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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas R. Keith Kelly, Circuit Court Judge

Appellant Case No. 2022-001557
Civil Action Case No. 2016-CP-42-01854

Chandelle Property Owners Association, Respondent,

v.

James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein, Defendants,

and

James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006, Third-Party Plaintiffs,

v.

Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg, and George Lynn Fleming in their personal and official capacities, Third-Party Defendants,

And

Kenneth L. Galloway and Molly C. Galloway, Third-Party Plaintiffs,

v.

Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg, and George Lynn Fleming, in their personal Capacities, Third-Part Defendants,

Of whom James Douglas Armstrong, Jane Armstrong, Warren Johnson Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006, are the Appellants.

RECORD ON APPEAL – VOLUME 1

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

C.A. No. 2016-CP-42-01854

Chandelle Property Owners Association,
Plaintiff,

vs.

CSC Developers, LLC, Chandelle
Runway, LLC, 331 South, LLC, Charlie
M. Allison, Janice H. Allison, James
Douglas Armstrong and Jane Armstrong,
Marilyn N. Berry, Stephen Berry, James
P. Brockman, Sr., Douglas E. Cobb,
Nicole Cobb, Kenneth L. Galloway, Molly
C. Galloway, Warren Johnson, Rhonda
Johnson, Lawrence E. Lewis, Barbara L.
Lewis, John K. Payne, Ruth G. Payne,
John R. Stewart, Jr., Angela Tanner,
Helmut Tuemmel, Silvia L. Tuemmel,
Tygerway, LLC, RL 240, LLC, and Rob
Graham as Trustee of the Jane Van
Wieren Trust,

Defendants.

C.A. No. 2016-CP-42-03213

Chandelle Runway, LLC,

Plaintiff,

vs.

Bruce R. Goldberg,

Defendant.

**ORDER
(COMPLEX CASES)**

C.A. No. 2016-CP-42-01854
C.A. No. 2016-CP-42-03213
C.A. No. 2016-CP-42-03214
C.A. No. 2016-CP-42-03215
C.A. No. 2016-CP-42-03344
C.A. No. 2016-CP-42-03409

C.A. No. 2016-CP-42-03214)
)
 Chandelle Runway, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Dale Ellis,)
)
 Defendant.)
 _____)

C.A. No. 2016-CP-42-03215)
)
 Chandelle Runway, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 George Lynn Fleming,)
)
 Defendant.)
 _____)

C.A. No. 2016-CP-42-03344)
)
 Chandelle Runway, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Stuart R. Swanson,)
)
 Defendant.)
 _____)

C.A. No. 2016-CP-42-03409)
)
 Chandelle Runway, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Billy J. Israel,)

Defendant.)
)

HEARING DATE: **October 4, 2016**
JUDGE: **J. Mark Hayes, II**
COURT REPORTER: **Julie Ashbrook**

This matter is before the Court pursuant to Plaintiff/Defendant Chandelle Runway's Motion to Consolidate and to Establish Complex Case Designation. Based on the pleadings filed to date in the above-captioned case, the documents submitted at this hearing, the arguments of counsel, as well as Chandelle Runway's Motion, the Court finds as follows:

1. By consent of the parties, the above-captioned cases are complex in nature and each should be designated as such.
2. The determination as to whether the above-referenced cases should be consolidated is premature at this point due to the procedural posture of each of the cases, as responsive pleadings have yet to be filed in some cases and there is a likelihood of additional claims; therefore, the issue of consolidation shall be held in abeyance for determination by the court-assigned circuit court judge at the proper time.
3. Likewise, a determination on Chandelle Runway's oral motion to consolidate Case Numbers 2016-CP-42-03344 and 2016-CP-42-03409 with the other above-captioned cases shall also be held in abeyance for determination by the court-assigned circuit court judge at the appropriate time.
4. Ruling on the motions to dismiss filed by Defendant Armstrong and Defendant Payne are held in abeyance for determination by the court-assigned circuit court judge.
5. Chandelle Runway's Motions for Temporary Restraining Orders filed in Case Numbers: 2016-CP-42-01854, 2016-CP-42-03213, 2016-CP-42-03214, 2016-CP-42-03215, 2016-CP-42-03344, and 2016-CP-42-03409 are removed from the motion

docket for October 7, 2016, and will be heard by the court-assigned circuit court judge.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff/Defendant Chandelle Runway's Motion is GRANTED IN PART as follows:
 - a. The above-captioned cases are each designated as complex;
 - b. The adjudication as to whether the above-captions cases should be consolidated is held in abeyance for determination by the court-assigned circuit court judge at the appropriate time;
 - c. Ruling on Chandelle Runway's oral motion to consolidate Case Numbers 2016-CP-42-03344 and 2016-CP-42-03409 with the other above-referenced cases is held in abeyance for determination by the court-assigned circuit court judge at the appropriate time; and
 - d. All other previously filed motions in the above-captioned cases and in Case Numbers 2016-CP-42-03344 and 2016-CP-42-03409 are held in abeyance for determination by the court-assigned circuit court judge.
2. The above-captioned cases are hereby assigned to the Honorable R. Keith Kelly to hear and handle all motions and other matters pertaining to each case.

IT IS SO ORDERED!

Hon. J. Mark Hayes, II
Chief Judge for Administrative Purposes

_____, 2016
Spartanburg, South Carolina



Spartanburg Common Pleas

Case Caption: Chandelle Property Owners Association VS Csc Developers Llc ,
defendant, et al
Case Number: 2016CP4201854
Type: Order/Complex Case Designation

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2016-10-14 10:44:19 page 5 of 5

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

C.A. No. 2016-CP-42-00074)

Chandelle Property Owners Association)

Plaintiff,)

vs.)

Kenneth L. Galloway and Molly C. Galloway,)

Defendants, et al.)

IN THE COURT OF COMMON PLEAS

**ORDER AS TO COMPLEX CASE
DESIGNATION, CONSOLIDATION
AND MEDIATION**

C.A. No. 2016-CP-42-01854)

Chandelle Property Owners Association,)

Plaintiff,)

vs.)

CSC Developers, LLC, Chandelle Runway,)
 LLC, 331 South, LLC, Charlie M. Allison,)
 Janice H. Allison, James Douglas Armstrong)
 and Jane Armstrong, Marilyn N. Berry,)
 Stephen Berry, James P. Brockman, Sr.,)
 Douglas E. Cobb, Nicole Cobb, Kenneth L.)
 Galloway, Molly C. Galloway, Warren)
 Johnson, Rhonda Johnson, Lawrence E. Lewis,)
 Barbara L. Lewis, John K. Payne, Ruth G.)
 Payne, John R. Stewart, Jr., Angela Tanner,)
 Helmut Tuemmel, Silvia L. Tuemmel,)
 Tygerway, LLC, RL 240, LLC, and Rob)
 Graham as Trustee of the Jane Van Wieren)
 Trust,)

Defendants.)

C.A. No. 2016-CP-42-00074
 C.A. No. 2016-CP-42-01854
 C.A. No. 2016-CP-42-03213
 C.A. No. 2016-CP-42-03214
 C.A. No. 2016-CP-42-03215
 C.A. No. 2016-CP-42-03344
 C.A. No. 2016-CP-42-03409
 C.A. No. 2017-CP-42-00541

C.A. No. 2016-CP-42-03213)

Chandelle Runway, LLC,)

Plaintiff,)

vs.

Bruce R. Goldberg,

Defendant, et al.

C.A. No. 2016-CP-42-03214

Chandelle Runway, LLC,

Plaintiff,

vs.

Dale Ellis,

Defendant, et al.

C.A. No. 2016-CP-42-03215

Chandelle Runway, LLC,

Plaintiff,

vs.

George Lynn Fleming,

Defendant, et al.

C.A. No. 2016-CP-42-03344

Chandelle Runway, LLC,

Plaintiff,

vs.

Stuart R. Swanson,

Defendant, et al.

C.A. No. 2016-CP-42-03409

Chandelle Runway, LLC,

Plaintiff,

vs.

Billy J. Israel,

Defendant, et al.

C.A. No. 2017-CP-42-00541

Chandelle Property Owners Association,

Plaintiff,

vs.

CSC Developers,

Defendant.

HEARING DATE: **March 3, 2017**

JUDGE: **R. Keith Kelly**

COURT REPORTER: **Lisa M. Scott**

This matter came before the Court pursuant to the Motion to Consolidate and to Establish Complex Case Designation filed by the Plaintiff/Defendant Chandelle Runway in C.A. No. 2016-CP-42-01854 and applying to multiple cases¹; the Motion to Consolidate and Designate Case as Complex filed by Chandelle Property Owners Association, Billy J. Israel, Bruce R. Goldberg, and Cindy Goldberg's in C.A. No. 2016-CP-42-74 and applying to multiple cases; and the Motion to

¹ By Order signed by the Honorable J. Mark Hayes, II on October 14, 2016, and filed on October 14, 2016, 2016-CP-42-1854, 2016-CP-42-3213, 2016-CP-42-3214, 2016-CP-42-3215, 2016-CP-42-3344, and 2016-CP-42-3409 were previously designated as complex. However, the issue of consolidation was held in abeyance for determination by the court-assigned circuit court judge, the Honorable R. Keith Kelly.

Consolidate and to Establish Complex Case Designation filed by CSC Developers, LLC, in C.A. No. 2017-CP-42-541 and applying to multiple cases.

A hearing was held on these matters, and other matters, on March 3, 2017. All attorneys of record were present. Based on the pleadings filed to date in the above-captioned case, the documents submitted at this hearing, the arguments of counsel, as well as the Motions filed, the Court finds as follows:

1. All of the above-captioned cases are complex in nature and are hereby designated as complex. Further, all of the above-captioned cases are hereby consolidated and assigned to the Honorable R. Keith Kelly to hear and handle all motion and other matters pertaining to the cases. Any and all rights of the parties to seek separate trials under Rule 42(b), SCRCPP, Rule 18(c), SCRCPP, or as otherwise allowed by the South Carolina Rules of Civil Procedure, are preserved and not waived or otherwise extinguished by this Order.
2. Mediation shall take place on April 24, 2017, as currently scheduled.
3. If settlement is not reached during mediation, the parties shall confer and prepare a scheduling order and submit it to the Court for consideration following mediation.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. All of the above-captioned cases are complex in nature and are hereby designated as complex. Further, all of the above-captioned cases are hereby consolidated and assigned to the Honorable R. Keith Kelly to hear and handle all motion and other matters pertaining to the cases. Any and all rights of the parties to seek separate trials under Rule 42(b), SCRCPP, Rule 18(c), SCRCPP, or as otherwise allowed by the South Carolina Rules of Civil Procedure, are preserved and not waived or otherwise extinguished by this Order.
2. Mediation shall take place on April 24, 2017, as currently scheduled.

3. If settlement is not reached during mediation, the parties shall confer and prepare a scheduling order and submit it to the Court for consideration following mediation

IT IS SO ORDERED!

R. Keith Kelly, Circuit Court Judge

_____, 2017
Spartanburg, South Carolina



Spartanburg Common Pleas

Case Caption: Chandelle Property Owners Association VS Csc Developers Llc ,
defendant, et al

Case Number: 2016CP4201854

Type: Order/Complex Case Designation

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2017-04-05 11:41:31 page 6 of 6

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP4201854

Chandelle Property Owners Association et al
PLAINTIFF(S)

Chandelle Runway LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This case is stayed due to bankruptcy. This case will also be stayed for the other defendants since court has determined that CSC and Chandelle Properties are necessary parties. The stay can be lifted at the conclusion of the bankruptcy proceedings.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/13/2019 .

Rob Graham
Angela Tanner
Barbara L. Lewis for Barbara L. Lewis
James P. Brockman, Sr for James P. Brockman, Sr
Silvia L. Tuemmel
Lawrence E. Lewis for Lawrence E. Lewis
Janice H. Allison for Janice H. Allison
Helmut Tuemmel
Charlie M. Allison for Charlie M. Allison
Molly C. Galloway for Molly C. Galloway
Kenneth L. Galloway for Kenneth L. Galloway
James P. Brockman, Sr for James P. Brockman, Sr
Lee S. Goldstein
Emma Jean Brockman
Barbara L. Lewis for Barbara L. Lewis
Lawrence E. Lewis for Lawrence E. Lewis
Molly C. Galloway for Molly C. Galloway
Kenneth L. Galloway for Kenneth L. Galloway
Janice H. Allison for Janice H. Allison
Charlie M. Allison for Charlie M. Allison
Jane Van Wieren Trust

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Spartanburg Common Pleas

Case Caption: Chandelle Property Owners Association , plaintiff, et al VS Csc
Developers Llc , defendant, et al

Case Number: 2016CP4201854

Type: Order/Electronic Form 4

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2019-09-13 09:20:51 page 3 of 3

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
C.A. No. 2016-CP-42-01854

Chandelle Property Owners Association,)

Plaintiff,)

vs.)

CSC Developers, LLC, Chandelle)
Runway, LLC, 331 South, LLC, Charlie)
M. Allison, Janice H. Allison, James)
Douglas Armstrong and Jane Armstrong,)
Marilyn N. Berry, Stephen Berry, James)
P. Brockman, Sr., Douglas E. Cobb,)
Nicole Cobb, Kenneth L. Galloway, Molly)
C. Galloway, Warren Johnson, Rhonda)
Johnson, Lawrence E. Lewis, Barbara L.)
Lewis, John K. Payne, Ruth G. Payne,)
John R. Stewart, Jr., Angela Tanner,)
Helmut Tuemmel, Silvia L. Tuemmel,)
Jane Van Wieren as Trustee of the Greer)
R.G. Irrevocable Property Trust dated)
October 25, 2006, Martin Tuemmel,)
Raymond M. Clark Jr., and also all other)
persons unknown, claiming any right, title,)
Estate, interest in or lien upon the real)
estate described in the complaint herein.)

Defendants.)

