller. Further, Seller has contracted with EODT to perform an additional Scope of Work toward further and more extensive investigation of Area A-1. The additional Scope of Work is available for inspection and copying at the office of Seller. However, Purchaser acknowledges that Seller makes no warranties or representations relative to the accuracy and results of such preliminary site investigation, Scope of Work and the work undertaken relative thereto and their recommendations, as well as any subsequent reports issued by EODT. Furthermore, Purchaser acknowledges and agrees that all construction activities on the Lot shall be undertaken by Purchaser in compliance with the provisions of the Report and its recommendations, as well as any subsequent reports issued by EODT and shall further be undertaken by Purchaser in compliance with the requirements of this Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation.

ARTICLE XVII

Release

Member and/or Owner, its, his, her or their (as the case may be) heirs, successors and assigns, do hereby knowingly and voluntarily forever release and discharge Declarant, its principals, officers, managers, members, employees, agents and/or contractors, their heirs, successors and assigns, from any and all claims at law or equity in any way arising from or related to conditions of the Property, accidents, personal injury, occurrences or the like in any way related to or arising from the prior use of the Property as part of the Bombing and Gunnery Range, to specifically include, without limitation, active or inactive ordnance upon the Property.

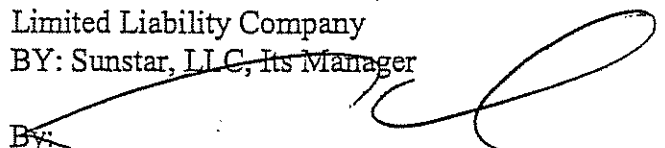
Association, its successors and assigns, members, officers and directors do hereby knowingly and voluntarily forever release and discharge Declarant, its principals, officers, managers, members, employees, agents and/or contracts, their heirs, successors and assigns, from any and all claims at law or equity, including, without limitation, indemnification and/or subrogation, in anyway arising from our related to conditions of the Property, accidents, personal injury, occurrences or the like, in anyway relating to or arising from the prior use of the Property as part of the Bombing and Gunnery Range, to specifically include, without limitation, active or inactive ordnance upon the Property.

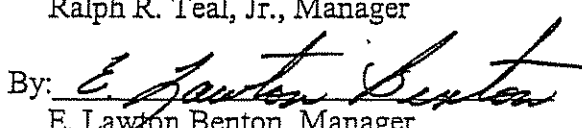
IN WITNESS WHEREOF, Wild Wing Company LLC, has caused this instrument to be executed by its proper officers and its corporate seal to be affixed thereto on the day and year first above written.

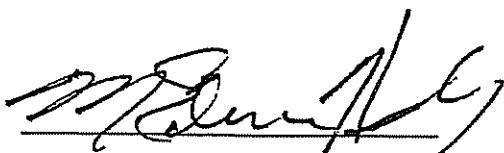
In the Presence of:

DECLARANT:

WILD WING COMPANY, LLC, A South Carolina
Limited Liability Company
BY: Sunstar, LLC, Its Manager

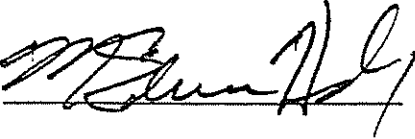
By: 
Ralph R. Teal, Jr., Manager

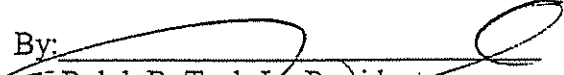
By: 
E. Lawton Benton, Manager


Michelle L. Inerle

Wild Wing Property Owners Association, Inc. executes this Declaration for the purposes of acknowledging and agreeing to the terms and conditions hereof.

WILD WING PROPERTY OWNERS
ASSOCIATION, INC.


Michelle L. Merkle

By: 
Ralph R. Teal, Jr., President

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Wild Wing Company, LLC, by and through its duly authorized Manager(s) Sign, Seal and as its Act and Deed deliver the within written DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WILD WING PLANTATION; and that s/he with the other witness subscribed above witnessed the execution thereof.



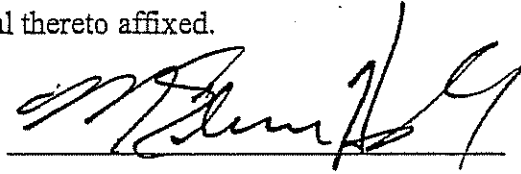
SWORN to before me this 26th

day of September, 2006.

Michelle L. Merkle (L.S.)
 Notary Public for South Carolina
 My Commission Expires: 1-23-2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named WILD WING PLANTATION PROPERTY OWNERS ASSOCIATION, INC., Sign, Seal and as its Corporate Act and Deed deliver the within written DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WILD WING PLANTATION; and that s/he with the other witness subscribed above witnessed the execution thereof and saw the Corporate Seal thereto affixed.



SWORN to before me this 26th

day of September, 2006.

Michelle L. Merrell (L.S.)
 Notary Public for South Carolina
 My Commission Expires: 1-23-2014

EXHIBIT A

ALL AND SINGULAR, Those certain pieces, parcels or lots of land, situate, lying and being in the State of South Carolina, County of Horry and being shown and designated as Lots 1 through 337, inclusive, of Wild Wing Plantation on a plat prepared by Associated Land Surveyors dated September 18, 2006, which plat was recorded September 20, 2006 in Plat Book 217 at Pages 55, 55-a, 55-b, 55-c, 55-d, 55-e, 55-f, 55-g, 55-h and 55-i, records of Horry County, South Carolina, reference to which is craved as forming a part and parcel of these presents.

This being a portion of the property conveyed to Wild Wing Company, LLC by deed of Wild Wing Plantation, Inc dated December 15, 2005 and recorded December 15, 2005 in Deed Book 3023 at Page 272, in the office of the Register of Deeds for Horry County, South Carolina.

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

JUN 14 2006

NONPROFIT CORPORATION
ARTICLES OF INCORPORATION

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

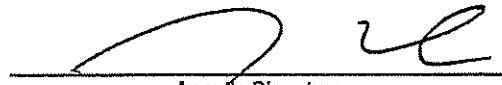
1. The name of the proposed corporation is **Wild Wing Plantation Property Owners' Association, Inc.**
2. The initial registered office of the nonprofit corporation is

990 Wild Wing Boulevard, Conway, South Carolina 29526

The name of the registered agent of the nonprofit corporation at that office is:

Ralph R. Teal, Jr.

I hereby consent to the appointment as registered agent of the corporation.


Agent's Signature

3. Check "a", "b" or "c", whichever is applicable. Check only one box:
 - a. ☐ The nonprofit corporation is a public benefit corporation.
 - b. ☐ The nonprofit corporation is a religious corporation.
 - c. ☒ The nonprofit corporation is a mutual benefit corporation.
4. Check "a" or "b", whichever is applicable:
 - a. ☒ This corporation will have members.
 - b. ☐ This corporation will not have members.
5. The address of the principal office of the nonprofit corporation is
990 Wild Wing Boulevard, Conway, South Carolina 29526
6. If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of paragraph #3 is checked), complete either "a" or "b", whichever is applicable to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.
 - a. ☐ Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of

060614-0100 FILED: 06/14/2006
WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATI
Filing Fee: \$25.00 ORIG



Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

- b. ☐ Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to: _____
7. If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.
- a. ☒ Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefitting or serving.
- b. ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to: _____
8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See Section 33-31-202©) of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instruction to this form).

9. The name and address of each incorporator is as follows (only one is required)
- Ralph R. Teal, Jr.**
990 Wild Wing Boulevard, Conway, South Carolina 29526
10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:
- | | |
|----------------------------------|-----------------------|
| N/A | |
| Name (Only if named in articles) | Signature of director |
11. Each incorporator must sign the articles.

Signature of Incorporator - Ralph R. Teal, Jr.

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Incorporation, Nonprofit Corporation

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., a nonprofit corporation duly organized under the laws of the State of South Carolina on June 14th, 2006, and having a perpetual duration unless otherwise indicated below, has as of the date hereof filed a Declaration and Petition for Incorporation of a nonprofit corporation for Religious, Educational, Social, Fraternal, Charitable, or other eleemosynary purpose.

Now, therefore, I Mark Hammond, Secretary of State, by virtue of the authority in me vested by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto, do hereby declare the organization to be a body politic and corporate, with all the rights, powers, privileges and immunities, and subject to all the limitations and liabilities, conferred by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto.

Given under my Hand and the Great Seal of the State of South Carolina this 14th day of June, 2006.

A handwritten signature in black ink that reads "Mark Hammond".

Mark Hammond, Secretary of State

BY-LAWS
OF
WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.

Article I
Name, Principal Office and Definitions

Section 1. Name. The name of the Association shall be Wild Wing Plantation Property Owners' Association, Inc. (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The principal office of the Association in the State of South Carolina shall be located in Myrtle Beach, County of Horry. The Association may have such other offices, either within or without the State of South Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in the Declaration of Protective Covenants, Restrictions, Charges and Liens for Wild Wing to which these Bylaws are attached as an Exhibit, as amended, renewed or extended from time to time, as hereinafter sometimes referred to as the "Declaration," unless the context shall prohibit.

Section 4. Purpose. The purpose of the Association is to manage the affairs of Wild Wing, a Subdivision established pursuant to the terms of the Declaration therefor, filed or to be filed in the Office of the Register of Deeds for Horry County, South Carolina.

The Association is not organized for profit and no part of the net earnings, if any, shall inure to the benefit of any member or individual person, firm or corporation.

The Association shall have all of the common law and statutory powers of a nonprofit corporation. The Association shall also have all of the powers necessary to implement the purposes of the Association and to provide for the general health and welfare of its membership.

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

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. The Association shall have two (2) classes of membership, Class "A" and Class "B", as more fully set forth in the Declaration, the terms of which pertaining to

membership are specifically incorporated herein by reference. The classes of membership shall be as follows:

Class A. Class A members shall be all Owners excepting the Declarant. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership pursuant to the Declaration. When more than one person holds such interest or interests in any Lot, the vote attributable to such Lot shall be exercised as such persons, mutually determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. The sole Class B member shall be the Declarant (as defined in the Declaration). The Class B member shall be entitled to total votes in an amount equal to twice the number of the Class A votes plus one. The Class B membership shall cease and become converted to Class A membership upon the conveyance to Lot Owners of all Lots subject to the Declaration, or December 31, 2015, whichever first occurs. In addition, Declarant may terminate the Class B membership upon written notice to the Association.

When a purchaser of an individual Lot or Lots takes title thereto from the Declarant, he automatically becomes a Class A member.

Section 3. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Voting Members as may be designated by the Board of Directors either within the properties or as convenient thereto as possible and practical.

Section 4. Annual Meetings. The first meeting of the membership, whether a regular or special meeting, shall be held within one hundred twenty (120) days after the expiration of one (1) year from the date of incorporation of the Association. The next annual meeting shall be set by the Board so as to occur no more than ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings of the membership shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to the foregoing, the annual meeting shall be held at a date and time as set by the Board of Directors.

Section 5. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Voting Members representing at least ten (10%) percent of the total votes of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 6. Notice of Meetings. Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered either personally or by mail, to each Voting Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary.

In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 7. Waiver of Notice. Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Member may, in writing, waive notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member or alternate shall be deemed waiver by such Voting Member of notice of the time, date and place thereof, unless such Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 8. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Voting Members who are present at such meeting, either in person or by alternate, may adjourn the meeting to a time not more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted.

Section 9. Voting. The voting rights of the Members shall be as set forth in the Declaration and as set forth herein, and such voting rights provisions are specifically incorporated herein.

Section 10. Proxies. Voting Members may vote in person or by proxy.

Section 11. Majority. As used in these By-Laws, the term "majority" shall mean those votes, Owners or other group as the context may indicate, totaling more than fifty (50%) percent of the total number.

Section 12 Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by alternate of the Voting Members representing fifty-one (51%) percent of the total vote of the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein. So long as a quorum is present at the opening of the meeting, business may be transacted until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum in attendance.

Further, at any adjourned meeting at which a quorum is present at the reconvening of such meeting, any business may be transacted which might have been transacted at the original meeting notwithstanding the withdrawal of enough members to leave less than a quorum in attendance.

Section 13. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

Section 14. Action Without a Meeting. Any action required by law to be taken at a meeting of the Voting Members, or any action which may be taken at a meeting of the Voting Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Voting Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Voting Members.

Article III

Board of Directors. Number, Powers, Meetings

A. Composition and Selection.

Section 1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors each of whom shall have one (1) vote. Except as provided in Section 2 of this Article, the Directors shall be Members. In the case of an Owner which is a corporation or partnership, the person designated in writing to the Secretary of the Association as the representative of such corporation or partnership shall be eligible to serve as a Director. The initial Board of Directors shall consist of three (3) persons. The names and addresses of the first Board of Directors of the Association, who shall hold office until the first annual meeting of members and until qualified successors are duly elected and have taken office, shall be as follows:

Ralph R. Teal, Jr.
E. Lawton Benton
J. Carson Benton

Section 2. Directors During Class "B" Control. The Directors who shall serve on the Board of Directors of the Association shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first annual meeting of the membership following termination of Class B control at which time the Board of Directors shall be increased to five (5) Members.

Within one hundred twenty (120) days thereafter, the Class "B" member shall call a meeting, as provided in Article II, Section 5, of these By-Laws for special meetings, to advise the membership of the termination of the Class "B" member's control or, in the alternative, shall notify each member by U. S. Mail that the Class B membership has terminated.

The Directors selected by the Class "B" member pursuant to this Section need not be Members as provided in Section 1 of this Article.

Section 3. Veto. This Section 3 may not be amended without the express, written consent of the Class "B" member, so long as the Class "B" membership exists.

So long as the Class "B" membership exists, the Class "B" member shall have a veto power over all actions of the Board and any committee, as is more fully provided in this Section. This veto power shall be exercisable only by the Class "B" member, its successors, and assigns who specifically take this power in a recorded instrument. The veto power shall be as follows:

No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) The Class "B" member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meetings with Article III, Sections 10 and 11, of these By-Laws as to regular and special meetings of the Directors and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Class "B" member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of the meeting relative to any prospective action, policy, or program to be implemented by the Board, any committee, or the Association. The Class "B" member and its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the subject committee and/or the Board. The Class "B" member shall have and is hereby granted a veto power over any such action, policy, or program authorized by any committee or the Board of Directors and to be taken by any committee or Board of the Association or any individual member of the Association if Board, committee, or Association approval is necessary for said action. This veto may be exercised by the Class "B" member, its representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. Any veto shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association.

Section 4. Number of Directors. The number of Directors in the Association shall not be less than three (3) nor more than five (5), as provided below. The initial Board shall consist of three (3) members as identified in the Articles of Incorporation.

Section 5. Nomination of Directors. Except with respect to Directors selected by the Class "B" Member, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and three (3) or more Members of the Association. The Nominating Committee

shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Voting Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each such annual meeting. Nominations shall be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Section 6. Election and Term of Office. Notwithstanding any other provision contained herein:

At the first annual meeting after the termination of Class B control, five (5) Directors shall be elected. Two (2) of the Directors, elected pursuant to this Section, shall be elected to serve for a term of three (3) years. Two (2) of the remaining Directors shall be elected to serve for a term of two (2) years, with the final Director elected to serve for a one (1) year term. Members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association. Directors may be elected to serve any number of consecutive terms. Each member elected thereafter shall be elected for a two (2) year term.

Section 7. Removal of Directors and Vacancies. Any Director of the Association may be removed, with or without cause, by a vote of the Voting Members with a majority vote of the membership. Any Director whose removal is sought will be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall then and there be elected to fill the vacancy by the Voting Members responsible for such removal.

Any Director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment for more than thirty (30) days may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board. In the event of the death, disability, or resignation of a Director, a vacancy may be declared by the Board and it may appoint a successor. Any Director appointed by the Board shall serve for the remainder of the term such successor was appointed to fill.

Section 8. Voting Procedure for Directors. At any election of Directors to the Board of Directors, each Voting Member may cast, in respect to each vacancy, as many votes as he or she is entitled to exercise under the Declaration. The candidates receiving the largest number of votes shall be elected.

B. Meetings.

Section 9. Organizational Meetings. The first meeting of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 10. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 11. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or by a majority of Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by telegram, charges prepaid. All such notices shall be given by use of the Director's telephone number or shall be sent to the Director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least three (3) days before the time set for the meeting.

Section 12. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 13. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors who are present at such meeting may adjourn the meeting until such time and place as they may determine. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 14. Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by Members holding a majority of the total vote of the Association at a regular or special meeting of the Association; provided any Director may be

reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors.

Section 15. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

Section 16. Open Meetings. Subject to the provisions of Section 17 of this Article, all meetings of the Board shall be open to all Voting Members, but Voting Members other than Directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a Director. In such case, the President may limit the time any Voting Member may speak.

Section 17. Action Without a Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

Section 18. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the Voting Members or the membership generally.

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

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;

(b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board of Directors, the annual assessment for each Declaration's proportionate share of the Common Expenses shall be payable in equal monthly installments, or as determined by the Board of Directors;

(c) providing for the operation, care, upkeep, and maintenance of all of the Common Areas;

(d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Areas and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, any reserve fund may be deposited, in the Directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable to Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting principles;

(m) making available to any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Lot, current copies of the Declaration, the By-Laws, rules governing the Lot, and all other books, records, and financial statements of the Association; and

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the properties.

Section 19. Management Agent.

(a) The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 18 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

(b) No management contract may have a term in excess of one (1) year and must permit termination by either party without cause and without termination fee or penalty on ninety (90) days' or less written notice.

Section 20. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed with regard to the annual audit, while the regular monthly accounting shall be on a cash basis;

(b) accounting and controls shall conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise unless it benefits the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(f) commencing at the end of the month in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a variance report reflecting the status of all Association ledger accounts in an "actual" versus "approved" budget format;

(iii) a balance sheet as of the last day of the preceding period; and

(iv) a delinquency report listing all Owners who are delinquent in paying the assessments at the time of the report and describing the status of any action to collect such installments which remain delinquent (A monthly installment of the assessment shall be considered to be delinquent on the fifteenth (15th) day of each month unless otherwise determined by the Board of Directors); and

(g) an annual report as of the end of the fiscal year consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited basis, by an independent certified public accountant for each fiscal year.

Section 21. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the Common Areas or for the purpose of funding budgetary shortfalls, without the approval of the membership; provided, however, the Board shall obtain Voting Member approval by majority vote for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association for that fiscal year.

Section 22. Rights of the Association. With respect to the Common Areas, and in accordance with the Articles of Incorporation and By-Laws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other Owners or residents associations, both within and without the properties. Such agreements shall require the consent of two-thirds (2/3) of all Directors of the Association.

Section 23. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. In the event that any occupant of a Lot violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the

Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder, except the suspension of voting rights for nonpayment of assessments, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested in a timely manner, the hearing before the Covenants Committee shall be held in executive session affording the Owner a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within thirty (30) days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

Article IV Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform

the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the membership, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term. The names and addresses of the first officers of the Association, who shall hold office until the first annual meeting of directors and until successors are duly elected and have taken office, shall be as follows:

<u>Office</u>	<u>Name</u>	<u>Address</u>
President	Ralph R. Teal, Jr.	2002 Oak Street, Suite 200 Myrtle Beach, SC 29577
Vice President	E. Lawton Benton	706 38 th Avenue North Myrtle Beach, SC 29577
Secretary/ Treasurer	J. Carson Benton	706 38 th Avenue North Myrtle Beach, SC 29577

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have the responsibility for the preparation of the budget as provided for in the Declaration.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors. Provided however, agreements, contracts and checks may be executed by the Management Agent.

Article V Committees

Section 1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Section 2. Covenants Committee. In addition to any other committees which may be established by the Board pursuant to Section 1 of this Article, the Board of Directors may appoint a Covenants Committee consisting of at least five (5) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and conduct all hearings held pursuant to Article III, Section 23 of these By-Laws.

Article VI Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with South Carolina law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of South Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration and By-Laws, membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the Properties as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member or Voting Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6. Amendment. Prior to the conveyance of the first Lot, Declarant may unilaterally amend these By-Laws. Thereafter and otherwise, but subject to the provisions hereinafter provided, these By-Laws may be amended only by the affirmative vote (in person or by alternate) or written consent of Voting Members representing sixty-seven (67%) percent of the total votes of the Association, including sixty-seven (67%) percent of the votes of Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Further, no amendment of any provision reserving a right specifically in favor of the Declarant may be amended without the Declarant's express consent. No amendment shall be effective until recorded in the public records of Horry County, South Carolina.

Article VII

INDEMNIFICATION

The Association shall indemnify any person who is made a party or is threatened to be made a party to any claim, suit, proceeding or liability by reason of the fact that he is or was a director, officer, employee, agent or representative of the Association to the fullest extent permitted by law, and the Association may advance expenses to any such person to the fullest extent permitted by law. The Association shall also have the power to purchase and maintain insurance on behalf of any

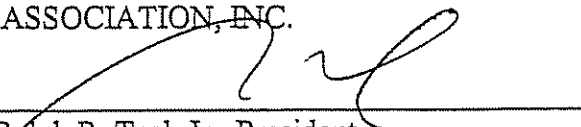
person who is or was a director, officer, employee, agent or representative of the Association against any liability asserted against him in any such capacity.

IN WITNESS WHEREOF, Wild Wing Property Owners' Association, Inc., a South Carolina Corporation, has caused these presents to be executed this 26th day of September, 2006.



Michelle L. Merkle

WILD WING PROPERTY OWNERS'
ASSOCIATION, INC.

By: 
Ralph R. Teal, Jr., President



4/22/13 E-mail

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF HORRY)

AMENDMENT TO DECLARATION OF
PROTECTIVE COVENANTS, RESTRICTIONS
EASEMENTS, CHARGES, AND LIENS FOR
WILD WING PLANTATION

WHEREAS, Wild Wing Company, LLC (hereinafter referred to as "Wild Wing Company"), made and executed that certain Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens for Wild Wing Plantation, dated September 26, 2006 and recorded September 27, 2006 in Deed Book 3164, at Page 361, records of Horry County, South Carolina, as amended (hereinafter referred to as the "Declaration");

WHEREAS, Wild Wing Company assigned all of its rights as the declarant and any other rights it has under the Declaration to SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company, in that certain Assignment of Rights dated December 22, 2010 and recorded December 28, 2010 in Deed Book 3497, at Page 1935, records of Horry County, South Carolina;

WHEREAS, SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company assigned all of its rights as the declarant and any other rights it has under the Declaration to Wild Wing Residential Development, LLC (hereinafter referred to as "Declarant"); in that certain Assignment of Rights dated November 9, 2011 and recorded November 9, 2011, in Deed Book 3550, at Page 3051, records of Horry County, South Carolina.

WHEREAS, a special meeting of Wild Wing Plantation Property Owners' Association, Inc. (Hereinafter referred to as the "Association"), was held pursuant to Article II, Section 5 of the Bylaws of Wild Wing Plantation Property Owners' Association, Inc., (hereinafter referred to as "Bylaws");

WHEREAS, at the special meeting, after notice and with a quorum present, a vote was held and passed pursuant to Article XII, Section 9 of the Declaration, by owners holding not less than two-thirds (2/3) of the total vote of the membership in the Association, to amend the Declaration as set forth herein.

NOW THEREFORE in accordance with the terms and provisions of the Declaration, the Declaration is hereby amended, as follows:

1. Article II, Section 16. Storage Receptacles, is hereby amended and restated as follows:

All fuel tanks or similar storage receptacles larger than twenty (20) pounds shall be buried underground and shall be located no closer to the lot line than the setback requirements.

2. Article IV, Section 3. Voting Rights, Class B, is hereby amended and restated as follows:

Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to total votes in an amount equal to twice the number of the Class A votes plus one. The Class B Membership shall cease and become converted to Class A Membership upon the conveyance to Lot Owners of all Lots subject to this Declaration or December 31, 2022, whichever first occurs. In addition, Declarant may terminate the Class B membership upon written notice to the Association.

RETURN TO
BELLAMY, RUTENBERG, COPELAND
EPFS, GRAVELY & BOWERS, P.A.
POST OFFICE BOX 357
MYRTLE BEACH, SC 29578.
843-448-2400 APM

Instrument#: 2011000119029, DEED BK:
3553 PG: 2358 DOCTYPE: 069 11/23/2011
at 01:11:00 PM, 1 OF 4 BALLERY V.
SKIPPER, HORRY COUNTY, SC
REGISTRAR OF DEEDS

3. Article VI, Section 2. Assessments, Liens and Personal Obligations Therefor, and Operation Maintenance of Common Areas Solely by the Association, subsection (a) is hereby amended and restated as follows:

(a) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses, extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot or Lots at the time when the assessment fell due. Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2016, each Lot within Phase I of the Property shall be exempt, at Declarant's option, from the assessments herein provided for (Both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessment made by the Association against the Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing January 1, 2017, the Declarant shall be subject to assessments as provided for in this Declaration so that it will pay assessments on the same basis provided for in this Declaration for other Lot Owners. In the event that additional phases are subjected to the provisions of this Declaration, then it is declared that until the later of: (1) January 1, 2017; or (10) ten years after the date the amendment or supplemental declarations submitting such additional phase(s) are filed for record in the public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the Lot is conveyed by the Declarant to an Owner other than the Declarant. Until such time as a lot is such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less an amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lots Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.

The provisions contained in this Amendment shall be retroactive and therefore shall be effective as of January 1, 2011.

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be made as of this 22 day of November 2011.

Patty Keyes
Ashley Kooch Clemons

WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.

By: [Signature]
Ralph R. Teal, Jr., Its President

The Declarant executed this Amendment for the purposes of acknowledging and agreeing to the terms and conditions hereof.

Wild Wing Residential Development, LLC, a Delaware Limited Liability Company

By: SLF IV / SBI Properties MM, LLC, a Texas Limited Liability Company, its Manager

By: SB Investments, LLC, a South Carolina Limited Liability Company, its Managing Member

Patty Keyes
Ashley Kooch Clemons

By: [Signature]
Ralph R. Teal, Jr., Co-Manager

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY.)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Wild Wing Plantation Property Owners' Association, Inc. By Raph R. Teal, Jr., Its President, Sign, Seal and as its Act and Deed deliver the within written AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WILD WING PLANTATION; and that s/he with the other witness subscribed above witnessed the execution thereof.

Patty Keyes

SWORN to before me this 22
 day of November, 2011
Ashley P. Smith (L.S.)
 Notary Public for South Carolina
 My Commission Expires: 12/10/14

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY.)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Wild Wing Residential Development, LLC, a Delaware Limited Liability Company, by SLF IV / SBI Properties MM, LLC, a Texas Limited Liability Company, its Manager, by SB Investments, LLC, a South Carolina Limited Liability Company, its Managing Member, by Ralph R. Teal, Jr., Co-Manager, Sign, Seal and as its Act and Deed deliver the within written AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WILD WING PLANTATION; and that s/he with the other witness subscribed above witnessed the execution thereof.

Patty Keyes

SWORN to before me this 22
 day of November, 2011
Ashley P. Smith (L.S.)
 Notary Public for South Carolina
 My Commission Expires: 12/10/14



NOTICE

November 9, 2011

WILD WING PLANTATION POA, INC.

Please be advised that this is your official notice, pursuant to Article II, Section 5 of the By-Laws of the Wild Wing Property Owners' Association, Inc., (hereinafter referred to as the "Association"), that a Special Meeting of the Members of the Association has been called for Monday November 21, 2011 at the Wild Wing Clubhouse in Conway, South Carolina. Registration will begin at 6:00 p.m. and the meeting will be called to order at 6:30 p.m.

The purpose of the meeting is to amend Article II, Section 16, Article IV, Section 3, and Article VI, Section 16 of the Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens for Wild Wing Plantation, dated September 26, 2006 and recorded September 27, 2006 in Deed Book 3164, at Page 361, records of Horry County, South Carolina, as previously amended (hereinafter referred to as the "Declaration"). An agenda of the meeting and a copy of the proposed amendment to the Declaration are attached hereto for your review.

In the event you are unable to attend the meeting, a proxy is enclosed which should be returned prior to the meeting in the enclosed envelope.

Please contact Wright Management if you have any questions. We look forward to seeing you at the meeting.

For the Board of Directors,
WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.

A handwritten signature in black ink, appearing to read 'Jackie W. Wright', is written over a faint, circular embossed seal.

Jackie W. Wright
President
Wright Management

Association Management

P.O. Box 7248 • 306 79th Ave. North • Myrtle Beach, SC 29572
(843) 839-9888 • Fax: (843) 839-9810

WILD WING PLANTATION PROPERTY OWNERS ASSOCIATION, INC.

SPECIAL MEETING

NOVEMBER 21, 2011

A G E N D A

- I. REGISTRATION 6:00 PM
- II. CALL TO ORDER AND WELCOME 6:30 PM
- II. CONFIRMATION OF QUORUM
- III. Discussion of and Voting on amendment to Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation, dated September 28, 2006 and recorded September 27, 2001 in Deed Book 3164, at Page 361, records of Horry County, South Carolina, as previously amended.
- IV. ADJOURNMENT

BALLOT

_____ Approval of the Amendment to Declaration of Protective Covenants, Restrictions,
Easements, Charges, and Liens for Wild Wing Plantation

_____ Disapproval of the Amendment to Declaration of Protective Covenants, Restrictions,
Easements, Charges, and Liens for Wild Wing Plantation

Signature

Printed Name

Lot Number

PROXY

I, _____, the undersigned owner of Lot _____ at Wild wing Plantation do hereby constitute and appoint Ralph R. Teal, Jr., President of the Wild Wing Plantation Property Owners' Association, Inc., to vote as my proxy at the Special Meeting of the Association, to be held on _____, 2011, for the transaction of any business which may legally come before the meeting, and for me and in my name, to act as fully as I could do if personally present; and I herewith revoke any other proxy heretofore given.

WITNESS my hand and seal this _____ day of _____, 2011

Signed: _____

Printed Name: _____

STATE OF SOUTH CAROLINA	)	AMENDMENT TO DECLARATION OF
	)	PROTECTIVE COVENANTS, RESTRICTIONS
	)	EASEMENTS, CHARGES, AND LIENS FOR
COUNTY OF HORRY	)	WILD WING PLANTATION

WHEREAS, Wild Wing Company, LLC (hereinafter referred to as "Wild Wing Company"), made and executed that certain Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens for Wild Wing Plantation, dated September 26, 2006 and recorded September 27, 2006 in Deed Book 3164, at Page 361, records of Horry County, South Carolina, as amended (hereinafter referred to as the "Declaration");

WHEREAS, Wild Wing Company assigned all of its rights as the declarant and any other rights it has under the Declaration to SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company, in that certain Assignment of Rights dated December 22, 2010 and recorded December 28, 2010 in Deed Book 3497, at Page 1935, records of Horry County, South Carolina;

WHEREAS, SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company assigned all of its rights as the declarant and any other rights it has under the Declaration to Wild Wing Residential Development, LLC (hereinafter referred to as "Declarant"); in that certain Assignment of Rights dated November 9, 2011 and recorded November 9, 2011, in Deed Book 3550, at Page 3051, records of Horry County, South Carolina.

WHEREAS, a special meeting of Wild Wing Plantation Property Owners' Association, Inc. (Hereinafter referred to as the "Association"), was held pursuant to Article II, Section 5 of the Bylaws of Wild Wing Plantation Property Owners' Association, Inc., (hereinafter referred to as "Bylaws");

WHEREAS, at the special meeting, after notice and with a quorum present, a vote was held and passed pursuant to Article XII, Section 9 of the Declaration, by owners holding not less than two-thirds (2/3) of the total vote of the membership in the Association, to amend the Declaration as set forth herein.

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Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to total votes in an amount equal to twice the number of the Class A votes plus one. The Class B Membership shall cease and become converted to Class A Membership upon the conveyance to Lot Owners of all Lots subject to this Declaration or December 31, 2022, whichever first occurs. In addition, Declarant may terminate the Class B membership upon written notice to the Association.

3. Article VI, Section 2. Assessments, Liens and Personal Obligations Therefor , and Operation Maintenance of Common Areas Solely by the Association, subsection (a) is hereby amended and restated as follows:

(a) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses, extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot or Lots at the time when the assessment fell due. Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2016, each Lot within Phase I of the Property shall be exempt, at Declarant's option, from the assessments herein provided for (Both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessment made by the Association against the Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing January 1, 2017, the Declarant shall be subject to assessments as provided for in this Declaration so that it will pay assessments on the same basis provided for in this Declaration for other Lot Owners. In the event that additional phases are subjected to the provisions of this Declaration, then it is declared that until the later of: (1) January 1, 2017; or (10) ten years after the date the amendment or supplemental declarations submitting such additional phase(s) are filed for record in the public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the Lots is conveyed by the Declarant to an Owner other than the Declarant. Until such time as a lot is such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less and amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lots Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.

The provisions contained in this Amendment shall be retroactive and therefore shall be effective as of January 1, 2011.

____ IN WITNESS WHEREOF, the undersigned have caused this Amendment to be made as of this ____ day of _____, 2011.

WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.

By: _____
Ralph R. Teal, Jr., Its President

The Declarant executed this Amendment for the purposes of acknowledging and agreeing to the terms and conditions hereof.

Wild Wing Residential Development, LLC, a Delaware Limited Liability Company

By: SLF IV / SBI Properties MM, LLC, a Texas Limited Liability Company, its Manager

By: SB Investments, LLC, a South Carolina Limited Liability Company, its Managing Member

By: _____
Ralph R. Teal, Jr., Co-Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Wild Wing Plantation Property Owners' Association, Inc. By Raph R. Teal, Jr., Its President, Sign, Seal and as its Act and Deed deliver the within written AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WILD WING PLANTATION; and that s/he with the other witness subscribed above witnessed the execution thereof.

 SWORN to before me this _____
 day of _____, 2011
 _____(L.S.)
 Notary Public for South Carolina
 My Commission Expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Wild Wing Residential Development, LLC, a Delaware Limited Liability Company, by SLF IV / SBI Properties MM, LLC, a Texas Limited Liability Company, its Manager, by SB Investments, LLC, a South Carolina Limited Liability Company, its Managing Member, by Ralph R. Teal, Jr., Co-Manager, Sign, Seal and as its Act and Deed deliver the within written AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WILD WING PLANTATION; and that s/he with the other witness subscribed above witnessed the execution thereof.