James Douglas Armstrong and Jane)
Armstrong, Warren Johnson, Rhonda)
Johnson, John K. Payne and Ruth G.)
Payne and Jane Van Wieren as Trustee of)
the Greer R.G. Irrevocable Property Trust)
dated October 25, 2006)

Third Party Plaintiffs)

vs)

PROPOSED ORDER ON PLAINTIFF,
CHANDELLE PROPERTY OWNERS
ASSOCIATION, AND THIRD PARTY
DEFENDANTS BILLY J. ISRAEL,
BRUCE GOLDBERG, CINDY
GOLDBERG AND GEORGE LYNN
FLEMMING'S MOTION FOR
DISMISSAL OR, IN THE
ALTERNATIVE, SUMMARY
JUDGMENT SUMMARY JUDGMENT
ON COUNTERCLAIMS AND THRID
PARTY CLAIMS OF DEFENDANT
JAMES DOUGLAS ARMSTRONG, JANE
ARMSTRONG, WARREN JOHNSON,
RHONDA JOHNSON, JOHN K. PAYNE,
RUTH G. PAYNE AND JANE VAN
WIEN AS TRUSTEE OF THE GREER
R.G. IRREVOCABLE PROPERTY
TRUST DATED OCTOBER 25, 2006

Billy J. Israel, Bruce R. Goldberg, Cindy
R. Goldberg and George Lynn Fleming in
their personal and official capacities,

Third Party Defendants

THIS MATTER CAME BEFORE THE COURT, upon motion of Plaintiff, Chandelle Property Owners Association and Third Party Defendants Billy J. Israel, Bruce Goldberg, Cindy Goldberg and George Lynn Fleming's (hereinafter collectively referred to as "Chandelle") Motion for Summary Judgment on the Counterclaims and Third Party Claims of James Douglas Armstrong and Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne and Ruth G. Payne Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006 (hereinafter collectively referred to as "Defendants"). A virtual courtroom hearing was held on September 13, 2022. Present at the hearing were Ryan McCabe and Ely Grote, attorneys for the Plaintiff, John Harjenhausen, attorney for Plaintiffs on the Counterclaims and Third Party Defendants. After hearing oral arguments from Mr. Harjenhausen and Mr. Hawkins on the issues raised in the Motion To Dismiss and, in the alternative, Summary Judgment and a review of the Memoranda and Exhibits filed therewith, the Court rules that the Plaintiff and Third Party Defendant's Motion for Summary Judgment is DENIED.

Chandelle filed its Motion for Summary Judgment on Motion on July 26, 2022 claiming that there is no genuine issue of material fact in the determination that Chandelle is liable to the Defendants for the claims of (1) Conversion, (2) Breach of Fiduciary Duty, (3) Equitable Indemnity, (4) Fraud, (5) Breach of Covenants, and (6) Self-Dealing and that the Third Party Claims ("TPC's") and Counterclaims ("CC's") should be dismissed pursuant to SCRCF Rule

56, that Chandelle's actions are protected by the "business judgment rule" and that there is no evidence that Chandelle acted with corrupt motives or in bad faith.

Rule 56(c) of the South Carolina Rules of Civil Procedure states a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). *Catawba Indian Nation v. State*, 407 S.C. 526, 535–36, 756 S.E.2d 900, 905–06 (2014). When evidence is susceptible to more than one reasonable inference, the issue should be submitted to the jury, rather than resolved at summary judgment stage. SCRCF, Rule 56(c). *Murphy v. Tyndall* (S.C.App. 2009) 384 S.C. 50, 681 S.E.2d 28, *rehearing denied*. Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. Rules Civ.Proc., Rule 56(c). *Murphy v. Tyndall* (S.C.App. 2009) 384 S.C. 50, 681 S.E.2d 28, *rehearing denied*.

Generally, only a mere scintilla of evidence is required to defeat a motion for summary judgment when the burden of proof is by a preponderance of the evidence. Rules Civ.Proc., Rule 56(c). *Weston v. Kim's Dollar Store* (S.C.App. 2009) 385 S.C. 520, 684 S.E.2d 769, *rehearing denied, certiorari granted, affirmed and remanded* 399 S.C. 303, 731 S.E.2d 864. Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery; nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and

that the party is not merely engaged in a fishing expedition. *Dawkins v. Fields* (S.C. 2003) 354 S.C. 58, 580 S.E.2d 433, *rehearing denied*. With respect to Chandelle’s Rule 56 motion, the Court finds that there are genuine issues of material fact that must be decided by the trier of fact and therefore Chandelle’s motion based on Rule 56 is DENIED.

Chandelle further argues that the Defendant’s counterclaims and third party complaints should be dismissed because the claims sound as a derivative action and do not meet the pleading requirements of SCRCF Rule 23(b)(1). Our Supreme Court, however, has ruled it is possible for claims to be *both* derivative and direct in nature. *Patterson v. Witter*, 425 S.C. 213, 821 S.E.2d 677 (2018). “Specifically, to distinguish a derivative claim from a direct one, the court considers: (1) who suffered the alleged harm, the corporation or the suing stockholders, individually, and (2) who would receive the benefit of any recovery or other remedy, the corporation or the stockholders individually.” 19 Am. Jur. 2d *Corporations* § 1923 (2015). Direct and derivative claims may be brought simultaneously. 19 Am. Jur. 2d *Corporations* § 1922 (2015). “When determining whether a claim is derivative or direct, some injuries affect both the corporation and the stockholders; if this dual aspect is present, a plaintiff can choose to sue individually.” *Id.* (citing *Carsanaro v. Bloodhound Techs., Inc.*, 65 A.3d 618 (Del. Ch. 2013)); *see also Horizon House-Microwave, Inc. v. Buzzy*, 21 Mass.App.Ct. 190, 486 N.E.2d 70, 74 (1985) (observing a shareholder may pursue both direct and derivative claims in a single action). *Id.* at 687. Because of the holdings of *Patterson*, Chandelle’s Motion for Dismissal and Summary Judgment based on SCRCF Rule 23(b)(1) are DENIED.

JUDGE’S SIGNATURE PAGE TO FOLLOW



Spartanburg Common Pleas

Case Caption: Chandelle Property Owners Association , plaintiff, et al VS Csc
Developers Llc , defendant, et al

Case Number: 2016CP4201854

Type: Order/Summary Judgment

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2022-10-19 15:43:02 page 5 of 5

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
C/A No: 2016-CP-42-01854

Chandelle Property Owners Association,

Plaintiff,

vs.

James Douglas Armstrong, Jane Armstrong,
Kenneth L. Galloway, Molly C. Galloway,
Warren Johnson, Rhonda Johnson, John K.
Payne, Ruth G. Payne, and Jane Van Wieren as
trustee of the Greer R.G. Irrevocable Property
Trust, dated October 25, 2006, and also all
other persons unknown, claiming any right,
title, estate, interest in or lien upon the real
estate described in the complaint herein,

Defendants.

James Douglas Armstrong, Jane Armstrong,
Warren Johnson, Rhonda Johnson, John K.
Payne, Ruth G. Payne, and Jane Van Wieren
as Trustee of the Greer R.G. Irrevocable
Property Trust dated October 25, 2006

Third-Party Plaintiffs,

v.

Billy J. Israel, Bruce R. Goldberg, Cindy R.
Goldberg and George Lynn Fleming in their
personal and official capacities,

Third-Party Defendants

Kenneth L. Galloway & Molly C. Galloway

Third Party Plaintiffs,

vs.

**ORDER GRANTING PLAINTIFF'S
MOTION
FOR PARTIAL SUMMARY JUDGMENT
AGAINST JAMES DOUGLAS
ARMSTRONG, JANE ARMSTRONG,
WARREN JOHNSON, RHONDA
JOHNSON, JOHN K. PAYNE, RUTH G.
PAYNE, AND JANE VAN WIEREN AS
TRUSTEE OF THE GREER R.G.
IRREVOCABLE PROPERTY TRUST,
DATED OCTOBER 25, 2006**

Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg and George Lynn Fleming in their personal and official capacities,

Third-Party Defendants

This matter came before me on Plaintiff's Motion for Partial Summary Judgment against James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 (collectively, the "**Subject Defendants**"), which was filed on August 19, 2022. A hearing on this motion was held before me on September 13, 2022. At the hearing, attorneys Ely O. Grote, D. Ryan McCabe, and John D. Harjehausen appeared on behalf of Plaintiff, and attorney Wendell L. Hawkins appeared on behalf of the Subject Defendants. After hearing oral argument, reviewing the memoranda and related documentation submitted by the parties, and after fully considering the facts and circumstances, I GRANT partial summary judgment to Plaintiff as follows and I find and order as follows.

FACTUAL BACKGROUND/FINDINGS OF FACT

1. Development Background

CSC Developers, LLC was the primary developer of Chandelle Subdivision. In February of 1997, CSC Developers, LLC entered into an agreement with James P. Brockman, Sr. to include approximately thirteen (13) acres of Mr. Brockman's land in the Chandelle Subdivision that was going to be developed.

In connection with the development of Chandelle Subdivision, CSC Developers, LLC recorded a Declaration of Covenants, Conditions and Restrictions for Chandelle Subdivision on December 16, 1997, in the Office of the Register of Deeds for Spartanburg County in Deed

Book 67-A at Page 0583 (the “**Original Declaration**”). The Original Declaration, as amended and supplemented, shall hereinafter be referred to as the “**Declaration**”.

The Original Declaration originally specified that Lots 1 through 26 were subject to and bound by the Declaration. Specifically, the Original Declaration provided on the first page thereof as follows:

NOW, THEREFORE, Declarant, by this DECLARATION of Covenants, Conditions and Restrictions does hereby declare that all the property described herein and shown as lots 1 through 26 on the Chandelle Subdivision plat dated September 24, 1997 by Huskey & Huskey, Inc. for Spartanburg County, South Carolina is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in the Declaration which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure for the benefit of each owner thereof.

The plat referenced above in the Original Declaration shall hereinafter be referred to as the “**Section 1 Plat**”. The land owned by James Brockman, Sr. included on the Section 1 Plat encompassed roughly Lots 1-10. Uncontroverted evidence was submitted that Mr. Brockman was provided with a copy of the Section 1 Plat and was aware that his lands were included on the plat. Although the Section 1 plat was approved for recording, according to CSC Developers, LLC, the Section 1 Plat was just kept on file with the Spartanburg County Planning Commission and the lots in Section 1 of Chandelle Subdivision were sold by reference to individual lot surveys in order to save on taxes.

It is uncontroverted that CSC Developers, LLC intended all of the property shown on the Section 1 Plat to be part of the Chandelle Subdivision and bound by the Declaration, specifically including Lots 1-10. Out of Lots 1-10, Lots 1, 5, 7, 8, 9, and 10 have been sold thus far, and all of the deeds from Mr. Brockman, Sr. to the initial purchasers of these Lots specifically reference the property as being subject to the Declaration.

Further, the Declaration envisions and authorizes additional property being subjected to the Declaration and added to Chandelle Subdivision.¹ After the Original Declaration was recorded, CSC Developers, LLC did in fact continue to expand Chandelle Subdivision. After the Original Declaration was recorded, the following plats of additional sections of Chandelle Subdivision were recorded:

- Chandelle Section 1-A, recorded on September 1, 1998 in Plat Book 142, Pg. 376
 - Depicting roads and Lots 13 and 22.
- Chandelle Section 2A, recorded November 8, 2000 in Plat Book 149, Pg. 64
 - Depicting Lots 50, 51, 52, 53, and 54
- Chandelle Section 3-A, recorded September 26, 2002 in Plat Book 153, Pg. 97
 - Depicting Lot 39
- Chandelle Section 3, recorded November 5, 2004 in Plat Book 156, Pg. 982
 - Depicting Lots 39A, 40, 41, 42, 43, 44, 45, 46, and 47, and additional land.

Thereafter, CSC Developers, LLC recorded an instrument on December 28, 2004 in Deed Book 81-Y, Pg. 823 to annex the following lots into Chandelle Subdivision and subject them to the Declaration: Chandelle Section 1A; Lot 39 (Section 3A); Lots 39a and 40-47 (Section 3). It is uncontroverted that CSC Developers, LLC believed that it had the authority to do this, and by this instrument intended to include these lots in Chandelle Subdivision and subject them to the Declaration. It is also uncontroverted that CSC Developers, LLC intended these lots to be part of Chandelle Subdivision and bound by the Declaration.

Subsequently, the following plats of additional sections of Chandelle Subdivision were then recorded:

¹ See e.g., recitals and Sections 1.1, 1.2, 1.14, 1.15, 1.24, 12.2, 16.1, and 16.2.

- Chandelle Section 4, recorded November 1, 2005 in Plat Book 158, Pg. 840
 - Depicting Lots 33 and 37
- Chandelle Section 7, recorded December 6, 2005 in Plat Book 159, Pg. 9
 - Depicting Lots 27 and 28
- Chandelle Section 6, recorded December 14, 2006 in Plat Book 160, Pg. 852
 - Depicting Lots 29, 30 and 34

Thereafter, CSC Developers, LLC recorded an instrument on April 17, 2007 in Deed Book 88-H, Pg. 448, to annex the following lots into Chandelle Subdivision and subject them to the Declaration: Lots 33 and 37 (Section 4); Lots 29, 30, and 34 (Section 6); Lots 27 and 28 (Section 7). Again, it is uncontroverted that CSC Developers, LLC believed that it had the right and authority to do this, and by this instrument intended to include these lots in Chandelle Subdivision and subject them to the Declaration. Further, it is uncontroverted that CSC Developers, LLC intended these lots to be part of Chandelle Subdivision and bound by the Declaration.

Subsequently, the following plats of additional sections of Chandelle Subdivision were then recorded:

- Chandelle Section 4A, recorded January 8, 2009 in Plat Book 163, Pg. 885
 - Depicting Lots 32 and 36
- Chandelle Section 5, recorded November 20, 2009 in Plat Book 164, Pg. 709
 - Depicting Lots 31 and 35
- Chandelle Section 8, recorded October 21, 2011 in Plat Book 166, Pg. 249
 - Depicting Lots 55, 56, and 57

Thereafter, an instrument was recorded on November 2, 2011 in Deed Book 99-L, Pg. 999, to annex the following lots into Chandelle Subdivision and subject them to the Declaration: Lots 32

and 36 (Section 4A); Lots 31 and 35 (Section 5); and Lots 55, 56, and 57 (Section 8). While this instrument was signed by two Board members for Plaintiff rather than CSC Developers, LLC, evidence was submitted to the Court that: (1) everyone involved, including CSC Developers, LLC, thought that this was the proper way to do it now that homeowners had been appointed to the Board of Directors for Plaintiff; (2) CSC Developers, LLC was in agreement with the Board members signing the instrument and CSC Developers, LLC knew it was being done; CSC Developers, LLC intended these lots be bound by the Declaration and intended that this instrument bind them; and (4) the Board members thought they were simply certifying the instrument as being proper pursuant to CSC Developers, LLC's authority. Further, it is uncontroverted that CSC Developers, LLC intended that these lots be part of Chandelle Subdivision and bound by the Declaration, and that is what CSC Developers, LLC intended to do by this instrument.

Additionally, CSC Developers, LLC recorded a revised plat for Chandelle, Section 8, on December 13, 2016 in Plat Book 171, Pg. 927, depicting Lots 55, 56, and revised Lot 57.

While Section 16.2 of the Declaration recorded with the Register of Deeds contained a purported annexation deadline of December 31, 2001, this purported deadline had been removed from the copy of the restrictive covenants distributed by CSC Developers, LLC to purchasers and prospective purchasers. Therefore, what was provided to purchasers and prospective purchasers didn't include any purported annexation deadline. Further, it is unrefuted that CSC Developers, LLC intended all of the foregoing annexations to be binding and proper.

2. John K. Payne and Ruth G. Payne – Lot 1

John K. Payne and Ruth G. Payne (the “Paynes”) are the owners of Lot 1 in Chandelle Subdivision. The Paynes are also the Owners of Lot 51; however, Lot 51 was not included in Plaintiff's motion and is not part of this Order. Lot 1 is more particularly described in the deeds

set forth hereinbelow, and currently is assigned Spartanburg County TMS # 4-01-00-005.05. As set forth above, Lot 1 was included in the land originally described in the Original Declaration as being bound by the Declaration.

Lot 1 was originally conveyed by James P. Brockman, Sr. to Larry Dee Davis and Angela Davis by deed recorded on December 19, 1997 in Deed Book 67-A, Pg. 958. This deed specifically provided that “This conveyance is specifically made subject to those certain Protective Covenants recorded in Book 67-A at Page 583” (i.e., the Declaration). Lot 1 was subsequently conveyed by Larry Dee Davis and Angela Davis to John K. Payne and Ruth G. Payne by deed recorded on June 2, 2000, in Deed Book 72-C, Pg. 145. This deed again specifically provided that “THIS CONVEYANCE is being made subject to Protective Covenants as recorded in Deed Book 67-A at Page 583 in the Office of the Register of Deeds for Spartanburg County” (i.e., the Declaration). The Paynes then deeded Lot 1 to themselves as joint tenants by deed recorded on March 7, 2006 in Deed Book 85-F, Pg. 538. The legal descriptions in the aforementioned deeds describe the property as “Lot No. 1, Chandelle Estates” and the plat referenced in the legal descriptions does reference “Chandelle Est.”

Further, the Paynes executed a mortgage with respect to Lot 1, which was recorded on June 20, 2000 in Book 2352, Pg. 420, and which contained a Planned Unit Development Rider. The Planned Unit Development Rider states that the property is part of a planned unit development (“PUD”) and the property includes the Borrower’s interest in the homeowners association. The PUD Rider also provides that the Borrower is required to perform all of the Borrower’s obligations under the PUD’s Constituent Documents, including the Declaration, and bylaws or rules and regulations of the Owners Association. The PUD rider also provides that the Borrower shall promptly pay all dues and assessments imposed pursuant to the Constituent Documents.

Also, during the pendency of this lawsuit, the Paynes executed another mortgage with respect to Lot 1, which was recorded on January 6, 2020 in Book 5736, Pg. 666, and which also contained a PUD Rider. The PUD Rider provides that the property is part of a planned unit development known as Chandelle, and again specifies that the Borrower must perform their obligations under the Constituent Documents and must pay all dues and assessments imposed pursuant to the Constituent Documents.

Further, there is undisputed evidence that Mr. Payne had some involvement with the development of Chandelle Subdivision, including helping with drafting the Declaration, helping manage the neighborhood early on, and serving on the architectural control committee for approximately fifteen (15) years. Further, there is undisputed evidence that the Paynes have engaged in certain additional actions in conformity with them/Lot 1 being part of Chandelle Subdivision and subject to the Declaration, including: (1) at least one of the Paynes attending at least one meeting of Plaintiff; (2) seeking approval to remove a tree per the requirements of the Declaration; and (3) payment of some assessments under the Declaration with respect to Lot 1, at least historically. Further, in his deposition, Mr. Payne specifically admitted that Lot 1 is subject to the Declaration.

3. Warren Johnson and Rhonda Johnson – Lots 28, 29, 30 and 34

Warren Johnson and Rhonda Johnson (the “**Johnsons**”) are the owners of Lots 28, 29, 30 and 34 in Chandelle Subdivision. Lots 28, 29, 30 and 34 are more particularly described in the deeds set forth hereinbelow, and are currently collectively assigned Spartanburg County TMS # 4-05-00-038.54. As set forth above, Lot 28 was platted by CSC Developers, LLC as part of Chandelle Section 7, and Lots 29, 30, and 34 were platted by CSC Developers, LLC as Chandelle

Section 6. Further, as set forth above, Lots 28, 29, 30, and 34 were all included in the annexation instrument recorded on April 17, 2007 in Deed Book 88-H, Pg. 448.

Lots 28 and 29 were later shown as combined on a Closing Survey for Warren G. Johnson and Rhonda B. Johnson recorded on June 24, 2009 in Plat Book 164, Pg. 328. The notes to this closing survey specifically state: "BEING LOT 28 OF CHANDELLE SEC. 7 AS SHOWN ON OUR PLAT DATED NOV. 28, 2005 AND LOT 29 OF CHANDELLE SEC. 6 AS SHOWN ON OUR PLAT DATED AUG. 1 2006." Lots 28 and 29 were conveyed to Warren G. Johnson and Rhonda B. Johnson by CSC Developers, LLC by deed recorded on June 24, 2009, in Deed Book 94-A, Pg. 978. The legal description in the deed references the closing survey and specifically refers to the property as "LOT NO. 28 AND LOT NO. 29 OF CHANDELLE SUBDIVISION, SECTION 7."

Subsequent to the recording of the Chandelle Section 7 plat noted above, Lots 30 and 34 were later shown as combined on a Closing Survey for Warren G. Johnson and Rhonda B. Johnson recorded on February 17, 2016 in Plat Book 170, Pg. 822. The notes to this closing survey specifically state: "BEING LOTS 30 AND 34 OF CHANDELLE SEC. 6 AS SHOWN ON OUR PLAT DATED AUG. 1, 2006." Lots 30 and 34 were conveyed to Warren G. Johnson and Rhonda B. Johnson by CSC Developers, LLC by deed recorded on April 19, 2016 in Deed Book 111-X, Pg. 568. The legal description in the deed references the closing survey and specifically refers to the property as: "Lot No. 30 and Lot No. 34 of Chandelle Subdivision, Section 6."

Subsequently, Lots 28, 29, 30, and 34 were shown as all being combined into a single parcel on a Closing Survey for Warren G. Johnson and Rhonda B. Johnson, recorded on February 2, 2018, in Plat Book 173, Pg. 674. The notes to this closing survey specifically state: "BEING LOT 28 OF CHANDELLE SEC. 7 AS SHOWN ON OUR PLAT DATED NOV. 28, 2005 AND

LOTS 29, 30, AND 34 OF CHANDELLE SEC. 6 AS SHOWN ON OUR PLAT DATED AUG. 1, 2006.” This closing survey was recorded during the pendency of this litigation.

Further, there is undisputed evidence that the Johnsons have engaged in further actions and conduct in conformity with them/their lots being part of Chandelle Subdivision and subject to the Declaration, including: (1) seeking approval from the Architectural Control Committee under the Declaration to build a residence on Lots 28 and 29;² (2) lack of any assertion that they were not subject to the Declaration in response to communications from Plaintiff and/or the Architectural Control Committee pertaining to failure to adhere to the requirements of the Declaration, including with respect to continuity of construction and barking dogs; (3) seeking and receiving approval from the Architectural Review Committee under the Declaration for the erection of fencing on their lots; (4) seeking and receiving approval from the Architectural Control Committee under the Declaration to add a concrete extension to their existing hangar ramp pad on their property; (5) seeking and obtaining approval of CSC Developers, LLC, as the Declarant under the Declaration, to combine Lots 28, 29, 30, and 34 into a single lot for purposes of the assessments under the Declaration as required by the Declaration;³ (6) payment of some assessments under the Declaration, at least historically; and (7) attendance at meetings of Plaintiff.

4. Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 – Lots 31, 32, 33, 35, 36, and 37

Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 (“**Van Wieren**”) is the owner of Lots 31, 32, 33, 35, 36, and 37 in Chandelle Subdivision.

² In connection therewith, Warren Johnson executed a Chandelle Private Aviation Estates Building Construction Form, which specifically included a certification that stated in part: “I (we) certify that the above information constitutes a description of the proposed building and accessory construction and of the location and the site of all items of construction and the same will be in accordance with the Chandelle Covenants and Restrictions. (emphasis added)

³ Article IV, Section 4.2 of the Declaration requires written approval of the “Declarant” to combine Lots under the Declaration.

Lots 31, 32, 33, 35, 36, and 37 are more particularly described in the deeds set forth hereinbelow. Lots 32, 33, 36, and 37 are currently collectively assigned Spartanburg County TMS # 4-05-00-038.44. Lots 31 and 35 are currently collectively assigned Spartanburg County TMS # 4-05-00-038.58.

As set forth above, Lots 33 and 37 were platted by CSC Developers, LLC as Chandelle Section 4. As set forth above, Lots 33 and 37 were included in the annexation instrument recorded on April 17, 2007 in Deed Book 88-H, Pg. 448. Additionally, as set forth above, Lots 32 and 36 were platted by CSC Developers, LLC as Chandelle Section 4A, and Lots 31 and 35 were platted by CSC Developers, LLC as Chandelle Section 5. Further, as set forth above, Lots 31, 32, 35, and 36 were included in the annexation instrument recorded on November 2, 2011 in Deed Book 99-L, Pg. 999.

On September 24, 2005, Robin Graham, acting on behalf of his mother, Ruth Graham, entered into a Contract of Sale on behalf of Ruth Graham for the purchase of Lot 33 in Chandelle Subdivision from CSC Developers, LLC. This Contract of Sale specifically stated that "Purchaser agrees to abide by the Chandelle Covenants, Conditions and Restrictions and Revisions recorded at the ROD Office of Spartanburg County" and that "Purchaser also understands that the minimum home heated square foot requirements are in the process of being changed from 2000 to 2600 square feet." Lot 33 was conveyed to Ruth Graham by CSC Developers, LLC by deed recorded on December 9, 2005 in Deed Book 84-P, Pg. 931. This deed specifically provided that Lot 33 was being conveyed subject to the Declaration and specifically stated, in part:

THIS conveyance is subject to all rights-of-way, easements, and protective covenants affecting the same appearing upon the public records of Spartanburg County, including, but not limited to those restrictive covenants entitled The Chandelle Covenants, Conditions & Restrictions that are recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Deed Book 67-A, Page 583.

(emphasis in original). Further, the legal description in the deed describes the property as Lot No. 33 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Phase IV. Lot 33 was then subsequently quitclaimed from Ruth Graham to Van Wieren by deed recorded on February 12, 2007, in Deed Book 87-V, Pg. 167. This deed also again specifically stated that the conveyance was subject to “those restrictive covenants entitled The Chandelle Covenants, Conditions & Restrictions that are recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Deed Book 67-A, Page 583” (i.e., the Declaration).

Lot 37 was conveyed to The Greer RG Irrevocable Property Trust by CSC Developers, LLC by deed recorded on October 23, 2007 in Deed Book 89-V, Pg. 897. The legal description in the deed refers to the property as “Lot No. 37 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Section IV.” Lot 37 was subsequently quitclaimed from The Greer RG Irrevocable Property Trust to Van Wieren by deed recorded on May 25, 2011 in Deed Book 98-M, Pg. 700. The legal description in this deed again refers to the property as “Lot No. 37 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Section IV.”

Lots 32 and 36 were conveyed to Van Wieren by CSC Developers, LLC by deed recorded on April 24, 2017 in Deed Book 115-N, Pg. 632. The legal description in this deed refers to the property as “Lot 32 and Lot 36 on a plat entitled ‘Chandelle, Section 4A’”.

Subsequently, Lots 32, 33, 36, and 37 were all shown as being combined into a single parcel on a survey entitled “Combination Survey for Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust Chandelle, Sec. 4 and 4A Lots 32, 33, 36, and 37”, which was recorded on December 6, 2017 in Plat Book 173, Pg. 419.

Lots 31 and 35 were conveyed to Van Wieren by CSC Developers, LLC by deed recorded on April 24, 2017 in Deed Book 115-N, Pg. 628. The legal description in this deed refers to the

property as “Lot 31 and Lot 35 on a plat entitled ‘Chandelle, Section 5’”. Lots 31 and 35 were subsequently shown as being combined into a single parcel on a survey entitled “Combination Survey for Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust Chandelle, Sec. 5 Lots 31 and 35.”, which was recorded on December 12, 2017, in Plat Book 173, Pg. 448.

Based on the evidence presented to the Court, it appears to be undisputed that Robin Graham purported to act on behalf of the trust for most matters involving the Chandelle Subdivision. Mr. Graham’s deposition testimony provided to the Court indicates that he had been provided a copy of the Declaration prior to him/the trust purchasing any property within Chandelle Subdivision. Further, there is undisputed evidence that representative(s) of Ruth Graham and the relevant trust(s) have engaged in further actions and conduct in conformity with them/the relevant trust(s)/the foregoing lots being part of Chandelle Subdivision and subject to the Declaration, including: (1) seeking architectural approval to build a house on Lot 33;⁴ (2) lack of any assertion of not being subject to the Declaration in response to notices of violation under the Declaration in 2010 and 2012; (3) seeking approval from the Chandelle Architectural Control Committee to build a hangar on Lots 32 and 33 and compliance with the Chandelle Architectural Control Committee’s requests in connection with the same; (4) payment of some assessments under the Declaration, at least historically; (5) attendance at meetings of Plaintiff; and (6) seeking approval from the Declarant, CSC Developers, LLC, as required by the Declaration, to combine Lots 32, 33, 36, and 37, and to also combine Lots 31 and 35.⁵

5. James Douglas Armstrong and Jane Armstrong – Lots 55, 56, and 57

⁴ It is noted that in connection therewith, Robin Graham signed a Chandelle Private Aviation Estates Building Construction Form that stated in part: “I (we) certify that the above information constitutes a description of the proposed building and accessory construction and of the location and the site of all items of construction and the same will be in accordance with the Chandelle Covenants and Restrictions.”