 SWORN to before me this _____
 day of _____, 2011
 _____(L.S.)
 Notary Public for South Carolina
 My Commission Expires: _____



WILDWING
2011
DEVELOPER ASSESSMENT
EXPOSURE
OPTION 1- ASSESSMENT FUNDING

DEVELOPMENT BUILD OUT	760
LOTS SUBJECT TO ASSESSMENT IN 2011	537
LOTS SOLD AT 12/31/11	<u>337</u>
DEVELOPER OWNED LOTS SUBJECT TO ASSESSMENT	200
QUARTERLY ASSESSMENT	\$ 342.00
NUMBER OF QUARTERS	4
TOTAL ASSESSMENTS	\$ 734,616.00
LESS ASSESSMENTS	<u>\$ 454,707.00</u>
MAX ASSESSMENTS TO DEVELOPER	\$ 279,909.00

LOTS SOLD AT 12/31/11=337
DEVELOPER OWNED LOTS AT 12/31/11=200

OPTION 2 DEFICIT FUNDING

ASSOCIATION INCOME NET OF DEVELOPER CONTRIBUTIONS	\$ 475,979.00	
	<u>\$ -</u>	
TOTAL EXPENSE (NET OF BAD DEBT EXPENSE)	\$ 466,629.00	
ASSOCIATION INCOME(DEFICIT)	<u>\$ 9,350.00</u>	
REQUIRED DEFICIT FUNDING	\$ -	NO DEFICIT
RESERVE FUNDING NOT MADE	<u>\$ (79,603.00)</u>	
REQUIRED FUNDING	\$ 79,603.00	
LESS DEVELOPER CONTRIBUTIONS RECEIVED DURING 2011	<u>\$ (42,569.40)</u>	
AMOUNT DUE FROM DEVELOPER	\$ 37,033.60	

A/R DEVELOPER AT 12/31/10	\$ -
LESS DEVELOPER RECEIPTS DURING 2011	<u>\$ (42,569.40)</u>
	\$ (42,569.40)
ADD 2011 DUE FROM DEVELOPER	<u>\$ 79,603.00</u>
A/R DEVELOPER AT 12/31/11	\$ 37,033.60

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF REVENUES AND EXPENSES
YEARS ENDED DECEMBER 31

	<u>2012</u>	<u>2011</u>
REVENUES		
Member Assessments - Operations	\$ 390,189	\$ 375,104
Member Assessments - Future Repairs And Replacements	79,603	79,603
Initial Assessments	700	800
ARB Income	3,750	4,500
Declarant Contributions	40,570	68,168
Bad Debt Recoveries	11,777	2,087
Interest Income	62	2
Miscellaneous Income	4,398	2,087
Late Fees	2,426	13,883
TOTAL REVENUES	<u>533,475</u>	<u>546,234</u>
EXPENSES		
Grounds Maintenance Agreement	56,687	60,086
Landscape Materials	8,573	17,625
Pool Maintenance And Supplies	129,408	107,748
Clubhouse Maintenance	7,540	10,348
Entrance Maintenance	17,665	14,987
Irrigation Maintenance	1,200	3,772
Road Maintenance Association	33,240	33,245
Termite Treatment And Pest Control	1,295	
General Maintenance	3,476	5,646
Major Repairs And Replacements	24,316	
Management Agreement	20,400	27,162
Insurance	25,236	23,268
Accounting	2,200	2,200
Office Supplies, Printing, And Postage	6,238	2,869
Administrative	3,313	
ARB Expenses	3,205	5,750
Bad Debt Expense	43,784	119,162
Legal Fees	5,808	1,206

0300

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF REVENUES AND EXPENSES
YEARS ENDED DECEMBER 31

	<u>2012</u>	<u>2011</u>
EXPENSES (Continued)		
Taxes And License	36	
Security	1,200	
Electricity	112,274	133,014
Fuel	9,387	6,150
Water And Sewer	6,322	10,059
Telephone	1,613	1,494
TOTAL EXPENSES	<u>524,416</u>	<u>585,791</u>
EXCESS (DEFICIT) OF REVENUES OVER EXPENSES	<u>\$ 9,059</u>	<u>\$ (39,557)</u>

0301

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

FINANCIAL STATEMENTS AND
SUPPLEMENTARY INFORMATION

YEARS ENDED DECEMBER 31, 2011 AND 2010

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

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SUPPLEMENTARY INFORMATION	
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Phillips, Hursey & Farrell, CPA's, LLC

Larry D. Phillips, CPA
Barbara A. Foehrkolb, CPA

Jim W. Corbett, CPA
Diana P. Farrell, CPA

Tele: (843) 249-3334
Fax: (843) 249-1088

Mailing Address:
Post Office Box 3409
North Myrtle Beach, SC 29582

Street Address:
1064 Sea Mountain Highway
North Myrtle Beach, SC 29582

INDEPENDENT AUDITOR'S REPORT

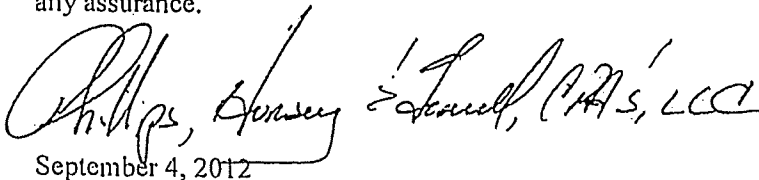
To The Board of Directors and Members of
Wild Wing Plantation Property Owners' Association, Inc.
Conway, South Carolina

We have audited the accompanying balance sheets of Wild Wing Plantation Property Owners' Association, Inc. as of December 31, 2011 and 2010, and the related statements of revenues and expenses, changes in members' equity, and cash flows for the years then ended. These financial statements are the responsibility of the Association's directors and management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Wild Wing Property Owners' Association, Inc. as of December 31, 2011 and 2010, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Accounting principles generally accepted in the United States of America require that the information on future major repairs and replacements on page 9 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Financial Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.


September 4, 2012

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

BALANCE SHEETS
DECEMBER 31

ASSETS

	<u>2011</u>	<u>2010</u>
Cash - Undesignated	\$ 6,178	\$ 13,234
Cash - Designated For Future Repairs And Replacements		116
Cash - ARB Deposits	26,001	21,000
Accounts Receivable - Other	2,596	
Accounts Receivable - Members	136,353	130,984
Accounts Receivable - Declarant	133,195	131,989
Allowance For Doubtful Accounts	(102,977)	(53,545)
Prepaid Income Tax	33	8
Prepaid Insurance	5,034	5,239
TOTAL ASSETS	<u>\$ 206,413</u>	<u>\$ 249,025</u>

LIABILITIES AND MEMBERS' EQUITY

LIABILITIES

Accounts Payable	\$ 46,347	\$ 42,147
ARB Deposits	24,500	21,000
Advanced Assessments - Members	23,731	34,486
TOTAL LIABILITIES		
	94,578	97,633

MEMBERS' EQUITY

Members' Equity - Designated For Future Repairs And Replacements		116
Members' Equity - Undesignated	111,835	151,276
TOTAL MEMBERS' EQUITY		
	111,835	151,392
TOTAL LIABILITIES AND MEMBERS' EQUITY		
	\$ 206,413	\$ 249,025

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF REVENUES AND EXPENSES
YEARS ENDED DECEMBER 31

	<u>2011</u>	<u>2010</u>
REVENUES		
Member Assessments - Operations	\$ 375,104	\$ 353,319
Member Assessments - Future Repairs And Replacements	79,603	79,603
Initial Assessments	800	400
ARB Income	4,500	3,750
Declarant Contributions	68,168	49,407
Bad Debt Recoveries	2,087	947
Interest Income	2	35
Miscellaneous Income	2,087	1,080
Late Fees	13,883	23,419
TOTAL REVENUES	<u>546,234</u>	<u>511,960</u>
EXPENSES		
Grounds Maintenance Agreement	60,086	32,818
Landscape Materials	17,625	26,369
Pool Maintenance And Supplies	107,748	107,788
Clubhouse Maintenance	10,348	14,799
Entrance Maintenance	14,987	20,120
Irrigation Maintenance	3,772	865
Road Maintenance Association	33,245	31,091
General Maintenance	5,646	6,405
Management Agreement	27,162	23,670
Insurance	23,268	24,322
Accounting	2,200	2,200
Office Supplies, Printing, And Postage	2,869	3,133
Administrative		102
ARB Expenses	5,750	575
Bad Debt Expense	119,162	75,088
Legal Fees	1,206	
Taxes And License		245
Electricity	133,014	121,708
Fuel	6,150	7,166
Water And Sewer	10,059	7,496
Telephone	1,494	1,485
TOTAL EXPENSES	<u>585,791</u>	<u>507,445</u>
EXCESS (DEFICIT) OF REVENUES OVER EXPENSES	<u>\$ (39,557)</u>	<u>\$ 4,515</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF CHANGES IN MEMBERS' EQUITY
YEARS ENDED DECEMBER 31

	<u>TOTAL</u>	<u>UNDESIGNATED</u>	<u>DESIGNATED FOR FUTURE REPAIRS AND REPLACEMENTS</u>
Members' Equity January 1, 2010	\$146,877	\$121,136	\$ 25,741
Excess Of Revenues Over Expenses	4,515	4,515	
Allocated to Future Repairs And Replacements			
Assessments		(79,603)	79,603
Unfunded		79,603	(79,603)
Interest		(35)	35
Transfers To Operating	<u> </u>	<u>25,660</u>	<u>(25,660)</u>
Members' Equity December 31, 2010	151,392	151,276	116
Excess (Deficit) Of Revenues Over Expenses	(39,557)	(39,557)	
Allocated to Future Repairs And Replacements			
Assessments		(79,603)	79,603
Unfunded		79,603	(79,603)
Interest		(2)	2
Bank Charges	<u> </u>	<u>118</u>	<u>(118)</u>
Members' Equity December 31, 2011	<u>\$111,835</u>	<u>\$111,835</u>	<u>\$ 0</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF CASH FLOWS
YEARS ENDED DECEMBER 31

	<u>2011</u>	<u>2010</u>
CASH FLOWS FROM OPERATING ACTIVITIES:		
Excess (Deficit) Of Revenues Over Expenses	\$ (39,557)	\$ 4,515
Adjustments To Reconcile Excess (Deficit) Of Revenues Over Expenses To Net Cash Provided By Operating Activities		
(Increase) Decrease In:		
Accounts Receivable	40,261	49,216
Prepaid Expenses	180	313
Increase (Decrease) In:		
Accounts Payable	4,200	14,987
ARB Deposits	3,500	7,000
Advanced Assessments	(10,755)	14,988
Net Cash Provided (Used) By Operating Activities	<u>(2,171)</u>	<u>(7,413)</u>
NET INCREASE (DECREASE) IN CASH	(2,171)	(7,413)
Cash Balance - Beginning Of Year	<u>34,350</u>	<u>41,763</u>
Cash Balance - End Of Year	<u>\$ 32,179</u>	<u>\$ 34,350</u>
SUMMARY OF CASH ACCOUNTS		
Undesignated	\$ 6,178	\$ 13,234
ARB Deposits	26,001	21,000
Designated For Future Repairs And Replacements	0	116
	<u>\$ 32,179</u>	<u>\$ 34,350</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

NOTES TO FINANCIAL STATEMENTS

NOTE 1 - NATURE OF ORGANIZATION

The Wild Wing Plantation Property Owners' Association, Inc. (the "Association") is a non-profit corporation existing under the laws of the State of South Carolina. The purpose of the Association is the administration, maintenance, management, and eventual ownership and control of the common and limited common areas of Wild Wing Plantation, a residential community consisting of five hundred and thirty - seven (537) available single-family lots located in Conway, South Carolina. The Declarant owned two hundred (200) lots at December 31, 2011. The Association incorporated on January 25, 2006.

As per the provisions of the Declaration of Covenants and Restrictions of the Wild Wing Plantation, membership consists of two classes. Class A members are owners of individual lots. The sole Class B member is the project developer. The Class B membership will cease to exist and will be converted to a Class A membership when the first of the following occurs:

- (i) December 31, 2022; or
- (ii) Upon the conveyance to Lot Owners of all Lots subject to the Declaration

The voting rights (both current and future) for each class member are specified within the Association's documents.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Accounts Receivable - Members: Accounts receivable at the balance sheet date represent assessments due from lot owners. The Association's policy is to retain legal counsel and place liens on the lots of members whose assessments become delinquent. An allowance for doubtful accounts has been provided in the financial statements for those accounts management considers uncollectible.

Property, Equipment and Accumulated Depreciation: Real property and common areas acquired from the developer and related improvements to such property are not recorded in the Association's financial statements. Common property elements not recognized as assets in the financial statements currently consist of drives, an entranceway, pools, clubhouse, tennis courts and green areas. The Association will capitalize personal property to which it has title at cost.

Estimates: The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Date of Management's Letter: In preparing the financial statements, the Association has evaluated events and transactions for potential recognition or disclosure through September 4, 2012, the date the financial statements were available to be issued.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

NOTES TO FINANCIAL STATEMENTS

NOTE 3 - CASH

Cash consists of balances on deposit, including interest-bearing deposits, with financial institutions. The Federal Deposit Insurance Corporation (FDIC) insures the balances on deposit at each financial institution up to \$250,000. There were no uninsured balances at December 31, 2011 and 2010.

NOTE 4 - INCOME TAXES

Homeowner associations may be taxed either as homeowners' associations or as regular corporations. For the years ended December 31, 2011 and 2010, the Association elected to file as a homeowner's association in accordance with the Internal Revenue Service Section 528. Under that Section, the Association excludes from taxation exempt function income, which generally consists of revenue from uniform assessments to owners.

On January 1, 2009, the Association adopted the new accounting for uncertainty in income tax guidance, which clarifies the accounting and recognition for tax positions taken or expected to be taken in its income tax returns. The Association's tax filings are subject to audit by various taxing authorities. The Association's federal and state tax returns for 2010, 2009, and 2008 remain open to examination. In evaluating the Association's tax provisions and accruals, the Association believes that its estimates are appropriate based on current facts and circumstances.

NOTE 5 - ASSESSMENTS CHARGED TO LOT OWNERS

Regular Assessments: Association members are subject to quarterly assessments to provide funds for the Association's operating expenses, future capital acquisitions, and major repairs and replacements.

Initial Working Capital Assessments: Upon the closing of an initial sale of a residential lot, new owners are assessed an amount to provide initial operating funds for the Association. This additional assessment is collected at the date of closing.

The annual budget and owners' assessments are determined by the Board of Directors to provide for current operating expenditures and required funds for future major repairs and replacements. The Association retains excess operating funds at the end of the fiscal year, if any, for use in the subsequent fiscal year.

NOTE 6 - DECLARANT ASSESSMENTS/CONTRIBUTIONS

In accordance with the Association's governing documents, the Declarant will be assessed and pay to the Association a sum equal to the actual amount of actual operating expenditures incurred by the Association less an amount equal to the total assessments made by the Association by Lot Owners other than those owned by the Declarant. The actual operating expenditures for this purpose also include any reserves for replacements or operating reserves. The Declarant may also, as its option, elect to pay assessments in the same basis as other Lot Owners as opposed to funding the Association's deficit. Declarant contributions for the years ended December 31, 2011 and 2010 were \$68,168 and \$49,407, respectively.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

NOTES TO FINANCIAL STATEMENTS

NOTE 7 - FUTURE MAJOR REPAIRS AND REPLACEMENTS

The Association's governing documents provide that the Association accumulate funds for future major repairs and replacements of the specific components of common property. The project developer conducted a study to estimate the remaining useful lives and the replacement costs of common property components. The Association will fund for such future major repairs and replacements over the estimated useful lives of the components based on the study's estimates of current replacement costs. Accumulated funds will be held by the Association in a separate bank account and expenditures can be made from these funds only with board of director's approval. Because actual expenditures may vary from estimated future expenditures, and the variations may be material, amounts designated for future major repairs and replacements may not be adequate to meet all future needs for major repairs and replacements. If additional funds are needed, the Association has the right, subject to appropriate approval, to increase regular assessments, pass special assessments, or delay major repairs and replacements until funds are available.

NOTE 8 - RELATED PARTY

For the years ended December 31, 2011 and 2010 the Association's management company performed landscape maintenance, cleaning and ARB services and received \$70,156 and \$54,351, respectively.

SUPPLEMENTARY INFORMATION

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

SUPPLEMENTARY INFORMATION ON FUTURE MAJOR REPAIRS
AND REPLACEMENTS (UNAUDITED)
DECEMBER 31

The Association's management and developer conducted a study to estimate the remaining useful lives and estimated current replacements costs of the components of common property.

The following information is based on the study and presents significant information about the components of common property.

<u>Component</u>	<u>Estimated Remaining Useful Life (Years)</u>	<u>Estimated Current Replacement Cost</u>	<u>2012 Funding Requirement</u>	<u>Designated For Repairs/Replacements 12/31/11</u>
Clubhouse				
Roof	20	\$ 20,000	\$ 1,000	\$ 0
Carpet	5	15,000	3,000	0
Furniture	5	32,500	6,500	0
Televisions	5	3,300	660	0
Pool				
Resurfacing	7	52,500	7,500	0
Fencing	10	38,000	3,800	0
Furniture	5	20,000		
Deck/Painting	5	11,000	2,200	0
Pool House Roof	20	5,000	250	0
Trellis	6	35,000	5,822	0
Signs	5	26,000	5,200	0
Waterfalls	20	250,000	12,500	0
Waterfalls Pumps	7	37,950	5,421	0
Boat Docks	20	375,000	18,750	0
Amenity Signs	5	15,000	3,000	0
		<u>\$ 936,250</u>	<u>\$ 75,603</u>	<u>\$ 0</u>

WILDWING
2012
DEVELOPER ASSESSMENT
EXPOSURE
OPTION 1- ASSESSMENT FUNDING

DEVELOPMENT BUILD OUT	760
LOTS SUBJECT TO ASSESSMENT IN 2012	537
LOTS SOLD AT 12/31/12	<u>345</u>
DEVELOPER OWNED LOTS SUBJECT TO ASSESSMENT	192
QUARTERLY ASSESSMENT	\$ 342.00
NUMBER OF QUARTERS	4
TOTAL ASSESSMENTS	\$ 734,616.00
LESS ASSESSMENTS	<u>\$ 469,791.53</u>
MAX ASSESSMENTS TO DEVELOPER	\$ 264,824.47

LOTS SOLD AT 12/31/12=345
DEVELOPER OWNED LOTS AT 12/31/12=192

OPTION 2 DEFICIT FUNDING

ASSOCIATION INCOME NET OF DEVELOPER CONTRIBUTIONS	\$ 481,120.00	
	<u>\$ -</u>	
TOTAL EXPENSE(NET OF BAD DEBT EXPENSE)	<u>\$ 480,632.00</u>	
ASSOCIATION INCOME(DEFICIT)	\$ 488.00	
REQUIRED DEFICIT FUNDING	<u>\$ -</u>	NO DEFICIT
RESERVE FUNDING NOT MADE	<u>\$ (53,069.00)</u>	

AMOUNT DUE FROM DEVELOPER \$ 53,069.00

A/R DEVELOPER AT 12/31/11	\$ 37,033.60
DEVELOPER RECEIPTS DURING 2012	<u>\$ 12,000.00</u>
REMAINING 12/31/11 A/R	\$ 25,033.60
ADD 2012 DUE FROM DEVELOPER	<u>\$ 53,069.00</u>
A/R DEVELOPER AT 12/31/12	\$ 78,102.60

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF REVENUES AND EXPENSES
YEARS ENDED DECEMBER 31

	<u>2012</u>	<u>2011</u>
REVENUES		
Member Assessments - Operations	\$ 390,189	\$ 375,104
Member Assessments - Future Repairs And Replacements	79,603	79,603
Initial Assessments	700	800
ARB Income	3,750	4,500
Declarant Contributions	40,570	68,168
Bad Debt Recoveries	11,777	2,087
Interest Income	62	2
Miscellaneous Income	4,398	2,087
Late Fees	2,426	13,883
TOTAL REVENUES	<u>533,475</u>	<u>546,234</u>
EXPENSES		
Grounds Maintenance Agreement	56,687	60,086
Landscape Materials	8,573	17,625
Pool Maintenance And Supplies	129,408	107,748
Clubhouse Maintenance	7,540	10,348
Entrance Maintenance	17,665	14,987
Irrigation Maintenance	1,200	3,772
Road Maintenance Association	33,240	33,245
Termite Treatment And Pest Control	1,295	
General Maintenance	3,476	5,646
Major Repairs And Replacements	24,316	
Management Agreement	20,400	27,162
Insurance	25,236	23,268
Accounting	2,200	2,200
Office Supplies, Printing, And Postage	6,238	2,869
Administrative	3,313	
ARB Expenses	3,205	5,750
Bad Debt Expense	43,784	119,162
Legal Fees	5,808	1,206

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF REVENUES AND EXPENSES
YEARS ENDED DECEMBER 31

	<u>2012</u>	<u>2011</u>
EXPENSES (Continued)		
Taxes And License	36	
Security	1,200	
Electricity	112,274	133,014
Fuel	9,387	6,150
Water And Sewer	6,322	10,059
Telephone	1,613	1,494
TOTAL EXPENSES	<u>524,416</u>	<u>585,791</u>
EXCESS (DEFICIT) OF REVENUES OVER EXPENSES	<u>\$ 9,059</u>	<u>\$ (39,557)</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

FINANCIAL STATEMENTS AND
SUPPLEMENTARY INFORMATION

YEARS ENDED DECEMBER 31, 2013 AND 2012

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

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INDEPENDENT AUDITOR'S REPORT

To The Board of Directors and Members of
Wild Wing Plantation Property Owners' Association, Inc.
Conway, South Carolina

Report on the Financial Statements

We have audited the accompanying financial statements of Wild Wing Plantation Property Owners' Association, Inc., which comprise the balance sheets as of December 31, 2013 and 2012, and the related statements of revenues and expenses, changes in members' equity and cash flows for the years then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

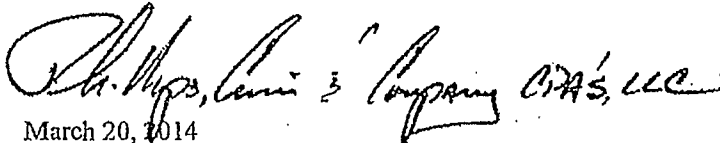
Wild Wing Plantation Property Owners' Association, Inc.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Wild Wing Plantation Property Owners' Association, Inc. as of December 31, 2013 and 2012, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Disclaimer of Opinion on Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the information on future major repairs and replacements on page 11 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Financial Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.


March 20, 2014

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

BALANCE SHEETS
DECEMBER 31

ASSETS		<u>2013</u>	<u>2012</u>
Cash - Undesignated	\$	20,045	\$ 18,539
Cash - Designated For Future Repairs And Replacements		59,369	2,236
Cash - ARB Deposits		34,250	17,001
Accounts Receivable - Other		2,783	2,783
Accounts Receivable - Members		106,328	152,078
Accounts Receivable - Declarant		66,330	161,765
Allowance For Doubtful Accounts		(99,557)	(132,092)
Prepaid Income Tax		33	33
Prepaid Insurance		5,881	5,620
TOTAL ASSETS		<u>\$ 195,462</u>	<u>\$ 227,963</u>
 LIABILITIES AND MEMBERS' EQUITY			
LIABILITIES			
Accounts Payable	\$	17,253	\$ 64,511
ARB Deposits		34,250	17,000
Advanced Assessments - Members		48,367	25,558
TOTAL LIABILITIES		<u>99,870</u>	<u>107,069</u>
 MEMBERS' EQUITY			
Members' Equity - Designated For Future Repairs And Replacements		59,369	2,236
Members' Equity - Undesignated		36,223	118,658
TOTAL MEMBERS' EQUITY		<u>95,592</u>	<u>120,894</u>
TOTAL LIABILITIES AND MEMBERS' EQUITY		<u>\$ 195,462</u>	<u>\$ 227,963</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF REVENUES AND EXPENSES
YEARS ENDED DECEMBER 31

	<u>2013</u>	<u>2012</u>
REVENUES		
Member Assessments - Operations	\$ 369,108	\$ 390,189
Member Assessments - Future Repairs And Replacements	74,773	79,603
Initial Assessments	1,000	700
ARB Income	10,500	3,750
Declarant Contributions		40,570
Legal Fee Reimbursements	7,067	
Bad Debt Recoveries	19,991	11,777
Interest Income	110	62
Miscellaneous Income	3,250	4,398
Late Fees	16,976	2,426
TOTAL REVENUES	<u>502,775</u>	<u>533,475</u>
EXPENSES		
Grounds Maintenance Agreement	33,502	56,687
Landscape Materials	28,972	8,573
Pool Maintenance And Supplies	98,359	129,408
Clubhouse Maintenance	7,743	7,540
Entrance Maintenance	17,760	17,665
Irrigation Maintenance	386	1,200
Lake Maintenance	17,850	
Road Maintenance Association		33,240
Termite Treatment And Pest Control	1,295	1,295
General Maintenance	3,183	3,476
Major Repairs And Replacements	27,001	24,316
Management Agreement	20,400	20,400
Insurance	25,756	25,236
Accounting	2,250	2,200
Office Supplies, Printing, And Postage	7,270	6,238
Administrative	3,757	3,313
ARB Expenses	7,287	3,205
Bad Debt Expense	69,456	43,784
Legal Fees	8,497	5,808

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF REVENUES AND EXPENSES
YEARS ENDED DECEMBER 31

	<u>2013</u>	<u>2012</u>
EXPENSES (Continued)		
Taxes And License	24	36
Security	1,044	1,200
Electricity	123,844	112,274
Fuel	11,769	9,387
Water And Sewer	9,184	6,322
Telephone	1,488	1,613
TOTAL EXPENSES	<u>528,077</u>	<u>524,416</u>
EXCESS (DEFICIT) OF REVENUES OVER EXPENSES	<u>\$ (25,302)</u>	<u>\$ 9,059</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF CHANGES IN MEMBERS' EQUITY
YEARS ENDED DECEMBER 31

	<u>TOTAL</u>	<u>UNDESIGNATED</u>	<u>DESIGNATED FOR FUTURE REPAIRS AND REPLACEMENTS</u>
Members' Equity January 1, 2012	\$111,835	\$111,835	\$ 0
Excess Of Revenues Over Expenses	9,059	9,059	
Allocated to Future Repairs And Replacements			
Assessments		(79,603)	79,603
Unfunded		53,069	(53,069)
Interest		(17)	17
Pool Furniture		4,167	(4,167)
Hot Tub Replaster		5,587	(5,587)
Pool Repair		<u>14,561</u>	<u>(14,561)</u>
Members' Equity December 31, 2012	120,894	118,658	2,236
Excess (Deficit) Of Revenues Over Expenses	(25,302)	(25,302)	
Allocated to Future Repairs And Replacements			
Assessments		(74,773)	74,773
Excess Funding		(9,306)	9,306
Interest		(55)	55
Pool Repairs		<u>27,001</u>	<u>(27,001)</u>
Members' Equity December 31, 2013	<u>\$ 95,592</u>	<u>\$ 36,223</u>	<u>\$ 59,369</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF CASH FLOWS
YEARS ENDED DECEMBER 31

	<u>2013</u>	<u>2012</u>
CASH FLOWS FROM OPERATING ACTIVITIES:		
Excess (Deficit) Of Revenues Over Expenses	\$ (25,302)	\$ 9,059
Adjustments To Reconcile Excess (Deficit) Of Revenues Over Expenses To Net Cash Provided By Operating Activities		
(Increase) Decrease In:		
Accounts Receivable	108,650	(15,367)
Prepaid Expenses	(261)	(586)
Increase (Decrease) In:		
Accounts Payable	(47,258)	18,164
ARB Deposits	17,250	(7,500)
Advanced Assessments	22,809	1,827
Net Cash Provided (Used) By Operating Activities	<u>75,888</u>	<u>5,597</u>
NET INCREASE (DECREASE) IN CASH	75,888	5,597
Cash Balance - Beginning Of Year	<u>37,776</u>	<u>32,179</u>
Cash Balance - End Of Year	<u>\$ 113,664</u>	<u>\$ 37,776</u>
SUMMARY OF CASH ACCOUNTS		
Undesignated	\$ 20,045	\$ 18,539
ARB Deposits	34,250	17,001
Designated For Future Repairs And Replacements	59,369	2,236
	<u>\$ 113,664</u>	<u>\$ 37,776</u>

See accompanying notes to financial statements

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

NOTES TO FINANCIAL STATEMENTS

NOTE 1 - NATURE OF ORGANIZATION

The Wild Wing Plantation Property Owners' Association, Inc. (the "Association") is a non-profit corporation existing under the laws of the State of South Carolina. The purpose of the Association is the administration, maintenance, management, and eventual ownership and control of the common and limited common areas of Wild Wing Plantation, a residential community consisting of five hundred and thirty - seven (537) available single-family lots located in Conway, South Carolina. The Declarant owned one hundred eighty-two (182) lots at December 31, 2013. The Association incorporated on January 25, 2006.

As per the provisions of the Declaration of Covenants and Restrictions of the Wild Wing Plantation, membership consists of two classes. Class A members are owners of individual lots. The sole Class B member is the project developer. The Class B membership will cease to exist and will be converted to a Class A membership when the first of the following occurs:

- (i) December 31, 2022; or
- (ii) Upon the conveyance to Lot Owners of all Lots subject to the Declaration

The voting rights (both current and future) for each class member are specified within the Association's documents.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Accounts Receivable - Members: Accounts receivable at the balance sheet date represent assessments due from lot owners. The Association's policy is to retain legal counsel and place liens on the lots of members whose assessments become delinquent. An allowance for doubtful accounts has been provided in the financial statements for those accounts management considers uncollectible.

Property, Equipment and Accumulated Depreciation: Real property and common areas acquired from the developer and related improvements to such property are not recorded in the Association's financial statements. Common property elements not recognized as assets in the financial statements currently consist of drives, an entranceway, pools, clubhouse, tennis courts and green areas. The Association will capitalize personal property to which it has title at cost.

Estimates: The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Date of Management's Letter: In preparing the financial statements, the Association has evaluated events and transactions for potential recognition or disclosure through March 20, 2014, the date the financial statements were available to be issued.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

NOTES TO FINANCIAL STATEMENTS

NOTE 3 - CASH

Cash consists of balances on deposit, including interest-bearing deposits, with financial institutions. The Federal Deposit Insurance Corporation (FDIC) insures the balances on deposit at each financial institution up to \$250,000. There were no uninsured balances at December 31, 2013 and 2012.

NOTE 4 - INCOME TAXES

Homeowner associations may be taxed either as homeowners' associations or as regular corporations. For the years ended December 31, 2013 and 2012, the Association elected to file as a homeowner's association in accordance with the Internal Revenue Service Section 528. Under that Section, the Association excludes from taxation exempt function income, which generally consists of revenue from uniform assessments to owners.

The Association's tax filings are subject to audit by various taxing authorities. The Association's federal and state tax returns for 2012, 2011, and 2010 remain open to examination. In evaluating the Association's tax provisions and accruals, the Association believes that its estimates are appropriate based on current facts and circumstances.

NOTE 5 - ASSESSMENTS CHARGED TO LOT OWNERS

Regular Assessments: Association members are subject to quarterly assessments to provide funds for the Association's operating expenses, future capital acquisitions, and major repairs and replacements.

Initial Working Capital Assessments: Upon the closing of an initial sale of a residential lot, new owners are assessed an amount to provide initial operating funds for the Association. This additional assessment is collected at the date of closing.

The annual budget and owners' assessments are determined by the Board of Directors to provide for current operating expenditures and required funds for future major repairs and replacements. The Association retains excess operating funds at the end of the fiscal year, if any, for use in the subsequent fiscal year.

NOTE 6 - DECLARANT ASSESSMENTS/CONTRIBUTIONS

In accordance with the Association's governing documents, the Declarant will be assessed and pay to the Association a sum equal to the actual amount of actual operating expenditures incurred by the Association less an amount equal to the total assessments made by the Association by Lot Owners other than those owned by the Declarant. The actual operating expenditures for this purpose also include any reserves for replacements or operating reserves. The Declarant may also, as its option, elect to pay assessments in the same basis as other Lot Owners as opposed to funding the Association's deficit. Declarant contributions for the years ended December 31, 2013 and 2012 were \$0 and \$40,570, respectively.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

NOTES TO FINANCIAL STATEMENTS

NOTE 7 - FUTURE MAJOR REPAIRS AND REPLACEMENTS

The Association's governing documents provide that the Association accumulate funds for future major repairs and replacements of the specific components of common property. The project developer conducted a study to estimate the remaining useful lives and the replacement costs of common property components. The Association will fund for such future major repairs and replacements over the estimated useful lives of the components based on the study's estimates of current replacement costs. Accumulated funds will be held by the Association in a separate bank account and expenditures can be made from these funds only with board of director's approval. Because actual expenditures may vary from estimated future expenditures, and the variations may be material, amounts designated for future major repairs and replacements may not be adequate to meet all future needs for major repairs and replacements. If additional funds are needed, the Association has the right, subject to appropriate approval, to increase regular assessments, pass special assessments, or delay major repairs and replacements until funds are available.

SUPPLEMENTARY INFORMATION

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

SUPPLEMENTARY INFORMATION ON FUTURE MAJOR REPAIRS
AND REPLACEMENTS (UNAUDITED)
DECEMBER 31

The Association's management and developer conducted a study to estimate the remaining useful lives and estimated current replacements costs of the components of common property.

The following information is based on the study and presents significant information about the components of common property.

<u>Component</u>	<u>Estimated Remaining Useful Life (Years)</u>	<u>Estimated Current Replacement Cost</u>	<u>2014 Funding Requirement</u>	<u>Designated For Repairs/Replacements 12/31/13</u>
Clubhouse				
Roof	19	\$ 20,000	\$ 983	\$ 1,331
Carpet	4	15,000	3,501	998
Furniture	4	32,500	7,584	2,163
Televisions	4	3,300	770	220
Pool				
Resurfacing	6	52,500	13,133	0
Fencing	9	38,000	3,941	2,529
Furniture	4	20,000	4,667	1,331
Deck/Painting	4	11,000	2,567	732
Pool House Roof	5	5,000	933	333
Trellis	4	35,000	8,168	2,329
Signs	19	26,000	1,278	1,730
Waterfalls	6	250,000	38,894	16,638
Waterfalls Pumps	6	37,950	5,904	2,526
Boat Docks	19	375,000	18,423	24,957
Amenity Signs	4	15,000	3,500	998
Unallocated				554
		<u>\$936,250</u>	<u>\$114,246</u>	<u>\$ 59,369</u>

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF REVENUES AND EXPENSES
YEARS ENDED DECEMBER 31

	<u>2010</u>	<u>Restated</u> <u>2009</u>
REVENUES		
Member Assessments - Operations	\$ 353,319	\$ 294,899
Member Assessments - Future Repairs And Replacements	79,603	79,603
Initial Assessments	400	600
ARB Income	3,750	4,500
Declarant Contributions	49,407	133,236
Bad Debt Recoveries	947	
Interest Income	35	1,148
Miscellaneous Income	1,080	
Late Fees	23,419	13,304
TOTAL REVENUES	<u>511,960</u>	<u>527,290</u>
EXPENSES		
Grounds Maintenance Agreement	32,818	32,475
Landscape Materials	26,369	23,148
Pool Maintenance And Supplies	107,788	103,045
Clubhouse Maintenance	14,799	11,026
Entrance Maintenance	20,120	17,354
Irrigation Maintenance	865	1,317
Road Maintenance Association	31,091	29,070
General Maintenance	6,405	5,878
Management Agreement	23,670	23,818
Insurance	24,322	25,861
Accounting	2,200	2,000
Office Supplies, Printing, And Postage	3,133	3,242
Administrative	102	283
ARB Expenses	575	37,025
Bad Debt Expense	75,088	21,414
Income Taxes		182
Taxes And License	245	243
Electricity	121,708	118,706
Fuel	7,166	5,340
Water And Sewer	7,496	6,202
Telephone	1,485	1,472
TOTAL EXPENSES	<u>507,445</u>	<u>469,101</u>
EXCESS OF REVENUES OVER EXPENSES	<u>\$ 4,515</u>	<u>\$ 58,189</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

FINANCIAL STATEMENTS AND
SUPPLEMENTARY INFORMATION

YEARS ENDED DECEMBER 31, 2010 AND 2009

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

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INDEPENDENT AUDITOR'S REPORT

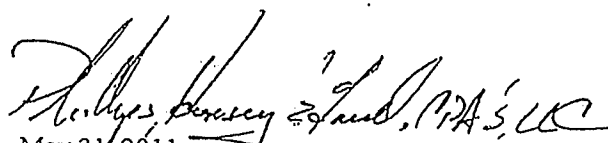
To The Board of Directors and Members of
Wild Wing Plantation Property Owners' Association, Inc.
Conway, South Carolina

We have audited the accompanying balance sheets of Wild Wing Plantation Property Owners' Association, Inc. as of December 31, 2010 and 2009, and the related statements of revenues and expenses, changes in members' equity, and cash flows for the years then ended. These financial statements are the responsibility of the Association's directors and management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Wild Wing Property Owners' Association, Inc. as of December 31, 2010 and 2009, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Accounting principles generally accepted in the United States of America require that the information on future major repairs and replacements on page 9 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Financial Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.


May 31, 2011

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

BALANCE SHEETS
DECEMBER 31

ASSETS

	<u>2010</u>	Restated <u>2009</u>
Cash - Undesignated	\$ 13,234	\$ 2,022
Cash - Designated For Future Repairs And Replacements	116	25,741
Cash - ARB Deposits	21,000	14,000
Accounts Receivable - Members	130,984	79,123
Accounts Receivable - Declarant	131,989	102,581
Allowance For Doubtful Accounts	(53,545)	(21,491)
Prepaid Income Tax	8	
Prepaid Insurance	5,239	5,560
TOTAL ASSETS	\$ 249,025	\$ 207,536

LIABILITIES AND MEMBERS' EQUITY

LIABILITIES

Accounts Payable	\$ 42,147	\$ 26,979
ARB Deposits	21,000	14,000
Income Taxes Payable		182
Advanced Assessments - Members	34,486	19,498
TOTAL LIABILITIES	97,633	60,659

MEMBERS' EQUITY

Members' Equity - Designated For Future Repairs And Replacements	116	25,741
Members' Equity - Undesignated	151,276	121,136
TOTAL MEMBERS' EQUITY	151,392	146,877
TOTAL LIABILITIES AND MEMBERS' EQUITY	\$ 249,025	\$ 207,536

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF REVENUES AND EXPENSES
YEARS ENDED DECEMBER 31

	<u>2010</u>	<u>Restated</u> <u>2009</u>
REVENUES		
Member Assessments - Operations	\$ 353,319	\$ 294,899
Member Assessments - Future Repairs And Replacements	79,603	79,603
Initial Assessments	400	600
ARB Income	3,750	4,500
Declarant Contributions	49,407	133,236
Bad Debt Recoveries	947	
Interest Income	35	1,148
Miscellaneous Income	1,080	
Late Fees	23,419	13,304
TOTAL REVENUES	<u>511,960</u>	<u>527,290</u>
EXPENSES		
Grounds Maintenance Agreement	32,818	32,475
Landscape Materials	26,369	23,148
Pool Maintenance And Supplies	107,788	103,045
Clubhouse Maintenance	14,799	11,026
Entrance Maintenance	20,120	17,354
Irrigation Maintenance	865	1,317
Road Maintenance Association	31,091	29,070
General Maintenance	6,405	5,878
Management Agreement	23,670	23,818
Insurance	24,322	25,861
Accounting	2,200	2,000
Office Supplies, Printing, And Postage	3,133	3,242
Administrative	102	283
ARB Expenses	575	37,025
Bad Debt Expense	75,088	21,414
Income Taxes		182
Taxes And License	245	243
Electricity	121,708	118,706
Fuel	7,166	5,340
Water And Sewer	7,496	6,202
Telephone	1,485	1,472
TOTAL EXPENSES	<u>507,445</u>	<u>469,101</u>
EXCESS OF REVENUES OVER EXPENSES	<u>\$ 4,515</u>	<u>\$ 58,189</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF CHANGES IN MEMBERS' EQUITY
YEARS ENDED DECEMBER 31

	<u>TOTAL</u>	<u>UNDESIGNATED</u>	<u>DESIGNATED FOR FUTURE REPAIRS AND REPLACEMENTS</u>
Members' Equity January 1, 2009	\$ 88,688	\$ 9,085	\$ 79,603
Excess Of Revenues Over Expenses	0	0	
Allocated to Future Repairs And Replacements Assessments		(79,603)	79,603
Unfunded		79,603	(79,603)
Interest		(1,148)	1,148
Transfers To Operating	<u> </u>	<u>55,010</u>	<u>(55,010)</u>
Members' Equity December 31, 2009 - As Previously Stated	88,688	62,947	25,741
Prior Period Adjustment (See Note 9)	<u>58,189</u>	<u>58,189</u>	<u> </u>
Members' Equity December 31, 2009 - As Restated	146,877	121,136	25,741
Excess Of Revenues Over Expenses	4,515	4,515	
Allocated to Future Repairs And Replacements Assessments		(79,603)	79,603
Unfunded		79,603	(79,603)
Interest		(35)	35
Transfers To Operating	<u> </u>	<u>25,660</u>	<u>(25,660)</u>
Members' Equity December 31, 2010	<u>\$ 151,392</u>	<u>\$ 151,276</u>	<u>\$ 116</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF CASH FLOWS
YEARS ENDED DECEMBER 31

	<u>2010</u>	Restated <u>2009</u>
CASH FLOWS FROM OPERATING ACTIVITIES:		
Excess Of Revenues Over Expenses	\$ 4,515	\$ 58,189
Adjustments To Reconcile Excess Of Revenues Over Expenses To Net Cash Provided By Operating Activities		
(Increase) Decrease In:		
Accounts Receivable	(49,216)	(123,520)
Prepaid Expenses	313	494
Increase (Decrease) In:		
Accounts Payable	14,987	7,036
ARB Deposits	7,000	14,000
Advanced Assessments	14,988	(25,813)
Net Cash Provided (Used) By Operating Activities	<u>(7,413)</u>	<u>(69,614)</u>
NET INCREASE (DECREASE) IN CASH	(7,413)	(69,614)
Cash Balance - Beginning Of Year	<u>41,763</u>	<u>111,377</u>
Cash Balance - End Of Year	<u>\$ 34,350</u>	<u>\$ 41,763</u>
SUMMARY OF CASH ACCOUNTS		
Undesignated	\$ 13,234	\$ 2,022
ARB Deposits	21,000	14,000
Designated For Future Repairs And Replacements	116	25,741
	<u>\$ 34,350</u>	<u>\$ 41,763</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

NOTES TO FINANCIAL STATEMENTS

NOTE 1 - NATURE OF ORGANIZATION

The Wild Wing Plantation Property Owners' Association, Inc. (the "Association") is a non-profit corporation existing under the laws of the State of South Carolina. The purpose of the Association is the administration, maintenance, management, and eventual ownership and control of the common and limited common areas of Wild Wing Plantation, a residential community consisting of seven hundred and sixty (760) single-family lots located in Conway, South Carolina. The Declarant owned four hundred thirty (430) lots at December 31, 2010. The Association incorporated on January 25, 2006.

As per the provisions of the Declaration of Covenants and Restrictions of the Wild Wing Plantation, as amended and effective January 1, 2011, membership consists of two classes. Class A members are owners of individual lots. The sole Class B member is the project developer. The Class B membership will cease to exist and will be converted to a Class A membership when the first of the following occurs:

- (i) December 31, 2022,
- (ii) Upon the conveyance to Lot Owners of all Lots subject to the Declaration, or
- (iii) Declarant may terminate the class B membership upon written notice to the Association.

The voting rights (both current and future) for each class member are specified within the Association's documents.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Accounts Receivable - Members: Accounts receivable at the balance sheet date represent assessments due from lot owners. The Association's policy is to retain legal counsel and place liens on the lots of members whose assessments become delinquent. An allowance for doubtful accounts has been provided in the financial statements for those accounts management considers uncollectible.

Property, Equipment and Accumulated Depreciation: Real property and common areas acquired from the developer and related improvements to such property are not recorded in the Association's financial statements because those properties are owned by the individual lot owners in common and not by the Association. Common property elements not recognized as assets in the financial statements currently consist of driveways, an entranceway, pool, clubhouse, and tennis courts. The Association will capitalize personal property to which it has title at cost.

Estimates: The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Date of Management's Letter: In preparing the financial statements, the Association has evaluated events and transactions for potential recognition or disclosure through May 31, 2011, the date the financial statements were available to be issued.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

NOTES TO FINANCIAL STATEMENTS

NOTE 3 - CASH

Cash consists of balances on deposit, including interest-bearing deposits, with financial institutions. The Federal Deposit Insurance Corporation (FDIC) insures the balances on deposit at each financial institution up to \$250,000. There were no uninsured balances at December 31, 2010 and 2009.

NOTE 4 - INCOME TAXES

Homeowner associations may be taxed either as homeowners' associations or as regular corporations. For the years ended December 31, 2010 and 2009, the Association was taxed as a regular corporation. As a regular corporation, membership income is exempt from taxation if certain elections are made, and the Association is taxed only on its non-membership income, such as interest earnings, at regular federal and state corporate rates.

On January 1, 2009, the Association adopted the new accounting for uncertainty in income tax guidance, which clarifies the accounting and recognition for tax positions taken or expected to be taken in its income tax returns. The Association's tax filings are subject to audit by various taxing authorities. The Association's federal and state tax returns for 2009, 2008, and 2007 remain open to examination. In evaluating the Association's tax provisions and accruals, the Association believes that its estimates are appropriate based on current facts and circumstances.

NOTE 5 - ASSESSMENTS CHARGED TO LOT OWNERS

Regular Assessments: Association members are subject to quarterly assessments to provide funds for the Association's operating expenses, future capital acquisitions, and major repairs and replacements.

Initial Working Capital Assessments: Upon the closing of an initial sale of a residential lot, new owners are assessed an amount to provide initial operating funds for the Association. This additional assessment is collected at the date of closing.

The annual budget and owners' assessments are determined by the Board of Directors to provide for current operating expenditures and required funds for future major repairs and replacements. The Association retains excess operating funds at the end of the fiscal year, if any, for use in the subsequent fiscal year.

NOTE 6 - DECLARANT ASSESSMENTS/CONTRIBUTIONS

In accordance with the Association's governing documents, the Declarant will be assessed and pay to the Association a sum equal to the actual amount of actual operating expenditures incurred by the Association less an amount equal to the total assessments made by the Association by Lot Owners other than those owned by the Declarant. The actual operating expenditures for this purpose also include any reserves for replacements or operating reserves. The Declarant may also, as its option, elect to pay assessments in the same basis as other Lot Owners as opposed to funding the Association's deficit. Declarant contributions for the years ended December 31, 2010 and 2009 were \$49,407 and \$133,236, respectively.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

NOTES TO FINANCIAL STATEMENTS

NOTE 7 - FUTURE MAJOR REPAIRS AND REPLACEMENTS

The Association's governing documents provide that the Association accumulate funds for future major repairs and replacements of the specific components of common property. The project developer conducted a study to estimate the remaining useful lives and the replacement costs of common property components. The Association will fund for such future major repairs and replacements over the estimated useful lives of the components based on the study's estimates of current replacement costs. Accumulated funds will be held by the Association in a separate bank account and expenditures can be made from these funds only with board of director's approval. Because actual expenditures may vary from estimated future expenditures, and the variations may be material, amounts designated for future major repairs and replacements may not be adequate to meet all future needs for major repairs and replacements. If additional funds are needed, the Association has the right, subject to appropriate approval, to increase regular assessments, pass special assessments, or delay major repairs and replacements until funds are available.

NOTE 8 - RELATED PARTY

For the years ended December 31, 2010 and 2009 the Association's management company performed landscape maintenance, cleaning and ARB services and received \$54,351 and \$52,084, respectively.

NORE 9 - PRIOR PERIOD ADJUSTMENT

During 2010, the Association discovered that it's previously issued 2009 financial statements understated accounts receivable - Declarant and Declarant contributions by \$58,189. The effect of the adjustment was an increase in revenues over expenses of \$58,189 and a corresponding increase in members' equity - undesignated of \$58,189.

SUPPLEMENTARY INFORMATION

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

SUPPLEMENTARY INFORMATION ON FUTURE MAJOR REPAIRS
AND REPLACEMENTS (UNAUDITED)
DECEMBER 31

The Association's management and developer conducted a study to estimate the remaining useful lives and estimated current replacements costs of the components of common property.

The following information is based on the study and presents significant information about the components of common property.

<u>Component</u>	<u>Estimated Remaining Useful Life (Years)</u>	<u>Estimated Current Replacement Cost</u>	<u>2011 Funding Requirement</u>	<u>Designated For Repairs/Replacements 12/31/10</u>
Clubhouse				
Roof	20	\$ 20,000	\$ 1,000	\$ 1,000
Carpet	5	15,000	3,000	3,000
Furniture	5	32,500	6,500	6,500
Televisions	5	3,300	660	660
Pool				
Resurfacing	7	52,500	7,500	7,500
Fencing	10	38,000	3,800	3,800
Furniture	5	20,000		
Deck/Painting	5	11,000	2,200	2,200
Pool House Roof	20	5,000	250	250
Trellis	6	35,000	5,822	5,822
Signs	5	26,000	5,200	5,200
Waterfalls	20	250,000	12,500	12,500
Waterfalls Pumps	7	37,950	5,421	5,421
Boat Docks	20	375,000	18,750	18,750
Amenity Signs	5	15,000	3,000	3,000
Overallocated			4,000	(49,862)
		<u>\$ 936,250</u>	<u>\$ 79,603</u>	<u>\$ 116</u>

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WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF REVENUES AND EXPENSES
YEARS ENDED DECEMBER 31

	<u>2008</u>	<u>2007</u>
REVENUES		
Member Assessments - Operations	\$ 272,459	\$
Member Assessments - Future Repairs And Replacements	79,603	
Initial Assessments	3,400	15,500
Declarant Contributions	15,328	59,942
Miscellaneous Income	1,080	
Late Fees	1,037	
TOTAL REVENUES	<u>372,907</u>	<u>75,442</u>
EXPENSES		
Grounds Maintenance Agreement	28,735	8,324
Landscape Materials	14,073	445
Pool Maintenance And Supplies	79,863	
Clubhouse Maintenance	10,869	4,280
Entrance Maintenance	11,222	2,325
Irrigation Maintenance	6,449	853
Termite Treatment		1,640
General Maintenance	676	775
Management Agreement	21,612	13,694
Insurance	25,093	18,151
Accounting	1,450	
Office Supplies, Printing, And Postage	3,503	1,561
Administrative	498	
ARB Expenses	15,327	
Bad Debt Expense	4,796	
Taxes And License	230	
Security	2,880	672
Electricity	64,633	18,933
Water And Sewer	3,072	2,594
Telephone	1,464	1,195
TOTAL EXPENSES	<u>296,445</u>	<u>75,442</u>
EXCESS OF REVENUES OVER EXPENSES	<u>\$ 76,462</u>	<u>\$ 0</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

FINANCIAL STATEMENTS AND
SUPPLEMENTARY INFORMATION

YEARS ENDED DECEMBER 31, 2008 AND 2007

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

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INDEPENDENT AUDITOR'S REPORT

To The Board of Directors and Members of
Wild Wing Plantation Property Owners' Association, Inc.
Conway, South Carolina

We have audited the accompanying balance sheets of Wild Wing Plantation Property Owners' Association, Inc. as of December 31, 2008 and 2007, and the related statements of revenues and expenses, changes in members' equity, and cash flows for the years then ended. These financial statements are the responsibility of the Association's directors and management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Wild Wing Property Owners' Association, Inc. as of December 31, 2008 and 2007, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

The supplementary information on future major repairs and replacements on page 9 is not a required part of the basic financial statements but is supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the supplementary information. However, we did not audit the information and express no opinion on it.

Phillips, Hursey & Farrell, CPAs, LLC

July 6, 2009

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

BALANCE SHEETS
DECEMBER 31

ASSETS

	<u>2008</u>	<u>2007</u>
Cash - Undesignated	\$ 31,774	\$ 27,082
Cash - Designated For Future Repairs And Replacements	79,603	
Accounts Receivable - Members	36,340	400
Accounts Receivable - Declarant		18,961
Allowance For Doubtful Accounts	(4,796)	
Prepaid Insurance	<u>6,054</u>	<u>5,434</u>
TOTAL ASSETS	<u>\$ 148,975</u>	<u>\$ 51,877</u>

LIABILITIES AND MEMBERS' EQUITY

LIABILITIES

Accounts Payable	\$ 14,976	\$ 4,729
Advanced Assessments - Members	45,311	34,922
TOTAL LIABILITIES	<u>60,287</u>	<u>39,651</u>

MEMBERS' EQUITY

Members' Equity - Designated For Future Repairs And Replacements	79,603	
Members' Equity - Undesignated	9,085	12,226
TOTAL MEMBERS' EQUITY	<u>88,688</u>	<u>12,226</u>

TOTAL LIABILITIES AND MEMBERS' EQUITY	<u>\$ 148,975</u>	<u>\$ 51,877</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF REVENUES AND EXPENSES
YEARS ENDED DECEMBER 31

	<u>2008</u>	<u>2007</u>
REVENUES		
Member Assessments - Operations	\$ 272,459	\$
Member Assessments - Future Repairs And Replacements	79,603	
Initial Assessments	3,400	15,500
Declarant Contributions	15,328	59,942
Miscellaneous Income	1,080	
Late Fees	1,037	
TOTAL REVENUES	<u>372,907</u>	<u>75,442</u>
EXPENSES		
Grounds Maintenance Agreement	28,735	8,324
Landscape Materials	14,073	445
Pool Maintenance And Supplies	79,863	
Clubhouse Maintenance	10,869	4,280
Entrance Maintenance	11,222	2,325
Irrigation Maintenance	6,449	853
Termite Treatment		1,640
General Maintenance	676	775
Management Agreement	21,612	13,694
Insurance	25,093	18,151
Accounting	1,450	
Office Supplies, Printing, And Postage	3,503	1,561
Administrative	498	
ARB Expenses	15,327	
Bad Debt Expense	4,796	
Taxes And License	230	
Security	2,880	672
Electricity	64,633	18,933
Water And Sewer	3,072	2,594
Telephone	1,464	1,195
TOTAL EXPENSES	<u>296,445</u>	<u>75,442</u>
EXCESS OF REVENUES OVER EXPENSES	<u>\$ 76,462</u>	<u>\$ 0</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF CHANGES IN MEMBERS' EQUITY
YEARS ENDED DECEMBER 31

	<u>TOTAL</u>	<u>UNDESIGNATED</u>	<u>DESIGNATED FOR FUTURE REPAIRS AND REPLACEMENTS</u>
Members' Equity January 1, 2007	\$ 12,226	\$ 12,226	\$ 0
Excess Of Revenues Over Expenses	0	0	
Allocated to Future Repairs And Replacements Assessments Unfunded		(29,836) <u>29,836</u>	29,836 <u>(29,836)</u>
Members' Equity December 31, 2007	12,226	12,226	0
Excess Of Revenues Over Expenses	76,462	76,462	
Allocated to Future Repairs And Replacements Assessments		<u>(79,603)</u>	<u>79,603</u>
Members' Equity December 31, 2008	<u>\$ 88,688</u>	<u>\$ 9,085</u>	<u>\$ 79,603</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

STATEMENTS OF CASH FLOWS
YEARS ENDED DECEMBER 31

	<u>2008</u>	<u>2007</u>
CASH FLOWS FROM OPERATING ACTIVITIES:		
Excess Of Revenues Over Expenses	\$ 76,462	\$ 0
Adjustments To Reconcile Excess Of Revenues Over Expenses To Net Cash Provided By Operating Activities		
(Increase) Decrease In:		
Accounts Receivable	(12,183)	(18,133)
Prepaid Expenses .	(620)	(5,434)
Increase (Decrease) In:		
Accounts Payable	10,247	4,130
Advanced Assessments	10,389	34,922
Net Cash Provided By Operating Activities	<u>84,295</u>	<u>15,485</u>
NET INCREASE IN CASH	84,295	15,485
Cash Balance - Beginning Of Year	<u>27,082</u>	<u>11,597</u>
Cash Balance - End Of Year	<u>\$ 111,377</u>	<u>\$ 27,082</u>
SUMMARY OF CASH ACCOUNTS		
Undesignated	\$ 31,774	\$ 27,082
Designated For Future Repairs And Replacements	79,603	0
	<u>\$ 111,377</u>	<u>\$ 27,082</u>

See accompanying notes to financial statements.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

NOTES TO FINANCIAL STATEMENTS

NOTE 1 - NATURE OF ORGANIZATION

The Wild Wing Plantation Property Owners' Association, Inc. (the "Association") is a non-profit corporation existing under the laws of the State of South Carolina. The purpose of the Association is the administration, maintenance, management, and eventual ownership and control of the common and limited common areas of Wild Wing Plantation, a residential community consisting of seven hundred and sixty (760) single-family lots located in Conway, South Carolina. The Declarant owned four hundred forty (440) lots at December 31, 2008. The Association incorporated on January 25, 2006.

As per the provisions of the Declaration of Covenants and Restrictions of the Wild Wing Plantation, membership consists of two classes. Class A members are owners of individual lots. The sole Class B member is the project developer. The Class B membership will cease to exist and will be converted to a Class A membership when the first of the following occurs:

- (i) December 31, 2015; or
- (ii) Upon the conveyance to Lot Owners of all Lots subject to the Declaration

The voting rights (both current and future) for each class member are specified within the Association's documents.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Accounts Receivable - Members: Accounts receivable at the balance sheet date represent initial assessments due from lot owners. The Association's policy is to retain legal counsel and place liens on the lots of members whose assessments become delinquent. An allowance for doubtful accounts has been provided in the financial statements for those accounts considered uncollectible.

Property, Equipment and Accumulated Depreciation: Real property and common areas acquired from the developer and related improvements to such property are not recorded in the Association's financial statements because those properties are owned by the individual lot owners in common and not by the Association. Common property elements not recognized as assets in the financial statements currently consist of access driveways, an entranceway, pool, clubhouse, boat docks, and tennis courts. The Association will capitalize personal property to which it has title at cost.

Estimates: The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

NOTES TO FINANCIAL STATEMENTS

NOTE 3 - CASH

Cash consists of balances on deposit, including interest-bearing deposits, with financial institutions. The Federal Deposit Insurance Corporation (FDIC) insures the balances on deposit at each financial institution up to \$250,000 at December 31, 2008 and \$100,000 at December 31, 2007. There were no uninsured balances at December 31, 2008 and 2007.

NOTE 4 - INCOME TAXES

Homeowner associations may be taxed either as homeowners' associations or as regular corporations. For the years ended December 31, 2008 and 2007, the Association elected to file as a homeowners' association in accordance with the Internal Revenue Section 528. Under that Section, the Association excludes from taxation exempt function income, which generally consists of revenue from uniform assessments to owners.

NOTE 5 - ASSESSMENTS CHARGED TO LOT OWNERS

Regular Assessments: Association members are subject to quarterly assessments to provide funds for the Association's operating expenses, future capital acquisitions, and major repairs and replacements. No assessments were charged to owners during 2007 at the discretion of the Declarant.

Initial Working Capital Assessments: Upon the closing of an initial sale of a residential lot, new owners are assessed an amount to provide initial operating funds for the Association. This additional assessment is collected at the date of closing.

The annual budget and owners' assessments are determined by the Board of Directors to provide for current operating expenditures and required funds for future major repairs and replacements. The Association retains excess operating funds at the end of the fiscal year, if any, for use in the subsequent fiscal year.

NOTE 6 - DECLARANT ASSESSMENTS/CONTRIBUTIONS

In accordance with the Association's governing documents, the Declarant will be assessed and pay to the Association a sum equal to the actual amount of actual operating expenditures incurred by the Association less an amount equal to the total assessments made by the Association by Lot Owners other than those owned by the Declarant. The actual operating expenditures for this purpose also include any reserves for replacements or operating reserves. The Declarant may also, as its option, elect to pay assessments in the same basis as other Lot Owners as opposed to funding the Association's deficit. At December 31, 2007, the Declarant had contributed \$59,942, of which \$18,961 represented an accounts receivable. This amount was received during 2008.

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

NOTES TO FINANCIAL STATEMENTS

NOTE 7 - FUTURE MAJOR REPAIRS AND REPLACEMENTS

The Association's governing documents provide that the Association accumulate funds for future major repairs and replacements of the specific components of common property. The project developer conducted a study to estimate the remaining useful lives and the replacement costs of common property components. The Association will fund for such future major repairs and replacements over the estimated useful lives of the components based on the study's estimates of current replacement costs. Accumulated funds will be held by the Association in a separate bank account and expenditures can be made from these funds only with board of director's approval. Because actual expenditures may vary from estimated future expenditures, and the variations may be material, amounts designated for future major repairs and replacements may not be adequate to meet all future needs for major repairs and replacements. If additional funds are needed, the Association has the right, subject to appropriate approval, to increase regular assessments, pass special assessments, or delay major repairs and replacements until funds are available. At December 31, 2007, no amenities existed and, as a result, the 2007 budgeted funding for future major repairs and replacements was not made.

NOTE 8 - RELATED PARTY

For the years ended December 31, 2008 and 2007 the Association's management company performed landscape maintenance and received \$28,735 and \$8,324, respectively.

SUPPLEMENTARY INFORMATION

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
CONWAY, SOUTH CAROLINA

SUPPLEMENTARY INFORMATION ON FUTURE MAJOR REPAIRS
AND REPLACEMENTS (UNAUDITED)
DECEMBER 31

The Association's management and developer conducted a study to estimate the remaining useful lives and estimated current replacements costs of the components of common property.

The following information is based on the study and presents significant information about the components of common property.

<u>Component</u>	<u>Estimated Remaining Useful Life (Years)</u>	<u>Estimated Current Replacement Cost</u>	<u>2009 Funding Requirement</u>	<u>Designated For Repairs/Replacements 12/31/08</u>
Clubhouse				
Roof	20	\$ 20,000	\$ 1,000	\$ 1,000
Carpet	5	15,000	3,000	3,000
Furniture	5	32,500	6,500	6,500
Televisions	5	3,300	660	660
Pool				
Resurfacing	7	52,500	7,500	7,500
Fencing	10	38,000	3,800	3,800
Furniture	5	20,000		
Deck/Painting	5	11,000	2,200	2,200
Pool House Roof	20	5,000	250	250
Trellis	6	35,000	5,822	5,822
Signs	5	26,000	5,200	5,200
Waterfalls	20	250,000	12,500	12,500
Waterfalls Pumps	7	37,950	5,421	5,421
Boat Docks	20	375,000	18,750	18,750
Amenity Signs	5	15,000	3,000	3,000
Unallocated				4,000
		<u>\$ 936,250</u>	<u>\$ 75,603</u>	<u>\$ 79,603</u>

1 Q. Was that recommendation rejected?

2 My question to you was, did you ever
3 recommend that to the declarants, that they create
4 a board seat to be occupied by a member, as opposed
5 to by a declarant representative?

6 A. We never requested permission to name an
7 owner to the board.

8 Q. Okay. Were you involved -- directly
9 involved in the creation of the budgets for the
10 Wild Wing POA during your time there?

11 A. I did not take an active role in creating
12 the budgets. I took an active role in reviewing a
13 budget once created, providing input, questions,
14 comments, potential adjustments.

15 It's a process. Takes several months. And
16 then that culminates with the adoption of the
17 budget.

18 Q. And who would actually create the budget?

19 A. I believe it would be a collaborative effort
20 between the finance committee and the property
21 manager; Waccamaw Management at that time.

22 Q. And so even though you didn't create the
23 budgets, would you describe your familiarity with
24 the budgets at the Wild Wing POA as being
25 considerable?

1 I would always, at least once a quarter,
2 look at the finances, which includes our
3 deficit funding obligations at Wild Wing, in
4 this case; so, in that regard, yes, I would
5 review those documents.

6 BY MR. LYLES:

7 Q. And how did you satisfy yourself that the
8 funding obligation was being fulfilled as required
9 by the regime documents?

10 A. It's being fulfilled because we are funding
11 the deficit. We write checks every month to the
12 association to fund our -- the projected shortfall,
13 which is a projection based on the budget that's
14 been adopted in the prior year.

15 We project a shortfall. We divide that
16 by 12, and we write checks every month. So you're
17 going to review the association finances, including
18 all revenues, expenses on a quarterly basis and
19 sometimes more than quarterly. But generally, at
20 least on a quarterly basis, we'll review those.

21 Q. And who's doing the calculations to
22 determine the shortfall?

23 A. Shortfall is a projection, just like -- it's
24 a budget.

25 Q. And you say then the shortfall is, on a

1 monthly or a quarterly basis, divided by 12?

2 A. That's a projected shortfall. You don't
3 know the actual shortfall until probably four
4 months after the year's over, when the audit is
5 done. So that's a look-back.

6 But all shortfalls are a look-forward
7 because you've got to fund. You can't ask the
8 power company to wait. They need to be paid. So
9 you fund on a monthly basis, is what we do.

10 Q. And there were 12 contributors to the
11 shortfall?

12 A. Twelve contributing --

13 Q. Oh, I see. What you're saying is you take
14 the projected shortfall, divide it by 12, as in
15 12 months in the year?

16 A. That's correct.

17 Q. And then the declarant writes a check every
18 month based on that projected shortfall?

19 A. That would be the typical way to do it. I
20 can look back at our cash flows and see that
21 perhaps on one month a check was not cut, but then
22 you'd make it up on the following month or
23 something like that.

24 But the better way to do it, and the typical
25 way that we would do it in most years, is you would

1 do 12 individual checks; one in January, one in
2 February, and so on.

3 Q. Have you spoken to any accountants about
4 Mr. Dyke's view of the funding obligations of the
5 declarant at Wild Wing?

6 A. Have I spoken to an accountant? No.

7 Q. I don't want you to, obviously, tell me
8 anything that you've discussed with Mr. Miller or
9 anybody at his law firm, but what have you done,
10 independent of talking to Mr. Miller and his
11 lawyers, to satisfy yourself that Mr. Dyke is wrong
12 in his view of the funding obligations of the
13 declarant?

14 A. Well, I've read the documents, and I
15 understand the documents can be interpreted
16 different ways. I have no qualms with that.

17 I read the documents and interpret them and
18 fully believe that we followed the documents
19 properly and conducted the business of the
20 association properly.

21 Q. But you believe that based on your
22 experience, not because you were --

23 A. Based on my experience.

24 Q. Okay. That's not because an accountant has
25 told you that?

1 to be released."

2 Did I read that correctly?

3 **A.** Yes, sir.

4 Q. Who is the association's representatives
5 that you've got in quotes?

6 **A.** Whoever was speaking on behalf of the
7 association as the board or finance committee
8 sometime, who -- I mean, I don't know their exact
9 titles at that point in time. But representatives
10 from the HOA would review the financials with --
11 with me and, of course, a representative from
12 Waccamaw Management.

13 Q. And the issue is treatment of bad debt
14 expense, correct?

15 **A.** For the calculation, yes.

16 Q. Okay. Do you ever remember there being
17 anybody from the association, other than Mr. Dykes,
18 who disagreed about bad debt treatment?

19 **A.** No, sir.

20 Q. Mr. Dykes only?

21 **A.** Only.

22 Q. So where -- in this document, when you're
23 referring to the association's representatives
24 disagreeing, you're talking about Mr. Dykes?

25 **A.** Yeah.

10:33AM

10:33AM

10:33AM

10:34AM

10:34AM

- 1 A. No.
- 2 Q. Officer?
- 3 A. No.
- 4 Q. Did you pay dues?
- 5 A. Yes.
- 6 Q. Were you subject to special assessments?
- 7 A. Yes.
- 8 Q. When did you buy into the Wild Wing project?
- 9 A. 2013.
- 10 Q. And have you been active in that property
- 11 owners' association?
- 12 A. Yes, I have.
- 13 Q. When did you become active in that POA?
- 14 A. 2014.
- 15 Q. And what did that consist of?
- 16 A. At the annual meeting in 2014, I was
- 17 appointed to the finance committee.
- 18 Q. And do you know when the annual meeting is
- 19 held?
- 20 A. Sometime in April.
- 21 Q. Did you miss the meeting and get appointed
- 22 in your absence, or did you volunteer?
- 23 A. No. I was present.
- 24 Q. Did you volunteer to serve?
- 25 A. Mrs. Eisenhardt volunteered me.

6/25/2020

C. BARRY DYKES

ELECTRONICALLY FILED - 2020 Sep 24 11:10 AM - Horry - COMMON PLEAS - CASE#2017CP2604187

1 ownership interest in any of the lots at the
2 development?

3 A. I am not aware of -- we're talking about Schultz,
4 Taylor and Plankers?

5 Q. That's right.

6 A. I am not aware of any of them owning any lots
7 here.

8 Q. Okay. And is there any -- any way that you
9 believe that my clients personally were unjustly
10 enriched as a result of their roles as members of
11 the board of the HOA?

12 A. As I said before, I don't know how their
13 compensation or other arrangements worked with
14 Founders, but I have no knowledge of how they
15 were compensated.

16 Q. So the answer to my question would be no, you
17 don't have any knowledge of my clients being
18 unjustly enriched?

19 A. I do not, no.

20 Q. Let me ask you, I want to make sure I understand
21 your position with regards to some of the
22 concepts we've already talked about. And I've
23 sort of reformulated a couple of things into a
24 few sentences I want to run by you and see if
25 I've captured your position accurately, okay?

6/25/2020

C. BARRY DYKES

ELECTRONICALLY FILED - 2020 Sep 24 11:10 AM - Horry - COMMON PLEAS - CASE#2017CP2604187

1 A. Okay.

2 Q. You don't believe that it is permissible for a
3 declarant to include provisions in the covenants
4 and declarations that operate to the benefit of
5 the declarant if, as a result, the general
6 membership is disadvantaged in some way. Did I
7 get that right?

8 A. I think that's accurate. What I'm saying is that
9 you have to put the interests of the membership
10 above the interests of the declarant. But that
11 doesn't mean that you can't -- if they're both --
12 that doesn't mean that they're always on opposite
13 sides. In other words, something can be in the
14 interest of the declarant that is also in the
15 interest of the membership.

16 Q. Right. But under your view of how all this
17 works, it would be impermissible for a declarant
18 to insert a provision in the covenants that
19 clearly benefitted the declarant and acted to the
20 disadvantage of the general membership. If
21 that's put out in plain language in the
22 declaration and included in the master deed and
23 your deed references that provision and you make
24 the election to buy property there, then you
25 don't believe that you as an individual owner

6/25/2020

BARBARA EISENHARDT

ELECTRONICALLY FILED - 2020 Sep 24 11:10 AM - Horry - COMMON PLEAS - CASE#2017CP2604187

1 fiduciary duty to the association?

2 A. I think that I would just reinforce the part
3 relative to something that Barry Dykes already
4 alluded to, and that was just as an example, with
5 the lot mowing in the neighborhood. I mean I
6 remember specifically being at the board meeting
7 that it was brought up that residents were
8 complaining that they wanted more frequency with
9 the empty lot mowing, and Mr. Edwards said,
10 "We're -- we -- we are never going to vote to
11 approve that because I own too many lots there
12 and I'm not paying to mow any more often than I
13 already do."

14 Q. Okay. Other than that, are there any other
15 examples or things that come to mind that haven't
16 been mentioned today or in your last deposition?

17 A. That's the only thing I can think of right now.

18 Q. Okay. Going through my notes very quickly. Do
19 you have any specific evidence or information
20 that my clients were personally unjustly enriched
21 at the expense of the HOA?

22 A. Well, I don't have any evidence that he wasn't.

23 Q. But do you have any evidence that they were?

24 A. No.

25 Q. Mr. Dykes was asked in his deposition earlier

6/25/2020

BARBARA EISENHARDT

ELECTRONICALLY FILED - 2020 Sep 24 11:10 AM - HORRY - COMMON PLEAS - CASE#2017CP2604187

1 about the cause of action for alter ego,
2 amalgamation, and veil piercing. And I think he
3 testified that the only evidence he has of those
4 claims as it pertains to Mr. Teal and Mr. Black
5 was from prior deposition testimony and some
6 newspaper articles. Are you aware of any other
7 additional evidence as to that cause of action
8 that hasn't been mentioned or identified today?

9 A. Not off the top of my head.

10 Q. Okay. I think that's all I have for you. Thank
11 you very much for your time.

12 A. You're welcome.

13 MR. ROLLINS: Nothing further from me.

14 MR. CROWL: I'm good, too.

15 (There being nothing further, the deposition concluded at
16 1:57 p.m.)

17

18

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25

1 A. Don't ask.

2 MR. LYLES: You get one of those per
3 deposition.

4 (Off-the-record conference.)

5 BY MR. MILLER:

6 Q. Because of your purchase of the lot in 2008,
7 are you keenly aware that we went through a real
8 estate depression?

9 A. I am.

10 Q. And did the properties at Wild Wing suffer
11 in value as a result?

12 A. Yes.

13 Q. And did that recession affect all aspects of
14 the development of Wild Wing, to your knowledge?

15 A. I have no idea.

16 Q. When did you become active in the
17 association at Wild Wing? Let me approach that two
18 ways.

19 When did you formally become active by
20 appointment to a committee or a board or something
21 of that nature?

22 A. I think 2012.

23 Q. And is that when you were appointed to the
24 finance committee?

25 A. Yes.

1 changing the date, not just here's the benefits for
2 you guys, because it was totally misrepresented.

3 Q. Anything else?

4 A. Well, I think, also, that they would have
5 asked at that time for us to vote on something with
6 the caveat that we could vote or not vote. It
7 wouldn't really matter because they had two times
8 plus one more votes than we did, so it didn't
9 really matter how we voted anyway. They got to
10 make the decision.

11 Q. There was a vote held, was there not?

12 A. I don't remember if there was or not.

13 Q. If I told you that there was a vote held and
14 that it was unanimously in favor and that your
15 attendance was noted, could you dispute that?