⁵ It is noted that all of these lot combinations occurred in 2017, during the pendency of this lawsuit.

James Douglas Armstrong and Jane Armstrong (the “**Armstrongs**”) are the owners of Lots 55, 56, and 57 in Chandelle Subdivision. Lots 55, 56, and 57 are more particularly described in the deeds set forth hereinbelow. Lots 55 and 56 are currently collectively assigned Spartanburg County TMS # 4-05-00-039.04. Lot 57 is currently assigned Spartanburg County TMS # 4-05-00-039.15. As set forth above, Lots 55, 56, and 57 were platted by CSC Developers, LLC as Chandelle, Section 8. Further, as set forth above, Lots 55, 56, and 57 were included in the annexation instrument recorded on November 2, 2011 in Deed Book 99-L, Pg. 999.

By deed recorded on November 3, 2011, in Deed Book 99-M, Pg. 48, Lot 55 was conveyed to Joseph G. Kohn and Dale D. Kohn. This deed specifically provided that “THIS PROPERTY IS SPECIFICALLY SUBJECT TO THE RESTRICTIVE COVENANTS OF CHANDELLE SUBDIVISION AS RECORDED IN DEED BOOK 67-A AT PAGE 583, DEED BOOK 72-G AT PAGE 843 AND DEED BOOK 88-H AT PAGE 448.” The legal description in this deed also referred to the property as “Lot No. 55 of Chandelle, Section 8.” By deed recorded on June 21, 2012, in Deed Book 100-Z, Pg. 363, Lot 56 was conveyed to Joseph G. Kohn and Dale D. Kohn. This deed also specifically provided that: “THIS PROPERTY IS SPECIFICALLY SUBJECT TO THE RESTRICTIVE COVENANTS OF CHANDELLE SUBDIVISION AS RECORDED IN DEED BOOK 67-A AT PAGE 583, DEED BOOK 72-G AT PAGE 843 AND DEED BOOK 88-H AT PAGE 448.” Further, the legal description in this deed refers to the property as “Lot No. 56 of Chandelle, Section 8.” Lots 55 and 56 were then subsequently conveyed to the Armstrongs by Joseph and Dale Kohn by deed recorded on December 16, 2014 in Deed Book 107-U, Pg. 361. The legal description in this deed again refers to the lots as “Lot Nos. 55 and 56 of Chandelle, Section 8.” A house had already been built on Lots 55 and 56 by the time the Armstrongs purchased Lots 55 and 56. In connection with the construction of the house and hangar on Lots

55 and 56, Joseph and Dale Kohn did seek and obtain approval of the Chandelle Architectural Committee under the Declaration. Further, the Armstrongs executed a mortgage with respect to Lots 55 and 56, which was recorded on December 16, 2014 in Book 4923, Pg. 812, and which contained a PUD Rider. The PUD Rider provides that the Borrower is required to perform all of the Borrowers obligations under the PUD's Constituent Documents. The PUD Rider also provides that the Borrower shall promptly pay all dues and assessments imposed pursuant to the Constituent Documents. Further, the Declaration was listed as an exception to the Armstrongs' title insurance policy with respect to Lots 55 and 56. Additionally, in connection with the closing on Lots 55 and 56, the Armstrongs executed a document entitled "HOMEOWNERS ASSOCIATION INFO" acknowledging that they had received a copy of the Declaration and all documents related to Chandelle, and that they had been advised regarding the upcoming homeowners association dues and it was their responsibility to pay the same.

Lot 57 was conveyed to James Douglas Armstrong and Jane G. Armstrong by deed recorded on January 30, 2017 in Deed Book 114-Q, pg. 424. The legal description in the deed refers to the property as lot number 57 of Chandelle, Section 8. Further, the Declaration was listed as an exception to the Armstrong's title insurance commitment/policy for Lot 57.

Further, there is undisputed evidence that the Armstrongs have engaged in further actions and conduct in conformity with them/their lots being part of Chandelle Subdivision and subject to the Declaration, including: (1) seeking architectural approval for some landscaping work on their property; (2) payment of some assessments under the Declaration, at least historically; (3) attendance at meetings of Plaintiff; and (4) the deposition testimony of the Armstrongs provided to the Court indicates that they thought they were members of Plaintiff, at least until around the time that this lawsuit was instituted.

LAW/ANALYSIS

1. Summary Judgment Standard

Pursuant to Rule 56, SCRCF, a moving party is entitled to summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” “In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial.” Skywaves I Corp. v. Branch Banking & Tr. Co., 423 S.C. 432, 453, 814 S.E.2d 643, 654 (Ct. App. 2018) (quoting NationsBank v. Scott Farm, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995). “Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings.” Id.

2. The Subject Defendants’ Properties Described Herein Are Subject to and Bound By the Declaration

There is no dispute that the Subject Defendants own their respective properties described herein. As set forth above, the properties described herein are Lots 1, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 55, 56, and 57, and for ease of reference, these lots will be hereinafter referred to as the “**Subject Lots**”.

Restrictive covenants are contractual in nature and are construed like contracts, and may give rise to actions for breach of contract. Kinard v. Richardson, 407 S.C. 247, 257, 754 S.E.2d 888, 893 (Ct. App. 2014).

There are several ways in which restrictive covenants may be created. The most common means are: (1) by deed; (2) by declaration; and (3) by implication from a general plan or scheme of development.

Id. Restrictive covenants on the use of property must be created in express terms or by plain and unmistakable implication. Bomar v. Echols, 270 S.C. 676, 679, 244 S.E.2d 308, 310 (1978); Kinard, 407 S.C. at 257-258, 754 S.E.2d at 894.

Where they arise by implication and subdivided land is involved, the restrictions are said to create a reciprocal negative easement. *Bomar*, 244 S.E.2d at 310. Ordinarily, four elements must be established to show a reciprocal negative easement. There must be: (1) a common grantor, (2) a designation of land subject to restrictions, (3) a general plan or scheme of restrictions, and (4) covenants running with the land in accordance with such plan or scheme. *Id.*; see also *Shipyard Property Owners Ass'n v. Mangiaracina*, 307 S.C. 299, 414 S.E.2d 795 (Ct.App.1992).

In the various grants of the lots, there must have been included some restriction for the benefit of the land retained, evidencing a scheme or intent that the entire tract shall be similarly treated, so that once the plan has been effectively put into operation, the burden placed upon the land conveyed is by operation of law reciprocally placed upon the land retained. 20 Am.Jur.2d *Covenants, Conditions, Etc.* § 173 (1965). In determining whether a reciprocal negative easement has been created, the court should consider not only the language of the deeds, but also the circumstances surrounding the origin of the covenants. *Nance v. Waldrop*, 258 S.C. 69, 187 S.E.2d 226 (1972). Generally, the developer must establish the general scheme of development before any lots are sold. To establish a general scheme, it is not necessary for every lot to be restricted in exactly the same manner, but extensive omissions or variations tend to show no scheme existed and the restrictions are only personal contracts. *Shipyard Property Owners Ass'n*, 414 S.E.2d at 802. All doubts regarding the creation of an implied reciprocal negative easement must be resolved in favor of the freedom of land from restriction. *Bomar*, 244 S.E.2d at 310.

Gambrell v. Schriver, 312 S.C. 354, 358, 440 S.E.2d 393, 395 (Ct. App. 1994). Further, in the case of Easterly v. Hall, the South Carolina Supreme Court noted:

This court has held that restrictive covenants imposed upon some lots, but not upon others, in the same subdivision were enforceable among all where it was clear from the inception of the subdivision that there had been a general plan for its residential development and such plan had been adhered to without material departure therefrom, and if it has been understood and relied upon by those concerned, it is binding and enforceable *Inter sese*. *Pitts v. Brown*, 215 S.C. 122, 54 S.E.2d 538. We also held in the *Pitts* case that neither the restricting of every lot within the area covered nor absolute identity of restrictions upon different lots is essential to the existence of a neighborhood scheme.

Easterly v. Hall, 256 S.C. 336, 343, 182 S.E.2d 671, 674 (1971).

Further, where “a deed describes land as is shown on a certain plat, such plat becomes a part of the deed.” Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 118, 145 S.E.2d 922, 924 (1965). “The law imputes to a purchaser who proposes to acquire title to real estate notice of the recitals contained in any properly recorded instrument of writing which forms a link in a chain of title to the property proposed to be acquired.” Carolina Land Co. v. Bland, 265 S.C., 98, 107, 217 S.E.2d 16, 20 (1975). A plat constitutes a link in the chain of title for property. See, id.

Based on all of the foregoing, I find that the Subject Lots are expressly bound by the Declaration. Lot 1 was specifically listed as part of the property bound in the Original Declaration. Further, the deeds in the chain of title for Lot 1 specifically state that Lot 1 is subject to the Declaration, and these deeds predate any purported annexation deadline contained in the Declaration. John K. Payne also specifically admitted in his deposition that Lot 1 is subject to the Declaration, and I further find that the Paynes are bound by such admission. All of the rest of the lots that are the subject of this Order (i.e., Lots 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 55, 56, and 57) were all identified in recorded instruments supplementing or amending the Declaration to annex such lots and to subject them to the Declaration. In addition, the chains of title for Lots 33, 55, and 56 each contain a deed or deeds specifically stating that such lots are subject to the Declaration. As set forth above, Lot 33 has now been combined with Lots 32, 36, and 37.

Further, although I find that the Subject Lots are expressly bound by the Declaration, I also additionally and/or alternatively find that the Subject Lots are subject to and bound by the Declaration by plain and unmistakable implication. As set forth above, CSC Developers, LLC, was the primary developer of Chandelle Subdivision, and acted in concert with and as part of a joint venture with James Brockman, Sr. and/or others to develop Chandelle Subdivision and to

convey lots to purchasers. Further, as set forth above, there was a designation of land subject to the restrictions and a general plan or scheme of restrictions and development. In particular, as set forth more fully above:

- CSC Developers, LLC recorded the Declaration at the outset of development.
- Numerous phases/sections of Chandelle Subdivision have been platted as part of a common scheme of development. Per these plats, there is a common scheme of lot numbering. See Kinard, 407 S.C. at 260, 754 S.E.2d at 996 (noting that consecutive lettering/numbering of parcels is evidence of a single scheme of development).
- All of the Subject Lots have been platted as Lots in Chandelle Subdivision.
- All of the Subject Lots were either identified as being bound by the Declaration in the Declaration as originally recorded, or in subsequently recorded instruments supplementing or amending the Declaration.
- The deeds in the chain of title for some of the Subject Lots specifically reference the property being subject to the Declaration. Further, all of the lots conveyed by James Brockman, Sr. specifically referenced such lots as being subject to the Declaration.
- The legal descriptions in the deeds refer to the Subject Lots as lots in Chandelle Subdivision.
- CSC Developers, LLC intended that all of the Subject Lots to be part of Chandelle Subdivision and subject to and bound by the Declaration.
- Some of the Subject Defendants have executed mortgages with Planned Unit Development riders, acknowledging that the property is part of a planned unit development, and specifying that that they must comply with all of the community's "constituent documents".

- Some of the Subject Defendants have executed other documents expressly or implicitly acknowledging that their respective properties are part of Chandelle Subdivision and subject to the Declaration.
- Chandelle Subdivision was marketed as a covenant restricted, master planned community, and all of the Subject Lots were marketed as being part of Chandelle Subdivision.
- Further, the Subject Defendants have taken actions and have engaged in a course of conduct in conformity with them/the Subject Lots being part of Chandelle Subdivision and being subject to and bound by the Declaration, and have consequently either expressly or implicitly admitted to, accepted, and/or acquiesced to the same, including membership in Plaintiff. Such conduct and actions include, without limitation: (1) attending membership meetings of Plaintiff; (2) payment of assessments to Plaintiff under the Declaration, including some of the Subject Defendants paying a special assessment to Plaintiff in 2021 during the pendency of this lawsuit; (3) seeking architectural approval under the Declaration; (4) seeking Declarant approval to combine Lots under the Declaration; and (5) other correspondence and/or conduct in conformity with being part of Chandelle Subdivision, subject to the Declaration, and a member of Plaintiff, as set forth more fully above.

Further, the Declaration runs with the land. Specifically, the recitals to the Declaration provide that the provisions of the Declaration “shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.” Additionally, Section 12.1 of the Declaration provides that the terms of the Declaration “shall run with and bind the Property....”

Although I have found that the Subject Lots are expressly bound by the Declaration, based on the foregoing, I also additionally and/or alternatively find that the Subject Lots are subject to and bound by the Declaration by plain and unmistakable implication. Further, by their course of conduct as set forth above, which has been relied upon by Plaintiff and others in the community, the Subject Defendants have either expressly or implicitly admitted to, accepted, and/or acquiesced to being part of Chandelle Subdivision, including being subject to the Declaration and being members of Plaintiff, and have either waived any objection to or are otherwise estopped from denying the same now.

Further, in addition to all of the foregoing, “[c]ourts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.” Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 252, 715 S.E.2d 348, 354 (Ct. App. 2011). Additionally, equity looks at substance over form and the principle applies by dispensing with pure formalities which would otherwise defeat the equity. Id. at 253, 715 S.E.2d at 354. When applying such principle, the courts “look to the substance and intent of the parties, and give a construction consistent with such intent.” Id. at 253, 715 S.E.2d at 355. Such equitable maxims can allow a court to relieve a party from the consequences of accident, mistake, and fraud. See id. at 254, 715 S.E.2d at 355. Therefore, in addition to all of the foregoing grounds, the Court further exercises its inherent equitable powers to give effect to the substance and intent of the developer and the parties, and further declares that the Subject Lots are subject to the Declaration on this basis as well.

In sum, for all of the foregoing reasons, I find that the Subject Lots are subject to and bound by the Declaration, and have been subject to and bound by the Declaration prior to and during the

entirety of the Subject Defendants' ownership of the same, regardless of whether expressly or implicitly bound. The Declaration binds the land and runs with the land.

3. *The Subject Defendants Are Members of Plaintiff, Chandelle Property Owners Association*

Article II, Section 2.3 of the Declaration provides that all Lot Owners shall be members of Plaintiff, Chandelle Property Owners Association. Likewise, Section 4.1 of the Bylaws of Chandelle Property Owners Association also establishes mandatory membership for Lot Owners. Therefore, the Subject Defendants, by virtue of their ownership of Lots subject to the Declaration, are mandatory members of Plaintiff.