16 A. If it's in the record, then I would agree
17 that the record would be reflected correctly.

18 Q. Okay.

19 A. And I would just like to add that based on
20 the explanation from the developer/board member,
21 that it was explained in such a way that it was so
22 financially in our best interests for them not to
23 turn it over when they were originally supposed to,
24 it makes sense that that would be what the record
25 would reflect. That if there was a vote that

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL
	)	CIRCUIT
		C/A NUMBER: 2017-CP-26-04187
C. BARRY DYKES AND BARBARA	)	
EISENHARDT, INDIVIDUALLY AND	)	
DERIVATIVELY ON BEHALF OF THE	)	
WILD WING PLANTATION PROPERTY	)	
OWNERS' ASSOCIATION, INC.,	)	
	)	Defendants Wild Wing Company, LLC;
PLAINTIFFS,	)	Sunstar, LLC; SLF IV/SBI Wild Wing,
VS.	)	LLC; SLF IV/SBI JV, LLC; SLF IV/SBI
WILD WING COMPANY, LLC;	)	Properties MM, LLC; SLF IV/SBI
SUNSTAR, LLC; RALPH R. TEAL, JR.;	)	Development Holdings, LLC; Wild Wing
SLF IV/SBI WILD WING, LLC; SLF	)	Residential Development, LLC; SB
IV/SBI JV, LLC; SLF IV/SBI PROPERTIES	)	Investments, LLC; Realstar
MM, LLC; SLF IV/SBI DEVELOPMENT	)	Management, LLC; Founders Wild
HOLDINGS, LLC; WILD WING	)	Wing, LLC; Founders Group
RESIDENTIAL DEVELOPMENT, LLC;	)	International, LLC; and Dan Liu's
STRATFORD LAND MANAGER, L.P.	)	
D/B/A STRATFORD LAND;	)	
STRATFORD LAND FUND IV, L.P.; SB	)	
INVESTMENTS, LLC; REALSTAR	)	
MANAGEMENT, LLC; GRAEME T.	)	
BLACK; H. GILFORD EDWARDS;	)	<u>Motion for Partial Summary Judgment</u>
FOUNDERS WILD WING, LLC;	)	<u>on the Business Judgment Rule</u>
FOUNDERS GROUP INTERNATIONAL,	)	
LLC; DAN LIU; XIAN "NICK" DOU;	)	
RICK SCHULTZ; RICK TAYLOR; AND	)	
THOMAS PLANKERS,	)	
	)	
DEFENDANTS.	)	
WILD WING PLANTATION OWNERS'	)	
ASSOCIATION, INC.	)	
	)	
NOMINAL DEFENDANT.	)	

Defendants bring this Motion on the Business Judgment Rule seeking an Order for Partial Summary Judgment on Plaintiffs' claims related to the Math. Plaintiffs claim Declarants failed to correctly calculate the Math. The Math was calculated by the joint efforts of the POA accountant, the POA property manager, and the POA Finance Committee, not the Declarants. The Board of Directors of the POA acted reasonably and within its scope of authority in determining the Math as advised by the POA accountant, property manager, and Finance

Committee. The business judgment rule operates to preclude judicial review of the determination of the Math.

CASE SUMMARY

Wild Wing Plantation is a residential golf community situate within the City of Conway, South Carolina. Wild Wing Plantation Property Owners Association (hereinafter the “POA”) was established in 2006 by Defendant, Wild Wing Company, LLC. The POA was incorporated and organized as a Non-Profit Entity.¹

I. Declarant Succession

Wild Wing Company, LLC was the initial Developer and therefore served as the initial Declarant. There have since been three successor Declarants. The Declarant succession is as follows:

Declarant	Dates
Wild Wing Company, LLC	09/26/06 – 12/22/10
SLF IV/SBI Wild Wing, LLC	12/22/10 – 11/09/11
Wild Wing Residential Development, LLC	11/09/11 – 04/13/15
Founders Wild Wing, LLC	04/13/15 – Present

¹ Articles of Incorporation. Defendants (CCS) 0458-59. Attached hereto as Exhibit A.

The initial development of this community by Wild Wing Company, LLC in late 2006/early 2007 proved to be unfortunate timing as the Great Recession hit soon thereafter. Wild Wing Company, LLC held on as long as it could before The National Bank of South Carolina (NBSC) threatened foreclosure proceedings in 2010.² As a result, the individuals involved in Wild Wing Company, LLC joined with new investors to form the SLF IV/SBI entities.³ This group bought the note from NBSC and accepted a Deed in Lieu of Foreclosure to save Wild Wing Plantation and other projects throughout the Grand Strand.⁴ For each community this group bought, an entity was organized. The entity for the Wild Wing project was SLF IV/SBI Wild Wing, LLC, which became the second Declarant. A separate entity, Wild Wing Residential Development, LLC, was established in 2011 so that SLF IV/SBI Wild Wing could focus on managing the golf course while Wild Wing Residential Development focused on the development of the community. SLF IV/SBI Wild Wing, LLC assigned its Declarant rights to Wild Wing Residential Development, LLC, which became the third Declarant.

In 2015, SLF IV/SBI Wild Wing, LLC and Wild Wing Residential, LLC sold the Wild Wing property to an unrelated entity to continue the project. Founders Wild Wing, LLC purchased the Wild Wing development and became the fourth Declarant. Founders Wild Wing, LLC still serves as Declarant today.

Declarants' rights were transferred by written Assignments.⁵ There were no assumptions of Declarant contingent liabilities.

² Teal 13:4-12. Attached hereto as Exhibit B.

³ Id. Attached hereto as Exhibit B.

⁴ Id. at 13:21 – 14:9. Attached hereto as Exhibit B.

⁵ Assignment of Rights from Wild Wing Company, LLC to SLF IV/SBI Wild Wing, LLC BLF-WW-1423-30; Assignment of Rights from SLF IV/SBI Wild Wing, LLC to Wild Wing Residential Development, LLC BLF-WW-1529-31; Assignment of Rights from Wild Wing Residential Development, LLC to Founders Wild Wing, LLC BLF-WW-1590-1600. Attached hereto as Exhibit C.

II. Administration of the POA

Wild Wing Company, LLC incorporated and organized the POA in 2006 as a Non-Profit entity. A Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation (hereinafter the “Declaration”) was filed of record September 27, 2006, although actual operations did not get underway until 2007.⁶ The Declaration governs the administration of the POA. Membership in the POA is automatic upon purchasing a lot.

Pursuant to the Declaration, a Board of Directors is appointed by the Declarant to govern the affairs of the POA.⁷ Once these Directors are appointed to the POA Board, they take on a duty to the POA in their capacity as Board members.⁸ The Declaration provides that the POA Board is vested with certain powers and duties to administer the affairs of the POA.⁹ As a means to assist the Board with these numerous responsibilities, the Board has the ability to hire management agents and professionals, as well as establish committees comprised of POA lot owner members.¹⁰

The POA Board of Directors initially hired Wright Management and later Waccamaw Management to assist in management of the community. One of the main functions of these property management companies was to assist with the accounting and financial responsibilities, one specific duty being preparation of the proposed annual budget.¹¹

The POA Board of Directors, upon recommendation from the property management company, hired Phillips, Currin & Company, CPAs, LLC to audit the annual financials, calculate the Declarant dues obligations, and perform other financial responsibilities.¹² The Board of

⁶ Declaration Defendants (CCS) 0420-76. Attached hereto as Exhibit D.

⁷ By-Laws Art. III, A Defendants (CCS) 0464. Attached hereto as Exhibit D.

⁸ Courtney 31:6-10. Attached hereto as Exhibit E.

⁹ By-Laws Art. III, C. Defendants (CCS) 0468-72. Attached hereto as Exhibit D.

¹⁰ Id. Attached hereto as Exhibit D.

¹¹ Courtney 10:13-18. Attached hereto as Exhibit E; Skirchak 45:14 – 46:5. Attached hereto as Exhibit F.

¹² Corbett 20:11-24. Attached hereto as Exhibit G.

Directors later replaced Phillips, Currin & Company with Deborah M Weir, CPA, LLC (on recommendation of Plaintiff Dykes)¹³ who assumed these same roles with the exception of the calculation of the Declarant dues obligation. That duty was transferred to the property management company. CPA Jim Corbett was the individual assigned to the Wild Wing account at both Phillips, Currin & Company and Deborah M Weir, as he changed firms with the account. Mr. Corbett and Plaintiff Dykes are the primary players in this dispute.

The Finance Committee is made up of members of the POA, including Plaintiffs Dykes and Eisenhardt, and assisted with all of these functions by providing review and recommendations.¹⁴

III. Financial Condition of the POA

Prior to the start of each year, the property manager presented a proposed budget to the Finance Committee.¹⁵ The Finance Committee and the property manager would go over the budget line by line.¹⁶ Once the budget was agreed upon, it was presented to the POA Board of Directors for approval.¹⁷ One of the line items in the budget was an Income item marked “Developer Contribution.” As with the other line items of the budget, “Developer Contribution” is first proposed by the property manager then reviewed with input from the Finance Committee before being approved by the POA Board of Directors.

The “Developer Contribution” is included in the budget to help keep dues of the Members constant. Dues and Developer Contribution are intended to offset expenses to create a

¹³ Skirchak 43:8-18. Attached hereto as Exhibit F.

¹⁴ Finance Committee Charter. BLF-WW-118-20. Attached hereto as Exhibit H.

¹⁵ Skirchak 45:14 – 46:5. Attached hereto as Exhibit F.

¹⁶ Id. at 40:24 – 41:2. Attached hereto as Exhibit F.

¹⁷ Id. Attached hereto as Exhibit F.

net zero budget, as is usual practice and consistent with all associations managed by Waccamaw Management.¹⁸ Upon POA approval of the budget, the property manager would inform the Declarant of its requested contribution and the Declarant typically paid in monthly or quarterly installments.¹⁹ This practice has been in place throughout the life of Wild Wing Plantation.

Despite the net zero budget, the POA has operated with a surplus of funds since 2014. In addition to this operating surplus:

- Lot owner dues have stayed consistent from 2006 to date;
- No special assessments have ever been levied from 2006 to date;
- No POA bills have ever gone unpaid; and
- The Reserve Fund of the POA is fully funded.²⁰

Wild Wing Plantation is a financially sound and well managed community.

IV. Plaintiffs' Claims

Despite the strong financial condition of the POA, Plaintiffs bring this lawsuit demanding Declarants pay additional monies to the POA. These two Plaintiffs allege failure of the four Declarants to pay POA dues in accordance with the Declaration. Plaintiffs' claims have two bases:

1. Plaintiffs contest the POA's math as to how the Declarant annual contribution to the POA, if any, is calculated; and
2. Plaintiffs contest two Amendments adopted by the POA extending the time frame within which the Declarant payment options exist, despite Plaintiff Eisenhardt having voted in favor of the first Amendment and Plaintiff Dykes having bought subsequently with record notice of the first Amendment. Many other POA Members bought subsequent to both Amendments being adopted and recorded of public record.

¹⁸ Atkinson 35:14-21. Attached hereto as Exhibit I.

¹⁹ Skirchak 48:15-18. Attached hereto as Exhibit F; Atkinson 36:18-22. Attached hereto as Exhibit I.

²⁰ Dykes Dec. 5, 2018 29:12 – 30:16. Attached hereto as Exhibit J; Atkinson 50:6-12. Attached hereto as Exhibit I; Superior Reserve Study Defendants (CCS) 0553-632. Attached hereto as Exhibit K.

Plaintiffs are two lot owners within Wild Wing Plantation. Plaintiff Eisenhardt purchased her lot in 2007.²¹ Plaintiff Dykes purchased his lot in 2013.²² Plaintiffs presume to represent all members of the POA derivatively. Plaintiffs make this presumption despite the fact that Plaintiffs and other members of the POA are not similarly situated to one another. Just as these two Plaintiffs purchased at different times, virtually all members of the POA purchased at different times. Each member has thus paid a different amount of dues over different years depending on when they purchased. Additionally, some members were part of the POA for the vote on each Amendment and many cast votes in favor of one or more of the Amendments (including Plaintiff Eisenhardt).²³ Others (including Plaintiff Dykes) purchased after the disputed Amendments were adopted and filed in the Public Records of Horry County, South Carolina. These Members were on record notice of these Amendments at the time of their purchase. Each member of the POA has different interests, yet Plaintiffs claim to be similarly situated with all of them.

A. The Math

The Declaration provides the Declarant two options to assist in funding the POA. The Declarant could (1) pay regular assessments for each lot it owned, or (2) the Declarant could pay what is referred to as “the shortfall”. Making up the shortfall is a mechanism to ensure that any deficit of revenues over expenses gets funded and the POA is able to pay its bills. The Declaration provides a formula for the funding of the shortfall in Wild Wing.

²¹ Eisenhardt Dec. 5, 2018 10:7-8. Attached hereto as Exhibit L.

²² Dykes Dec. 5, 2018 14:8-9. Attached hereto as Exhibit J.

²³ Eisenhardt June 25, 2020 34:19-23. Attached hereto as Exhibit L.

However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, *a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made by the Association against Owners of Lots other than those owned by the Declarant.* The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. *(Emphasis added)*²⁴

The “actual amount of actual operating expenditures incurred” unambiguously refers to the actual payment of an expense. These words do not include “paper expenses” such as depreciation or bad debt.²⁵ The CFO of Waccamaw Management testified that in 26 years of working with countless associations, she has never seen bad debt included.²⁶

Plaintiffs’ case centers on Mr. Dykes’ belief that bad debt should be included in the formula as an expense.²⁷ The bad debt at issue is the result of lot owners who did not pay their dues.²⁸ The issue over bad debt originated from a dispute between Plaintiff Dykes and the POA auditing accountant, Jim Corbett. On April 28, 2015, the POA Finance Committee met with Mr. Corbett to review the 2014 annual audit. Despite his recent appointment to the Finance Committee, Mr. Dykes took issue with the accountant’s calculation of the developer contribution. Mr. Dykes’ issue was that the calculation did not include bad debt as an “actual amount of actual operating expenditures incurred”.²⁹ In response, the POA Finance Committee commissioned Mr. Corbett to review the formula and the calculation such that the Finance Committee could make a sound decision based upon expert advice and opinion. Mr. Corbett reviewed the Declaration, discussed the issue with other CPAs, consulted GAAP, and met with

²⁴ Declaration Article VI, Section 2. Defendants (CCS) 0436-37. Attached hereto as Exhibit D.

²⁵ Corbett 50:4-10. Attached hereto as Exhibit G; Atkinson 23:4-14. Attached hereto as Exhibit I.

²⁶ Atkinson 23:4-20. Attached hereto as Exhibit I.

²⁷ Dykes Dec. 5, 2018 42:1-16. Attached hereto as Exhibit J.

²⁸ *Id.* at 86:22-23. Attached hereto as Exhibit J.

²⁹ Finance Committee Minutes May 12, 2015. Plaintiff 000251-53. Attached hereto as Exhibit M.

the CFO of Waccamaw Management.³⁰ As a result of his investigation and review, Mr. Corbett concluded that his original determination to exclude bad debt was correct. Mr. Corbett explained to Mr. Dykes that bad debt represents the unpaid assessments of other lot owners and including bad debt would charge the Declarant for the unpaid assessments of the members.³¹ The Finance Committee agreed with Mr. Corbett over Mr. Dykes' sole objection.

Two years later, Plaintiffs brought this lawsuit on the basis that Defendants failed to properly fund the POA because bad debt was not included as an "actual amount of actual operating expenditures incurred". As explained by Mr. Corbett, the bad debt Plaintiffs seek to include are the unpaid dues of other Members of the POA. In other words, Plaintiffs have filed a derivative action on behalf of dissimilar POA Members seeking to charge the Declarants with the very dues the POA Members themselves failed to pay. Furthermore, Plaintiffs seek damages from Defendants under this theory dating all the way back to 2008.

B. The Amendments

The Declaration specifically provides a process for amending.³² In both 2011 and 2016, the Declaration was amended pursuant to and in accordance with the procedure required by the Declaration. These Amendments extended the period of time the Declarant would enjoy the option to pay contributions according to the formula set forth in the Declaration.

Due to the Great Recession that substantially slowed development in Wild Wing Plantation, the community had very few constructed homes at the time of the Amendments. These Amendments were necessary to ensure the community continued its growth and to ensure

³⁰ Corbett 31:20 – 32:18, 36:7-25. Attached hereto as Exhibit G.

³¹ Corbett Email April 30, 2015 Plaintiff 000144-45. Attached hereto as Exhibit N.

³² Declaration Art. XII, Sec. 9 Defendants (CCS) 0450. Attached hereto as Exhibit D.

the stability of the POA. The Amendments made the property more marketable to builders who came in to continue development. This ultimately led to more homeowners in the community, benefitting the Declarant, the POA, and each individual lot owner.³³

Plaintiffs complain that the Amendments were unfair to the Members of the POA and only benefitted the Declarants. Plaintiffs fail to grasp the benefits the Amendments served to the community as a whole. This misunderstanding stems from the fact that Plaintiffs are not developers, they do not understand the process of developing a community, and they have not sought the opinion of any expert in this field. Declarants are developers with years of experience developing numerous communities. Declarants understand what is necessary to develop a successful community. The Amendments were necessary for the success of Wild Wing.

i. The 2011 Amendment

In 2011, the POA gave Notice that a Special Meeting of the Members was being called.³⁴ The Notice explained that the purpose of the meeting was to amend the Declaration. The Notice included a copy of the Amendment for each Member's review. On November 21, 2011, the Special Meeting of the Members was held. After Notice, and with a quorum present, a vote was held and the 2011 Amendment was passed unanimously.³⁵ Plaintiff Eisenhardt was in attendance and voted in favor of the 2011 Amendment.³⁶ After the vote passed, the 2011 Amendment was filed with the Horry County Register of Deeds on November 23, 2011.³⁷

³³ Edwards 31:5-13. Attached hereto as Exhibit O; Black 47:23 – 48:17, 50:3-24. Attached hereto as Exhibit P; Plankers 23:1-14. Attached hereto as Exhibit Q; Teal 33:12 – 34:6. Attached hereto as Exhibit B.

³⁴ Nov. 9, 2011 Notice of Special Meeting BLF-WW-28-35. Attached hereto as Exhibit R.

³⁵ Edwards 36:20-21. Attached hereto as Exhibit O.

³⁶ Eisenhardt June 25, 2020 34:10, 19-25. Attached hereto as Exhibit L.

³⁷ 2011 Amendment to the Declaration Defendants (CCS) 0646-49. Attached hereto as Exhibit S.

In 2013, Plaintiff Dykes purchased Lot 97, Phase I in Wild Wing Plantation. Mr. Dykes' Deed and title insurance policy specify that his property is subject to the Declaration *and all amendments thereto*. (Emphasis added).³⁸ Mr. Dykes cannot now complain of a condition which existed of record at the time of his purchase.

ii. The 2016 Amendment

On October 21, 2016, the POA gave Notice to all Members that a Special Meeting would be held for the purpose of amending the Declaration.³⁹ Like the previous Notice, this Notice included the proposed Amendment for review by the Members. Additionally, this Notice included a letter from the Declarant setting forth the purpose and effect of the Amendment. The meeting was called, Noticed, and conducted in accordance with the Declaration.⁴⁰ The votes were then tallied and the accuracy of the tallies was ensured by the property manager.⁴¹ Once again, the vote passed with the two-thirds majority required by the Declaration.

Both Amendments were passed in accordance with the Declaration. Notice was given providing members with all necessary information. Special meetings were held with a quorum present or by proxy. Lot Owner votes were taken with a majority in favor.

Still, Plaintiffs dispute the validity of these Amendments on the basis of their own personal speculation and misperception of the benefit to the community. Plaintiffs are not developers and have not hired or consulted with an expert developer about these Amendments. Plaintiffs challenge these Amendments even though the first Amendment happened nine years ago, both were conducted in accordance with the Declaration, and both were passed with a two-

³⁸ Dykes Closing Documents Plaintiff 02717-21. Attached hereto as Exhibit T.

³⁹ Oct. 21, 2016 Notice of Special Meeting BLF-WW-2838-45. Attached hereto as Exhibit U.

⁴⁰ Skirchak 53:11-19. Attached hereto as Exhibit F.

⁴¹ Skirchak 55:11-13. Attached hereto as Exhibit F.

thirds majority vote. Plaintiff Dykes has testified that even though a majority of homeowners, which Plaintiffs presume to represent, voted in favor of the Amendments, he would still seek to overturn and would not bother to even speak with those homeowners about the matter.⁴²

V. Primary and Secondary Defendants

In addition to the Declarants, Plaintiffs have also sued multiple individuals and numerous other entities upon these very same allegations. Plaintiffs have taken the alleged bad acts of four Declarants and six board members (hereinafter “Primary Defendants”) and claim that 11 additional Defendants (hereinafter “Secondary Defendants”) should bear responsibility for the actions of the others. These Secondary Defendants consist of members, managers, and members of members of the Declarants as well as entities without any direct relationship to the Declarants.

Plaintiffs have joined Secondary Defendants upon theories of Veil Piercing, Alter Ego, and Amalgamation. On December 5, 2018, Plaintiff Dykes was tediously asked to identify evidence as to each and every required element of these allegations. Plaintiff Dykes’ responses included statements such as:

- “I don’t have any specific evidence. I believe it to be true, but I don’t have any evidence to support that;”⁴³ and
- “I don’t recall anything specific.”⁴⁴

Over a year and a half later, Plaintiff Dykes was deposed again after amending the Complaint to include even more Defendants. Once again he was asked to identify evidence to support these allegations. Still, his responses were:

⁴² Dykes June 25, 2020 88:17-21. Attached hereto as Exhibit J.

⁴³ Dykes Dec. 5, 2018 72:19-25. Attached hereto as Exhibit J.

⁴⁴ Id. at 71:18-21. Attached hereto as Exhibit J.

- “I can’t point to a document;”⁴⁵ and
- “I don’t know.”⁴⁶

In fact, Plaintiff Dykes explained that the Secondary Defendants have been included simply to ensure that a potential judgment against Primary Defendants can be satisfied.⁴⁷

RELEVANT FACTS

In 2006, Wild Wing Company, LLC as Declarant of Wild Wing Plantation established the POA as a Not-for-Profit Corporation to maintain and administer the Wild Wing community in accordance with the Declaration.⁴⁸ The Declaration provides that the affairs of the POA shall be governed by a Board of Directors.⁴⁹ One of the duties of the Board of Directors in administering the POA is to make assessments to defray the Common Expenses and to establish the means and methods of collecting such assessments.⁵⁰ The Declarants were also included in this obligation to contribute monies to the POA. The Declaration provided the Declarant the option to pay assessments for each lot the Declarant owed or to pay the shortfall of “the actual amount of actual operating expenditures incurred” by the POA less an amount equal to the total assessments made. This formula is common in many community governing documents.⁵¹

To ensure that the Board of Directors carried out these duties correctly, the Board hired a property manager, an accountant, and formed a Finance Committee of Members as permitted by the Declaration. This reliance yielded a process by which the property manager and Finance

⁴⁵ Dykes June 25, 2020 59:24 – 60:1. Attached hereto as Exhibit J.

⁴⁶ *Id.* at 60:5-7. Attached hereto as Exhibit J.

⁴⁷ *Id.* at 63:24 – 64:7. Attached hereto as Exhibit J.

⁴⁸ Declaration Defendants (CCS) 0420. Attached hereto as Exhibit D.

⁴⁹ By-Laws Art. III(A) Sec. 1 Defendants (CCS) 0464. Attached hereto as Exhibit D.

⁵⁰ *Id.* at Art. III(C) Sec. 18(b) Defendants (CCS) 0468. Attached hereto as Exhibit D.

⁵¹ Courtney 17:20 – 18:3. Attached hereto as Exhibit E.

Committee worked hand in hand to create a budget for the POA which established the regular assessments for the membership as well as a Developer Contribution amount. Once the budget was approved by the Board of Directors, the property manager would request the Developer Contribution amount from the Declarant in installments, which were paid.⁵² At the end of each year, the POA accountant would prepare an annual audit of the POA and included a Developer Contribution Calculation worksheet reflecting the two Declarant payment options on a look back basis.

In mid-2014, Plaintiff Dykes was appointed to the Finance Committee. He met with the POA property manager and obtained copies of all POA financial information. On April 28, 2015, Plaintiff Dykes met with members of Waccamaw Management and the POA accountant, Jim Corbett, to review the draft of the 2014 Annual Audit.⁵³ During this meeting, Plaintiff Dykes raised concerns about the Declarant Contribution Calculation.⁵⁴ Plaintiff Dykes took issue with the CPA's calculation, specifically with the fact that bad debt was excluded from the "actual amount of actual operating expenditures incurred".⁵⁵ Following deliberation and discussion, the Finance Committee commissioned the auditing CPA to further review, investigate, and advise as to this decision. Jim Corbett agreed to review the formula.⁵⁶ Mr. Corbett reviewed the Declaration and Generally Accepted Accounting Principles.⁵⁷ He also consulted with the other CPAs in his office⁵⁸ and with the CFO of Waccamaw Management.⁵⁹ She had never seen bad debt included as an "actual operating expenditure incurred" in her many years of Association

⁵² Skirchak 48:15-18. Attached hereto as Exhibit F; Atkinson 36:18-22. Attached hereto as Exhibit I.

⁵³ Finance Committee Minutes May 12, 2015 BLF-WW-000251-53. Attached hereto as Exhibit M.

⁵⁴ Id. Attached hereto as Exhibit M.

⁵⁵ Id. Attached hereto as Exhibit M.

⁵⁶ Id. Attached hereto as Exhibit M.

⁵⁷ Corbett 31:20-25 – 32:1-18. Attached hereto as Exhibit G.

⁵⁸ Id. Attached hereto as Exhibit G.

⁵⁹ Id. at 36:7-13. Attached hereto as Exhibit G.

accounting.⁶⁰ Mr. Corbett took his conclusions back to the Finance Committee and Mr. Dykes, explaining that the Declarant cannot be held responsible for the unpaid assessments of members of the POA.⁶¹

Mr. Corbett's conclusion is affirmed by the Declaration which states, "The Declarant shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself."⁶² It is undisputed that the failure of lot owners to pay their assessments is a violation of the Declaration.⁶³

Despite Plaintiff Dykes' objection, the Finance Committee and the Board of Directors relied on the POA accountant (and later the property manager) and elected to continue to calculate Declarant dues in accordance with the POA experts' advice and recommendation. To date, these calculations show that the POA accounts were always in good order and more recently that the Declarants have overpaid the POA.⁶⁴

STANDARDS OF REVIEW

This Motion on the Business Judgment Rule is submitted as a Motion for Summary Judgment pursuant to Rule 56, SCRCP or to be reviewed under the trial standard by Your Honor as the trier of fact. If Your Honor finds this argument does not meet the standard for Summary Judgment, please allow this argument to serve as a partial or absolute defense under the trial standard.

⁶⁰ Atkinson 23:8-20. Attached hereto as Exhibit I.

⁶¹ Corbett Email April 30, 2015 Plaintiff 000144-45. Attached hereto as Exhibit N.

⁶² Declaration Art. XII Sec. 3 Defendants (CCS) 0449. Attached hereto as Exhibit D.

⁶³ Dykes Dec. 5, 2018 62:23 – 63:4. Attached hereto as Exhibit J.

⁶⁴ Declarant Contribution Calculation Plaintiff 000333. Attached hereto as Exhibit V.

I. Rule 56, SCRCP Motion for Summary Judgment

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” Rule 56, SCRCP; South Carolina Prop. & Cas. Guar. Ass’n. v. Yensen, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001).

“When ruling on a motion for summary judgment, the trial judge must consider all of the documents and evidence within the record, including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits.” Higgins v. Med. Univ., 326 S.C. 592, 599, 486 S.E.2d 269, 272 (Ct. App. 1997). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 619, 602 S.E.2d 747 (2004); McNair v. Rainsford, 330 S.C. 332, 341, 499 S.E.2d 488, 493 (Ct. App. 1998). A party opposing a properly supported Motion for Summary Judgment may not rest on the mere allegations or denials of its pleading, but must set forth or point to specific facts showing there is a genuine issue of material fact. Dickert v. Metro. Life Ins. Co., 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct. App. 1991). The existence of a mere scintilla of evidence in support of the nonmoving party’s position is not sufficient to overcome a Motion for Summary judgment. Id.

II. Trial Standard

“In all actions tried upon the facts without a jury... the court shall find the facts specially and state separately its conclusions of law thereon.” Mathis v. Brown & Brown of S.C., Inc., 389 S.C. 299, 320, 698 S.E.2d 773, 784 (2010) (citing Rule 52, SCRCP).

ARGUMENT

In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the ‘business judgment rule,’ and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action.

Goddard v. Fairways Dev. Gen. P’ship, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993) (Emphasis added).

“The burden of proving good faith is not on the governing board; the burden of proving a lack of good faith is borne, rather, by those challenging the board’s actions.” Dockside Ass’n, Inc. v. Detyens, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987).

Plaintiffs contend that Declarants failed to pay proper contributions to the POA pursuant to the Declaration. However, the Declarants did not play any role in determining the amount to be paid. The amount the Declarant was requested to pay each year was determined by the joint efforts of the POA property manager, the POA auditor, and the POA Finance Committee, all of whom were tasked with this role by the Board of Directors of the POA. The Declarant was simply told by the property manager the amount to pay and did so.

“In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: legal counsel, *public accountants*, or *other persons as to matters the director reasonably believes are within the person’s professional or expert competence.*” S.C. Code Ann. § 33-31-830(b)(2) (Emphasis added).

Before the beginning of each year, the property management company hired by the POA and the Finance Committee, made up of POA members including Plaintiffs Dykes and

Eisenhardt, would work in collaboration to create the annual budget.⁶⁵ The budget worked to balance the projected income and expenses to create a net zero budget. Part of the income listed in the budget was a line item for the Developer Contribution. This line was a projected “shortfall” to cover the deficit potentially owed by the Declarant at the end of the year to cover expenditures pursuant to the operative language in the Declaration.⁶⁶ The amount of the Developer Contribution was first put forth by the property management company hired by the POA.⁶⁷ The Finance Committee would then review this number and make a recommendation to the POA Board of Directors.⁶⁸ The Declarant was informed of this amount by the POA property manager and made monthly installment payments to the POA to pay the budgeted Developer Contribution amount.⁶⁹

At the beginning of the following year, the POA hired an accounting firm to audit the POA’s financial statements. In addition to the audit, the accounting firm also prepared a Declarant Contribution Calculation worksheet.⁷⁰ This Declarant Contribution Calculation worksheet was later completed by the in house accountant for the property management company, which was also hired by the POA.⁷¹ This worksheet applied certain relevant figures from the audited annual financial statements to the two Declarant funding options set forth in the Declaration. The Declarant could (1) fund the shortfall (i.e., the difference between the actual amount of actual operating expenditures incurred by the Association ... less an amount equal to the total assessments made); or (2) pay an assessment for all lots it owned within Wild Wing

⁶⁵ Eisenhardt June 25, 2020 27:12-19. Attached hereto as Exhibit L; Black 59:18-21. Attached hereto as Exhibit P.

⁶⁶ Black 75:10-20. Attached hereto as Exhibit P.

⁶⁷ Dykes June 25, 2020 98:1-4. Attached hereto as Exhibit J.

⁶⁸ Id. at 98:11-22. Attached hereto as Exhibit J.

⁶⁹ Skirchak 48:15-18. Attached hereto as Exhibit F; Atkinson 36:18-22. Attached hereto as Exhibit I.

⁷⁰ Corbett 20:19-21. Attached hereto as Exhibit G; Dykes June 25, 2020 72:7-13. Attached hereto as Exhibit J.

⁷¹ Dykes June 25, 2020 74:12-15. Attached hereto as Exhibit J.

Plantation.⁷² By 2014 these Declarant Contribution Calculations reflected that rather than owing money to the POA, the POA actually owed money to the Declarant.⁷³ The most recent Declarant Contribution Calculations calculated by the POA property management company reflect that the POA still owes money to the Declarant.⁷⁴

The Declarants were not involved in the process of preparing the annual budgets, auditing the annual financial statements, or determining the shortfall contribution amount as presented in the Declarant Contribution Calculations. Instead, the amount the Declarants were expected to pay to the POA was determined by the POA accountant, the POA property management company, and the Finance Committee with review and approval by the Board of Directors of the POA.

The Plaintiffs have not put forth any evidence or allegations that the Board of Directors acted contrary to the accounting work performed by these delegated hands. Additionally, the property manager, the CFO of Waccamaw Management, and the President of Waccamaw Management have testified that the Board of Directors acted within their scope of authority and did not act in bad faith or with corrupt motives.⁷⁵ The Board of Directors acted within its scope of authority as directors of the POA and in reasonable reliance upon the POA accountant, the POA property management company, and the Finance Committee properly charged with responsibility for matters relative to calculating the Declarant's annual funding obligation. The decisions regarding the payment of Declarant contributions to the POA fall squarely within the business judgment rule and are not subject to judicial review by this Court.

⁷² Declaration Art. VI Sec. 2 Defendants (CCS) 0436-37. Attached hereto as Exhibit D.

⁷³ Corbett 37:3-17. Attached hereto as Exhibit G.

⁷⁴ Developer Contribution Calculation Plaintiff 000333. Attached hereto as Exhibit V.

⁷⁵ Skirchak 63:5-9, 64:16-20. Attached hereto as Exhibit F; Atkinson 55:3-12. Attached hereto as Exhibit I; Courtney 36:17-22. Attached hereto as Exhibit E.

REQUESTED RELIEF

Based upon the foregoing, Defendants respectfully request that this Honorable Court rule:

- a. The Board of Directors of the POA acted reasonably and within its scope of authority in determining the Math as advised by the POA's Accountant, Property Manager, and Finance Committee;
- b. The record is void of any evidence suggesting the Board of Directors acted in bad faith, fraud, self-dealing, or engaged in unconscionable conduct;
- c. The business judgment rule operates to preclude judicial review of the Board of Directors' decisions related to the Math; and
- d. Defendants are entitled to judgment as a matter of law as to Plaintiffs allegations related to the Math.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843)448-2400
Attorneys for Defendants Wild Wing Company,
LLC; Sunstar, LLC; SLF IV/SBI Wild Wing, LLC;
SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM,
LLC; SLF IV/SBI Development Holdings, LLC;
Wild Wing Residential Development, LLC; SB
Investments, LLC; Realstar Management, LLC;
Founders Wild Wing, LLC; Founders Group
International, LLC; and Dan Liu

s/ Zachary J. Crowl

David B. Miller, SC Bar #10296
Zachary J. Crowl, SC Bar #103617

Myrtle Beach, South Carolina
Dated: October 29, 2020

EXHIBIT A

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

JUN 14 2006

NONPROFIT CORPORATION
ARTICLES OF INCORPORATION


SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

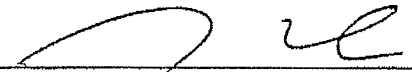
1. The name of the proposed corporation is **Wild Wing Plantation Property Owners' Association, Inc.**
2. The initial registered office of the nonprofit corporation is

990 Wild Wing Boulevard, Conway, South Carolina 29526

The name of the registered agent of the nonprofit corporation at that office is:

Ralph R. Teal, Jr.

I hereby consent to the appointment as registered agent of the corporation.


Agent's Signature

3. Check "a", "b" or "c", whichever is applicable. Check only one box:
 - a. ☐ The nonprofit corporation is a public benefit corporation.
 - b. ☐ The nonprofit corporation is a religious corporation.
 - c. ☒ The nonprofit corporation is a mutual benefit corporation.
4. Check "a" or "b", whichever is applicable:
 - a. ☒ This corporation will have members.
 - b. ☐ This corporation will not have members.
5. The address of the principal office of the nonprofit corporation is
990 Wild Wing Boulevard, Conway, South Carolina 29526
6. If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of paragraph #3 is checked), complete either "a" or "b", whichever is applicable to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.
 - a. ☐ Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of

060614-0100 FILED: 06/14/2006
WILD WING PLANTATION PROPERTY OWNERS' ASSC
Filing Fee: \$25.00 ORIG



EXHIBIT A

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Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

- b. ☐ Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to: _____
7. If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.
- a. ☒ Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefitting or serving.
- b. ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to: _____
8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See Section 33-31-202©) of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instruction to this form).

9. The name and address of each incorporator is as follows (only one is required)
- Ralph R. Teal, Jr.
990 Wild Wing Boulevard, Conway, South Carolina 29526
10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

N/A	
Name (Only if named in articles)	Signature of director

11. Each incorporator must sign the articles.

Signature of Incorporator - Ralph R. Teal, Jr.