4. *The Subject Defendants Owe Plaintiff Assessments*

Section 11.1 of the Declaration provides that the Owner of each Lot is deemed to covenant and agreed to pay Plaintiff assessments, including annual, special, and default assessments. Further, Section 7.5 of the Declaration authorizes Plaintiff to suspend rights to use the runway and to charge individual assessments for use of the runway with respect to an Owner who is in default in the payment of assessments. Additionally, monetary fines are considered default assessments under the Declaration. Further, the Declaration provides that assessments, together with interest, costs, and reasonable attorney's fees are the personal obligation of the Owner of the Lot. Further, Section 11.7 of the Declaration provides:

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Laws or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or

other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

Because the Subject Lots are subject to the Declaration as set forth above, the Subject Defendants and the Subject Lots are subject to assessments under the Declaration and Bylaws of Plaintiff. In connection with its motion, Plaintiff submitted an affidavit of Billy J. Israel, Jr. setting forth the amounts alleged to be owed by the Subject Defendants to Plaintiff. I find that there is no genuine issue of material fact as to the amount of the assessments owed by the Subject Defendants, but I find that there is a genuine issue of material fact as to the amount of the interest and/or late charges, if any, that may be owed by the Subject Defendants.

I find that, as of September 1, 2022, the Subject Defendants owe Plaintiff the following amounts for assessments only, exclusive of late charges, interest, and attorney's fees, and grant judgment in favor of Plaintiff against the Subject Defendants respectively as follows:

- Paynes: \$22,000.00
- Johnsons: \$24,000.00
- Van Wieren: \$55,250.00
- Armstrongs: \$44,000.00

The Subject Defendants also assert that the Plaintiff, by and through its Board, violated Section 8.2(i) of the Bylaws of Plaintiff by allegedly borrowing more than \$50,000.00 or incurring more than \$50,000.00 in debt without a vote of its members. While I don't reach the merits of whether there has been any violation of Section 8.2(i) of the Bylaws, I find that even assuming *arguendo* that a violation has occurred, it does not relieve the Subject Defendants of their obligation to pay assessments. Whether a debt was properly incurred is independent of the Subject Defendants' obligation to pay assessments. Even if a debt was improperly incurred by Plaintiff,

that debt is still an obligation of the Plaintiff that Plaintiff is liable for. Like most homeowners associations, Plaintiff's primary means of funding its obligations is through assessments levied against its members. If the Court were to accept the Subject Defendants' argument, it would mean for example that if the Plaintiff were to borrow more than \$50,000 without member approval, then Plaintiff could never assess its members to pay off that loan, forcing the Plaintiff to default on the loan and suffer the adverse consequences of a default. I find that such a position cannot be sustained. Rather, if there has been any violation of Section 8.2(i) of the Bylaws,⁶ I find that it does not obviate the Subject Defendants' obligation to pay assessments, without prejudice to whatever rights the Subject Defendants may have, if any, to pursue claims against the Plaintiff or its directors, individually or derivatively, arising out of the alleged violation.

While I grant summary judgment to Plaintiff as to the principal amount of the assessments, I find that there is a question of fact as to the amount of the late charges and interest claimed by Plaintiff, and therefore deny summary judgment at this time as to late charges and interest. Likewise, I find that a determination of whether Plaintiff is entitled to an award of attorney's fees should be held in abeyance at this time for determination at a later date.

5. Attorney's Fees and Costs – Rule 37(c), SCRCF

Plaintiff's motion also sought an award of attorney's fees and costs under Rule 37(c), SCRCF on the basis of the Subject Defendants' failure to admit certain matters. I find that this issue should be held in abeyance at this time for a determination at a later date.

⁶ The merits of any alleged violation of Section 8.2(i) of the Bylaws is not reached in this Order and no ruling or opinion is expressed as to whether there has in fact been a violation thereof.

ORDERS

Based on the foregoing, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The Subject Lots are subject to and bound by the Declaration, and have been subject to and bound by the Declaration prior to and during the entirety of the Subject Defendants' ownership of the same. The Declaration and the annexation instrument recorded on November 2, 2011 in Deed Book 99-L, Pg. 999 are reformed as set forth hereinabove.

2. The Subject Defendants are members of Plaintiff by virtue of their ownership of the Subject Lots.

3. Judgment is granted in favor of Plaintiff against the Subject Defendants for past due assessments (as of September 1, 2022), exclusive of interest, late charges, and attorney's fees, respectively as follows:

- Paynes: \$22,000.00
- Johnsons: \$24,000.00
- Van Wieren: \$55,250.00
- Armstrongs: \$44,000.00

Summary judgment is denied as to interest and late charges. Further, a determination of whether Plaintiff is entitled to an award of attorney's fees is held in abeyance at this time for determination at a later date.

4. A determination as to Plaintiff's claim for attorney's fees and costs under Rule 37(c), SCRPC is held in abeyance at this time for a determination at a later date.

5. The Register of Deeds for Spartanburg County is ordered to record a copy of this Order in its office and to properly index this Order in the chain of title for the Subject Lots under the following party names:

- Chandelle Property Owners Association
- John K. Payne
- Ruth G. Payne
- Warren G. Johnson
- Rhonda B. Johnson
- Jane Van Wieren, trustee, or her successor in trust, of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006
- James Douglas Armstrong
- Jane G. Armstrong

6. This Order shall bind the land, shall run with the land, shall be binding upon and inure to the benefit of Chandelle Property Association and the Subject Defendants, their heirs, successors, successors in title, and assigns, and shall be binding upon and inure to the benefit of all persons or entities having any right, title, or interest in the Subject Lots or any part thereof, their heirs, successors and assigns.

IT IS SO ORDERED.



Spartanburg Common Pleas

Case Caption: Chandelle Property Owners Association , plaintiff, et al VS Csc
Developers Llc , defendant, et al

Case Number: 2016CP4201854

Type: Order/Summary Judgment

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2022-10-28 09:44:38 page 27 of 27

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP4201854

Chandelle Property Owners Association et al
PLAINTIFF(S)

Chandelle Runway LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Chandelle's Motion for Dismissal and Summary Judgment on the Counterclaims are DENIED. - order signed 10/19/22.
Chandelle's MSJ is Partially GRANTED - formal order to follow.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/31/2022 .

Rob Graham
Angela Tanner
James P Brockman, Sr for James P Brockman, Sr
Silvia L Tuemmel
Helmut Tuemmel
Molly C Galloway for Molly C Galloway
Kenneth L Galloway for Kenneth L Galloway
James P Brockman, Sr for James P Brockman, Sr
Lee S Goldstein
Molly C Galloway for Molly C Galloway
Kenneth L Galloway for Kenneth L Galloway
Jane Van Wieren Trust **NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

Court Reporter:

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



Spartanburg Common Pleas

Case Caption: Chandelle Property Owners Association , plaintiff, et al VS Csc
Developers Llc , defendant, et al

Case Number: 2016CP4201854

Type: Order/Electronic Form 4

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2022-10-31 16:01:48 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Chandelle Property Owners Association,

Plaintiff,

v.

CSC Developers, LLC, Chandelle Runway, LLC, 331 South, LLC, Charlie M. Allison, Janice H. Allison, James Douglas Armstrong and Jane Armstrong, Marilyn N. Berry, Stephen Berry, James P. Brockman, Sr., Douglas E. Cobb, Nicole Cobb, Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, Lawrence E. Lewis, Barbara L. Lewis, John K. Payne, Ruth G. Payne, John R. Stewart, Jr., Angela Tanner, Helmut Tuemmel, Silvia L. Tuemmel, Tygerway, LLC, RL 240, LLC and Rob Graham as Trustee of the Jane Van Wieren Trust.

Defendant(s)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C/A No.: 2016-CP-42-

1854

COMPLAINT
(Jury Trial Demanded)

(18771.6)

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The Plaintiff herein, complaining of the acts or omissions of the Defendants would show unto this Honorable Court as follows:

1. The Plaintiff, Chandelle Property Owners Association, Inc. (hereinafter "Plaintiff" or "Chandelle"), is an eleemosynary corporation organized and existing under the laws of the State of South Carolina. It is composed of all property owners in Chandelle Subdivision located in Spartanburg County.

2. Upon information and belief, Defendant CSC Developers, LLC ("CSC") is a limited liability company organized under the laws of the State of South Carolina and is an owner of the subject property of this action, which is located in Spartanburg County.

3. Upon information and belief, Defendant Stewart is a citizen and resident of Spartanburg County, South Carolina.

4. Upon information and belief, Defendant Clark is a citizen and resident of the State of Georgia.

5. Upon information and belief, Defendant Marilyn N. Berry is a citizen and resident of Spartanburg County, South Carolina.

6. Upon information and belief, Defendant Stephen Berry is a citizen and resident of Spartanburg County, South Carolina.

7. Upon information and belief, Defendant Douglas E. Cobb is a citizen and resident of Spartanburg County, South Carolina.

8. Upon information and belief, Defendant Nicole Cobb is a citizen and resident of Spartanburg County, South Carolina.

9. Upon information and belief, Defendant James P. Brockman, Sr. is a citizen and resident of Spartanburg County.

10. Upon information and belief, Defendant Lawrence E. Lewis is a citizen and resident of Spartanburg County.

11. Upon information and belief, Defendant Barbara L. Lewis is a citizen and resident of Spartanburg County.

12. Upon information and belief, Defendant Charlie M. Allison is a citizen and resident of Spartanburg County.

13. Upon information and belief, Defendant Janice H. Allison is a citizen and resident of Spartanburg County.

14. Upon information and belief, Defendant James Douglas Armstrong is a citizen

and resident of Spartanburg County.

15. Upon information and belief, Defendant Jane Armstrong is a citizen and resident of Spartanburg County.

16. Upon information and belief, Defendant Kenneth L. Galloway is a citizen and resident of Spartanburg County.

17. Upon information and belief, Defendant Molly C. Galloway is a citizen and resident of Spartanburg County.

18. Upon information and belief, Defendant Warren Johnson is a citizen and resident of Spartanburg County.

19. Upon information and belief, Defendant Rhonda Johnson is a citizen and resident of Spartanburg County.

20. Upon information and belief, Defendant John K. Payne is a citizen and resident of Spartanburg County.

21. Upon information and belief, Defendant Ruth G. Payne is a citizen and resident of Spartanburg County.

22. Upon information and belief, Defendant Angela Tanner is a citizen and resident of Spartanburg County.

23. Upon information and belief, Defendant Helmut Tuemmel is a citizen and resident of Spartanburg County.

24. Upon information and belief, Defendant Silvia L. Tuemmel is a citizen and resident of Spartanburg County.

25. Upon information and belief, the Jane Van Wieren Trust, trustee Robert Graham, owns at least two parcels of Real Estate located in Spartanburg County, South Carolina.

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26. Upon information and belief, Defendant Chandelle Runway, LLC is a limited liability company organized and existing under the laws of the State of South Carolina and having its principal place of business in Spartanburg County, South Carolina.

27. Upon information and belief, Defendant RL 240, LLC is a limited liability company organized and existing under the laws of the State of South Carolina and having its principal place of business in Spartanburg County, South Carolina.

28. Upon information and belief, Defendant Tygerway, LLC is a limited liability company organized and existing under the laws of the State of South Carolina and having its principal place of business in Spartanburg County, South Carolina.

29. Upon information and belief, Defendant 331 South, LLC is a limited liability company organized and existing under the laws of the State of South Carolina and having its principal place of business in Spartanburg County, South Carolina.

30. This court has jurisdiction over the parties and subject matter of this complaint.

ALLEGATIONS OF FACT

31. Defendants Clark, Stewart and Cobb (the "CSC Defendants") are members of CSC and have been at all relevant times herein.

32. Upon information and belief, Defendant Marilyn N. Berry had agreements with CSC, and the CSC Defendants to assist CSC in the development and sale of the Chandelle property.

33. CSC executed a Declaration of Covenants, Conditions and Restrictions for Chandelle Subdivision on December 15, 1997 and recorded December 16, 1997 in the Office of the Register of Deeds for Spartanburg County in Book 67-A at Page 0583 (the "Declaration").

34. A true and accurate copy of the Declaration is attached hereto as **Exhibit A**.

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35. Pursuant to the recitals of the Declaration, it was intended to encumber property known as Lots 1 through 26 on the Chandelle Subdivision Plat dated September 24, 1997 by Huskey & Huskey, Inc. to be recorded in Spartanburg County.

36. Said plat was never recorded with the Office of the Register of Deeds for Spartanburg County.

37. Plaintiff is informed and believes that CSC did not own the entirety of the property it sought to encumber at the time the Declaration was recorded.

38. Upon information and belief, Defendant Brockman owned a portion of the Chandelle Property at the time the Declaration was recorded.

39. Plaintiff is unaware of any consent agreement by Defendant Brockman authorizing CSC to encumber his lots during this time.

40. The Defendants developed and sold lots within the community and represented that the Chandelle subdivision was restricted by the covenants in the Declaration.

41. The Defendants also represented that the aircraft runway was a common area when developing and selling lots within Chandelle.

42. These representations were made both orally and written through marketing materials.

43. By deed dated May 19, 2006 and recorded May 24, 2006 in the Spartanburg County Register of Deeds Office in Book 85-V at Page 383, CSC and Stewart transferred title of the runway to Defendant Chandelle Runway, LLC for \$10.00 recited consideration.

44. Upon information and belief, Chandelle Runway, LLC is a shell corporation formed to shield the runway as an asset of Defendants Stewart and CSC.

45. True and accurate copies of pages from the Association's website taken on May

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11, 2014 and August 6, 2014.

46. Upon information and belief, one or more of the Defendants maintains the Association website.

47. As of May 11, 2014, the Association's website indicated that the Runway at Chandelle Private Aviation Estates was for "Private use only" and stated "Continued operation assured in future."

48. On or about July 15, 2014, the Defendants removed the representation stating "Continuing operation assured in future."

49. As of May 11, 2014, a separate page of the Association website entitled "Covenants" stated "The Owners have guaranteed continued use of the 3700 foot runway to Homeowners living in Chandelle."

50. On or about July 15, 2014, the Defendants removed the statement guaranteeing continued use of the runway from the Covenants page of the website.

51. The "Covenants" page of the website stated May 11, 2014 and currently states "The Homeowners Association will obtain property insurance to cover the runway, taxiways *and other common areas.*" (emphasis added).

52. Article XVI, Section 16.2 of the Declaration states that the Declarant, CSC, may expand Chandelle Subdivision by recording a Declaration of Annexation before December 31, 2001, describing the real property to be annexed and submitting it to the Declaration.