Page 1

1 IN THE COURT OF COMMON PLEAS
 2 FIFTEENTH JUDICIAL CIRCUIT
 3 COUNTY OF HORRY
 4
 5 C. BARRY DYKES and BARBARA : CIVIL ACTION
 6 EISENHARDT, individually and NO. 2017-CP-26-04187
 7 derivatively on behalf of :
 8 The Wild Wing Plantation
 9 Property Owners' :
 10 Association, Inc.
 11 Plaintiffs :
 12 vs.
 13 WILD WING COMPANY, LLC; RALPH :
 14 R. TEAL, JR.; SLF IV/SBI WILD
 15 WING, LLC; WILD WING :
 16 RESIDENTIAL DEVELOPMENT, LLC;
 17 STRATFORD LAND MANAGER; :
 18 SB INVESTMENTS, LLC; GRAEME T.
 19 BLACK; GILFORD EDWARDS; :
 20 FOUNDERS WILD WING, LLC;
 21 FOUNDERS GROUP INTERNATIONAL, :
 22 LLC; DAN LIU and XIAN DOW,
 23 Defendants :
 24
 25

1 WILD WING PLANTATION OWNERS'
 2 ASSOCIATION, INC.,
 3 Nominal Defendant
 4
 5 DEPONENT: RALPH R. TEAL, JR.
 6 DATE: MAY 14, 2019
 7 TIME: 10:00 a.m.
 8 LOCATION: THE BELLAMY LAW FIRM
 9 1000 29TH AVENUE NORTH
 10 MYRTLE, SC
 11
 12 REPORTED BY: CAROL T. LUCIC, RPR, RMR
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22 CLARK & ASSOCIATES, INC.
 23 CHARLESTON, SC 29415
 24 843-762-6294
 25 WWW.CLARK-ASSOCIATES.COM

Page 3

1 A P P E A R A N C E S
 2
 3 ON BEHALF OF THE PLAINTIFFS:
 4 LYLES & ASSOCIATES, LLC
 5 BY: ROBERT T. LYLES, ESQ.
 6 342 EAST BAY STREET
 7 CHARLESTON, SC 29401
 8
 9 ON BEHALF OF THE DEFENDANTS:
 10 CARLOCK, COPELAND, & STAIR, LLP
 11 BY: DOUGLAS W. MacKELCAN, ESQ.
 12 40 CALHOUN STREET, SUITE 400
 13 CHARLESTON, SC 29401
 14
 15 THE BELLAMY LAW FIRM
 16 BY: DAVID B. MILLER, ESQ.
 17 ZACH CROWL, ESQ.
 18 1000 29TH AVENUE NORTH
 19 MYRTLE BEACH, SC 29577
 20
 21 PRESENT: C. BARRY DYKES
 22
 23
 24
 25

Page 4

1 INDEX
 2
 3 RALPH R. TEAL, JR.
 4 MAY 14, 2019
 5
 6 EXAMINATION PAGE
 7 BY MR. LYLES 5
 8
 9 CERTIFICATE OF REPORTER 46
 10
 11 EXHIBITS
 12 (None offered)
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

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1 people in the Wild Wing Company and in others into
 2 the new entity that ended up with the Wild Wing
 3 property.
 4 Q. When you were beginning your explaining to
 5 me what resulted in that transaction, you said that
 6 they were threatening foreclosure. Do you mean
 7 NBSC?
 8 A. Yes, NBSC.
 9 Q. Because NBSC had loaned somebody the money
 10 to purchase the property and ultimately start the
 11 Wild Wing Company development; is that right?
 12 A. Yes, sir.
 13 Q. As I understand it, the people who you
 14 named as being members of Wild Wing Company, LLC,
 15 were also signatories on that NBSC note?
 16 A. Yes, sir.
 17 Q. So at some point NBSC wanted their money,
 18 and an agreement was reached with an entity
 19 affiliated with Stratford Land to come in and
 20 provide capital to pay off the NBSC note?
 21 A. Stratford brought their money to the
 22 table, and then our interests brought -- the
 23 ultimate interests of the other side, the SBI side,
 24 brought their capital in, and then together with
 25 all that money they bought the asset. Stratford

Page 15

1 IV/SBI Wild Wing, LLC, were funded?
 2 A. I was not involved in the accounting
 3 day-to-day operations of that, so I'm not sure of
 4 that.
 5 Q. Would you rely on the accountants to do
 6 the accounting?
 7 A. Uh-huh.
 8 Q. Is that a yes?
 9 A. Yes. I'm sorry.
 10 Q. That's okay.
 11 Who would you rely on in terms of helping
 12 you establish what entities you needed to establish
 13 and what -- go ahead.
 14 A. Stratford's attorneys, SBI's attorneys,
 15 Stratford's accountants, and SBI's accounting firm
 16 together set the transaction and then the
 17 subsequent entities up, and so every entity paid
 18 taxes. It was all separate entities, but they
 19 initially set it up. Gilford Edwards, our
 20 controller, with oversight from Stratford handled
 21 the day-to-day paying of any bills associated with
 22 that.
 23 Q. And you don't know what the source of
 24 those funds was?
 25 A. No.

Page 14

1 wasn't the only person.
 2 Q. When you say "bought the asset," you mean
 3 what happened was those two entities or Stratford
 4 Land and the SBI crowd paid off the NBSC note?
 5 A. I don't know the technical way it was
 6 structured. It was basically a deed in lieu, and
 7 it wasn't for that particular piece of property.
 8 It was a bigger group of properties that were
 9 assembled.
 10 Q. The entity SLF IV/SBI Wild Wing, LLC, if
 11 we can focus just on that discrete entity --
 12 A. One more time.
 13 Q. SLF IV/SBI Wild Wing, LLC. I understand
 14 that at some point there was a joint venture with a
 15 similar name. Does that ring a bell to you?
 16 A. Can you tell me the similar name?
 17 Q. Yes, sir. SLF IV/SBI JV, LLC. Does that
 18 ring a bell?
 19 A. I don't know if that was the parent
 20 company that it closed under or not. I don't
 21 remember.
 22 Q. Do you know whether or not the company SLF
 23 IV/SBI Wild Wing, LLC, ever had any assets?
 24 A. I don't know.
 25 Q. Do you know how the obligations of SLF

Page 16

1 Q. Going back to the first declarant, to your
 2 knowledge did Wild Wing Company, LLC, ever do any
 3 business other than act as the declarant for the
 4 Wild Wing project?
 5 A. As a company?
 6 Q. Yes, sir.
 7 A. I don't remember that it did or didn't.
 8 Q. Is it still in business or do you know?
 9 A. I don't know.
 10 Q. At the time that the Wild Wing Company,
 11 LLC, conveyed its interest in the Wild Wing project
 12 to SLF IV/SBI Wild Wing, LLC -- at the time of that
 13 conveyance did the Wild Wing Company, LLC, retain
 14 any assets?
 15 A. I don't know.
 16 Q. In the filing that your lawyers made the
 17 time period that SLF IV/SBI Wild Wing, LLC, was the
 18 declarant is listed as December 22, 2010, to
 19 11/09/2011, so a little under a year. At that
 20 point there was a third declarant, Wild Wing
 21 Residential Development, LLC. Is that a company
 22 that rings a bell to you?
 23 A. No, sir.
 24 Q. Do you know whether or not Wild Wing
 25 Residential Development, LLC, ever had any assets?

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1 buy that property because without the declarant
2 control, I don't know of an issue -- I've never
3 been involved in anything in my 30 years or seen or
4 heard of anybody doing that as a developer.

5 Q. You mean anybody coming in and buying
6 development rights when the developer or the
7 declarant didn't have control?

8 A. We've never had that that I'm aware of.
9 We wouldn't be a part of that, and I don't think
10 anybody else -- a professional or any other
11 developer would.

12 Q. If you can for a minute, I want to ask
13 this question in a particular context. What I want
14 to try to understand from you is this: Can you
15 quantify the benefit that you believed that the
16 members of the POA received because of the
17 extension of development rights, declarant rights?
18 Can you tell me what the individual homeowners,
19 members of the POA got out of that?

20 A. I can't tell you, but I do know that it
21 stabilized the community. There are a lot of cases
22 around this town where similar communities'
23 property values went to 5, 6 thousand dollars a
24 lot. Because of what was done there, that saved
25 that community and it saved everybody invested in

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1 wouldn't have been as positive for everybody as
2 what transpired.

3 Q. The extension of declarant rights
4 including the funding option right occurred after
5 SLF/SBI purchased the asset. Okay?

6 A. Okay.

7 Q. Can you tell me how the extension of
8 developer rights once SLF/SBI had the asset -- how
9 did that extension of declarant rights benefit the
10 owners?

11 A. In my mind it made it a marketable
12 community. It stabilized everybody's values and
13 opened the door for -- because the declarant rights
14 were intact, it stabilized that community and made
15 it a more marketable community.

16 Q. How did the owners benefit because the
17 community was more marketable?

18 A. If they didn't have it, if the declarant
19 rights weren't intact, I don't believe there would
20 have been a buyer for that community.

21 Q. How did the owners benefit from a buyer?

22 A. If it had gone into foreclosure, it would
23 have pushed everybody's property values down in my
24 opinion.

25 Q. Was there ever a risk that SLF IV/SBI Wild

Page 34

1 that community and it saved their property values
2 and gave them a successful, viable community,
3 whereas a lot around here didn't have that. To
4 quantify, I can't tell you exactly what it is
5 dollarwise, but it was a good thing what we did for
6 that community.

7 Q. What was the good thing?

8 A. By buying that asset and stabilizing it
9 and finishing it like we did.

10 Q. When you say "buying that asset," you mean
11 buying the Wild Wing project generally?

12 A. We bought that whole asset.

13 Q. And you bought it from a Japanese entity?
14 Who bought the asset?

15 A. I'm talking about when SLF bought the
16 asset.

17 Q. From Wild Wing --

18 A. Company, LLC.

19 Q. I got you.

20 If SLF/SBI had not bought the asset, what
21 would have happened?

22 A. There would have been a dispute between
23 NBSC and the Wild Wing Company that would have had
24 to play out however it played out. I don't know
25 how it would have played out. I suspect it

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1 Wing, LLC, was not going to be able to pay off its
2 obligations?

3 A. One more time.

4 Q. Was there ever a risk that SLF IV/SBI Wild
5 Wing, LLC, would not have been able to pay its
6 obligations?

7 A. No, sir.

8 Q. Prior to the conveyance to Founders Wild
9 Wing Residential Development, LLC, was the
10 declarant, and that was the one that we talked
11 about from November 9, 2011, to April 13, 2015.

12 Is there any evidence that you can point
13 me to that indicates that that declarant was ever
14 unable to pay its bills?

15 A. "That declarant" being?

16 Q. Wild Wing Residential Development, LLC.

17 A. No, sir.

18 Q. How did the members of the POA -- I'm
19 speaking specifically to individual property
20 owners -- how did they benefit from the sale to
21 Founders?

22 A. I think they benefited from the sale to
23 Founders and from SBI because a stable company came
24 in there and continued to develop that property
25 increasing and helping to stabilize everybody's

Instrument#: 2010000127957, DEED BK:
3497 PG: 1935 DOCTYPE: 046 12/28/2010
at 03:25:55 PM, 1 OF 8 BALLERY V.
SKIPPER, HORRY COUNTY, SC
REGISTRAR OF DEEDS

Cross Reference: Instruments recorded in Deed Book 1978, at Page 855; Deed Book 3164, at Page 361; Deed Book 2001, at Page 107; Deed Book 3248, at Page 1269; Deed Book 3248, at Page 1277; Deed Book 3287, at Page 1176; Deed Book 3300, at Page 173; Deed Book 3374, at Page 2692; each in the records of Horry County, South Carolina.

When recorded, please return to:
M. Edwin Hinds, Jr.
Bellamy, Rutenberg, Copeland, Epps,
Gravely & Bowers, P.A.
1000 29th Avenue North
P.O. Box 357
Myrtle Beach, South Carolina 29578

ASSIGNMENT OF RIGHTS

This ASSIGNMENT OF RIGHTS ("Assignment") is made and effective this 22nd day of December, 2010 (the "Effective Date"), by and between WILD WING COMPANY, LLC, a South Carolina limited liability company ("Assignor") and SLF IV / SBI WILD WING, LLC, a Texas limited liability company ("Assignee").

WHEREAS, simultaneous with the execution of this Assignment, Assignor is transferring to Assignee all of its interest in that certain real property commonly referred to as Wild Wing Plantation and more fully described on Exhibit "A" attached hereto (the "Property"); and

WHEREAS, the Property is subject to those certain restrictive covenants, restrictions, easements, charges and liens relative to the Property as more fully described on Exhibit "B" attached hereto (the "Covenants"), as amended from time to time; and

WHEREAS, the Covenants include various reserved rights, membership interests in associations (including, but not limited to, the Class B membership interests in Wild Wing Plantation Property Owner's Association, Inc. and the Class C membership interests in Wild Wing Plantation Road Maintenance Association, Inc.), options, conditions and powers to include, but not limited to, the right to levy assessments and dues against lots subject to the Covenants, lot owners and members of any entities or organizations within the Property established from time to time by the Assignor (collectively the "Declarant Rights"); and

EXHIBIT C

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to assume from Assignor, the Declarant Rights and any other rights Assignor may have in and to the Covenants; and

WHEREAS, under the Covenants, Assignor has the power and authority to enter this Assignment.

NOW, THEREFORE, for and in consideration of Ten Dollars and No/100 (\$10.00) and other good and valuable consideration, Assignor hereby transfers and assigns to Assignee, its successors or assigns, all of Assignor's right, title and interest in and to the Covenants and the Declarant Rights subject to the following terms and conditions, to-wit:

1. Assignor hereby assigns all of its interest in the Covenants and the Declarant Rights effective immediately upon execution of this Agreement and recording in the Office of the Register of Deeds of Horry County, South Carolina.
2. Assignor warrants and represents that it is the Declarant under the terms of the Covenants.
3. Assignor warrants and represents that as Declarant it has the right, title, and authority to assign its interest in the Covenants and Declarant Rights.
4. Assignor warrants and represents that it has not previously assigned any of its interest in the Covenants and Declarant Rights to any other person, party or entity.
5. Assignor warrants and represents that it is not currently in breach of its obligations and duties under the Covenants and that there is no current act or omission which, if continued, would constitute a breach of its obligations and duties under the Covenants.
6. Assignor warrants and represents that all assessments, dues or other obligations of Declarant are current and have been paid through December 31, 2010.
7. This Assignment shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Assignee, its successors and assigns.
8. This Assignment shall be governed by and construed in accordance with the laws of the State of South Carolina.

[SIGNATURE PAGES TO FOLLOW]

EXHIBIT C

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment of Rights as of the day and year first written above.

Witnesses:

[Signature]
Margaret Buckley

ASSIGNOR:

WILD WING COMPANY, LLC, a South
Carolina limited liability company
By: Sunstar LLC, a SC limited liability company
Its: Manager
By: [Signature]
Its: Manager

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Ralph R. Teal Jr, Manager of Sunstar LLC of Wild Wing Company, LLC, a South Carolina limited liability company, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 22nd day of December, 2010.

[Signature] (SEAL)
Notary Public for South Carolina
My Commission expires: 3/17/18

ELECTRONICALLY FILED - 2020 Oct 29 1:46 PM - Horry - COMMON PLEAS - CASE#2017CP2604187

Witnesses:

E. A.
Margaret B. Buckner

ASSIGNEE:

SLF IV / SBI WILD WING, LLC, a Texas limited liability company

By: SB Investments, LLC, a South Carolina limited company, its managing member

By: [Signature]
 Ralph T. Teal, Jr., Co-Manager

By: [Signature]
 Jeffrey B. Turner, Co-Manager

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Richland)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Ralph T. Teal, Jr. and Jeffrey B. Turner, both Co-Managers of SB Investments, LLC, a South Carolina limited liability company, Manager of **SLF IV / SBI WILD WING, LLC**, a Texas limited liability company, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 22nd day of December, 2010.

[Signature] (SEAL)
 Notary Public for South Carolina
 My Commission expires: 3/17/18

EXHIBIT C

EXHIBIT "A"

Parcel 1:

All and Singular all that certain piece, parcel or lot of land being situated in Conway Township, Horry County, State of South Carolina, and being more particularly described as that certain 1003.426 more or less acre tract on Sheet 1 of 2 on a map of "Wetlands Located on Buist-APAC Tract of International Paper Company for Interstate Realty Corporation", dated September 18, 1986, revised November 3, 1986, prepared by Sur-Tech, Incorporated, which map is recorded in records of Horry County, Plat Book 93, at Page 186.

A. Less and excepting:

All and Singular, that certain piece, parcel or tract of land situate, lying and being in Conway Township, Horry County, South Carolina, and more particularly described as 10.42 acres, more or less, as shown on a plat or map of property made for Wild Wing Plantation, Inc. by Southstar Surveying, Inc. dated July 1, 1996, and recorded in Plat Book 152, at Page 134, in the Office of the Register of Deeds for Horry County, South Carolina, which is by reference made a part of this description. (Aviary Village)

B. Less and excepting:

Those certain lots of land described as Lots 1 - 12 of Wild Wing Industrial Park as shown on a plat entitled "Final Subdivision Plat of Wild Wing Industrial Park" dated August 10, 1999, and recorded August 16, 1999, in Plat Book 164, at Page 189, Office of the Register of Deeds for Horry County.

C. Less and excepting:

Those certain lots of land described as Lots 1 through 72, in Phase 2-A of the Sanctuary at Wild Wing Plantation and any common areas/amenity areas contained therein in the Sanctuary Phase 2-A. Said lots being more particularly shown as all lots in Phase 2-A on a plat made by Survey Technology recorded in Plat Book 154, at Page 103, in the Office of the Register of Deeds for Horry County, South Carolina.

D. Less and excepting:

Those certain parcels being described as roadways and easements for drainage which were conveyed to the City of Conway in Deed Book 2393, at Page 1032, Office of the Register of Deeds for Horry County, South Carolina.

E. Less and excepting:

That certain lot or parcel of land described as Parcels "A", "B" and "C", Phase 2-B, The Sanctuary at Wild Wing Plantation PUD, containing 6.912 acres, more or less, and more particularly shown on a plat prepared by Thomas & Hutton Engineering Co. dated April 1, 2005, recorded in Plat Book 204, at Page 164, in the Office of the Register of Deeds for Horry County, South Carolina.

Parcel 2:

All and Singular, all that certain piece, parcel or lot of land being situate in Conway Township, Horry County, State of South Carolina, being more particularly described as that certain twenty (20) acre parcel shown on Sheet 1 of 2 on the plat entitled "Wetlands Location on the Buist-APAC Tract of International Paper Company for Interstate Realty Corporation", dated September 18, 1986, revised November 3, 1986, prepared by Sur-Tech, Incorporated and recorded in the records of Horry County in Plat Book 93, at Page 186.

A. Less and excepting:

All and Singular, all that certain piece, parcel or tract of land in Conway Township, Horry County, South Carolina, consisting of 2.351 acres, more or less, and being further designated as Tract 2 on that certain map entitled "Boundary Survey for Wild Wing Golf Plantation", prepared by Survey Technology, Inc., on February 1, 2000, and recorded on March 14, 2000, in Plat Book 168, at Page 132, in the Office of the Register of Deeds for Horry County. (Peppertree Sales Center Parcel).

Parcel 3:

All and Singular, that certain piece, parcel or lot of land situate, lying and being in Conway Township, Horry County, South Carolina, shown and designated as Parcel F-2 containing 5.175 acres, on that certain map for Interstate Realty Corp. by Sur-Tech, Incorporated, dated October 29, 1986, which map is recorded in Plat Book 102, at Page 254, records of Horry County.

Said parcel is more particularly described on said map as follows: Commencing at an iron pin N on the northeastern margin of U.S. Hwy. 501 on the line of Tract F-1 as shown on said map, thence along the northeastern margin of U.S. Hwy. 501, North 38 degrees 04 minutes 08 seconds West 175 feet to an iron pin N; thence North 51 degrees 55 minutes 40 seconds East 1,277.25 feet to an iron pin N on the southwestern margin of the Horry County Railroad Right-of-Way; thence along the southwestern margin of said railroad right-of-way, South 45 degrees 13 minutes 23 seconds East 176.37 feet to an iron pin N, thence South 51 degrees 55 minutes 40 seconds West 1,299.22 feet to the beginning corner.

Said parcel is bounded on said map as follows: Northwest by Tract F-3; Northeast by Horry County Railroad; Southeast by Tract F-1; and Southwest by U.S. Hwy. 501.

Parcel 4:

All and Singular, all that certain piece, parcel or tract of land in Conway Township, Horry County, South Carolina, being shown as "Tract A" containing 10.056 acres, more or less, on that certain survey entitled "Survey of Buist Railroad Frontage Tract for International Paper Realty Corporation, Conway Township, Horry County, South Carolina"; said survey dated May 15, 1996 and prepared by Survey Technology, Inc. Said survey has been recorded on June 14, 1996 in Plat Book 141, at Page 205, Register of Mesne Conveyances, Horry County, South Carolina.

LESS AND EXCEPTING FROM PARCELS 1, 2, 3 AND 4 ABOVE THE FOLLOWING DESCRIBED PROPERTIES:

ALL AND SINGULAR, those certain pieces, parcels or lots of land, situate, lying and being in Horry County, South Carolina, designated as Lots 1, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 61, 62, 63, 65, 66, 67, 68, 69, 70, 76, 77, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 117, 118, 119, 122, 125, 127, 129, 130, 131, 132, 133, 135, 136, 137, 140, 141, 143, 149, 150, 151, 152, 155, 157, 162, 163, 166, 168, 169, 170, 174, 175, 176, 177, 178, 179, 181, 182, 184, 186, 193, 194, 195, 199, 202, 203, 204, 205, 206, 208, 209, 211, 214, 215, 216, 218, 219, 220, 221, 222, 223, 225, 226, 227, 228, 229, 230, 231, 232, 235, 236, 238, 239, 240, 247, 248, 249, 250, 251, 252, 253, 254, 256, 257, 259, 262, 264, 265, 270, 283, 284, 285, 287, 288, 289, 292, 293, 294, 299, 308, 310, 313, 314, 317, 318, 323, 324, 325, 326, 327, 328, 330, 331, 332, 333, 334, 335, 336 and 337, Phase I of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Phase I Wild Wing Plantation", dated September 18, 2006 and recorded September 20, 2006 in Plat Book 217 at Pages 55 through 55i inclusive, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

ALL AND SINGULAR, those certain pieces, parcels or lots of land, situate, lying and being in Horry County, South Carolina, designated as Lots 338, 339, 340, 341, 342, 343, 344, 345, and 346, Phase IB of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Wild Wing Plantation Phase IB", dated May 3, 2007, revised May 10, 2007 and recorded May 29, 2007 in Plat Book 225 at Page 298, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

ALL AND SINGULAR, those certain pieces, parcels or lots of land, situate, lying and being in Horry County, South Carolina, designated as Lots 351, 359, 360, 364, 365, 372, 374, 375, 376, 377, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 414, 415, 416, 417, 419, 420, 422, 423, 424, 425, 426, 427, 428, 429, 430, 435, 437, 438, 443, 446, 447, 448, 449, 450, 451 and 452, Phase 2 of Wild Wing Plantation as shown on that certain plat

EXHIBIT C

prepared by Associated Land Surveyors entitled "Final Plat of Wild Wing Plantation Phase Two", dated May 3, 2007, final revised May 29, 2007 and recorded May 29, 2007 in Plat Book 225 at Pages 299 and 300, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

ALL AND SINGULAR, those certain pieces, parcels or lots of land, situate, lying and being in Horry County, South Carolina, designated as Lots 459, 460, 461, 462, 463, 464, 465, 468, 469, 470, 471, 473, 475, 477, 478, 482, 484, 486, 487, 489, 490, 491, 492, 493, 494, 497, 501, 502, 503, 505, 507, 510, 512, 513, 514, 515, 516, 524, 525, 529, 530, 541, 543, 544, 545, 546, 547, 548, 549, 550, 555 and 556, Phase 3 of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Wild Wing Plantation Phase Three", dated October 12, 2007 and recorded October 24, 2007 in Plat Book 231 at Pages 264 and 265, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "Proposed City of Conway" containing 130,141 sq. ft., 2.99 acres, Phase I of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Phase I Wild Wing Plantation", dated September 18, 2006 and recorded September 20, 2006 in Plat Book 217 at Pages 55 through 55i inclusive, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

ALSO LESS AND EXCEPTING:

Those certain streets and roadways shown on the following plats prepared by Associated Land Surveyors:

- (a) "Final Plat of Phase I Wild Wing Plantation", dated September 18, 2006, and recorded September 20, 2006, in Plat Book 217, at Pages 55 through 55i inclusive, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.
- (b) "Final Plat of Wild Wing Plantation Phase IB", dated May 3, 2007, revised May 10, 2007 and recorded May 29, 2007, in Plat Book 225, at Page 298, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.
- (c) "Final Plat of Wild Wing Plantation Phase Two", dated May 3, 2007, final revised May 29, 2007, and recorded May 29, 2007, in Plat Book 225, at Pages 299 and 300, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.
- (d) "Final Plat of Wild Wing Plantation Phase Three", dated October 12, 2007, and recorded October 24, 2007, in Plat Book 231, at Pages 264 and 265, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

EXHIBIT B

COVENANTS

1. Declaration of Restrictive Covenants regarding Wetlands by Wild Wing Plantation, Inc. recorded October 1, 1997, in Deed Book 1978, at Page 855, records of Horry County, South Carolina.
2. Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens for Wild Wing Plantation dated September 26, 2006, and recorded September 27, 2006 in Deed Book 3164, at Page 361, records of Horry County, South Carolina, as amended.
3. Declaration of Special Covenants for the Wild Wing Plantation Road Maintenance Association, Inc. dated December 22, 1997, by Wild Wing Plantation, Inc. and recorded in Deed Book 2001, at Page 107, records of Horry County, South Carolina.
4. Supplemental Declaration to Declaration of Protective Covenants for Wild Wing Plantation recorded May 30, 2007, in Deed Book 3248, at Page 1269, records of Horry County, South Carolina.
5. Supplemental Declaration to Declaration of Protective Covenants for Wild Wing Plantation recorded May 30, 2007, in Deed Book 3248, at Page 1277, records of Horry County, South Carolina.
6. Supplemental Declaration to Declaration of Protective Covenants for Wild Wing Plantation recorded October 25, 2007, in Deed Book 3287, at Page 1176, records of Horry County, South Carolina.
7. Supplemental Declaration to Declaration of Protective Covenants for Wild Wing Plantation recorded December 12, 2007, in Deed Book 3300, at Page 173, records of Horry County, South Carolina.
8. Supplemental Declaration to Declaration of Protective Covenants for Wild Wing Plantation recorded November 20, 2008, in Deed Book 3374, at Page 2692, records of Horry County, South Carolina.

RETURN TO ~~APM~~
BELLAMY, RUTENBERG, COPELAND
EPPS, GRAVELY & BOWERS, P.A.
POST OFFICE BOX 357
MYRTLE BEACH, SC 29578
843-448-2400

STATE OF SOUTH CAROLINA)
) ASSIGNMENT OF RIGHTS
COUNTY OF HORRY)

This ASSIGNMENT OF RIGHTS ("Assignment") is made this 9th day of November 2011 by and between SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company (hereinafter referred to as "Assignor") and Wild Wing Residential Development, LLC, a Delaware Limited Liability Company (hereinafter referred to as "Assignee").

RECITALS

WHEREAS, Wild Wing Plantation is subject to that certain Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation, dated September 26, 2006 and recorded September 27, 2006 in Deed Book 3164, at Page 361, records of Horry County, South Carolina, (the "Covenants"), as amended from time to time; and

WHEREAS, the Covenants include various reserved rights, interests in associations, options, conditions and powers to include, but not limited to, the right to levy assessments and dues against lots subject to the Covenants, lot owners and members of any entities or organizations within the Property established from time to time by the Assignor (collectively the "Declarant Rights"); and

WHEREAS, Wild Wing Company, LLC ("Wild Wing Company") assigned to Assignor the Declarant Rights and any other rights Wild Wing Company had in and to the Covenants, by that certain Assignment of Rights dated December 22, 2010 and recorded December 28, 2010 in Deed Book 3497, at Page 1935, records of Horry County, South Carolina; and

WHEREAS, Assignor desires to assign to Assignee and Assignee desires to assume from Assignor, the Declarant Rights and any other rights Assignor may have in and to the Covenants.

WHEREAS, Assignor is the Declarant (as such term is defined in the Covenants) under the terms of the Covenants and as such has the power and authority to enter this Assignment.

NOW, THEREFORE, for and in consideration of Ten Dollars and No/100 (\$10.00) and other good and valuable consideration, Assignor hereby transfers and assigns to Assignee, its successors or assigns, all of Assignor's right, title and interest in and to the Covenants and the Declarant Rights subject to the following terms and conditions, to-wit:

1. Assignor hereby assigns all of its interest in the Covenants and the Declarant Rights effective immediately upon execution of this Agreement and recording in the Office of the Register of Deeds of Horry County, South Carolina.
2. Assignor warrants and represents that it has not previously assigned any of its interest in the Covenants and Declarant Rights to any other person, party or entity.
3. This Assignment shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Assignee, its successors and assigns.
4. This Assignment shall be governed by and construed in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF the parties hereto have set their respective hand and seals this 9th day of November, 2011.

WITNESSES:

ASSIGNOR:

SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company

By: SLF IV / SBI Properties MM, LLC, a Texas Limited Liability Company, its Manager

By: SB Investments, LLC, a South Carolina Limited Liability Company, its Managing Member

Patty Keyes
Anne Anderson

By: [Signature]
Ralph R. Teal, Jr., Co-Manager

WITNESSES:

ASSIGNEE:

Wild Wing Residential Development, LLC, a Delaware Limited Liability Company

By: SLF IV / SBI Properties MM, LLC, a Texas Limited Liability Company, its Manager

By: SB Investments, LLC, a South Carolina Limited Liability Company, its Managing Member

Patty Keyes
Anne Anderson

By: [Signature]
Ralph R. Teal, Jr., Co-Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, states and deposes that s/he saw the within named SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company, by SLF IV / SBI Properties MM, LLC, by SB Investments, LLC, a South Carolina Limited Liability Company, its managing member, by Ralph R. Teal, Jr., Its Co-Manager, Sign, Seal and as its Act and Deed deliver the within Assignment and that s/he with the undersigned notary witnessed the execution thereof.

Patty Keyes
(above witness also sign here)

SWORN to before me this 9th
day of November, 2011
Anne Anderson (L.S.)
Notary Public for South Carolina

My Commission expires: 2-3-16

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Wild Wing Residential Development, LLC, a Delaware Limited Liability Company, by SLF IV / SBI Properties MM, LLC, a Texas Limited Liability Company, its Manager, by SB Investments, LLC, a South Carolina Limited Liability Company, its Managing Member, by Ralph R. Teal, Jr., Co-Manager, Sign, Seal and as its Act and Deed deliver the within Assignment; and that s/he with the other witness subscribed above witnessed the execution thereof.

Patty Keyes

SWORN to before me this 9th
day of November, 2011
Anne Anderson (L.S.)
Notary Public for South Carolina
My Commission Expires: 2-3-16

EXHIBIT C

After recording return to:
Bellamy, Rutenberg, Copeland, Epps,
Gravely & Bowers, P.A.
1000 29th Avenue North
PO Box 357
Myrtle Beach, SC 29578

Instrument#: 2015000043010, DEED BK:
3812 PG: 2978 DOCTYPE: 111 04/14/2015
at 09:33:27 AM, 1 OF 68 HORRY COUNTY,
SC REGISTER OF DEEDS

STATE OF SOUTH CAROLINA)
) ASSIGNMENT OF DECLARANT RIGHTS
COUNTY OF HORRY)

This ASSIGNMENT OF RIGHTS ("Assignment") is made and effective this 13th day of April, 2015 (the "Effective Date"), by and between Wild Wing Residential Development, LLC, a Delaware Limited Liability Company ("Assignor") and Founders Wild Wing, LLC, a South Carolina Limited Liability Company ("Assignee").

WHEREAS, by Deed of even date herewith, to be recorded in the Office of the Register of Deeds for Horry County, Assignor has conveyed to Assignee all of its interest in that certain real property commonly referred to as a portion of Wild Wing Plantation as more fully described on Exhibit "A" attached hereto (the "Property"); and

WHEREAS, the Property is subject to that certain Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation, dated September 26, 2006, and recorded September 27, 2006, in Deed Book 3164, at Page 361, in the office of the Register of Deeds for Horry County, South Carolina, a copy of which is attached hereto as Exhibit "B" (the "Covenants"), as amended from time to time; and

WHEREAS, the Covenants include various reserved rights, membership interests in associations, including, but not limited to, rights of the Declarant pursuant to the Covenants, the Class B membership interests in Wild Wing Property Owner's Association, Inc. and the options, conditions and powers to include, but not limited to, the right to levy assessments and dues against lots subject to the Covenants, lot owners and members of any entities or organizations within the Property established from time to time by the Assignor (collectively the "Declarant Rights"); and

WHEREAS, Wild Wing Company, LLC ("Wild Wing Company"), assigned to SLF IV / SBI Wild Wing, LLC ("SLF Wild Wing"), the Declarant Rights and any other rights Wild Wing Company had in and to the Covenants, by that certain Assignment of Rights dated December 22, 2010, and recorded December 28, 2010, in Deed Book 3497, at Page 1935, records of Horry County, South Carolina; and

WHEREAS, SLF Wild Wing assigned to Assignor the Declarant Rights and any other rights SLF Wild Wing had in and to the Covenants, by that certain Assignment of Rights dated November 9, 2011, and recorded November 9, 2011, in Deed Book 3550, at Page 3051, records of Horry County, South Carolina; and

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to assume from Assignor, the Declarant Rights and any other rights Assignor may have in and to the Covenants; and

ELECTRONICALLY FILED - 2020 Oct 29 1:46 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

EXHIBIT C

WHEREAS, under the Covenants, Assignor has the power and authority to enter this Assignment.

NOW, THEREFORE, for and in consideration of Ten Dollars and No/100 (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby transfers and assigns to Assignee, its successors or assigns, all of Assignor's right, title and interest in and to the Covenants and the Declarant Rights subject to the following terms and conditions, to-wit:

1. Assignor hereby assigns all of its interest in the Covenants and the Declarant Rights effective immediately upon execution of this Agreement and recording in the Office of the Register of Deeds of Horry County, South Carolina, and Assignee shall be considered the Declarant for purposes of exercising Declarant rights from this date forward.
2. Assignor warrants and represents that it has not previously assigned any of its interest in the Covenants and Declarant Rights to any other person, party or entity.
3. This Assignment shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Assignee, its successors and assigns.
4. This Assignment shall be governed by and construed in accordance with the laws of the State of South Carolina.

Signature pages to follow.

EXHIBIT C

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment of Rights as of the day and year first written above.

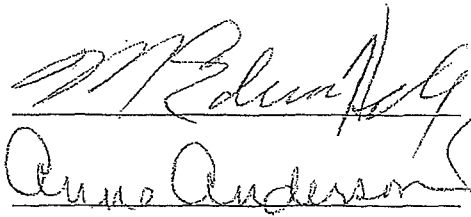
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

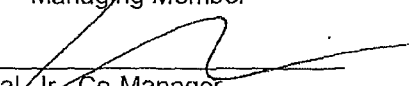
ASSIGNOR:

Wild Wing Residential Development, LLC, a
Delaware Limited Liability Company

By: SLF IV / SBI Properties MM, LLC, a Texas
Limited Liability Company, its Manager

By: SB Investments LLC, a South
Carolina Limited Liability Company, its
Managing Member


Anna Anderson

By: 
Ralph R. Teal, Jr., Co-Manager

STATE OF SOUTH CAROLINA)

)

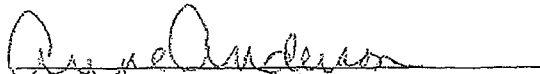
ACKNOWLEDGMENT

COUNTY OF HORRY)

)

I, the undersigned notary, do hereby certify that the above subscribed Ralph R. Teal, Jr., as Co-Manager of SB Investments, LLC, Managing Member of SLF IV / SBI Properties MM, LLC, Manager of Wild Wing Residential Development, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 13th day of April, 2015.


Notary Public for South Carolina

My Commission Expires: 2/3/16

(Seal)

ELECTRONICALLY FILED - 2020 Oct 29 1:46 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

EXHIBIT C

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment of Rights as of the day and year first written above.

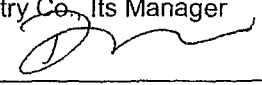
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

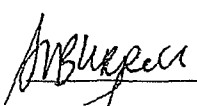
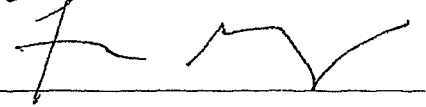
ASSIGNEE:

Founders Wild Wing, LLC

A South Carolina Limited Liability Company

By: Jiangsu Tianrui Danfo Commerce and
Industry Co., Its Manager

By: 
Dan Liu, President

STATE OF SOUTH CAROLINA

)

)

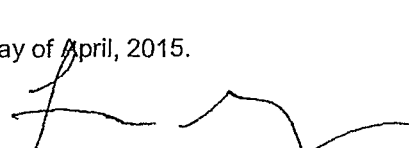
ACKNOWLEDGMENT

COUNTY OF HORRY

)

I, the undersigned notary, do hereby certify that the above subscribed Dan Liu, as President of Founders Wild Wing, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 13th day of April, 2015.


Notary Public for South Carolina

My Commission Expires: 2/19/24

(Seal)

ELECTRONICALLY FILED - 2020 Oct 29 1:46 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

EXHIBIT "A"

Lots

Phase 1

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lots 2, 3, 4, 5, 6, 9, 20, 21, 29, 54, 55, 61, 64, 73, 74, 75, 79, 115, 116, 118, 119, 120, 121, 123, 124, 126, 134, 139, 142, 144, 145, 146, 147, 148, 152, 153, 154, 156, 158, 159, 160, 161, 167, 172, 173, 174, 187, 188, 189, 190, 191, 192, 196, 197, 198, 201, 210, 212, 213, 217, 233, 234, 237, 241, 242, 243, 245, 246, 258, 259, 260, 263, 266, 267, 268, 269, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 286, 290, 291, 295, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 311, 312, 315, 316, 319, 320, 321 and 322, Phase 1 of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Phase I Wild Wing Plantation", dated September 18, 2006 and recorded September 20, 2006 in Plat Book 217 at Pages 55 through 55i inclusive, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lot 224, Phase 1 of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Boundary Line Adjustment Plat Between Lots 223 & 224 Wild Wing Plantation, Phase One", dated May 2, 2007, and recorded May 31, 2007, in Plat Book 226, at Page 24, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lots 58, 59, and 60, Phase 1 of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Boundary Line Adjustment Plat Between Lots 58 Thru 60, Wild Wing Plantation", dated November 15, 2007, and recorded December 7, 2007, in Plat Book 233, at Page 49, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Phase 1B

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lots 345, 346, 347, 348, 349 and 350, Phase 1B of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Wild Wing Plantation Phase 1B", dated May 3, 2007, revised May 10, 2007 and recorded May 29, 2007 in Plat Book 225 at Page 298, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Phase 2

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lots 352, 353, 354, 355, 356, 357, 358, 361, 362, 363, 366, 367, 368, 369, 370, 371, 373, 378, 379, 380, 407, 413, 414, 418, 421, 424, 431, 432, 433, 435, 439, 440, 441, 442, 444, 445, and 453, Phase 2 of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Wild Wing Plantation Phase Two", dated May 3, 2007, final revised May 29, 2007 and recorded May 29, 2007 in Plat Book 225 at Pages 299 and 300, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Phase 3

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lots 466, 467, 472, 474, 476, 479, 480, 481, 483, 485, 488, 495, 498, 504, 508, 509, 511, 517, 518, 519, 520, 521, 523, 526, 527, 528, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 542, 550, 551, 552, 553 and 554, Phase 3 of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Wild Wing Plantation Phase Three", dated October 12, 2007 and recorded October 24, 2007 in Plat Book 231 at Pages 264 and 265, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Development Land**Parcel B**

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel B**" containing 2,956,814 sq. ft., 67.88 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-019

Parcel E

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel E**" containing 378,746 sq. ft., 8.69 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-019

Parcel G

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel G**" containing 213,215 sq. ft., 4.89 AC., more or less, including the area containing 2.54 AC., more or less, shown as being included within Parcel G, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-019 and 151-44-01-119

Parcel J

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel J**" containing 4,893 sq. ft., 0.11 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-202

Parcel K

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Sign Parcel K**" containing 5,248 sq. ft., 0.12 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-44-01-032

Parcel L

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel L, Inclusive of TMS 151-00-04-204 & Portion of TMS 151-44-01-032**" containing 681,402 sq. ft., 15.64 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

TMS # 151-00-04-204 and Portion of 151-44-01-032

Parcel M

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel M**" containing 280,863 sq. ft., 6.45 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-204

Parcel O

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel O**" containing 307,408 sq. ft., 7.06 AC., more or

less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-204

Parcel P

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel P**" containing 33,955 sq. ft., 0.78 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-204

Parcel Q

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel Q**" containing 72,768 sq. ft., 1.67 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-204

Parcel R

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel R**" containing 13,414 sq. ft., 0.31 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-204

Parcel S

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel S**" containing 65,065 sq. ft., 1.49 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for

a more complete description.

Portion of TMS # 151-00-04-204

Remainder of TMS 151-00-04-019

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Remainder of TMS 151-00-04-019**" containing 5,495,724 sq. ft., 126.16 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Golf Course Land

Parcel A

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel A**" containing 9,565,940 sq. ft., 219.60 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-019

Parcel C

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel C**" containing 848,839 sq. ft., 19.49 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-019

Parcel F

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel F**" containing 164,809 sq. ft., 3.78 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-019

Parcel H

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel H**" containing 784,538 sq. ft., 18.01 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-44-01-119

Parcel I

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Parcel I**" containing 332,597 sq. ft., 7.64 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-45-02-056

Remainder of TMS 151-00-04-202

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "**Remainder of TMS 151-00-04-202**" containing 2,829,822 sq. ft., 64.96 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Remainder of TMS # 151-00-04-202

EXHIBIT C

EXHIBIT "B"

Covenants attached

EXHIBIT D

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) DECLARATION OF PROTECTIVE COVENANTS,
) RESTRICTIONS, EASEMENTS, CHARGES
) AND LIENS FOR WILD WING PLANTATION

THIS DECLARATION made this 26th day of September, 2006, by **Wild Wing Company, LLC**, a **South Carolina Limited Liability Company**, with its principal place of business located in Myrtle Beach, South Carolina, hereinafter referred to as the "Declarant":

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property more particularly described in Exhibit "A" of this Declaration, which Exhibit "A" is made a part and parcel hereof by this reference and desires to develop thereon a residential subdivision to be known as "Wild Wing Plantation"; and

WHEREAS, the Declarant, in its discretion, may incorporate additional real property as additional phases of this development and bring same under this Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation, but shall be under no obligation to do so; and,

WHEREAS, the Declarant is desirous of maintaining design criteria, location and construction specifications, and other controls to assure the integrity of the development; and,

WHEREAS, each owner of a Lot in Wild Wing Plantation will be required to maintain and construct homes in accordance with the design criteria herein contained; and,

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in such development and for the maintenance of common lands and facilities, if any, and to this end, desires to subject the real property described in Exhibit "A", to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and,

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in such community, to create an agency to which will be delegated and assigned the powers of maintaining and administering the Development (as defined hereinafter), promulgating rules and regulations for the usage of common areas in accordance with this Declaration, administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, the Declarant has caused to be incorporated under the laws of the State of South Carolina, as a Not-for-Profit corporation to be known as the Wild Wing Plantation Property Owner's Association, Inc. for the purpose of exercising the aforesaid functions,

NOW THEREFORE, the Declarant declares that the real property described in Exhibit "A", annexed hereto and forming a part hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

RETURN TO
BELLAMY, RUTENBERG, COPELAND
EPPS, GRAVELY & BOWERS, P.A.
POST OFFICE BOX 367

ARTICLE IDefinitions

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Annual Assessments" or "Assessments" shall mean an assessment established by the Board of Directors for common expenses as provided for herein or by a subsequent amendment which shall be used for the purpose of promoting the recreation, common benefit and enjoyment of the Owners and occupants of all Lots and the operation, maintenance and repair of the Common Area.

(b) "Architectural Review Board" or "A.R.B." shall mean and refer to that committee or board of Association (as hereinafter defined) created for the purpose of establishing and enforcing criteria for the construction of improvements (including landscaping) within the Properties. Initially, Declarant shall appoint all members of the Architectural Review Board until such rights of Declarant terminate or are transferred to Association in accordance with Article VII of this Declaration.

(c) "Association" shall mean and refer to Wild Wing Property Owners Association, Inc., its Successors and Assigns.

(d) "Common Area" shall mean and refer to those areas of land, including the facilities to be constructed thereon, if any, shown and specifically designated as such on any subdivision map of The Properties filed by Declarant or by any other means so designated by Declarant and shall include an easement (as hereinafter provided) over the Lake and Lake Areas. Such areas are intended to be devoted to the common use and enjoyment of the members of the Association as herein defined, and are not dedicated for use by the general public. However, no general plan or plat of the Properties showing adjoining areas which may later be developed as additional phases of the Development shall be included as Common Areas nor shall the Association or any Owner be entitled to any right, title or interest therein unless and until such adjoining areas shall have been formally included as a part of the Development by the Declarant pursuant to the terms hereinafter contained. Declarant reserves the right, but shall be under no obligation, to build a swimming pool, clubhouse, playground, two (2) tennis courts, beach area, boat docking slips and boat landing, as well as such other amenities as Declarant may, in its sole discretion, determine to construct and dedicate same as a Common Area. As to all conveyances of Common Areas by Declarant to Association, Association agrees to accept title to such areas upon execution and delivery of a quit-claim deed of conveyance provided (i) said Common Areas have been completed and are, subject to normal wear and tear, in reasonable repair and condition, and (ii) reasonable provisions have been made for the establishment of a reserve fund budgeted for normal maintenance thereof which such fund has been turned over to the Association.

Provided however, the recording and reference to said plat shall not in and of itself be construed as creating any dedications, rights or easements (negative reciprocal or otherwise), all such dedications, rights and/or easements being made only specifically by this Declaration, any amendment or supplement hereto or any deed of conveyance from Declarant, its successors or assigns, as developer.

(e) "Declarant" shall mean and refer to Wild Wing Company, LLC, its Successors and Assigns in the development of the Properties, but shall not include an Owner of an individual Lot located within the Properties.

(f) "Declaration" shall mean and refer to this Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation.

(g) "Design Criteria", "Plans", and "Specifications", and such like terms shall refer to and encompass the Plans, Specifications, Elevations, and Designs, including but not limited to, exterior finishes and textures, and exterior colors and materials for dwellings and improvements to be constructed upon Lots within the Project as well as setbacks, locations, etc. contained hereinafter in this Declaration.

(h) "Development", "Project" "Wild Wing" and "Community" shall all mean and refer to the project known as Wild Wing Plantation as hereafter developed by the Declarant.

(i) "Lot" shall mean and refer to any plot of land intended for residential use, with delineated boundary lines appearing on any recorded subdivision map of the Properties with the exception of any Common Area shown on a recorded map. In the event any Lot is increased or decreased in size by resubdivision, the same shall nevertheless be and remain a Lot for the purpose of this Declaration. This definition shall not imply, however, that a Lot may be subdivided if prohibited elsewhere in this Declaration. In the event that an Owner desires to combine two (2) or more adjoining Lots for the purpose of constructing and maintaining a single residence thereon, the resulting combined Lots shall from that date forward be deemed one (1) Lot for the purposes of this Declaration, including for the purpose of determining Assessments in accordance with this Declaration.

(j) "Lake" and "Lake Areas" means any Common Area or portion of a Lot or Lots on which a Lake now exists or is later constructed by Declarant and "Lake" means a body of water which now exists or is later constructed by Declarant and so designated.

(k) "Lake Maintenance Easement" means those areas identified on the recorded plat(s) of the Property as "Lake Access/Maint Easmt (typ)" or similar designation which shall be reserved to the Association for the purpose of performing maintenance of the Lakes in accordance with the terms and provisions of this Declaration.

- (l) "Member" shall mean and refer to all those Owners who are members of the Association, as provided in Article IV hereof.
- (m) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee-simple title to any Lot(s), but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure. Said term "Owner" shall also refer to the heirs, successors and assigns of any Owner.
- (n) "Properties" or "Property" shall mean and refer to all property including Lots and Common Areas, as are subject to this Declaration, and which are described in Exhibit "A" together with any additional phases that may be developed and specifically submitted to the provisions of this Declaration pursuant hereto.
- (o) "Personal watercraft" means a boat less than sixteen feet in length which: (i) has an outboard motor or an inboard motor which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion, (ii) is designed with the concept that the operator and passenger ride on the outside surfaces of the vessel as opposed to riding inside the vessel; (iii) has the probability that the operator and passenger, in the normal course of use, may fall overboard. Personal watercraft includes, without limitation, a vessel where the operator and passenger ride on the outside surfaces of the vessel, even if the primary source of motive propulsion is a propeller, and a vessel commonly known as a "jet ski".
- (p) "Setback" shall mean an area along the boundary of a Lot where no building or other structures such as swimming pools or decks shall be permitted, without the express written permission of Declarant or the Architectural Review Board. However, the location of normal air handling and heat, ventilation and air conditioning units (and the associated approved screening for such units) within such Setback area shall be permissible so long as it is in conjunction with an approved residential structure located on a Lot.
- (q) "Subsequent Amendment" or "Supplemental Declaration" shall mean an amendment to this Declaration which adds property to this Declaration and makes it subject to the Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations and/or modifications to these Restrictions on the land submitted by that Subsequent Amendment to the provisions of the Declaration.
- (r) "Special Assessments" shall mean an assessment established by the Board of Directors from time to time for capital improvements, unique costs or expenses, extraordinary budget or expense items and the like.

ARTICLE IIUses of Property

Section 1. Conformity and Approval of Structures. No structure, fence, sidewalk, wall, swimming pool, boat docking slip, bulkhead wall, landscaping (other than replacement of landscaping in accordance with an approved plan) or other improvement shall be placed or altered on any Lot except in accordance with the provisions of this Declaration and after approval of the Architectural Review Board as hereinafter provided in Article VII of this Declaration.

Section 2. Subdivision of Lot. No Lot shall be subdivided except as hereinafter provided and no building or residence, including porches, swimming pools or projections of any kind, shall be erected so as to extend over or across any of the building lines as hereinafter established except as herein provided. Provided, however, two or more Lots may be combined to provide one building site in accordance with this Declaration, subject to the limitations contained in Article I of this Declaration.

Section 3. Increased Size of Lots. A Lot or Lots may only be subdivided provided the effect is to increase the size of both of the adjoining Lots. In such cases, the Declarant may alter the building lines to conform. Should the Owner or Owners of any Lots and/or portions of Lots which have been combined for a single building site subsequently wish to revert to the original plan of subdivision, or make any other combination which would not be in violation of this restriction, such may be done only if the written consent of the Declarant is first had and obtained. In such instances, the adjoining Lot Owners, or other Owners in the subdivision do not have the right to review, pass on or interfere with such rearrangement of Lots, as such rights shall be exclusively that of the Declarant or any successors or assigns to whom the Declarant may expressly have transferred such rights, but the purchaser of any other Lot in the subdivision does not, by virtue of his status as a purchaser, become any such successor or assign.

Section 4. Alteration of Setback Lines in the Best Interest of Development. Where because of size of Lot, shape of Lot, natural terrain, or any other reason in the sole opinion of the Declarant, that the Setback lines of any Lot(s) should be altered or changed, then the Declarant reserves unto itself, its successors or assigns, and no other, the right to change said Setback lines to meet such conditions. The Declarant specifically reserves the right to transfer and assign this right of approval to the Architectural Review Board hereinafter established.

Section 5. Completion of Improvements. The exterior of all dwellings and other structures constructed upon any Lot must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergencies or natural calamities. No building under initial construction shall be occupied until construction is completed, and all necessary approvals of any governmental authorities have been obtained, and the Architectural

Review Board has issued its certificate of completion in accordance with guidelines promulgated by the Architectural Review Board.

Section 6. Residential Use of Lots. Except as provided herein, all Lots shall be used for residential purposes exclusively. No structures, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family dwelling constructed in accordance with the Plans and Specifications herein defined in Article III. No timesharing, interval ownership or other related ownership scheme shall be permitted. No separate storage or other out building shall be permitted; all storage rooms must be attached to, form a part of and conform to the architectural scheme and appearance of the dwelling. In addition, no leasing or rental of any dwelling shall be permitted having a duration of less than six (6) months. However, Declarant or its assignee may maintain sales offices, models and construction offices upon one or more Lots until all Lots located or to be located within the Properties (including all subsequent phases) have been sold to third parties or Declarant no longer has the right to incorporate additional property under the terms of this Declaration. Easements are hereby reserved through the Common Area, including, without limitation, the easements shown on the plat (s) of the Property for use by Developer, for its use and the use of its agents, employees, licensees and invitees, for all purposes in connection with the use, development and sales of the Property, including, without limitation, for the erection and maintenance of signage.

Section 7. Maintenance of Lots. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly, or unkept condition of buildings or grounds on such Lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area. Each Owner shall maintain his Lot and shall keep underbrush and weeds mowed, which shall include, without limitation, the mowing of Lots on which no residence has been built not less than twice annually in October and May of each year.

Section 8. Nuisances. No noxious, unlawful or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood. No plants, poultry, animals (other than household pets) or devices or things of any sort, the normal activities or existence of which are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood shall be placed, kept or maintained on any Lot. Without limiting the foregoing, exterior lighting may not be so installed on any Lot as to illuminate any portion of a neighboring Lot or to shine into any window or otherwise enter a dwelling located on an adjoining Lot. Garage doors must be closed except when in use.

Section 9. Exclusion of Above Ground Utilities. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission or receiving antenna shall be erected, placed or maintained on any part of the premises. Provided, however, that the normal service pedestals, and similar equipment, used in conjunction with such underground utilities shall be permitted within the development. Overhead utilities shall be permitted during the construction period and until utility

companies can place them underground. Except as hereinafter provided, no Owner shall install any receiving or transmitting device which requires any exterior protrusion, nor shall any antennas or other receiving or transmitting devices be located on any Lot. Notwithstanding the foregoing, the following types of antennas may be installed, but only in accordance with reasonable rules and regulations to be promulgated by the Architectural Review Board, which rules and regulations shall include, without limitation, restrictions as to location, color and screening:

a dish antenna that is one (1) meter or less in diameter and is designed to receive direct broadcast satellite service, including direct to home satellite service; (B) an antenna that is one (1) meter or less in diameter or diagonal measurement and is designed to receive video programming services via multi-channel multi-point distribution (wireless cable) providers (MMDS); or (C) an antenna that is designed to receive television broadcast signals.

Section 10. Signs. Except as required by law, no billboards, posters or advertising signs of any kind or character (specifically including "for sale" or "for rent" signs or posters) shall be erected, placed, permitted, maintained or allowed to remain on any lot or improvement thereon (including in any window) except for signs designating the Lot Owner and contractor on any Lot on which a residence is then under construction. Such signs shall be of a uniform type and color as approved by the Architectural Review Board and shall be supplied by Association upon payment of a fee for same by Owner. However, it shall be permissible for the Association to have a sign located on the Common Area, if the design, size and location of such sign is approved by Declarant, prior to its erection. No other sign of any kind or design shall be allowed. Declarant reserves the right to erect temporary or permanent signs identifying and/or advertising the Project on the Common Area.

Section 11. Prohibition Against Business Activity. Except as hereinafter provided, no business activity, including but not limited to, a rooming house, boarding house, gift shop, antique shop, professional office or beauty shop or the like or any trade of any kind whatsoever shall be carried on upon a Lot or Lots. Nothing herein shall be construed to prevent a "home office" so long as all activities are conducted within the residence and no customers, employees, clients or others enter the Properties relative to such business activity. Provided, however, that nothing contained herein shall be construed so as to prohibit the construction of houses to be sold on said Lots or the showing of said houses for the purpose of selling houses in the subdivision. Nothing herein shall be construed to prevent the Declarant from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and sales in the subdivision.

Section 12. Mining and Drilling. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the premises, nor shall any oil, natural gas, petroleum, asphalt or hydrocarbon products or materials of any kind be produced or extracted from the premises.

Section 13. Garbage Disposal. Each Lot Owner shall provide garbage receptacles or

similar facilities in accordance with reasonable standards established by the Declarant, or a roll-out garbage rack of the type approved by the Declarant, which shall be visible from the streets on garbage pickup days only. No garbage or trash incinerator shall be permitted upon the premises. No burning, burying or other disposal of garbage on any Lot or within the Project shall be permitted. Provided that the Declarant shall be permitted to modify the requirements of this Section 13 where necessary to comply with orders of governing bodies.

Section 14. Temporary Structures. No structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractors during construction of the main dwelling house, it being clearly understood that the latter temporary shelters may not, at any time, be used for a residence or permitted to remain on the Lot after completion of construction.

Section 15. Other Structures. No home, tent (other than small overnight tents used by children which remain in place for less than 24 hours), barn, tree house or other similar out-building or structure shall be placed on any Lot at any time either temporarily or permanently, except as provided in Section 14 above.

Section 16. Storage Receptacles. No fuel tanks or similar storage receptacles may be located on the Lots (with the exception of small portable tanks for supplying fuel to gas grills and gas logs for fireplace) nor may any such tanks or storage receptacles be buried underground.

Section 17. Clotheslines. No clotheslines or drying yards shall be located upon the premises so as to be visible from any Common Area or from any adjoining property or Lot.

Section 18. Water and Irrigation Systems. No individual water supply system shall be permitted upon any Lot. Furthermore, no wells may be drilled upon any Lot or Common Area for supplying water, whether the same shall be used for lawn irrigation or otherwise. No drawing of water from any lake or pond shall be permitted.

Section 19. Off-Street Parking. Adequate off-street parking shall be provided by the Lot Owner herein for the parking of automobiles or other vehicles owned by said Owner and said Owner agrees not to park his automobile or other vehicles on the Streets or Common Areas in the subdivision. No travel trailers or mobile homes, campers or other habitable motor vehicles of any kind, whether self-propelled or not, school buses, trucks (other than non-commercial pickup trucks) or commercial vehicles, or boat trailers or boats shall be kept, stored or parked overnight, either on any Common Area, any streets, or any Lot, except within enclosed approved garages or sheltered from view from neighboring Lots, any adjacent property which is not part of the project or Common Areas or within a portion of the Common Areas which may be hereafter specifically designated for such use. Furthermore, no non-operative or junked vehicles (or parts thereof) may be kept on the Properties. It shall not be permissible to make repairs to or "work on" vehicles, boats or other watercraft while same are located on the Properties.

Section 20. Sewer System. No surface toilets are permitted on the Properties. The Grantee of any Lot assumes all responsibility for obtaining the necessary permits for attaching to the public sanitary sewer and water system for the project, developer making no warranties or representations thereabout.

Section 21. Firearms and Fireworks. No firearms or fireworks of any variety shall be discharged upon the Lots or Common Areas.

Section 22. Pets. No pet shall be permitted off of its owner's Lot when not on a leash.

Section 23. Lakes and Lake Area(s). Subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration and except as otherwise provided, no individual using a Lake, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association or within a Lake Area. Notwithstanding the foregoing, Declarant, the Association and each and every Owner (subject to restrictions contained in this Declaration with regard to the simultaneous use of Common Areas by multiple Owners of a single Lot), their respective successors, heirs and assigns, shall have a right and easement over all Lakes and Lake Areas for entry thereon and the use thereof by Declarant or any Owner and such Owner's guest(s) when accompanied by an Owner in accordance with the Association's rules and regulations, whether or not such Lake or Lake Area (or portions thereof) is actually located upon a Lot or Lots. No Owner shall have the right to exclude Declarant or any Owner and such Owner's accompanied guest(s) from any Lake or Lake Area because of such Lake or Lake Area being partially located within the bounds of any Lot(s). Such easements shall be appurtenant to, and pass with, the title to each Lot. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. No docks, piers or other structures may be erected in, over or adjoining any Lake, except for a boat dock slip and associated bulkhead walls constructed in strict accordance with guidelines promulgated by the Architectural Review Board. Furthermore, no Lake may be used by any Owner for the purpose of providing water for irrigation purposes. A Lake may be used for swimming, boating, and other recreational purposes only in accordance with rules and regulations promulgated by Association, as such rules and regulations may now or hereafter be adopted, amended and/or modified. Such rules and regulations may include restrictions as to type, length and horsepower of any boats to be used upon such Lake(s). Furthermore, no personal watercraft (as defined in this Declaration) may be used or located upon any Lake or Lake Areas. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any lake or Lake Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

Declarant reserves unto itself, its designated successors and assigns, the right to increase or decrease the level of the waters of any Lake, from time to time, without obtaining the consent or approval of Association or any Owner(s) and without liability for such actions.

ARTICLE III

Construction in Accordance with Plans and Specifications

Section 1. General. All structures of every type and description shall be constructed, placed or erected within the Development in accordance with the provisions of this Article III together with other applicable provisions of this Declaration.

Section 2. Size of Residences and Lot Coverage. All residences to be constructed upon any Lot shall have a minimum of 2,000 square feet of enclosed heated floor space for single level dwellings, exclusive of porches, decks and garages, and a minimum of 2,400 square feet of enclosed heated floor space in multi-level dwellings (with not less than 1,600 square feet of enclosed heated floor space on the first level), exclusive of porches, decks and garages as herein defined. For purposes of this Declaration, a single level or one story dwelling shall be a dwelling having living areas on only one level while a multi-level or two story dwelling shall be a dwelling having living areas located on more than one level within the dwelling. In addition, each residence must include an enclosed garage. While Declarant may not modify the provisions of this Section with regard to the Property being hereby submitted to the terms and provisions of this Declaration as Phase I, Declarant expressly reserves the right, in its sole discretion, to modify the terms of this Section as to any subsequent property submitted to the terms of this Declaration as additional phase(s) by subsequent amendment or supplemental declaration. Such subsequent amendment or supplemental declaration shall specify the modifications of this Section (if any) applicable to such additional property or phase so incorporated under the terms of this Declaration.

Section 3. Setbacks. No building or structure, including porches, swimming pools or projections of any kind, shall be erected so as to extend over or across any of the Setback lines so as to be nearer to the Lot boundary line than such Setback line. The Setback lines for each Lot shall be as follows:

Front Setback Line - 35 feet from front Lot Boundary Line
(As to all Lots except as otherwise specifically provided in this section)

Front Setback Line
(Lots 248 through 251,
Lots 265 through 297 and Lots
305 through 331, inclusive) - 20 feet from front Lot Boundary Line

EXHIBIT D

Side Setback Line - 10 feet from each side Boundary Line of the Lot
(As to all Lots except as otherwise specifically provided in this section)

Rear Setback Line - 35 feet from the Rear Lot Boundary Line
(On Lots which do not adjoin a Lake or Lake Area and are not otherwise specifically provided for in this section)

Rear Setback Line - 23 feet measured from the Lake Maintenance Easement boundary line on the upland or high ground side of the Lake Maintenance Easement
(On Lots which adjoin a Lake or Lake Area and are not otherwise specifically provided for in this section)

Rear Setback Line (Lots 248 through 251, Lots 265 through 297 and Lots 305-331, inclusive) - 20 feet measured from the Lake Maintenance Easement boundary line on the upland or high ground side of the Lake Easement

However, (a) the location of normal air handling and heat, ventilation and air conditioning units and associated approved screening within such Setback area shall be permissible so long as it is in conjunction with an approved residential structure on said Lot, (b) roof overhangs not to exceed twenty-four (24") inches from and as a part of the main dwelling may extend unto the Setback area, and (c) boat dock slips and bulkheads constructed in strict accordance with plans approved by the Architectural Review Board may extend into setback and Lake maintenance easement areas.

Notwithstanding the foregoing, Declarant reserves the rights provided in Article II, Section 4 of this Declaration to modify said setback lines.

ARTICLE IV

Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is an Owner of any Lot which is subjected by this Declaration to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.

Section 2. Articles of Incorporation and Bylaws. A copy of the Articles of Incorporation of the Association and Bylaws of the Association are attached hereto as Exhibit "B" and Exhibit "C", respectively, and made a part and parcel hereof.

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership.

Class A. Class A Members shall be all Owners excepting the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 1 above. When more than one person holds such interest or interests in any Lot, the vote attributable to such Lot shall be exercised as such persons mutually determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to total votes in an amount equal to twice the number of the class A votes plus one. The Class B membership shall cease and become converted to Class A membership upon the conveyance to Lot Owners of all Lots subject to this Declaration, or December 31, 2015, whichever first occurs. In addition, Declarant may terminate the Class B membership upon written notice to Association.

When a purchaser of an individual Lot or Lots takes title thereto from the Declarant, he automatically becomes a Class A Member.

ARTICLE V.

Property Rights in the Common Areas

Section 1. Member's Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Member shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot. This right and easement shall be for use in common with all other such members, their tenants, guests and invitees. In the event that Declarant incorporates additional land under the provisions of this

Declaration pursuant to Article IX of this Declaration, all Owners of Lots within such additional phases shall have the same rights and privileges with regard to use of the Common Areas as the Owners of Lots originally made subject to this Declaration.

Furthermore, and notwithstanding anything in this Declaration to the contrary, any owner of a lot within the subdivision located near to the Property which is known as "The Sanctuary at Wild Wing" (the "Sanctuary") may use the swimming pool, tennis court(s) and Owner's Clubhouse facilities (at such time as the same may be constructed) located within the Common Areas of the Development upon payment by such owner of an annual fee to the Association, which fee shall be equal to thirty-five (35%) percent of the regular annual assessment assessed by the Association against each Lot (and the Owner thereof) within the Development, as the same changes from time to time. Such usage shall be in accordance with the rules and regulations promulgated by the

Association for the members thereof. However, nothing herein shall create any ownership or membership rights in the owners of lots within the Sanctuary nor shall any of such owners within the Sanctuary have any rights to vote or otherwise manage the Association of the Common Areas.

Section 2. Title to Common Areas. Subject to the provisions of Article I, Section C, the Declarant hereby covenants for itself, its successors and assigns, it will convey to the Association, by Quit-Claim Deed, fee simple title to the Common Areas (excluding any portions of Lakes and Lake Areas which are located within the bounds of any Lot) upon the conditions set forth herein, free and clear of all encumbrances and liens, except those created by or pursuant to this Declaration and except for those rights reserved unto the Developer pursuant to this Declaration. Association shall accept such conveyance of the Common Areas (which may include streets, roads and drainage facilities).

In lieu of the conveyance provided for herein with regard to the streets, roads, and/or drainage facilities. Declarant may cause such streets, roads and/or drainage facilities to be dedicated to any governmental entity, as provided for in Section 3(a) hereof.

Section 3. Extent of Member's Easements. The rights and easements created hereby shall be subject to the following:

- (a) The right of the Declarant, and/or of the Association, to dedicate, transfer or convey all or any part of the Common Areas, with or without consideration, to any governmental body, district, agency or authority, or to any utility company, provided that no such dedication, transfer or conveyance shall adversely limit the use of the Common Areas by the Members of the Association;
- (b) The right of the Declarant, and/or of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage and other utilities and services, including, without limitation, a cable (CATV) or community antenna television system and irrigation or lawn sprinkler systems, and the right of the Declarant to grant and reserve easements and rights-of-way through, over and upon and across the Common Areas for the completion of the Development, and for the operation and maintenance of the Common Areas;
- (c) The right of the Association, as provided in its By-Laws, to suspend the enjoyment rights of any Owner in the Common Areas for any period during which any assessment remains unpaid, and for any period during which the Owner is in violation of this Declaration or the rules and regulations of the Association and in addition thereto (and without limiting the foregoing periods) for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.

- (d) The rights of the Association, in accordance with law, its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas and in pursuance thereof, to mortgage the same.
- (e) Restrictions and easements contained on any plat or other instrument filed of record with respect to the Properties.
- (f) The right of Declarant to grant and/or dedicate non-exclusive easements across the Common Area in favor of other property of Declarant.
- (g) The right of Declarant to develop Wild Wing Plantation, which may or may not include additional property, in such manner as it may determine, in its sole discretion.

Section 4. Maintenance. Subject to the provisions herein contained, the Association shall at all times maintain all Common Areas, Lakes and Lake Areas in good repair, and shall repair or replace as often as necessary, the paving, drainage structures, street lighting fixtures, landscaping, entrance signage, and other amenities (except utilities) situated on the Common Areas. Association shall also cause the landscaping, entrance features and signage at the entrance to the Property to be maintained at Association's expense. Notwithstanding the foregoing, it shall be the responsibility of each Owner of a Lot located adjacent to a Lake or Lake Area to maintain that portion of the bank of the Lake or Lake Area bordering such Owner's Lot, at such Owner's sole expense, in a manner to prevent erosion of the Lake bank and in accordance with rules and regulations to be promulgated by the Board of Directors of Association. The Board of Directors acting on a majority vote shall order all work to be done and shall pay for all expenses including all electricity consumed by the lighting located in the Common Areas and all other common expenses. All work pursuant to this Section and all expenses hereunder shall be paid for by such Association through assessments imposed in accordance with this Declaration. Nothing herein shall be construed as preventing the Association from delegating or transferring its maintenance obligations to the governmental authority under such terms and conditions as the Board of Directors may deem in the best interest of the Association.

Section 5. Additional Structures. Neither the Association nor any Owner or any group of Owners shall, without the prior written approval of Declarant, erect, construct or otherwise locate any structure or other improvement in the Common Areas.

Section 6. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised by members of the Owners' family who occupy the residence of the Owner within the properties.

(b) Tenants. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants who occupy a residence within the Properties.

(c) Guests. Recreational facilities, if any, situated upon the Properties may be utilized by guests of an Owner accompanied by such Owner or tenants subject to the rules and regulations of the Association governing said use and as established by its Board of Directors.

Section 7. Rules and Regulations. The use of the Common Areas by an Owner or Owners, and all other parties authorized to use same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established by the Association governing such use, or which may hereafter be prescribed and established by the Association. Such rules and regulations shall include a limitation on use of amenities within Common Areas (including Lakes) to a designated Owner and such Owner's family and/or significant other in cases of Lots owned by multiple Owners who are not members of the same family. For purposes of this section, "family" shall mean and refer to a group of persons, each of whom is related to each other member of the group through blood or marriage either as siblings or in direct lines of ancestry or descent. Such designation of the Owner for purposes of use of the Common Areas may not be changed more often than six (6) months and shall be made in writing to Association.

Section 8. Easement for Utilities and Lake Maintenance. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and reasonable easement and right of ingress and egress, over, upon, across and under the Setback areas and easement areas on each Lot as shown on the recorded map of the Properties and/or as set forth herein and over, upon, across and under the Common Area for the erection, maintenance, installation and use of electrical and telephone wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public convenience or utilities, including an easement for privately owned television and other communications cable and equipment and for the construction and maintenance of the Lakes and Lake Areas located (or to be located as shown on the recorded plats of the Property) upon the Property. The Declarant may further cut drainways for surface water when such action may appear to the Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of soil, or to take any other similar action reasonably necessary to provide economical and safe utility or other installations and to maintain reasonable standards of health, safety and appearance. Declarant further reserves the right to locate wells, pumping stations, and tanks within residential areas on any Lot owned by Declarant. It shall not be necessary to obtain the consent of Owners of Lots adjoining the existing utilities and pump station. Such rights may be exercised by the licensee of the Declarant but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility service. No structures or other items, including walls, fences, paving or planting shall be erected upon any part of the property which will interfere with the rights of ingress and egress provided for in this paragraph. Specifically, except as herein provided, no Owner shall erect any structure, including, without limitation, walls, fences, paving or planting within the areas designated on the Plat of the

Properties as a "Drainage Easement", "Lake Maintenance Easement" or words of similar import nor shall any Owner change the grade of any such easement area. In that regard, an easement for ingress and egress for the maintenance of the Lakes and Lake Areas is hereby reserved for the benefit of the Association over all Lake Maintenance Easements. However, nothing herein shall restrict or prevent the location of boat docking slips and bulkhead walls in accordance with plans approved by the Architectural Review Board within any such easement or setback area. In the event that any such approved boat docking slip is constructed within any Lake Maintenance Easement on any Lot, the Owner of such Lot shall make provision for such additional access around such boat docking slip as is reasonably necessary for the purpose of Lake Maintenance as is reasonably acceptable to Association. Each Owner shall keep drainage ditches and swales located on his/her Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon such Lot as may be reasonably required for proper drainage. Declarant may, at its sole option, convey any such drainage easements to an appropriate governmental entity and/or the Association. The easements referred to in this paragraph are, without limitation, those shown upon the recorded plat of the Properties; as set out in easements of record; upon the plans of the Development; or which are located on or under the ground.