53. CSC continued to annex property after the annexation date of the Declaration and also annexed property that was not owned by the Defendants therefore could not be submitted to the Declaration. Specifically, CSC executed and recorded the following instruments:

- a. Amendments to Covenants, Conditions and Restrictions of Chandelle Subdivision

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H. LOPEZ-MALEY

dated December 28, 2004 and recorded December 28, 2004 in the Register of Deeds Office for Spartanburg County in Book 81-Y at Page 823 and purporting to annex Section 1-A, Lot 39, Lot 39a and Lots 40 through 47.

- b. Amendments to Covenants, Conditions and Restrictions of Chandelle Subdivision dated April 11, 2007 and recorded April 17, 2007 in the Register of Deeds Office for Spartanburg County in Book 88-H at Page 448 and purporting to annex Lots 33, 37, 29, 30, 34, 27, and 28.
- c. Amendments to Covenants, Conditions and Restrictions of Chandelle Subdivision dated November 2, 2011 and recorded November 2, 2011 in the Register of Deeds Office for Spartanburg County in Book 99-L at Page 999 and purporting to annex Lots 32, 36, 35, 55, 56 and 57.

54. CSC distributed unofficial and inaccurate copies of the Declaration to lot purchasers within the Association that lacked the annexation date to conceal the fact that CSC had no right to continue annexing property into the Association.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment as to validity of Declaration, Mandatory Membership and Ownership of the Runway, Unauthorized Practice of Law, Constructive/Resulting Trust)
S.C. Code Ann. § 15-53-10, *et. seq.*

55. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

56. The Declaration purports to establish Chandelle and to encumber the Chandelle property with certain covenants, conditions, restrictions and easements.

57. CSC recorded the Declaration but failed to record the subdivision plat for Chandelle or to provide a legal description as to the property being encumbered by the Declaration.

58. CSC did not own all the property it sought to encumber with the Declaration.

H. JOSE ELLAQUE

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59. CSC annexed additional property under the Declaration after termination of the annexation date.

60. CSC represented to Plaintiff and other Association members that the Runway was a common area amenity to the Association and that its continued use by the membership was guaranteed.

61. The Plaintiff has relied on the representations made by the Declaration and the Association has been operated as a covenant restricted community since inception.

62. Defendants engaged in the unauthorized practice of law by one or more of the following particulars:

- a. Examining property titles when encumbering and annexing the Chandelle property;
- b. Drafting legal instruments including the Declaration and various amendments thereto; and
- c. Recording legal instruments including the Declaration and various amendments thereto with the Register of Deeds Office for Spartanburg Count.

63. Plaintiff has been damaged by Defendants' failure to properly establish the Association in that Plaintiff is unclear whether or not the Chandelle Property is in fact encumbered by the Declaration, whether the Lot Owners are mandatory members of the Association, whether the Association may properly levy and collect assessments, and many other uncertainties affecting the title to the Chandelle Properties.

64. By operation of law, a constructive or resulting trust exists for the benefit of the Plaintiff as it relates to the runway and other common area property.

65. Chandelle Runway, LLC unfairly holds legal title to the runway as a result of the

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MICHELE BLAIR-ROLEY

unconscionable, deceptive and fraudulent actions of the Defendants.

66. Chandelle Runway, LLC is a pretentious company with Defendant Stewart as its managing member.

67. Chandelle Runway, LLC only exists for the purpose of shielding assets from the Association for the benefit of the Defendants.

68. Defendants misrepresented the ownership of the runway for the purpose of enticing purchasers to buy lots in Chandelle and pay a substantially greater value for the property.

69. The circumstances regarding Chandelle Runway, LLC's ownership of the runway property are inequitable; therefore a constructive or resulting trust should be implied to the benefit of the Plaintiff, as the mechanism that was intended to hold title to this property for the benefit of its members.

70. Given that Defendants failed to properly establish the Association and because such restraint creates an unreasonable restraint on title, Plaintiff asks that the Court hold the provision in the Bylaws requiring declarant to be present for quorum as invalid.

71. Plaintiff is informed and believes that it is entitled to a Declaratory Judgment establishing the validity of the Association, whether membership in the Association is mandatory, the ownership of the Runway and the Defendants' engagement in the unauthorized practice of law due to the defects in the Association's formation created by the actions and inactions of the Defendants.

FOR A SECOND CAUSE OF ACTION

(Unfair Trade Practices Act Violation as to Stephen Berry, Nicole Cobb, Lawrence E. Lewis, and Barbara L. Lewis and Chandelle Runway, LLC)

S.C. Code Ann. § 39-5-10 *et seq.*

72. Plaintiff incorporates all previous allegations as if repeated verbatim here.

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SPRINGFIELD, IL

73. In violation of the Declaration, Defendants continued to annex property into Chandelle and submit it to the covenants after the deadline for Declarant's annexation of property had passed.

74. Defendants' sole reason for continuing to annex property beyond the stated deadline of December 31, 2001 was to sell lots and generate a profit.

75. By representing that Chandelle was a covenant restricted private aviation community with access to common area amenities, Defendants caused lot purchasers to pay substantially more for their lots than the average market value for property in this vicinity.

76. Defendants removed said deadline from the version of the Declaration they distributed to lot purchasers to conceal the fact that the annexations were improper.

77. Defendants' willful and wanton actions directly influence commerce and trade by virtue of the fact that they intentionally induced purchasers to buy lots in Chandelle using deception and misrepresentations.

78. Lot purchasers within Chandelle failed to receive the benefit for the increased purchase value of the property by virtue of buying into a community that lacks the requirements for a covenant restricted planned development.

79. Defendants' actions are unfair and deceptive and are capable of repetition.

80. As a direct and proximate result of Defendants' violations of the Act, Plaintiff has suffered and continues to suffer damages.

81. Plaintiff is informed and believes that it is entitled to judgment against the Defendants for treble damages and attorney's fees and costs incurred.

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H. HOPE BLACKLEY

FOR A THIRD CAUSE OF ACTION
**(Fraudulent Misrepresentation Stephen Berry, Nicole Cobb, Lawrence E. Lewis, and
Barbara L. Lewis and Chandelle Runway, LLC)**

82. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

83. Throughout the Declaration, CSC made reference to Chandelle as a private aviation community.

84. CSC and the individual Defendants also represented orally and in written marketing materials distributed to the Association and its members that the runway was a Common Area amenity of the Association as stated herein above.

85. The Defendants also represented that membership in Chandelle was mandatory by virtue of taking title to a lot within the community.

86. The representations made by the Defendants regarding the runway as a Common Area were false in that CSC and Stewart transferred title to the runway to a Defendant Chandelle Runway, LLC.

87. The representations made by the Defendants regarding mandatory membership in the Association were false in that the Defendants failed to properly establish the Association and encumber the Chandelle Property.

88. The Association and its members relied upon these representations, which were material, by purchasing lots in the community and paying to maintain and upkeep the runway.

89. By purporting to transfer the runway to Chandelle Runway, LLC separate and apart from the Declarant and Association, the Defendants stripped the Association of a common area amenity, as was originally represented.

90. Defendants made these representations for the sole purpose of selling lots within Chandelle, which they advertised as a private aviation community with mandatory membership.

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M. HOPKINS
CLERK

91. Defendants' representations were material to the Association and its members in that they enticed owners to purchase lots in Chandelle.

92. Plaintiff had a right to rely on the representations of the Defendant and did in fact make such reliance.

93. As a direct and proximate result of Defendants' misrepresentations, Plaintiff has and continues to suffer damages.

94. Plaintiff is informed and believes that it is entitled to judgment against the Defendants for actual and punitive damages for Defendants' fraudulent misrepresentations.

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract as to Chandelle Runway, LLC and CSC Developers, LLC)

95. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

96. Under South Carolina law, the Declaration for Chandelle constitutes a binding contract.

97. Defendants violated the contract by one or more of the following particulars:

- a. Failing to record the subdivision plat as required in the recitals to the Declaration and as would be required to properly encumber the property; and
- b. Annexing property beyond the stated deadline for annexation.

98. As a direct and proximate result of Defendants' breach of contract, Plaintiff has suffered and continues to suffer damages.

99. Plaintiff is informed and believes that it is entitled to judgment against the Defendants for Defendants' breach of contract.

FOR A FIFTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act Chandelle Runway, LLC and CSC Developers, LLC)

100. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

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M. HOPKINS
CLERK

101. Under South Carolina law, the Declaration for Chandelle constitutes a binding contract.

102. Defendants violated the contract by one or more of the following particulars:

- a. Failing to record the subdivision plat as required in the recitals to the Declaration and as would be required to properly encumber the property; and
- b. Annexing property beyond the stated deadline for annexation.

103. Defendants demonstrated fraudulent intent and fraudulent actions by circulating an unofficial and inaccurate copy of the Declaration to the Association, which lacked the provision relating to the Declarant's deadline for annexing property into the Association.

104. The sole purpose for circulating this unofficial copy of the Declaration was to conceal the fact that CSC had no right to continue to annex property into Chandelle.

105. As a direct and proximate result of Defendants' breach of contract, Plaintiff has suffered and continues to suffer damages.

106. Plaintiff is informed and believes that it is entitled to judgment against the Defendants for actual and punitive damages for Defendants' breach of contract.

FOR A SIXTH CAUSE OF ACTION

(Promoter Liability- except as to Stephen Berry, Nicole Cobb, Lawrence E. Lewis, and Barbara L. Lewis)

107. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

108. The CSC Defendants and Berry represented that Chandelle Subdivision was properly established as a covenant restricted community.

109. Defendants failed to properly establish the Association by one or more of the following particulars:

- a. Failing to record a subdivision plat identifying the purportedly restricted property;

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CLERK OF COURT

- b. Attempting to encumber property neither the individuals nor CSC owned;
- c. Annexing additional property under the Declaration beyond the stated deadline for annexation;

110. The CSC Defendants and Berry knew or should have known that the Association was not properly formed, yet they represented to Lot purchasers that it was properly formed for the purpose of selling lots.

111. Plaintiff is informed and believes that it is entitled to judgment against the CSC Defendants and Berry on the basis of promoter liability for their actions.

FOR A SEVENTH CAUSE OF ACTION
(Negligent Construction and Maintenance of the Runway as to Chandelle Runway, LLC, Nicole Cobb and John R. Stewart, Jr.)

112. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

113. Defendants owed Plaintiff an obligation to construct and maintain the runway in a good and safe condition.

114. In addition to original construction, Defendants have made certain improvements to the runway property over the course of several years.

115. Defendants have breached this duty by one or more of the following particulars:

- a. Failing to remediate poor drainage making it impossible to taxi due to standing water;
- b. Failing to regularly mow and landscape the runway and taxi areas; and
- c. Failing to remediate grading issues which allows water to undermine the pavement of the runway.

116. As a direct and proximate result of Defendants' negligent maintenance of the runway, Plaintiff has suffered and continues to suffer damages.

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1401 E. BLACKHAWK

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Chandelle Property Owners Association,

Plaintiff,

v.

CSC Developers, LLC, Chandelle Runway, LLC, 331 South, LLC, Charlie M. Allison, Janice H. Allison, James Douglas Armstrong and Jane Armstrong, Marilyn N. Berry, Stephen Berry, James P. Brockman, Sr., Douglas E. Cobb, Nicole Cobb, Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, Lawrence E. Lewis, Barbara L. Lewis, John K. Payne, Ruth G. Payne, John R. Stewart, Jr., Angela Tanner, Helmut Tuemmel, Silvia L. Tuemmel, Tygerway, LLC, RL 240, LLC and Rob Graham as Trustee of the Jane Van Wieren Trust.

Defendant(s)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C/A No.: 2016-CP-42-1854

**AMENDED COMPLAINT
(Jury Trial Demanded)**

(18771.6)

The Plaintiff herein, complaining of the acts or omissions of the Defendants would show unto this Honorable Court as follows:

1. The Plaintiff, Chandelle Property Owners Association, Inc. (hereinafter "Plaintiff" or "Chandelle"), is an eleemosynary corporation organized and existing under the laws of the State of South Carolina. It is composed of all property owners in Chandelle Subdivision located in Spartanburg County.

2. Upon information and belief, Defendant CSC Developers, LLC ("CSC") is a limited liability company organized under the laws of the State of South Carolina and is an owner of the subject property of this action, which is located in Spartanburg County.

3. Upon information and belief, Defendant Stewart is a citizen and resident of Anderson County, South Carolina.
4. Upon information and belief, Defendant Clark is a citizen and resident of the State of Georgia.
5. Upon information and belief, Defendant Marilyn N. Berry is a citizen and resident of Spartanburg County, South Carolina.
6. Upon information and belief, Defendant Stephen Berry is a citizen and resident of Spartanburg County, South Carolina.
7. Upon information and belief, Defendant Douglas E. Cobb is a citizen and resident of Spartanburg County, South Carolina.
8. Upon information and belief, Defendant Nicole Cobb is a citizen and resident of Spartanburg County, South Carolina.
9. Upon information and belief, Defendant James P. Brockman, Sr. is a citizen and resident of Spartanburg County.
10. Upon information and belief, Defendant Lawrence E. Lewis is a citizen and resident of Spartanburg County.
11. Upon information and belief, Defendant Barbara L. Lewis is a citizen and resident of Spartanburg County.
12. Upon information and belief, Defendant Charlie M. Allison is a citizen and resident of Anderson County.
13. Upon information and belief, Defendant Janice H. Allison is a citizen and resident of Anderson County.
14. Upon information and belief, Defendant James Douglas Armstrong is a citizen

and resident of Spartanburg County.

15. Upon information and belief, Defendant Jane Armstrong is a citizen and resident of Spartanburg County.

16. Upon information and belief, Defendant Kenneth L. Galloway is a citizen and resident of Spartanburg County.

17. Upon information and belief, Defendant Molly C. Galloway is a citizen and resident of Spartanburg County.

18. Upon information and belief, Defendant Warren Johnson is a citizen and resident of Spartanburg County.

19. Upon information and belief, Defendant Rhonda Johnson is a citizen and resident of Spartanburg County.

20. Upon information and belief, Defendant John K. Payne is a citizen and resident of Spartanburg County.

21. Upon information and belief, Defendant Ruth G. Payne is a citizen and resident of Spartanburg County.

22. Upon information and belief, Defendant Angela Tanner is a citizen and resident of Spartanburg County.

23. Upon information and belief, Defendant Helmut Tuemmel is a citizen and resident of Spartanburg County.

24. Upon information and belief, Defendant Silvia L. Tuemmel is a citizen and resident of Spartanburg County.

25. Upon information and belief, the Jane Van Wieren Trust, trustee Rob Graham, owns at least two parcels of Real Estate located in Spartanburg County, South Carolina.