In addition to the foregoing rights reserved to Declarant, and not in limitation thereof, Declarant further reserves unto itself, its successors and assigns, a perpetual, alienable commercial easement and right of ingress and egress over, upon, across and under the Common Areas and all streets and roads within the Properties for the purpose of providing drainage and utility installation, construction, reconstruction, and maintenance to adjacent property now or hereafter owned by Declarant and for the installation and maintenance of any pipes, drainways or other installations necessary for the foregoing and further for the installation, maintenance, repair, replacement and operation of water lines and other utilities which serve or shall serve property presently owned by Declarant. Declarant, its agents, contractors, servants, employees and assignees may enter upon the easement areas for the purposes of maintaining, repairing, replacing and operating such water lines and other utilities and drainage facilities and for the purpose of installing additional utilities and drainage facilities. Declarant further reserves unto itself, its successors and assigns, a perpetual, alienable easement and right-of-way over, under and across those areas designated as "Drainage Easement" or like wording on the plat of the Properties referred to in Exhibit "A" hereto for the purpose of providing drainage of the Properties and lands adjacent to the Properties and for the installation, repair and maintenance of pipes and other facilities necessary for such drainage. Declarant, its agents, contractors, servants, employees and assignees may enter upon any of the easement areas so designated on the recorded plat of the Properties for the purpose of maintaining, repairing, replacing and operating any of the drainage facilities, pipes, ditches, and drainage areas located thereon. The Owners of Lots on which such easements are located shall not interfere in any manner with such easements or any of the facilities located therein or the access thereto. Except for boat docking slips and bulkheads constructed in accordance with plans approved by the Architectural Review Board, no Owner shall erect any structure or fence within such easement areas without the prior written consent of Declarant. Declarant, its agents, employees and assignees shall have no liability for damage which may occur to any structures or other items which may be located in such utility and drainage easements and Declarant shall have no obligation to replace any such structures

which may be removed or damaged due to maintenance, repair or other work performed in such easement areas. Declarant further specifically reserves unto itself, its successors and assigns, a perpetual, alienable, commercial easement and right of ingress and egress over all Lots along an area 5 feet in width inside each boundary line of each Lot and along any Lot boundary line which adjoins any of the streets of the Project. This easement is for the purpose of installation, maintenance and repair of utilities and utility systems and access. This easement shall be in addition to, and not in limitation of, any and all other easements reserved unto the Declarant herein. Declarant further reserves an easement of ingress and egress over and across all streets and roads of the Project which such easements are and shall be for the purpose of ingress and egress to any property now owned or hereafter acquired by Declarant, its successors and assigns whether or not such property is made a part of the Project and whether or not such property adjoins the Project.

Section 9. Sidewalk Easements on Lots. Declarant reserves for itself and the Association, their successors, assigns and agents, a sidewalk easement ten (10) feet in width across all Lots for use and enjoyment by the Owners of Lots and others, only under such rules as may be promulgated by the Association from time to time. The sidewalk easement is ten (10) feet in width, lies on the Lots adjacent to the boundaries between Lots and all road rights-of-way, and includes the right to usual and necessary access for purposes of construction, maintenance, repair, removal and replacement of sidewalks. The provisions in this paragraph shall not be construed as an obligation on the part of Declarant or the Association to undertake construction of any sidewalks. In the event sidewalks are constructed on the easements reserved herein or in the road rights-of-way adjacent to the Lots, the Association shall be responsible for the maintenance and management of such sidewalks.

ARTICLE VI.

Assessments for the Maintenance and Operation of Common Areas and Facilities

Section 1. Initial Contribution. Upon the closing of the initial sale of each lot by the Declarant, the purchaser of each Lot shall pay an initial contribution to the Association of One Hundred and No/100 (\$100.00) Dollars to provide initial reserve funds for the Association. Such payment shall not in any way be considered a prepayment of any regular or special assessment. Such funds may be used by the Association in such manner as the board of directors thereof shall direct.

Section 2. Assessments, Liens and Personal Obligations Therefor, and Operation
Maintenance of Common Areas Solely by the Association.

(a) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses,

extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such lot or Lots at the time when the assessment fell due. Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2010, each Lot within The Properties shall be exempt, at Declarant's option, from the assessments herein provided for (both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made by the Association against Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing January 1, 2011, the Declarant shall be subject to assessments as provided for in this Declaration so that it will pay assessments on the same basis provided for in this Declaration for other Lot Owners. In the event that additional phases are subjected to the provisions of this Declaration, then it is declared that until the later of: (1) January 1, 2011; or (5) five years after the date the amendments or supplemental declarations submitting such additional phase(s) are filed for record in the public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the lot is conveyed by the Declarant to an Owner other than the Declarant. Until such time as a lot in such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less an amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lot Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.

(b) The Assessment levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Development, and in particular for the improvement and maintenance of the Common Areas, Lakes and Lake Areas, now or hereafter designated or existing, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereof, the cost of labor, equipment, materials, management and supervision thereof, and the cost of lawn and landscaping maintenance, maintenance of the fencing and/or signage, the employment of attorneys to represent the Association when necessary and such other needs as may arise. In the event that Declarant performs any of the foregoing services for Association, including,

but not limited to, accounting and bookkeeping services, it shall have the right to receive a reasonable fee therefore and such shall not be deemed to be a conflict of interest.

Section 3. Amount and Payment of Annual Assessment. The Board of Directors of the Association shall at all times fix the amount of the annual Assessment at an amount sufficient to pay the costs of maintaining and operating the Common Areas and performing the other exterior maintenance required to be performed by the Association under this Declaration including adequate reserves. The Board shall also fix the date of commencement and the amount of the Assessment against each Lot for each Assessment period (which shall be based on a calendar year), and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto, which shall be kept in the Office of the Association and shall be open to inspection by any Owner. Written notice of the Assessment shall thereupon be sent to every Owner subject thereto. In the event that any Lot is subject to an assessment for only part of a calendar year, then the amount of such assessment shall be prorated based on the portion of the assessment period for which such Lot is subject to an assessment.

Each annual Assessment shall be fully payable in advance on the 1st day of January each year, but the Board of Directors of the Association shall have the option to permit monthly or quarterly payments. The exact amount of each annual Assessment shall be fixed by the Board of Directors of the Association.

The Association shall, upon demand at any time, furnish to any Owner liable for any assessment, a certificate in writing, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be in recordable form and shall be conclusive evidence of payment of any assessment therein stated to have been paid.

This Section shall not be amended as provided in this Declaration to eliminate or substantially impair the obligation to fix the assessment at an amount sufficient to properly maintain and operate the Common Areas and perform the exterior maintenance required to be performed by the Association under this Declaration.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments, the Board of Directors of the Association, on behalf of the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying unexpected repair or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto. The due date of any specified assessment shall be fixed in the Resolution of the Board of Directors authorizing such assessment.

Section 5. Paid Professional Manager. The Board of Directors of the Association may employ a professional manager or managerial firm to supervise all the work, labor, services and material required in the operation and maintenance of the Common Areas and in the discharge of the Association's duties throughout the Community.

Section 6. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner: The Lien. Remedies of Association. If any assessment is not paid on the date when due, then such assessment shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof as are hereinafter provided, continue as a lien on the Lot or Lots, which shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such assessment or reimbursement, however, shall remain his personal obligation and will also pass on to his successor in title.

If the assessment or reimbursement is not paid within thirty (30) days after the due date, a late charge in an amount to be specified by the Board of Directors of the Association may be assessed and furthermore, the assessment shall bear interest from the date of delinquency at the rate of eighteen (18%) percent per annum. In addition, the Association may bring legal action against the then Owner personally obligated to pay the same or may enforce or foreclose the lien against the Lot or Lots in the same manner as a mortgage is foreclosed; and in the event a judgment is obtained, such judgment shall include interest on the assessment or reimbursement as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. The Association may further file a notice of lien in the office of the Register of Deeds for Horry County, South Carolina.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments (and reimbursement) provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon any Lot subject to assessment and reimbursement; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments or reimbursements thereafter becoming due, nor from the lien of any subsequent assessment or reimbursement.

Section 8. Exempt Property. All Common Areas subject to this Declaration shall be exempted from the assessments, charges and liens created herein.

ARTICLE VII.

Architectural and Landscape Control

Section 1. Architectural Review Board. The Architectural Review Board shall have the right to approve or disapprove all architectural and landscaping plans and the location of any proposed Improvements. The Architectural Review Board may, in its sole discretion, impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning or other governmental codes.

Section 2. The Architectural Review Board shall be a permanent committee of the Association and shall administer and perform the architectural and landscape review and control functions of the Association. The Architectural Review Board shall consist of five (5) voting members who shall initially be named by the Declarant and who shall hold office at the pleasure of the Declarant. Until termination of Declarant's Class B membership status in the Association, as defined in this Declaration, the Declarant shall have the right: to change the number of members on the Architectural Review Board provided, however, that the Architectural Review Board shall at all times consist of at least three (3) members; to appoint all members of the Architectural Review Board; and to remove and replace all members appointed to the Architectural Review Board. The Declarant shall determine which member of the Architectural Review Board shall serve as its Chairman, or which members of the Architectural Review Board shall serve as Co-Chairmen. In the event of the failure, refusal or inability to act of any of the members appointed by the Declarant, and in the event that the Declarant fails to fill any such vacancy within thirty (30) days of such occurrence, the remaining members of the Architectural Review Board shall fill such vacancy by appointment. At such time as Declarant's Class B membership status terminates or at such earlier date as Declarant may decide, the Declarant shall assign to the Association the rights, powers, duties and obligations of the Architectural Review Board, whereupon the Board of Directors shall determine how many persons shall serve on the Architectural Review Board, provided that the Architectural Review Board shall at all times consist of not less than three (3) members, shall appoint the members of the Architectural Review Board shall provide for the terms of the members of the Architectural Review Board, and shall determine which member of the Architectural Review Board shall serve as its Chairman. There shall be no requirement that any of the members of the Architectural Review Board be a member of either the Association or an Owner within Wild Wing Plantation. Any three (3) members of the Architectural Review Board shall constitute a quorum to transact business at any meeting, and the action of the majority present shall constitute the action of the Architectural Review Board.

Section 3. Buildings, fences, walls, etc. No building, fence, wall, boat docking slip, landscaping or other improvements, and no change in topography, landscaping or any other item originally approved by the Architectural Review Board shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change be made until the plans and specifications showing the nature, kind, texture, shape, height, materials, color and locations of the same shall have been submitted to and approved in writing as to the harmony of the external design and location in relation to the surrounding structures and topography by the Architectural Review Board. The right of approval herein reserved and granted shall include, without limitation, the right to designate or re-designate which Lot line shall be the "front" in the case where a Lot is bordered by more than one street. In the event the Architectural Review Board fails to approve or disapprove any request within sixty (60) days after complete plans and specifications have been submitted to it in accordance with the guidelines promulgated by the Architectural Review Board, the same shall be deemed approved, and this Article shall be deemed to have been fully complied with, provided, however, that no such failure to act shall be deemed an approval of any matters specifically prohibited by any other provision of this Declaration. Refusal of approval of plans, specifications and plot plans or any of them may be based on any grounds, including purely aesthetic grounds,

which in the sole and uncontrolled discretion of the Declarant or the Architectural Review Board may seem sufficient. Any change in exterior appearance of any building, wall, fence or other structural improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval.

All construction of any nature shall further be subject to the provisions and requirements of Article XV RESTRICTIVE COVENANT.

Section 4. Lot Filling. No Lot may be cleared, graded cut or filled for any reason until the Architectural Review Board has reviewed and approved the application for approval of the proposed improvement. The site plan, along with the tree survey and other documents required by the Architectural Review Board, must clearly delineate the extent of clearing, grading, cutting and filling.

Section 5. Fee Schedule. The Architectural Review Board may adopt a schedule of reasonable fees for processing requests for approval. Such Fees, if any, shall be payable to the Association at the time that the plans and specifications and other documents are submitted to the Architectural Review Board. The payment of such fees, as well as other expenses of the Architectural Review Board required to be paid, shall be deemed to be an individual Assessment, enforceable against the Owner and the Lot as provided hereinabove. The Architectural Review Board is expressly reserved the right and power, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the Architectural Review Board in its review of any plans or specifications, and the cost of such consulting services shall be the responsibility of the respective applicant or Owner of the subject property.

Section 6. Defects or Damages. Neither the Declarant, the directors or officers of the Association, the members of the Architectural Review Board, nor any person acting on behalf of any of them, shall be liable for any costs or damage incurred by an Owner or Association or any other party whatsoever, due to any mistakes in judgment, negligence or any action of the Architectural Review Board in connection with the approval or disapproval of plans and specifications. Each Owner or Association and occupant of any property within Wild Wing Plantation agrees, as do their successors and assigns by acquiring title thereto or an interest therein, or by assuming possession thereof, that they shall not bring any action or suit against the Declarant, the directors or officers of the Association, the members of the Architectural Review Board, or their respective agents, in order to recover any damages caused by the actions of the Architectural Review Board. The Association shall indemnify, defend and hold the Architectural Review Board and each of its members harmless from all costs, expenses and liabilities, including attorneys' fees, of all nature resulting by virtue of the acts of the Architectural Review Board or its members. Neither the Declarant, the directors or officers of the Association, the members of the Architectural Review Board, nor any person acting on behalf of any of them, shall be responsible for any defects in any plans and specifications, nor for any defects in any Improvements constructed pursuant thereto. Each party submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

ARTICLE VIII.Exterior Maintenance, Reasonable Access
and Maintenance of Common Areas

Section 1. Exterior Maintenance. The Owner shall maintain the structures and grounds on each Lot at all times in a neat and attractive manner. Upon the Owner's failure to do so, the Declarant, or the Association (after the termination of Class B membership status of Declarant) may, at its option, after giving the Owner ten (10) days written notice sent to his last known address, or to the address of the subject premises, have the grass, weeds, shrubs and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed from such Lot, and replaced, and may have any portion of the Lot resodded or landscaped, all of which shall not be deemed a trespass, and all expenses of the Association under this provision shall be a lien and charge against the Lot on which the work is done and the personal obligation of the then Owner of such Lot. The Declarant or the Association, and its assigns, may likewise, after giving the owner ten (10) days written notice sent as aforesaid, enter upon such Lot(s) to remove any trash, debris or garbage which has collected on said Lot(s) without such entrance and removal being deemed a trespass, all at the expense of the owner of said Lot. Upon the Owner's failure to maintain the exterior of any structure in good repair and appearance, the Association may, at its option, after giving the Owner thirty (30) days written notice sent to his last known address, make repairs and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Lot and shall constitute an assessment against the Lot on which the work was performed, collectible in a lump sum secured by a lien against the Lot as herein provided.

Section 2. Access at Reasonable Hours. For the purpose of performing its function under this or any other Article of the Declaration, and to make necessary surveys in connection therewith, the Association, by its duly authorized agent and employees, or the Declarant during the period of development, shall have the right to enter upon any Lot at reasonable hours, on any day except Sundays and holidays, on reasonable prior notice.

Section 3. Maintenance of Common Areas. It shall be the responsibility of the Association to maintain the Common Areas. However, should the Declarant (prior to conveyance to the Association) or the Association (after the termination of the Class B status of Declarant), decide to transfer any portion or all of the areas designated or to become, by conveyance, Common Areas to governmental authority, as they have the right to do, such duty to maintain same shall cease as to that portion so transferred.

ARTICLE IX.Phased Development

Section 1. Phase I. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Horry County, South Carolina, and is more particularly described on Exhibit "A" attached hereto and made a part and parcel hereof.

Section 2. Additional Phases. The Declarant may, at its option, from time to time bring other land under the provisions hereof by recording a Supplemental Declaration(s) or amendment stating its intention to so incorporate additional real estate. Declarant may incorporate such additional land under the provisions hereof in any number of additional phases as it may so desire. Such Supplemental Declaration(s) or amendment shall not require the vote or consent of the association or any Owner. Any such Supplemental Declaration(s) shall be effective upon the filing thereof in the public records of Horry County, South Carolina. Such Supplemental Declaration shall describe the real property to be brought under the provisions hereof. Any such property to be brought under the provisions of this Declaration must be contiguous or near to property already subjected to the provisions of this Declaration at that time and must be owned by Declarant or its successors and assigns as developer. Declarant may bring such additional real estate under the terms hereof either in whole or in part and may do so in multiple phases. Upon the Declarant's election to incorporate additional real estate hereunder, all of such real estate so incorporated shall be as fully covered hereby as if a part of the original Development. However, Declarant reserves the right unto itself to change or modify the restrictions applicable to such additional phases by such supplemental declaration, which changes or modifications may include, without limitation, increasing or decreasing the size of Lots within such phases(s), modifying the building setback lines within such phases(s) and changing architectural and material requirements and minimum home size requirements within such phase(s). Subject to the foregoing, all property so incorporated shall be subject to all the declarations, covenants, easements, liens, restrictions and duties as herein contained, together with such additional restrictions and obligations or modifications to these Restrictions as Declarant may impose on the land being submitted to the provisions of this Declaration by such Supplemental Declaration(s). Declarant shall have the unilateral right to transfer to any other person or entity the said right to submit additional property to the provisions of this Declaration. Declarant shall have no obligation to develop any land adjoining the Properties in accordance with this Declaration and may develop same in any manner it may desire and further, Declarant, in the event that it should decide to develop any additional land located adjacent to the Properties, in its sole discretion, shall have no obligation to make same a part of this Project or subject to this Declaration. THE DECLARANT SHALL BE UNDER NO OBLIGATION TO DEVELOP ADDITIONAL PHASES AND NONE OF THE REMAINING PORTION OF THE PROPERTY DESCRIBED HEREIN SHALL BE DEEMED A PART OF ANY SCHEME OF DEVELOPMENT UNTIL ACTUALLY BROUGHT UNDER THESE RESTRICTIONS AS HEREIN PROVIDED.

Section 3. Reservation of Additional Easements and Rights. Declarant reserves for itself and its successors and assigns as developer (and all conveyances by Declarant to Association of Common Areas shall be deemed to automatically reserve) easements over, under and across all Common Areas for ingress and egress and for construction and completion of construction and development of this phase and all future phases of the Development and/or for the construction and development of other property of Declarant, whether or not such other property is submitted to the terms and provisions of this Declaration, including, without limitation, easements for the installation, construction, reconstruction, repair, maintenance and operation of all utility services; said easements to be in addition to and not in lieu of any other rights or easements reserved by Declarant herein or in any supplement hereto or any other conveyance by or to Declarant or its predecessors in title.

ARTICLE X.

Rights of Mortgagees

Rights of Mortgagees or Third Parties. Should a mortgagee or third party acquire the rights of Declarant, by way of foreclosure or otherwise in adjoining or neighboring property contained within the property contiguous to the property subject to this declaration, as same may exist from time to time, it shall be allowed full use of all rights, easements, rights-of-way and utilities contained within The Properties for the purpose of serving such adjoining or neighboring areas. These rights shall also inure to the benefit of Declarant should it retain or be the Owner of any portion of said property. Any of such parties may elect to bring additional phases under this Declaration.

ARTICLE XI.

Insurance and Casualty Losses

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount (as determined by the insurance underwriter) sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Area, Buffer area and any other areas Association is permitted to enter upon, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million and No/100 (\$1,000,000.00) Dollar single person limit as respects bodily injury and property damage, a One Million and No/100 (\$1,000,000.00) Dollars limit per occurrence, and a Five Hundred Thousand and No/100

(\$500,000.00) Dollar minimum property damage limit.

Cost of insurance coverage obtained by the Association for the Common Area shall be included in the Assessment.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefitted parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in South Carolina which holds a Best's rating of A or better as is assigned a financial size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area and fencing referred to above shall be for the benefit of the Association and Declarant shall be named as additional insured.

(c) Exclusive authority to adjust losses under policies in force on the Common Areas and said fencing obtained by the Association shall be vested in the Association's Board of Directors.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) that no policy may be cancelled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, its Owner, or mortgagee;

(iii) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(iv) That no policy may be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

Association, its successors and assigns, members, officers and directors do hereby knowingly and voluntarily forever release and discharge Declarant, its principals, officers, managers, members, employees, agents and/or contractors, their heirs, successors and assigns, from any and all claims at law or equity, including, without limitation, indemnification and/or subrogation, in anyway arising from our related to conditions of the Property, accidents, personal injury, occurrences or the like, in anyway relating to or arising from the prior use of the Property as part of the Bombing and Gunnery Range, to specifically include, without limitation, active or inactive ordnance upon the Property.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. However, no fidelity bond shall be required as long as the class B Member exists. The amount of fidelity coverage shall be determined in the directors' best business judgment but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

The Association may purchase officers and directors liability insurance, if reasonably available and the Board of Directors of the Association approves the purchase of same. However, every Director and every officer of the Property Owners Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or Officer of the Association, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty or willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the Director or Officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

Section 2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

(b) If it is determined, as provided for in Section 4 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in Section A above. However, repair or replacement of the affected Common Area must be made unless prevented by law or governmental rule or regulation.

Section 3. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Board of Directors of the Association, shall decide within thirty (30) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the Common Area damaged or destroyed shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Area shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

Section 4. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners in proportion to the number of Lots owned, provided, if the damage or destruction involves a Lot or Lots only Owners of the affected Lots shall be subject to such assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Section 5. Declarant has contracted and paid for Pollution Legal Liability Policy #PLS 1959333 written by American International Specialty Lines Insurance Company (the "Policy", which term shall include substitute policies, renewals, replacement policies or the like), which such policy is procured responsive to portions of the Development, Project, Wild Wing, Community, Properties

or Property, as defined herein, having been determined by the United States Army Corps of Engineers to be within the former Conway Bombing and Gunnery Range. See Articles XV and XVI herein. The effective anniversary dates of the Policy are December 27, 2005 thru December 27, 2015, after which the Association Board of Directors may, in its discretion, elect to renew, extend, replace or discontinue such coverage. The Association Board of Directors shall not discontinue such coverage at any time prior to the expiration of the original effective anniversary date recited above.

The Policy has or shall be amended to include the Association as an Additional Named Insured. Immediately thereupon, The Association agrees and hereby does accept contractual liability obligations to indemnify and hold harmless Declarant, Members, Owners, their successors, heirs and assigns, their guests, licensees, invitees or others upon the Development, Project, Wild Wing, Community, Properties or Property, as defined herein, to the full extent coverage exists, and only to such extent, pursuant to the terms and conditions of the Policy.

The Association shall report, notice and facilitate the handling and management of any such claims and shall and hereby does assume responsibility for any Self Insured Retention (deductible) applicable thereto. Any and all Self Insured Retention amounts shall be borne by the Association and charged to the Members as a portion of Annual Assessments and/or Special Assessments as defined herein.

In the event Insurance Coverage in these regards is unavailable for any reason, including inapplicability, non-renewal, lapse or otherwise, Member and/or Owner, its, his, her or their (as the case may be) heirs, successors and assigns, do hereby knowingly and voluntarily forever release and discharge Association, its principals, officers, managers, members, employees, agents and/or contractors, their heirs, successors and assigns, from any and all claims at law or equity in any way arising from or related to conditions of the Property, accidents, personal injury, occurrences or the like in any way related to or arising from the prior use of the Property as part of the Bombing and Gunnery Range, to specifically include, without limitation, active or inactive ordnance upon the Property.

ARTICLE XII.

General Provisions

Section 1. Time of Essence. It is agreed that time is of the essence with regard to these restrictions, protective covenants, limitations and conditions.

Section 2. Enforcement. In the event of a violation or breach of any of these restrictions by any Owner, or agent, or agent of such Owner, the Owners of Lots in the subdivision, or any of them, jointly or severally, the Declarant and/or the Association shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any such event or to recover damages. In addition to the foregoing, the Declarant, its successors and assigns, shall have the right, but shall be under no obligation whenever there shall have been built

on any lot in the subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the Owner, if, after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservation, restriction or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the rights to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should Declarant or Association employ Counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for Declarant's Counsel shall be paid by the Owner of such lot or Lots in breach thereof. Any amount assessed hereunder shall constitute a lien on such lot and shall be enforceable as herein provided. Failure of Declarant, the Association or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter.

Section 3. Responsibility of Declarant. The Declarant herein shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself. In addition, nothing contained in this Declaration shall be deemed to be a representation by Declarant with regard to the requirements of any governmental authority and it shall be the duty of each Owner to comply with any such requirements in addition to the provisions of this Declaration.

Section 4. Rule Against Perpetuities. In the event that any of the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event, such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of South Carolina, and such provision shall be fully effective for said reduced period of time.

Section 5. Binding Effect. All covenants, conditions, limitations, restrictions, easements and affirmative obligations set forth in this declaration shall be binding on the Owners of the Lots, and their respective heirs, successors and assigns and run with the land. All rights, easements and agreements reserved by or granted to Declarant shall inure to the benefit of Declarant, its successors and assigns including, without limitation, the right to develop and submit additional phases. Declarant reserves the right in addition to all other rights of Declarant, to assign its rights of consent and approval as set out in this Declaration and any amendment hereto or supplement hereof, to Association, or to any assignee of Declarant's development rights.

Section 6. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant, the Association, or the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns.

Section 7. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered

or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 8. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in nowise effect any other provisions which shall remain in full force and effect.

Section 9. Amendment. In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges and liens of this agreement may be amended, changed, added to, derogated or deleted at any time and from time to time upon the execution and recordation of any instrument executed by Owners holding not less than two-thirds (2/3) vote of the membership in the Association, provided, that so long as the Declarant is the Owner of any Lot affected by this Declaration the Declarant's consent must be obtained. Provided, further, that the provisions for voting of Class A and Class B Members as hereinabove contained in this Declaration shall also be effective in voting for changes in this Declaration.

Section 10. Amendment Prior to Sale by Declarant. At any time prior to the closing of the first sale of a Lot by Declarant, the Declarant, and any mortgage holder, if any, may amend this Declaration by mutual consent. The closing of the first sale shall mean transfer of title and delivery of a deed and not execution of a Contract of Sale or a like document.

Section 11. Effective Date. This Declaration shall become effective upon its recordation in the Office of the Register of Deeds for Horry County, South Carolina.

Section 12. Plat. Reference to Exhibit A, "plat", "map" other term synonymous therewith shall mean and include Exhibit A as recorded herewith and all subsequent revisions thereof, together with any and all additional plats or maps filed as any additional phases, if any, are submitted to this Declaration as and when recorded in the Office of the Register of Deeds for Horry County, South Carolina.

ARTICLE XIII.

Additional Matters Dealing with Phased Development

Section 1. Voting Rights. As each phase, if any, is added to the Development, the Lots comprising such additional phase shall be counted for the purpose of voting rights.

ARTICLE XIVSpecial Restrictions for Golf Course Lots

Section 1. Golf Course Property. A golf course is currently located adjacent to portions of the Property. Although the golf course is currently owned by Declarant, the golf course is not, and is not intended to be, a Common Area of the Project. Purchase of property in the Subdivision does not guarantee or vest in the purchaser or Owner the right to use of the golf course. Each Owner, by acceptance of a deed to a Lot acknowledges that no Owner acquires any interest in the golf course by virtue of taking title to property within the Project. Each Owner acknowledges that no representations or warranties, either verbal or written have been made by the Declarant or any other person regarding the continued ownership or operation of, or rights in the golf course, or that the golf course will become Common Area to the Association.

Section 2. Easements. Until such time as a residence is constructed on a Lot bordering the golf course, Declarant hereby reserves unto itself, its successors and assigns, an easement to permit and authorize registered golf course players to enter upon such Lot to recover a ball or play a ball, without such entering and playing being deemed a trespass.

Every Lot bordering a golf course and any Common Area bordering the golf course are burdened with an easement to come upon the Lot or Common Area immediately adjacent to the golf course for the purposes related to the playing of golf and the normal operation of the golf course and for golfers at reasonable times and in a reasonable manner to come upon the exterior portions of such Lot or Common Area in order to retrieve errant golf balls. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. However, under no circumstances shall the Declarant or the Association be held liable for any damages or injury caused from errant golf balls or the exercise of this easement.

Section 3. Golf Course Maintenance. Each Owner, occupant or other person acquiring an interest in a Lot within the Project is hereby deemed to acknowledge being aware that for such period of time as the golf course is being used as a golf course, it can be expected that (a) maintenance activities on the golf course shall begin early in the morning and extend until late into the evening; (b) during certain periods of the year the golf course will be heavily fertilized; and (c) golf balls are not susceptible of being easily controlled and accordingly may land or strike beyond the golf course boundaries. Neither the Declarant, nor any employee or agent of the Declarant, shall be liable for personal injury or property damage caused by errant golf balls.

Section 4. Actions of Lot Owners. Owners or occupants of Lots bordering the golf course fairways shall be obligated to refrain from any actions which would detract from the playing qualities of the golf course or unreasonably distract golfers from the playing of golf.

ARTICLE XV

Restrictive Covenant

No excavation of any portions of the property shall be made which exceed four (4) feet in depth below the grade level of the property without the prior written approval of Declarant (or its assignee or designee). Furthermore, swimming pools or other similar improvements shall not be installed without the prior written approval of Declarant (or its assignee or designee). The approval of Declarant (or its assignee or designee) may be conditioned upon the Lot Owner providing Declarant (or its assignee or designee) with the written results of an examination of the area in which such excavation is to occur, which examination shall be performed by EODT (as hereafter defined, or such other party approved by Declarant or its assignee or designee), confirming that the area is clear of any ordnance or explosive materials.

ARTICLE XVI

Disclosure

The undersigned understands that this property has been determined by the U.S. Army Corps of Engineers to be within either Area A or Area A-1 of the former Conway Bombing and Gunnery Range. Seller has contracted with EOD Technology, Inc ("EODT") to conduct subsurface clearance within Area A in accordance with U.S. Army Corps of Engineers Guidelines of ordnance/explosive materials detected within Area A. In addition, Seller has contracted with EODT for an investigation of the property within Area A-1. EODT has conducted a preliminary site investigation and has issued a report (the Report") detailing the results of its preliminary site investigation and the work performed relative thereto. The Report is available for inspection and copying at the office of Seller. Further, Seller has contracted with EODT to perform an additional Scope of Work toward further and more extensive investigation of Area A-1. The additional Scope of Work is available for inspection and copying at the office of Seller. However, Purchaser acknowledges that Seller makes no warranties or representations relative to the accuracy and results of such preliminary site investigation, Scope of Work and the work undertaken relative thereto and their recommendations, as well as any subsequent reports issued by EODT. Furthermore, Purchaser acknowledges and agrees that all construction activities on the Lot shall be undertaken by Purchaser in compliance with the provisions of the Report and its recommendations, as well as any subsequent reports issued by EODT and shall further be undertaken by Purchaser in compliance with the requirements of this Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation.

ARTICLE XVII

Release

Member and/or Owner, its, his, her or their (as the case may be) heirs, successors and assigns, do hereby knowingly and voluntarily forever release and discharge Declarant, its principals, officers, managers, members, employees, agents and/or contractors, their heirs, successors and assigns, from any and all claims at law or equity in any way arising from or related to conditions of the Property, accidents, personal injury, occurrences or the like in any way related to or arising from the prior use of the Property as part of the Bombing and Gunnery Range, to specifically include, without limitation, active or inactive ordnance upon the Property.

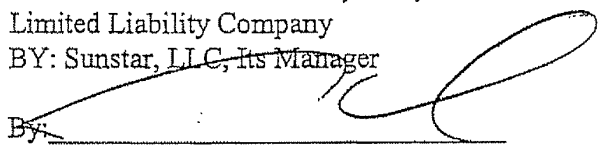
Association, its successors and assigns, members, officers and directors do hereby knowingly and voluntarily forever release and discharge Declarant, its principals, officers, managers, members, employees, agents and/or contracts, their heirs, successors and assigns, from any and all claims at law or equity, including, without limitation, indemnification and/or subrogation, in anyway arising from our related to conditions of the Property, accidents, personal injury, occurrences or the like, in anyway relating to or arising from the prior use of the Property as part of the Bombing and Gunnery Range, to specifically include, without limitation, active or inactive ordnance upon the Property.

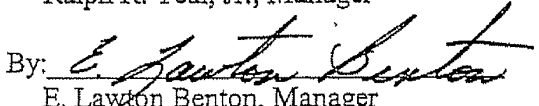
IN WITNESS WHEREOF, Wild Wing Company LLC, has caused this instrument to be executed by its proper officers and its corporate seal to be affixed thereto on the day and year first above written.

In the Presence of:

DECLARANT:

WILD WING COMPANY, LLC, A South Carolina
Limited Liability Company
BY: Sunstar, LLC, Its Manager

By: 
Ralph R. Teal, Jr., Manager

By: 
E. Lawton Benton, Manager

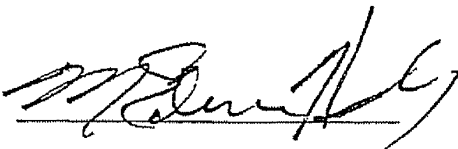
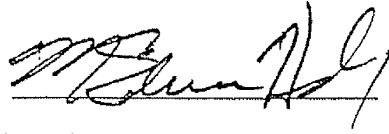
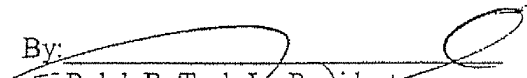

Michelle L. Merrill

EXHIBIT D

Wild Wing Property Owners Association, Inc. executes this Declaration for the purposes of acknowledging and agreeing to the terms and conditions hereof.

WILD WING PROPERTY OWNERS
ASSOCIATION, INC.


Michelle L. Merkle

By: 
Ralph R. Teal, Jr., President

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Wild Wing Company, LLC, by and through its duly authorized Manager(s) Sign, Seal and as its Act and Deed deliver the within written DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WILD WING PLANTATION; and that s/he with the other witness subscribed above witnessed the execution thereof.



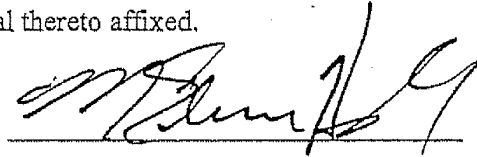
SWORN to before me this 26th

day of September, 2006.

Michelle L. Murch (L.S.)
Notary Public for South Carolina
My Commission Expires: 1-23-2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named WILD WING PLANTATION PROPERTY OWNERS ASSOCIATION, INC., Sign, Seal and as its Corporate Act and Deed deliver the within written DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WILD WING PLANTATION; and that s/he with the other witness subscribed above witnessed the execution thereof and saw the Corporate Seal thereto affixed.



SWORN to before me this 26th

day of September, 2006.

Michelle L. Merrell (L.S.)
 Notary Public for South Carolina
 My Commission Expires: 1-23-2014

EXHIBIT D

EXHIBIT A

ALL AND SINGULAR, Those certain pieces, parcels or lots of land, situate, lying and being in the State of South Carolina, County of Horry and being shown and designated as Lots 1 through 337, inclusive, of Wild Wing Plantation on a plat prepared by Associated Land Surveyors dated September 18, 2006, which plat was recorded September 20, 2006 in Plat Book 217 at Pages 55, 55-a, 55-b, 55-c, 55-d, 55-e, 55-f, 55-g, 55-h and 55-i, records of Horry County, South Carolina, reference to which is craved as forming a part and parcel of these presents.

This being a portion of the property conveyed to Wild Wing Company, LLC by deed of Wild Wing Plantation, Inc dated December 15, 2005 and recorded December 15, 2005 in Deed Book 3023 at Page 272, in the office of the Register of Deeds for Horry County, South Carolina.

EXHIBIT D

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

JUN 14 2006

NONPROFIT CORPORATION
ARTICLES OF INCORPORATION


SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

1. The name of the proposed corporation is **Wild Wing Plantation Property Owners' Association, Inc.**

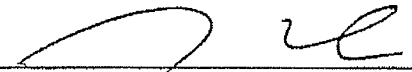
2. The initial registered office of the nonprofit corporation is

990 Wild Wing Boulevard, Conway, South Carolina 29526

The name of the registered agent of the nonprofit corporation at that office is:

Ralph R. Teal, Jr.

I hereby consent to the appointment as registered agent of the corporation.


Agent's Signature

3. Check "a", "b" or "c", whichever is applicable. Check only one box:

a. ☐ The nonprofit corporation is a public benefit corporation.

b. ☐ The nonprofit corporation is a religious corporation.

c. ☒ The nonprofit corporation is a mutual benefit corporation.

4. Check "a" or "b", whichever is applicable:

a. ☒ This corporation will have members.

b. ☐ This corporation will not have members.

5. The address of the principal office of the nonprofit corporation is

990 Wild Wing Boulevard, Conway, South Carolina 29526

6. If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of paragraph #3 is checked), complete either "a" or "b", whichever is applicable to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.

a. ☐ Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of

060614-0100 FILED: 06/14/2006
WILD WING PLANTATION PROPERTY OWNERS' ASSC
Filing Fee: \$25.00 ORIG



Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

- b. ☐ Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to: _____
7. If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.
- a. ☒ Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefitting or serving.
- b. ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to: _____
8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See Section 33-31-202©) of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instruction to this form).

9. The name and address of each incorporator is as follows (only one is required)
- Ralph R. Teal, Jr.
990 Wild Wing Boulevard, Conway, South Carolina 29526
10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

N/A	
Name (Only if named in articles)	Signature of director

11. Each incorporator must sign the articles.

Signature of Incorporator - Ralph R. Teal, Jr.

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Incorporation, Nonprofit Corporation

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., a nonprofit corporation duly organized under the laws of the State of South Carolina on June 14th, 2006, and having a perpetual duration unless otherwise indicated below, has as of the date hereof filed a Declaration and Petition for Incorporation of a nonprofit corporation for Religious, Educational, Social, Fraternal, Charitable, or other eleemosynary purpose.