26. Upon information and belief, Defendant Chandelle Runway, LLC is a limited liability company organized and existing under the laws of the State of South Carolina and having its principal place of business in Spartanburg County, South Carolina.

27. Upon information and belief, Defendant RL 240, LLC is a limited liability company organized and existing under the laws of the State of South Carolina and having its principal place of business in Spartanburg County, South Carolina.

28. Upon information and belief, Defendant Tygerway, LLC is a limited liability company organized and existing under the laws of the State of South Carolina and having its principal place of business in Spartanburg County, South Carolina.

29. Upon information and belief, Defendant 331 South, LLC is a limited liability company organized and existing under the laws of the State of South Carolina and having its principal place of business in Spartanburg County, South Carolina.

30. This court has jurisdiction over the parties and subject matter of this complaint.

ALLEGATIONS OF FACT

31. Defendants Clark, Stewart and Cobb (the “CSC Defendants”) are members of CSC and have been at all relevant times herein.

32. Upon information and belief, Defendant Marilyn N. Berry had agreements with CSC, and the CSC Defendants to assist CSC in the development and sale of the Chandelle property.

33. CSC executed a Declaration of Covenants, Conditions and Restrictions for Chandelle Subdivision on December 15, 1997 and recorded December 16, 1997 in the Office of the Register of Deeds for Spartanburg County in Book 67-A at Page 0583 (the “Declaration”).

34. A true and accurate copy of the Declaration is attached hereto as **Exhibit A.**

35. Pursuant to the recitals of the Declaration, it was intended to encumber property known as Lots 1 through 26 on the Chandelle Subdivision Plat dated September 24, 1997 by Huskey & Huskey, Inc. to be recorded in Spartanburg County.

36. Said plat was never recorded with the Office of the Register of Deeds for Spartanburg County.

37. Plaintiff is informed and believes that CSC did not own the entirety of the property it sought to encumber at the time the Declaration was recorded.

38. Upon information and belief, Defendant Brockman owned a portion of the Chandelle Property at the time the Declaration was recorded.

39. Plaintiff is unaware of any consent agreement by Defendant Brockman authorizing CSC to encumber his lots during this time.

40. The Defendants developed and sold lots within the community and represented that the Chandelle subdivision was restricted by the covenants in the Declaration.

41. The Defendants also represented that the aircraft runway was a common area when developing and selling lots within Chandelle.

42. These representations were made both orally and written through marketing materials.

43. By deed dated May 19, 2006 and recorded May 24, 2006 in the Spartanburg County Register of Deeds Office in Book 85-V at Page 383, CSC and Stewart transferred title of the runway to Defendant Chandelle Runway, LLC for \$10.00 recited consideration.

44. Upon information and belief, Chandelle Runway, LLC is a shell corporation formed to shield the runway as an asset of Defendants Stewart and CSC.

45. The website has never been created, operated, or managed by Plaintiff

Association.

46. Upon information and belief, one or more of the Defendants maintains the Association website.

47. As of May 11, 2014, the Association's website indicated that the Runway at Chandelle Private Aviation Estates was for "Private use only" and stated "Continued operation assured in future."

48. On or about July 15, 2014, the Defendants removed the representation stating "Continued operation assured in future."

49. As of May 11, 2014, a separate page of the Association website entitled "Covenants" stated "The Owners have guaranteed continued use of the 3700 foot runway to Homeowners living in Chandelle."

50. On or about July 15, 2014, the Defendants removed the statement guaranteeing continued use of the runway from the Covenants page of the website.

51. The "Covenants" page of the website stated May 11, 2014 and currently states "The Homeowners Association will obtain property insurance to cover the runway, taxiways *and other common areas.*" (emphasis added).

52. Article XVI, Section 16.2 of the Declaration states that the Declarant, CSC, may expand Chandelle Subdivision by recording a Declaration of Annexation before December 31, 2001, describing the real property to be annexed and submitting it to the Declaration.

53. CSC continued to annex property after the annexation date of the Declaration and also annexed property that was not owned by the Defendants and, therefore, could not be submitted to the Declaration. Specifically, CSC executed and recorded the following instruments:

- a. Amendments to Covenants, Conditions and Restrictions of Chandelle Subdivision dated December 28, 2004 and recorded December 28, 2004 in the Register of Deeds Office for Spartanburg County in Book 81-Y at Page 823 and purporting to annex Section 1-A, Lot 39, Lot 39a and Lots 40 through 47.
 - b. Amendments to Covenants, Conditions and Restrictions of Chandelle Subdivision dated April 11, 2007 and recorded April 17, 2007 in the Register of Deeds Office for Spartanburg County in Book 88-H at Page 448 and purporting to annex Lots 33, 37, 29, 30, 34, 27, and 28.
 - c. Amendments to Covenants, Conditions and Restrictions of Chandelle Subdivision dated November 2, 2011 and recorded November 2, 2011 in the Register of Deeds Office for Spartanburg County in Book 99-L at Page 999 and purporting to annex Lots 32, 36, 35, 55, 56 and 57.
54. CSC distributed unofficial and inaccurate copies of the Declaration to lot purchasers within the Association that lacked the annexation date to conceal the fact that CSC had no right to continue annexing property into the Association.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment as to validity of Declaration, Mandatory Membership and Ownership of the Runway, Unauthorized Practice of Law, Constructive/Resulting Trust, as to CSC Developers, LLC and Chandelle Runway, LLC)
S.C. Code Ann. § 15-53-10, *et. seq.*

55. Plaintiff incorporates all previous allegations as if repeated verbatim herein.
56. The Declaration purports to establish Chandelle and to encumber the Chandelle property with certain covenants, conditions, restrictions and easements.
57. CSC recorded the Declaration but failed to record the subdivision plat for Chandelle or to provide a legal description as to the property being encumbered by the

Declaration.

58. CSC did not own all the property it sought to encumber with the Declaration.

59. CSC annexed additional property under the Declaration after termination of the annexation date.

60. CSC represented to Plaintiff and other Association members that the Runway was a common area amenity to the Association and that its continued use by the membership was guaranteed.

61. The Plaintiff has relied on the representations made by the Declaration and the Association has been operated as a covenant restricted community since inception.

62. Defendants engaged in the unauthorized practice of law by one or more of the following particulars:

- a. Examining property titles when encumbering and annexing the Chandelle property;
- b. Drafting legal instruments including the Declaration and various amendments thereto; and
- c. Recording legal instruments including the Declaration and various amendments thereto with the Register of Deeds Office for Spartanburg Count.

63. Plaintiff has been damaged by Defendants' failure to properly establish the Association in that Plaintiff is unclear whether or not the Chandelle Property is in fact encumbered by the Declaration, whether the Lot Owners are mandatory members of the Association, whether the Association may properly levy and collect assessments, and many other uncertainties affecting the title to the Chandelle Properties.

64. By operation of law, a constructive or resulting trust exists for the benefit of the

Plaintiff as it relates to the runway and other common area property.

65. Chandelle Runway, LLC unfairly holds legal title to the runway as a result of the unconscionable, deceptive and fraudulent actions of the Defendants.

66. Chandelle Runway, LLC is a pretentious company with Defendant Stewart as its managing member.

67. Chandelle Runway, LLC only exists for the purpose of shielding assets from the Association for the benefit of the Defendants.

68. Defendants misrepresented the ownership of the runway for the purpose of enticing purchasers to buy lots in Chandelle and pay a substantially greater value for the property.

69. The circumstances regarding Chandelle Runway, LLC's ownership of the runway property are inequitable; therefore a constructive or resulting trust should be implied to the benefit of the Plaintiff, as the mechanism that was intended to hold title to this property for the benefit of its members.

70. Given that Defendants failed to properly establish the Association and because such restraint creates an unreasonable restraint on title, Plaintiff asks that the Court hold the provision in the Bylaws requiring declarant to be present for quorum as invalid.

71. Plaintiff is informed and believes that it is entitled to a Declaratory Judgment establishing the validity of the Association, whether membership in the Association is mandatory, the ownership of the Runway and the Defendants' engagement in the unauthorized practice of law due to the defects in the Association's formation created by the actions and inactions of the Defendants.

FOR A SECOND CAUSE OF ACTION
(Unfair Trade Practices Act Violation as to Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., CSC Developers, LLC, and Chandelle Runway, LLC)
S.C. Code Ann. § 39-5-10 *et seq.*

72. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

73. In violation of the Declaration, Defendants continued to annex property into Chandelle and submit it to the covenants after the deadline for Declarant's annexation of property had passed.

74. Defendants' sole reason for continuing to annex property beyond the stated deadline of December 31, 2001 was to sell lots and generate a profit.

75. By representing that Chandelle was a covenant restricted private aviation community with access to common area amenities, Defendants caused lot purchasers to pay substantially more for their lots than the average market value for property in this vicinity.

76. Defendants removed said deadline from the version of the Declaration they distributed to lot purchasers to conceal the fact that the annexations were improper.

77. Defendants' willful and wanton actions directly influence commerce and trade by virtue of the fact that they intentionally induced purchasers to buy lots in Chandelle using deception and misrepresentations.

78. Lot purchasers within Chandelle failed to receive the benefit for the increased purchase value of the property by virtue of buying into a community that lacks the requirements for a covenant restricted planned development.

79. Defendants' actions are unfair and deceptive and are capable of repetition.

80. As a direct and proximate result of Defendants' violations of the Act, Plaintiff has suffered and continues to suffer damages.

81. Plaintiff is informed and believes that it is entitled to judgment against the

Defendants for treble damages and attorney's fees and costs incurred.

FOR A THIRD CAUSE OF ACTION
**(Fraudulent Misrepresentation Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr.,
CSC Developers, LLC, and Chandelle Runway, LLC)**

82. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

83. Throughout the Declaration, CSC made reference to Chandelle as a private aviation community.

84. CSC and the individual Defendants also represented orally and in written marketing materials distributed to the Association and its members that the runway was a Common Area amenity of the Association as stated herein above.

85. The Defendants also represented that membership in Chandelle was mandatory by virtue of taking title to a lot within the community.

86. The representations made by the Defendants regarding the runway as a Common Area were false in that CSC and Stewart transferred title to the runway to a Defendant Chandelle Runway, LLC.

87. The representations made by the Defendants regarding mandatory membership in the Association were false in that the Defendants failed to properly establish the Association and encumber the Chandelle Property.

88. The Association and its members relied upon these representations, which were material, by purchasing lots in the community and paying to maintain and upkeep the runway.

89. By purporting to transfer the runway to Chandelle Runway, LLC separate and apart from the Declarant and Association, the Defendants stripped the Association of a common area amenity, as was originally represented.

90. Defendants made these representations for the sole purpose of selling lots within

Chandelle, which they advertised as a private aviation community with mandatory membership.

91. Defendants' representations were material to the Association and its members in that they enticed owners to purchase lots in Chandelle.

92. Plaintiff had a right to rely on the representations of the Defendant and did in fact make such reliance.

93. As a direct and proximate result of Defendants' misrepresentations, Plaintiff has and continues to suffer damages.

94. Plaintiff is informed and believes that it is entitled to judgment against the Defendants for actual and punitive damages for Defendants' fraudulent misrepresentations.

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract as to Chandelle Runway, LLC and CSC Developers, LLC)

95. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

96. Under South Carolina law, the Declaration for Chandelle constitutes a binding contract.

97. Defendants violated the contract by one or more of the following particulars:

- a. Failing to record the subdivision plat as required in the recitals to the Declaration and as would be required to properly encumber the property; and
- b. Annexing property beyond the stated deadline for annexation.
- c. Attempting to annex and bind property not owned by Defendants.

98. As a direct and proximate result of Defendants' breach of contract, Plaintiff has suffered and continues to suffer damages.

99. Plaintiff is informed and believes that it is entitled to judgment against the Defendants for Defendants' breach of contract.

FOR A FIFTH CAUSE OF ACTION

(Breach of Contract Accompanied by a Fraudulent Act Chandelle Runway, LLC and CSC Developers, LLC)

100. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

101. Under South Carolina law, the Declaration for Chandelle constitutes a binding contract.

102. Defendants violated the contract by one or more of the following particulars:

- a. Failing to record the subdivision plat as required in the recitals to the Declaration and as would be required to properly encumber the property; and
- b. Annexing property beyond the stated deadline for annexation.

103. Defendants demonstrated fraudulent intent and fraudulent actions by circulating an unofficial and inaccurate copy of the Declaration to the Association, which lacked the provision relating to the Declarant's deadline for annexing property into the Association.

104. The sole purpose for circulating this unofficial copy of the Declaration was to conceal the fact that CSC had no right to continue to annex property into Chandelle.

105. As a direct and proximate result of Defendants' breach of contract, Plaintiff has suffered and continues to suffer damages.

106. Plaintiff is informed and believes that it is entitled to judgment against the Defendants for actual and punitive damages for Defendants' breach of contract.

FOR A SIXTH CAUSE OF ACTION

(Promoter Liability- as to Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., CSC Developers, LLC, and Chandelle Runway, LLC)

107. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

108. The CSC Defendants and Berry represented that Chandelle Subdivision was

properly established as a covenant restricted community.

109. Defendants failed to properly establish the Association by one or more of the following particulars:

- a. Failing to record a subdivision plat identifying the purportedly restricted property;
- b. Attempting to encumber property neither the individuals nor CSC owned;
- c. Annexing additional property under the Declaration beyond the stated deadline for annexation;

110. The CSC Defendants and Berry knew or should have known that the Association was not properly formed, yet they represented to Lot purchasers that it was properly formed for the purpose of selling lots.

111. Plaintiff is informed and believes that it is entitled to judgment against the CSC Defendants and Berry on the basis of promoter liability for their actions.

FOR A SEVENTH CAUSE OF ACTION

(Negligent Construction and Maintenance of the Runway as to Chandelle Runway, LLC, CSC Developers, LLC, Douglas E. Cobb and John R. Stewart, Jr.)

112. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

113. Defendants owed Plaintiff an obligation to construct and maintain the runway in a good and safe condition.

114. In addition to original construction, Defendants have made certain improvements to the runway property over the course of several years.