Now, therefore, I Mark Hammond, Secretary of State, by virtue of the authority in me vested by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto, do hereby declare the organization to be a body politic and corporate, with all the rights, powers, privileges and immunities, and subject to all the limitations and liabilities, conferred by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto.

Given under my Hand and the Great
Seal of the State of South Carolina this
14th day of June, 2006.

A handwritten signature of Mark Hammond in cursive script, written over a horizontal line.

Mark Hammond, Secretary of State

BY-LAWS
OF
WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.

Article I
Name, Principal Office and Definitions

Section 1. Name. The name of the Association shall be Wild Wing Plantation Property Owners' Association, Inc. (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The principal office of the Association in the State of South Carolina shall be located in Myrtle Beach, County of Horry. The Association may have such other offices, either within or without the State of South Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in the Declaration of Protective Covenants, Restrictions, Charges and Liens for Wild Wing to which these Bylaws are attached as an Exhibit, as amended, renewed or extended from time to time, as hereinafter sometimes referred to as the "Declaration," unless the context shall prohibit.

Section 4. Purpose. The purpose of the Association is to manage the affairs of Wild Wing, a Subdivision established pursuant to the terms of the Declaration therefor, filed or to be filed in the Office of the Register of Deeds for Horry County, South Carolina.

The Association is not organized for profit and no part of the net earnings, if any, shall inure to the benefit of any member or individual person, firm or corporation.

The Association shall have all of the common law and statutory powers of a nonprofit corporation. The Association shall also have all of the powers necessary to implement the purposes of the Association and to provide for the general health and welfare of its membership.

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

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. The Association shall have two (2) classes of membership, Class "A" and Class "B", as more fully set forth in the Declaration, the terms of which pertaining to

membership are specifically incorporated herein by reference. The classes of membership shall be as follows:

Class A. Class A members shall be all Owners excepting the Declarant. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership pursuant to the Declaration. When more than one person holds such interest or interests in any Lot, the vote attributable to such Lot shall be exercised as such persons, mutually determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. The sole Class B member shall be the Declarant (as defined in the Declaration). The Class B member shall be entitled to total votes in an amount equal to twice the number of the Class A votes plus one. The Class B membership shall cease and become converted to Class A membership upon the conveyance to Lot Owners of all Lots subject to the Declaration, or December 31, 2015, whichever first occurs. In addition, Declarant may terminate the Class B membership upon written notice to the Association.

When a purchaser of an individual Lot or Lots takes title thereto from the Declarant, he automatically becomes a Class A member.

Section 3. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Voting Members as may be designated by the Board of Directors either within the properties or as convenient thereto as possible and practical.

Section 4. Annual Meetings. The first meeting of the membership, whether a regular or special meeting, shall be held within one hundred twenty (120) days after the expiration of one (1) year from the date of incorporation of the Association. The next annual meeting shall be set by the Board so as to occur no more than ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings of the membership shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to the foregoing, the annual meeting shall be held at a date and time as set by the Board of Directors.

Section 5. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Voting Members representing at least ten (10%) percent of the total votes of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 6. Notice of Meetings. Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered either personally or by mail, to each Voting Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary.

In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 7. Waiver of Notice. Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Member may, in writing, waive notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member or alternate shall be deemed waiver by such Voting Member of notice of the time, date and place thereof, unless such Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 8. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Voting Members who are present at such meeting, either in person or by alternate, may adjourn the meeting to a time not more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted.

Section 9. Voting. The voting rights of the Members shall be as set forth in the Declaration and as set forth herein, and such voting rights provisions are specifically incorporated herein.

Section 10. Proxies. Voting Members may vote in person or by proxy.

Section 11. Majority. As used in these By-Laws, the term "majority" shall mean those votes, Owners or other group as the context may indicate, totaling more than fifty (50%) percent of the total number.

Section 12. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by alternate of the Voting Members representing fifty-one (51%) percent of the total vote of the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein. So long as a quorum is present at the opening of the meeting, business may be transacted until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum in attendance.

Further, at any adjourned meeting at which a quorum is present at the reconvening of such meeting, any business may be transacted which might have been transacted at the original meeting notwithstanding the withdrawal of enough members to leave less than a quorum in attendance.

Section 13. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

Section 14. Action Without a Meeting. Any action required by law to be taken at a meeting of the Voting Members, or any action which may be taken at a meeting of the Voting Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Voting Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Voting Members.

Article III

Board of Directors. Number, Powers, Meetings

A. Composition and Selection.

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors each of whom shall have one (1) vote. Except as provided in Section 2 of this Article, the Directors shall be Members. In the case of an Owner which is a corporation or partnership, the person designated in writing to the Secretary of the Association as the representative of such corporation or partnership shall be eligible to serve as a Director. The initial Board of Directors shall consist of three (3) persons. The names and addresses of the first Board of Directors of the Association, who shall hold office until the first annual meeting of members and until qualified successors are duly elected and have taken office, shall be as follows:

Ralph R. Teal, Jr.
E. Lawton Benton
J. Carson Benton

Section 2. Directors During Class "B" Control. The Directors who shall serve on the Board of Directors of the Association shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first annual meeting of the membership following termination of Class B control at which time the Board of Directors shall be increased to five (5) Members.

Within one hundred twenty (120) days thereafter, the Class "B" member shall call a meeting, as provided in Article II, Section 5, of these By-Laws for special meetings, to advise the membership of the termination of the Class "B" member's control or, in the alternative, shall notify each member by U. S. Mail that the Class B membership has terminated.

The Directors selected by the Class "B" member pursuant to this Section need not be Members as provided in Section 1 of this Article.

Section 3. Veto. This Section 3 may not be amended without the express, written consent of the Class "B" member, so long as the Class "B" membership exists.

So long as the Class "B" membership exists, the Class "B" member shall have a veto power over all actions of the Board and any committee, as is more fully provided in this Section. This veto power shall be exercisable only by the Class "B" member, its successors, and assigns who specifically take this power in a recorded instrument. The veto power shall be as follows:

No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) The Class "B" member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meetings with Article III, Sections 10 and 11, of these By-Laws as to regular and special meetings of the Directors and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Class "B" member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of the meeting relative to any prospective action, policy, or program to be implemented by the Board, any committee, or the Association. The Class "B" member and its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the subject committee and/or the Board. The Class "B" member shall have and is hereby granted a veto power over any such action, policy, or program authorized by any committee or the Board of Directors and to be taken by any committee or Board of the Association or any individual member of the Association if Board, committee, or Association approval is necessary for said action. This veto may be exercised by the Class "B" member, its representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. Any veto shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association.

Section 4. Number of Directors. The number of Directors in the Association shall not be less than three (3) nor more than five (5), as provided below. The initial Board shall consist of three (3) members as identified in the Articles of Incorporation.

Section 5. Nomination of Directors. Except with respect to Directors selected by the Class "B" Member, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and three (3) or more Members of the Association. The Nominating Committee

shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Voting Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each such annual meeting. Nominations shall be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Section 6. Election and Term of Office. Notwithstanding any other provision contained herein:

At the first annual meeting after the termination of Class B control, five (5) Directors shall be elected. Two (2) of the Directors, elected pursuant to this Section, shall be elected to serve for a term of three (3) years. Two (2) of the remaining Directors shall be elected to serve for a term of two (2) years, with the final Director elected to serve for a one (1) year term. Members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association. Directors may be elected to serve any number of consecutive terms. Each member elected thereafter shall be elected for a two (2) year term.

Section 7. Removal of Directors and Vacancies. Any Director of the Association may be removed, with or without cause, by a vote of the Voting Members with a majority vote of the membership. Any Director whose removal is sought will be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall then and there be elected to fill the vacancy by the Voting Members responsible for such removal.

Any Director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment for more than thirty (30) days may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board. In the event of the death, disability, or resignation of a Director, a vacancy may be declared by the Board and it may appoint a successor. Any Director appointed by the Board shall serve for the remainder of the term such successor was appointed to fill.

Section 8. Voting Procedure for Directors. At any election of Directors to the Board of Directors, each Voting Member may cast, in respect to each vacancy, as many votes as he or she is entitled to exercise under the Declaration. The candidates receiving the largest number of votes shall be elected.

B. Meetings.

Section 9. Organizational Meetings. The first meeting of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 10. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 11. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or by a majority of Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by telegram, charges prepaid. All such notices shall be given by use of the Director's telephone number or shall be sent to the Director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least three (3) days before the time set for the meeting.

Section 12. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 13. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors who are present at such meeting may adjourn the meeting until such time and place as they may determine. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 14. Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by Members holding a majority of the total vote of the Association at a regular or special meeting of the Association; provided any Director may be

reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors.

Section 15. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

Section 16. Open Meetings. Subject to the provisions of Section 17 of this Article, all meetings of the Board shall be open to all Voting Members, but Voting Members other than Directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a Director. In such case, the President may limit the time any Voting Member may speak.

Section 17. Action Without a Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

Section 18. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the Voting Members or the membership generally.

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

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;

(b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board of Directors, the annual assessment for each Declaration's proportionate share of the Common Expenses shall be payable in equal monthly installments, or as determined by the Board of Directors;

(c) providing for the operation, care, upkeep, and maintenance of all of the Common Areas;

(d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Areas and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, any reserve fund may be deposited, in the Directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable to Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting principles;

(m) making available to any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Lot, current copies of the Declaration, the By-Laws, rules governing the Lot, and all other books, records, and financial statements of the Association; and

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the properties.

Section 19. Management Agent.

(a) The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 18 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

(b) No management contract may have a term in excess of one (1) year and must permit termination by either party without cause and without termination fee or penalty on ninety (90) days' or less written notice.

Section 20. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed with regard to the annual audit, while the regular monthly accounting shall be on a cash basis;

(b) accounting and controls shall conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise unless it benefits the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(f) commencing at the end of the month in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a variance report reflecting the status of all Association ledger accounts in an "actual" versus "approved" budget format;

(iii) a balance sheet as of the last day of the preceding period; and

(iv) a delinquency report listing all Owners who are delinquent in paying the assessments at the time of the report and describing the status of any action to collect such installments which remain delinquent (A monthly installment of the assessment shall be considered to be delinquent on the fifteenth (15th) day of each month unless otherwise determined by the Board of Directors); and

(g) an annual report as of the end of the fiscal year consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited basis, by an independent certified public accountant for each fiscal year.

Section 21. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the Common Areas or for the purpose of funding budgetary shortfalls, without the approval of the membership; provided, however, the Board shall obtain Voting Member approval by majority vote for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association for that fiscal year.

Section 22. Rights of the Association. With respect to the Common Areas, and in accordance with the Articles of Incorporation and By-Laws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other Owners or residents associations, both within and without the properties. Such agreements shall require the consent of two-thirds (2/3) of all Directors of the Association.

Section 23. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. In the event that any occupant of a Lot violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the

Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder, except the suspension of voting rights for nonpayment of assessments, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested in a timely manner, the hearing before the Covenants Committee shall be held in executive session affording the Owner a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within thirty (30) days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

Article IV Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform

the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the membership, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term. The names and addresses of the first officers of the Association, who shall hold office until the first annual meeting of directors and until successors are duly elected and have taken office, shall be as follows:

<u>Office</u>	<u>Name</u>	<u>Address</u>
President	Ralph R. Teal, Jr.	2002 Oak Street, Suite 200 Myrtle Beach, SC 29577
Vice President	E. Lawton Benton	706 38 th Avenue North Myrtle Beach, SC 29577
Secretary/ Treasurer	J. Carson Benton	706 38 th Avenue North Myrtle Beach, SC 29577

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have the responsibility for the preparation of the budget as provided for in the Declaration.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors. Provided however, agreements, contracts and checks may be executed by the Management Agent.

Article V
Committees

Section 1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Section 2. Covenants Committee. In addition to any other committees which may be established by the Board pursuant to Section 1 of this Article, the Board of Directors may appoint a Covenants Committee consisting of at least five (5) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and conduct all hearings held pursuant to Article III, Section 23 of these By-Laws.

Article VI
Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with South Carolina law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of South Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration and By-Laws, membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the Properties as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member or Voting Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6. Amendment. Prior to the conveyance of the first Lot, Declarant may unilaterally amend these By-Laws. Thereafter and otherwise, but subject to the provisions hereinafter provided, these By-Laws may be amended only by the affirmative vote (in person or by alternate) or written consent of Voting Members representing sixty-seven (67%) percent of the total votes of the Association, including sixty-seven (67%) percent of the votes of Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Further, no amendment of any provision reserving a right specifically in favor of the Declarant may be amended without the Declarant's express consent. No amendment shall be effective until recorded in the public records of Horry County, South Carolina.

Article VII

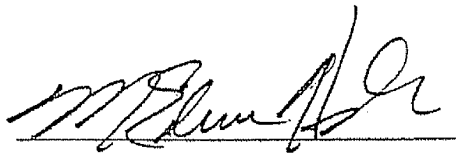
INDEMNIFICATION

The Association shall indemnify any person who is made a party or is threatened to be made a party to any claim, suit, proceeding or liability by reason of the fact that he is or was a director, officer, employee, agent or representative of the Association to the fullest extent permitted by law, and the Association may advance expenses to any such person to the fullest extent permitted by law. The Association shall also have the power to purchase and maintain insurance on behalf of any

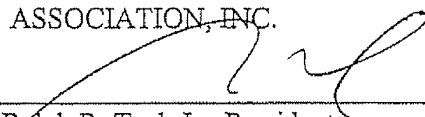
EXHIBIT D

person who is or was a director, officer, employee, agent or representative of the Association against any liability asserted against him in any such capacity.

IN WITNESS WHEREOF, Wild Wing Property Owners' Association, Inc., a South Carolina Corporation, has caused these presents to be executed this 26th day of September, 2006.


Michelle L. Merrell

WILD WING PROPERTY OWNERS'
ASSOCIATION, INC.

By: 
Ralph R. Teal, Jr., President

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt,
Individually and derivatively
on behalf of the Wild Wing Plantation
Property Owners' Association, Inc.,

Plaintiff(s),

vs.

CIVIL ACTION NO.
2017-CP-26-04187

Wild Wing Company, LLC,
Ralph R. Teal, Jr.,
SLF IV/SBI Wild Wing, LLC,
Wild Wing Residential Development LLC,
Stratford Land Manager,
SB Investments LLC,
Graeme T. Black, Gilford Edwards,
Founders Wild Wing, LLC,
Founders Group International, LLC,
Dan Liu, and Xian Dou,

Defendant(s).

Wild Wing Plantation
Owners' Association, Inc.

Nominal Defendant.

VIRTUAL

DEPOSITION OF: PRESTON COURTNEY

DATE: Wednesday, August 20th, 2020

TIME: 11:38 a.m. through 12:39 p.m.

LOCATION: BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Defendant(s)

COURT REPORTER: MADONNA M. FARRELL
Registered Professional Reporter
CaseViewNet Realtime Reporter

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 as a security company, it was more of a staffing
2 company for gated communities.

3 COURT REPORTER: For what?

4 MR. MILLER: Gated communities.

5 THE DEPONENT: Today we are association
6 management and the maintenance that goes
7 along with that, still doing the staffing,
8 but I sold the landscape company many years
9 ago.

10 BY MR. MILLER:

11 Q. Congratulations. Tired of replacing dead
12 palm trees, I presume.

13 So when you say "association management,"
14 would the accounting functions that Jane now
15 performs for you, would that be part of that
16 association management?

17 A. Correct. Yes. Bookkeeping for the
18 associations, doing their monthly financials, yes.

19 Q. And so your job, of course, is overseeing
20 all of your managers in charge of those different
21 functions. Is that fair?

22 A. Yes.

23 Q. You know that this deposition is about a
24 dispute at Wild Wing, do you not?

25 A. Yes.

1 no, not -- never a requirement to do that.

2 My understanding, my experience is it's
3 always been -- the obligation is the baseline to --
4 to pay for the services on the property. Keep the
5 property functioning.

6 Q. Have you reviewed the declaration of Wild
7 Wing as regards the developer contribution
8 calculation and the issue in this case?

9 A. Have I read the section? Yes, I've read the
10 section.

11 Q. As a result of doing so, and you can look at
12 your Exhibit Number 1 right there, if you will,
13 Press, turn to Page 18 of that exhibit.

14 A. (Complies.)

15 Q. And if you'll go down to the 11th line over
16 to the right, it begins with the word "However,
17 until such time as a lot is conveyed"; do you see
18 that?

19 A. Yes.

20 Q. And it reads that "In lieu of an assessment
21 thereof, the declarant shall pay a sum equal to the
22 actual amount of actual operating expenditures
23 incurred by the association for that portion of the
24 calendar year, less an amount equal to the total
25 assessments made by the association against lot" --

1 "owners of lots."

2 **A.** Yes. Common language -- language that we
3 see in most governing documents.

4 **Q.** Okay.

5 **A.** Some -- some version thereof, yes.

6 **Q.** The words "actual amount of actual operating
7 expenditures," okay, what -- what do you read those
8 words to mean?

9 **A.** Well, I'll tell you from my experience what
10 those words have always meant in my experience, is
11 the actual expenses: The light bill, the
12 landscaper, the maintenance company, paying the
13 bills of the association.

14 **Q.** Have you ever seen it to include something
15 like bad debt expense, the issue here where it's
16 not -- it's not a hand-over of cash out of the
17 association account as such, but it's rather a
18 failure to receive money? Have you ever seen that?

19 **A.** No.

20 **Q.** Give me a minute. I'm going to thumb
21 through my notes and try to move along.

22 Are -- are you aware of a second issue in
23 this case concerning amendments that were done in
24 2011 and again in 2016 extending the time for the
25 developer contribution to be made per this -- this

1 someone raids from me, they've stolen from me, and
2 they don't intend to give it back or put it back.

3 Q. Okay. Any -- anything else? Any other
4 difference?

5 A. No.

6 Q. Okay. You testified earlier that when a
7 person is -- assumes a position on the board of an
8 HOA, they owe a fiduciary duty to the association;
9 is that right?

10 A. Yes.

11 Q. Even if that person was appointed by a
12 declarant?

13 A. Absolutely.

14 Q. Is that right?

15 A. Absolutely.

16 Q. And so what happens then to that person when
17 the interest of the declarant and the interest of
18 the HOA -- or let's say -- and by HOA, I mean, the
19 property owners who are not the declarant -- what
20 happens to the board member when those interests
21 conflict?

22 A. Well, it's the same thing that happens to
23 anyone else that serves on any board where they
24 have a fiduciary responsibility and their personal
25 or professional interests conflict. They either --

1 Q. And that that's very common in any
2 development that you've been associated with, that
3 the declarant places members on the board?

4 A. Yes.

5 Q. Okay. And so under those circumstances,
6 regardless of who those members are, there may be
7 situations where they have obligations to the
8 developer, but also have obligations to the
9 association that they're serving on the board for,
10 right?

11 A. Correct. That's usually inclusive.

12 Q. Okay. And you read my mind all the way
13 through the computer. But the question there is:
14 That does not necessarily in and of itself create a
15 conflict of interest, correct?

16 A. Correct.

17 Q. All right. And along those lines, are you
18 aware of any instance during the time that
19 Mr. Black, Mr. Teal, and Mr. Edwards served on the
20 board for Wild Wing Plantation where they acted
21 contrary to the interests of the association?

22 A. I am not. And, you know, in all
23 developments, the developer has to operate the
24 association to the benefit of -- it's got to be a
25 positive thing for both sides, or we'd have no

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt,
Individually and derivatively
on behalf of the Wild Wing Plantation
Property Owners' Association, Inc.,

Plaintiff(s),

vs.

CIVIL ACTION NO.
2017-CP-26-04187

Wild Wing Company, LLC,
Ralph R. Teal, Jr.,
SLF IV/SBI Wild Wing, LLC,
Wild Wing Residential Development LLC,
Stratford Land Manager,
SB Investments LLC,
Graeme T. Black, Gilford Edwards,
Founders Wild Wing, LLC,
Founders Group International, LLC,
Dan Liu, and Xian Dou,

Defendant(s).

Wild Wing Plantation
Owners' Association, Inc.

Nominal Defendant.

TELEPHONIC

DEPOSITION OF: PAUL SKIRCHAK

DATE: Thursday, July 30, 2020

TIME: 10:03 a.m. through 12:40 p.m.

LOCATION: BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Defendant(s)

COURT REPORTER: MADONNA M. FARRELL
Registered Professional Reporter
CaseViewNet Realtime Reporter

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

0479

1 Does this help you recall that the board
2 sought the review by an auditor and got that
3 opinion?

4 **A.** Repeat that, please.

5 Q. Does reading this note here help refresh
6 your recollection about the board getting or the
7 finance committee getting the advice of a
8 professional auditor on this issue?

9 **A.** Other than Jim Corbett?

10 Q. No. He counts. He's a professional
11 auditor, is he not?

12 **A.** Yeah. Jim was the one at this time that I
13 can recall that was involved in these discussions
14 between Barry and, I guess, the board.

15 I really don't recall the results of those
16 that much, other than it was, to my understanding,
17 the way it had been handled by the same auditing
18 firm as multiple developer-controlled communities.

19 Q. Would the finance committee have recommended
20 a proposed developer contribution calculation up to
21 the board? Is that how it works?

22 **A.** That finance committee, at the time I worked
23 with them, offered a budget recommendation line by
24 line. My recollection is I presented a budget, and
25 it had them cut mustard for the finance committee

10:50 AM

10:50 AM

10:50 AM

11:00 AM

11:00 AM

1 before it was presented to the board for approval.

2 And we went over that budget line by line.
3 I can't recall all the details. But it was a very
4 positive experience, learning experience for
5 everybody. And ultimately, we were both pretty
6 close, is my recall, on the budget to present for
7 that particular year.

8 Q. Okay.

9 A. Very sharp people on that finance committee.

10 Q. Good. I'll come back to those budgets.

11 Right now if you would pull up Exhibit
12 Number 2?

13 (EXHIBIT 2, Wild Wing 2011 Developer
14 Assessment Exposure, was marked for
15 identification.)

16 THE DEPONENT: All right.

17 BY MR. MILLER:

18 Q. And I realize some of those documents
19 predate your involvement. But those are what we're
20 calling the developer calculations. The developer
21 assessment exposures is what they call...

22 Have you seen these before?

23 A. Maybe.

24 Q. Okay. So these are a little bit different
25 than the budget, right?

1 inclusive up to the board --

2 **A.** Sorry. I recall is the finance committee
3 wanted Phillips out of there at that time and
4 another auditor in, and that's when Deborah Weir
5 came in.

6 Q. Okay.

7 **A.** Somewhere around '15, '16.

8 Q. So when you spoke earlier, you used the
9 words "an owner-generated request to change
10 auditors."

11 You're telling me that came from the finance
12 committee? That's what you're talking about?

13 **A.** Well, no. My recall is that that came from
14 Barry before there was a finance committee. The
15 committee process was still in early discussions.

16 Q. So "owner recommended," you're talking about
17 Barry Dykes?

18 **A.** That is correct. That's my recall.

19 Q. Okay.

20 MR. MILLER: Paul, we've been going
21 just over an hour. Do you want to take a
22 short break? Please say yes.

23 THE DEPONENT: Yes.

24 MR. MILLER: Thank you.

25 Y'all want to say -- we need to set a

1 see '14, that was done by Lisa Marie Rockwood. '15
2 would have been the first one that I was involved
3 with.

4 Q. Okay. Would it also have been the last one
5 you were involved with?

6 A. No. I should have been involved with '16
7 and '17 at that point, then.

8 Q. Okay. I've got Kristy Farley's name on
9 those, and then I see your name again on the 2018.

10 A. That was -- that was my parting gift, I
11 guess. I prepared the budget of 2018. I left at
12 the end of '17.

13 Q. Okay. Got it.

14 So walk me quickly through, how does the
15 budget process work? How does that go?

16 A. You know, you identify the expenses, past.
17 You identify expectations from your service
18 providers and utilities of what the prices may do
19 going forward. You put all the specific budget
20 items that are inflexible. I mean, they have to be
21 there. They're mandatory. You identify them. You
22 look at the items that are discretionary, identify
23 all of them as well.

24 And primarily based on expenses and
25 projections of funds to be expensed, put them all

1 together and, Voila, there's the budget.

2 Q. Okay. And as the property manager, you
3 prepare the first draft. Is that what you're
4 telling me?

5 A. I do, yes.

6 Q. And do you then present that to the finance
7 committee?

8 A. Hmm.

9 Q. And I'm talking about the Wild Wing project.
10 Would you present that to the finance committee?

11 (Indiscernible crosstalk.)

12 THE DEPONENT: -- probably both. My
13 first one may have presented only to the
14 board and advisor members that, you know,
15 they had invited or not. And then after the
16 committees were established and had their
17 charters, the first draft would go to the
18 finance committee. That's correct.

19 BY MR. MILLER:

20 Q. Okay. And then from there would the finance
21 committee, whenever they finally approve it,
22 recommend it up the line to the board of the POA?
23 Is that how it went?

24 A. In my case, they presented very expertly
25 both their recommendations and mine, like, side by

1 Q. Yeah. When you say they approved the
2 budget, the POA board approved the budget, did it
3 not?

4 A. Which was developer controlled, yes.

5 Q. Right. But it was the POA board, not the
6 developer board, correct?

7 A. POA board, yes, sir.

8 Q. Okay. And then I've got some correspondence
9 where you sent numbers over to a lady named Lisa
10 Mackley, you know, letting her know what the number
11 is for the developer contribution.

12 Do you remember that you would communicate
13 that over to the developer?

14 A. I'm sorry, David. Repeat that.

15 Q. Do you remember that upon approval by the
16 POA, you would let the developer know what their
17 requested contribution would be?

18 A. Yes.

19 Q. And so the end number is zero. When I'm
20 looking at these budgets, it always ends in zero?

21 A. Isn't that wonderful?

22 Q. Why is that?

23 A. Well, it was -- it was practice. When you
24 build a budget, you build a balanced budget. Now,
25 the budget is just a guess, a best guess based on

1 administration of the amendment of the same
2 amendments of 2011 to 2016, right?

3 Q. Well, that's what I'm getting ready to ask
4 you. So let me ask you this way.

5 Did the Wild Wing POA board call and notice
6 a special members' meeting for the purpose of
7 voting on this amendment?

8 A. Yes.

9 Q. And did you --

10 A. Probably -- it's probably in the minutes.

11 Q. And did you oversee ensuring that that
12 special meeting was called, noticed, and conducted
13 in accordance with the Declaration for Wild Wing,
14 the community documents?

15 A. Yes.

16 Q. Was it, in fact, called, noticed, and
17 conducted in accordance with the community
18 documents?

19 A. Well, it's here. It must have been.

20 Q. Okay. Is that your signature on the front
21 page of the Proof of Mailing?

22 A. Yes, and of the notice. That's my signature
23 on the notice as well.

24 Q. Okay. And then if you flip forward, there's
25 a copy of the amendment that was sent -- that was

1 Q. Mine, too.

2 Is this your tally sheet? Did you create
3 this and enter the numbers "1" beside or under
4 "pro" or "con"?

5 A. Although I would look at it periodically, my
6 assistant probably put this tally sheet together.
7 That's one of the things I had the benefit, luxury
8 of having when I was there, an assistant to receive
9 all these return proxies and put them in this type
10 of format.

11 Q. Would you review it and ensure its accuracy
12 and correctness?

13 A. I would. I said yes.

14 Q. Okay. Thank you.

15 Paul, I'm going to ask you about reserve
16 accounts a little bit.

17 There have been some allegations in the
18 formal pleadings of the lawsuit, and then also some
19 discussion in a deposition with Mr. Dykes, as to
20 whether the developer raided the reserve accounts
21 and used monies inappropriately.

22 If you would look at Exhibit Number 8 and
23 also Number 9. If you'll dig those out, please.

24 (EXHIBIT 8, E-mail chain, was marked
25 for identification.)

1 THE DEPONENT: I worked with them until
2 the sale of the property to Founders.

3 COURT REPORTER: Thank you.

4 BY MS. SUTTIE:

5 Q. And are you aware of any actions that were
6 taken by Mr. Black or Mr. Edwards or Mr. Teal in an
7 individual capacity that you felt violated any
8 fiduciary duties to the POA?

9 A. No.

10 MS. SUTTIE: I think that is all I have
11 right now. I appreciate your time.

12 THE DEPONENT: You're welcome.

13 **EXAMINATION**

14 **BY MR. ROLLINS:**

15 Q. Mr. Skirchak, this is Cliff Rollins. I
16 represent Thomas Plankers, Rick Schultz, and Rick
17 Taylor, and I'd like to ask you a few questions.

18 Do you remember these gentlemen as I
19 mentioned their names?

20 A. Tom Plankers, Rick Schultz, and who else?

21 Q. And Rick Taylor?

22 A. Yes.

23 Q. Okay. And in what capacity do you recall
24 having interaction with them?

25 A. They were the Founders' employees assigned

1 to be declarant board members for Wild Wing
2 Plantation when Founders purchased the property.

3 Q. All right. And so that was roughly 2015 on,
4 2016? Do you recall what year you began working
5 with them in that capacity?

6 A. At the time of the sale.

7 Q. Okay. And were you familiar with any of
8 them prior to their service on the HOA's board?

9 A. No.

10 Q. Okay. At the time you were acting as the
11 property manager for the Wild Wing Plantation POA,
12 did you have a working understanding of the powers
13 and authority of the board members as those were
14 outlined in the covenants?

15 A. Yes.

16 Q. Okay. Did you ever observe them to take any
17 actions as board members that you felt were outside
18 of the authority that was given to them by those
19 documents?

20 A. No.

21 Q. Did -- I'm sure -- you indicated earlier
22 that you've worked with something in excess of a
23 hundred different -- or managed something in excess
24 of a hundred different properties. I'm sure you
25 have seen board members that run the gamut in terms

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt,
Individually and derivatively
on behalf of the Wild Wing Plantation
Property Owners' Association, Inc.,

Plaintiff(s),

vs.

CIVIL ACTION NO.
2017-CP-26-04187

Wild Wing Company, LLC,
Ralph R. Teal, Jr.,
SLF IV/SBI Wild Wing, LLC,
Wild Wing Residential Development LLC,
Stratford Land Manager,
SB Investments LLC,
Graeme T. Black, Gilford Edwards,
Founders Wild Wing, LLC,
Founders Group International, LLC,
Dan Liu, and Xian Dou,

Defendant(s).

Wild Wing Plantation
Owners' Association, Inc.

Nominal Defendant.

DEPOSITION OF: JAMES CORBETT

DATE: Wednesday, November 6, 2019

TIME: 10:06 a.m. through 11:23 a.m.

LOCATION: BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Defendant(s)

COURT REPORTER: MADONNA M. FARRELL
Registered Professional Reporter
Certified Livenote Reporter
CaseViewNet Realtime Reporter

STENOTYPE REPORTING SERVICE, LLC

Madonna Farrell, RPR *** (843) 685-0075
4350 Old Kings Highway, Murrells Inlet, SC 29576

1 **A.** Yes, sir.

2 **Q.** Okay. Sounds like you're familiar with
3 their operation?

4 **A.** Very much.

5 **Q.** How would you rate them as among property
6 management companies on the beach?

7 **A.** Absolute best I've ever seen.

8 **Q.** Wow. High praise.

9 Let's talk more -- a little more
10 specifically.

11 So you told me that you did audit work --

12 **A.** Right.

13 **Q.** -- for Wild Wing?

14 **A.** (Moves head up and down.)

15 **Q.** And when I say "Wild Wing," I mean the
16 property owners association, because that's who you
17 worked for.

18 **A.** (Moves head up and down.)

19 **Q.** Did you also prepare calculations as to what
20 the developer's dues contribution should be?

21 **A.** Yes.

22 **Q.** Did you participate in analyzing the reserve
23 funding?

24 **A.** Yes.

25 **Q.** Anything else?

1 it's minutes of a Wild Wing POA finance committee
2 meeting. And just look it over and tell me if you
3 recognize that document.

4 **A.** Yes, sir.

5 Q. And I'm looking at the last page. And
6 mine's highlighted (indicating). If you'll see
7 this part right here is what I'm looking at.

8 **A.** Okay.

9 Q. And -- and it reads, and tell me if I read
10 this correctly: "Also, the auditor's formula for
11 determining the developer's contribution excludes
12 bad debt expense from the total expenses of the
13 POA. Barry" -- being Barry Dykes -- "strongly
14 questioned that approach and indicated there was no
15 support for that approach that he was aware of in
16 the community documents. The auditor agreed to
17 review that formula."

18 Did I read that correctly?

19 **A.** Yes, sir.

20 Q. Okay. My question is this: As the auditor
21 for the property owners association, what did you
22 do to review that formula?

23 **A.** I went back and looked at any prior years.
24 Plus I went in and read the covenants and how it's
25 calculated.

1 Q. The declaration?

2 A. Declaration, yeah.

3 Q. Did you meet with any other of the
4 professionals in your office about it?

5 A. Yes. It was discussed with myself and
6 Barbara Faircobb (phonetic). She's a CPA.

7 Q. What about Larry Phillips?

8 A. Larry would review any and all audits. If
9 first -- if Barb did an audit, I reviewed it, and
10 then it went to Larry. If I did one, it went to
11 Barbara, and then it would go down to Larry.

12 Q. Got it.

13 Did you look at any other sources of
14 information, such as generally accepted accounting
15 principles and those kind of things you guy rely
16 upon?

17 A. Yes, sir. GAAP. The financial statements
18 presented in the audit are GAAP.

19 Q. General accepted accounting principles?

20 A. Accounting principles.

21 Q. Got it. Okay.

22 A. They include bad debt expense as GAAP. Now
23 we've got a calculation. And over here on this
24 calculation, we would start with that GAAP number,
25 the number that was determined to be the income or

1 Q. This letter, if I look at the dates, this
2 follows by a couple of months the prior exhibit
3 where the -- the finance committee asked, where we
4 read the auditor agreed to review the matter?

5 A. Uh-huh.

6 Q. This is a couple of months later.

7 Is this the results of your having gone in
8 and done the review that you just outlined to me?

9 A. Yes. I remember sitting down with Jane
10 Atkinson, and we went back through years of
11 calculation. Jane, like I say, she's excellent.
12 And we were -- we were within dollars of each
13 other's calculation.

14 Q. Okay. So early you had testified that you
15 went back and looked at the declaration, you pulled
16 numbers. But now you're telling me, in addition to
17 that, you and the accountant at the -- at the
18 property owners management company worked together
19 to go back years and bring it all the way back
20 forward.

21 A. I do -- that -- what triggered it is seeing
22 this 119,918.89. Okay? I mean, I apologize.
23 That's four years. I'm 65 years old. I don't
24 remember a lot.

25 But no. I remember that number. So, yeah.

1 But I think -- never mind. Yeah. I recognize it.

2 Q. Well, let me make sure I understand this.

3 This letter reads: "We have completed the
4 audit for Wild Wing Plantation Property Owners
5 Association, Inc. as of and for the year ending
6 December 31, 2014. The audit resulted in an amount
7 due to the declarant totaling \$119,918.89, which is
8 currently shown within the liability section of the
9 association's balance sheet as advanced
10 assessments-declarant."

11 Did I read that correctly?

12 **A.** Yes.

13 Q. So am I to understand that as a result of
14 your exhaustive review, you concluded that the
15 association owed money to the developer and not
16 vice versa?

17 **A.** Correct.

18 Q. And this is a letter to the developer, is it
19 not, telling them that?

20 **A.** Yes, I believe it is. SL, yeah.

21 Q. Okay.

22 **A.** And the association.

23 Q. So the developer didn't undertake to have
24 this number calculated. This was done at the
25 request of the finance committee of the property

1 Q. All right. Are you --

2 A. I can have an expense, but I didn't
3 necessarily have to spend money.

4 Q. Okay. So your interpretation -- in your
5 interpretation under GAAP, expense and expenditure
6 mean two different things. Is that what you're
7 telling me?

8 A. That's my interpretation. I just see an
9 expenditure as somebody writing a check or reaching
10 in their pocket and paying for something.

11 Q. So when you look at this statement in the
12 declaration and you look at this sentence, you
13 wouldn't begin with actual operating expenses --
14 expenses from the financial statement.

15 Is that what you're telling me?

16 A. When we did our calculation?

17 Q. Yeah.

18 A. Yeah. We would begin with the net income or
19 loss for that period, and then the judgments were
20 made.

21 Q. And what about that sentence tells you --
22 about that sentence in the declaration tells you
23 you need to back out certain expenses?

24 A. What I asked David, somewhere there's a
25 permanent file, and I don't know if you have it,