115. Defendants have breached this duty by one or more of the following particulars:

- a. Failing to remediate poor drainage making it impossible to taxi due to standing water;
- b. Failing to regularly mow and landscape the runway and taxi areas; and

- c. Failing to remediate grading issues which allows water to undermine the pavement of the runway.

116. As a direct and proximate result of Defendants' negligent maintenance of the runway, Plaintiff has suffered and continues to suffer damages.

117. Plaintiff is informed and believes that it is entitled to judgment against the Defendants for negligent maintenance of the runway.

FOR AN EIGHTH CAUSE OF ACTION
(Breach of Fiduciary Duty as to only CSC Developers, LLC)

118. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

119. Under South Carolina law, Defendant CSC owed the Plaintiff a fiduciary duty as the Developer of the Association to hold the common areas for the benefit of the Association and to turn over the common areas in good repair.

120. CSC breached this duty by one or more of the following particulars:

- a. Transferring the runway to Chandelle Runway, LLC;
- b. Failing to adequately construct, maintain and repair the runway and taxiways;
- c. Failing to properly establish the Association to encumber the property.

121. As a direct and proximate result of CSC's breach of fiduciary duty, Plaintiff has suffered and continues to suffer damages.

122. Plaintiff is informed and believes it is entitled to judgment against CSC for breach of fiduciary duty.

FOR A NINTH CAUSE OF ACTION
(Negative Reciprocal Easement, as to CSC Developers, LLC, John R. Stewart, Jr., Marilyn N. Berry, and Douglas E. Cobb)

123. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

124. Defendants created a negative reciprocal easement by implication.

125. Defendants represented themselves as a common grantor of the lots within the Chandelle Subdivision.

126. Defendants developed and published a general plan or scheme of restrictions for the development and published this scheme on the Association website, among other media.

127. Defendants subdivided lots and designated the lots subject to the restrictions.

128. Defendants created restrictive covenants for the development, and these covenants run with the land in accordance with the general plan or scheme developed by Defendants.

129. In granting the lots subject to the general scheme and restrictions, the owners of the lots stood to benefit from the scheme.

130. The general plan or scheme of restrictions evidence an intent that the entire tract be similarly treated, so that once the plan was effectively put into operation, the burden placed upon the land conveyed is by operation of law reciprocally placed upon the land retained.

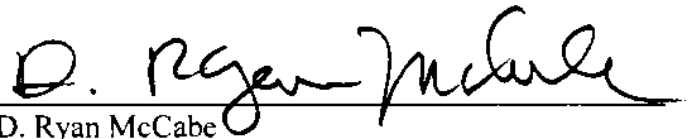
131. Plaintiff seeks injunctive relief in order to prevent any further violation of the easement.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays unto this Honorable Court as follows:

1. A Declaratory Judgment that the Association is valid, membership is mandatory, the Runway is a Common Area, that Defendants have engaged in the unauthorized practice of law, and that the Runway is held in a constructive or resulting trust for the benefit of Plaintiff;
2. Judgment against the Defendants under the Second Cause of Action for treble damages;
3. Judgment against the Defendants under the Third Cause of Action for actual and punitive damages;

4. Judgment against the Defendants under the Fourth Cause of Action;
5. Judgment against the Defendants under the Fifth Cause of Action for actual and punitive damages;
6. Judgment against the Defendants under the Sixth Cause of Action;
7. Judgment against the Defendants under the Seventh Cause of Action;
8. Judgment against CSC under the Eighth Cause of Action;
9. Injunction against the Defendants under the Ninth Cause of Action;
10. Attorney's fees and costs incurred; and
11. For such other and further relief as may be just and proper.

MCCABE, TROTTER & BEVERLY, P.C.



D. Ryan McCabe
140 Stoneridge Drive, Suite 650
Post Office Box 212069 (29221)
Columbia, SC 29210
Phone: 803-724-5000
Fax: 803-724-5001
Email: ryan.mccabe@mccabetrotter.com
ATTORNEY FOR THE PLAINTIFF

May 22, 2016

Columbia, South Carolina

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CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Chandelle Property Owners Association,

Plaintiff,

v.

CSC Developers, LLC, Chandelle Runway, LLC, 331 South, LLC, Charlie M. Allison, Janice H. Allison, James Douglas Armstrong, Jane Armstrong, Marilyn N. Berry, Stephen Berry, James P. Brockman, Sr., Douglas E. Cobb, Nicole Cobb, Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, Lawrence E. Lewis, Barbara L. Lewis, John K. Payne, Ruth G. Payne, John R. Stewart, Jr., Angela Tanner, Helmut Tuemmel, Silvia L. Tuemmel, Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006, Martin Tuemmel, Raymond M. Clark, Jr., and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein.

Defendant(s)

(18771.6)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
C/A No.: 2016-CP-42-1854

**SECOND AMENDED COMPLAINT
(Jury Trial Demanded)**

The Plaintiff herein, complaining of the acts or omissions of the Defendants would show unto this Honorable Court as follows:

1. The Plaintiff, Chandelle Property Owners Association, Inc. (hereinafter “Plaintiff” or “Association”), is an eleemosynary corporation organized and existing under the laws of the State of South Carolina. It is composed of all property owners in Chandelle Subdivision located in Spartanburg County.

2. Upon information and belief, Defendant CSC Developers, LLC (“CSC”) is a limited liability company organized under the laws of the State of South Carolina, is/was

involved in the development of the Chandelle Subdivision, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

3. Upon information and belief, defendant John R. Stewart, Jr. is a citizen and resident of Anderson County, South Carolina, is/was involved in the development of the Chandelle Subdivision, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

4. Upon information and belief, Defendant Marilyn N. Berry is a citizen and resident of Spartanburg County, South Carolina, is/was involved in the development of the Chandelle Subdivision, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

5. Upon information and belief, Defendant Stephen Berry is a citizen and resident of Spartanburg County, South Carolina, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

6. Upon information and belief, Defendant Douglas E. Cobb is a citizen and resident of Spartanburg County, South Carolina, is/was involved in the development of the Chandelle Subdivision, and has an ownership interest in property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

7. Upon information and belief, Defendant Nicole Cobb is a citizen and resident of

Spartanburg County, South Carolina, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

8. Upon information and belief, Defendant James P. Brockman, Sr. is a citizen and resident of Spartanburg County, is/was involved in the development of the Chandelle Subdivision, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

9. Upon information and belief, Defendant Lawrence E. Lewis is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

10. Upon information and belief, Defendant Barbara L. Lewis is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

11. Upon information and belief, Defendant Charlie M. Allison is a citizen and resident of Anderson County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

12. Upon information and belief, Defendant Janice H. Allison is a citizen and resident of Anderson County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

13. Upon information and belief, Defendant James Douglas Armstrong is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

14. Upon information and belief, Defendant Jane Armstrong is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

15. Upon information and belief, Defendant Kenneth L. Galloway is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

16. Upon information and belief, Defendant Molly C. Galloway is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

17. Upon information and belief, Defendant Warren Johnson is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

18. Upon information and belief, Defendant Rhonda Johnson is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

19. Upon information and belief, Defendant John K. Payne is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

20. Upon information and belief, Defendant Ruth G. Payne is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

21. Upon information and belief, Defendant Angela Tanner is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

22. Upon information and belief, Defendant Helmut Tuemmel is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

23. Upon information and belief, Defendant Silvia L. Tuemmel is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

24. Upon information and belief, Jane Van Wieren is the trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006, which is the owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated

herein by reference).

25. Upon information and belief, Defendant Chandelle Runway, LLC is a limited liability company organized and existing under the laws of the State of South Carolina and having its principal place of business in Spartanburg County, South Carolina, and claims to be the purported owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

26. Upon information and belief, Defendant 331 South, LLC is a limited liability company organized and existing under the laws of the State of South Carolina and having its principal place of business in Spartanburg County, South Carolina, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

27. Upon information and belief, Defendant Martin Tuemmel is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the third amended *Lis Pendens* filed herewith and incorporated herein by reference).

28. Upon information and belief, defendant Raymond M. Clark, Jr. is a citizen and resident of Georgia and was involved in the development of the Chandelle Subdivision.

29. This court has jurisdiction over the parties and subject matter of this complaint.

ALLEGATIONS OF FACT

30. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

31. Defendants John R. Stewart, Jr., Douglas E. Cobb, and Raymond M. Clark, Jr. are/were members of CSC.

32. Upon information and belief, Defendant Marilyn N. Berry had agreements with CSC, John R. Stewart, Jr., Raymond M. Clark, Jr., and/or Douglas E. Cobb to assist CSC, John R. Stewart, Jr., Raymond M. Clark, Jr., and/or Douglas E. Cobb in the development of the Chandelle Subdivision and the sale of property in the Chandelle Subdivision in Spartanburg County.

33. CSC had an agreement with James P. Brockman, Sr. pertaining to the development of Chandelle Subdivision, including an agreement to include the lands of James P. Brockman, Sr. in the Chandelle Subdivision.

34. Upon information and belief, CSC, John R. Stewart, Jr., Raymond M. Clark, Jr., Douglas E. Cobb, and/or Marilyn N. Berry were responsible for developing and marketing the Chandelle Subdivision, which was intended to be an aviation community containing an aircraft runway.

35. CSC executed a Declaration of Covenants, Conditions and Restrictions for Chandelle Subdivision on December 15, 1997, which was recorded December on 16, 1997, in the Office of the Register of Deeds for Spartanburg County in Book 67-A at Page 0583 (the "Declaration").

36. A true and accurate copy of the Declaration is attached hereto as **Exhibit A.**

37. The Declaration purports to establish Plaintiff, the Chandelle Subdivision, and to encumber the properties in the Chandelle Subdivision with certain covenants, conditions, restrictions and easements.

38. Pursuant to the recitals of the Declaration, it was intended to encumber property known as Lots 1 through 26 on the Chandelle Subdivision Plat dated September 24, 1997 by Huskey & Huskey, Inc. to be recorded in Spartanburg County; however, certain provisions of the Declaration, namely Article VIII, also referenced lots in addition to Lots 1 through 26.

39. Said plat referenced in the Declaration was never recorded with the Office of the Register of Deeds for Spartanburg County.

40. Upon information and belief, CSC did not own the entirety of the property it sought to encumber at the time the Declaration was recorded.

41. Upon information and belief, Defendant James P. Brockman, Sr. still owned a portion of the property included in the property to be encumbered by the Declaration at the time the Declaration was recorded.

42. CSC, John R. Stewart, Jr., Raymond M. Clark, Jr., Douglas E. Cobb, and Marilyn N. Berry developed and sold lots within the Chandelle Subdivision and represented that the Chandelle Subdivision was restricted by the covenants in the Declaration.

43. CSC, John R. Stewart, Jr., Raymond M. Clark, Jr., Douglas E. Cobb, and Marilyn N. Berry also initially represented that the aircraft runway was a common area when developing and selling lots within the Chandelle Subdivision. These representations were made both orally and through written marketing materials.

44. For a period of time, a website existed that provided information concerning the Chandelle Subdivision (hereinafter the "Chandelle website"); however, the website was never created, operated, or managed by Plaintiff.

45. Upon information and belief, the Chandelle website stated the following in 1998: "The developers have guaranteed continued operation of the runway by transferring ownership to the lot owners through the Property Owners Association; in this way, each lot owner will also own a share of the runway. The Association will provide for the improvement, maintenance and operation of the runway and common areas as detailed in the Covenants."

46. Upon information and belief, CSC, John R. Stewart, Jr., Raymond M. Clark, Jr., Douglas E. Cobb, and/or Marilyn N. Berry maintained the Chandelle website and were

responsible for the content on the Chandelle website.

47. Further, the terms of the Declaration clearly indicate that the runway was intended as a common area/amenity of the Chandelle Subdivision.

48. Additionally, the terms of the above-referenced agreement between CSC and James Brockman, Sr. indicate that the runway was to be a common area/amenity of the Chandelle Subdivision.

49. The Spartanburg County Planning and Development Commission, as a condition to approval of the Chandelle Subdivision, required a homeowners association to be formed and bear responsibility for perpetual easements and the runway.

50. Even though the runway was intended to be a common area of the Chandelle Subdivision, those involved in the development of Chandelle Subdivision, including CSC, John R. Stewart, Jr., Raymond M. Clark, Jr., Douglas E. Cobb, and/or Marilyn N. Berry, failed to have title to the runway conveyed to Plaintiff.

51. Instead, CSC, John R. Stewart, Jr., Raymond M. Clark, Jr., Douglas E. Cobb, and/or Marilyn N. Berry improperly and inappropriately altered the Declaration and Bylaws of Plaintiff without proper amendment and distributed unofficial and inaccurate copies of the Declaration and Bylaws to Plaintiff, lot purchasers, and potential purchasers (hereinafter the “altered Declaration” and the “altered Bylaws”).

52. The altered Declaration and altered Bylaws contain material differences from the official Declaration and official Bylaws recorded with the Spartanburg County Register of Deeds.

53. Upon information and belief, the official Declaration was improperly and inappropriately modified, in part, in an attempt to improperly alter ownership and control of the runway and to induce property owners to enter into runway license agreements.

54. By way of example, among other things, the altered Declaration inserts a definition of “Licensor” as section 1.17, which defines the Licensor as “Chandelle Airport Corporation, LLC, A South Carolina Limited Liability Company, which owns the runway and will issue licenses for the use of said runway.” The altered Declaration also renumbers the subsequent definitions. The official declaration does not contain a reference to a “Licensor”, but rather the official section 1.17 is the definition of a “Lot”.

55. By way of further example, Section 7.4 of the official Declaration was altered to change the rulemaking authority with respect to aircraft operations and the runway from “Declarant and Association” to “Declarant or Licensor.”

56. By way of further example, Section 4.3 of the official Bylaws was altered to change “Common Area” to “Runway” in several instances.

57. By way of further example, Section 8.2(a) of the official Bylaws attached to the official Declaration provides that the Plaintiff has the power and duty to “administer and enforce the Covenants, Restrictions, Easement, *Aircraft and Runway Operations*, Uses, Limitations, Obligations and all other provisions set forth in the Declaration” (emphasis added); however, the altered Bylaws attached to the altered Declaration delete reference to “Aircraft and Runway Operations.”

58. Instead of the runway being transferred to Plaintiff as intended and as required, by deed dated May 19, 2006, and recorded May 24, 2006, in the Spartanburg County Register of Deeds Office in Book 85-V at Page 383, CSC and John R. Stewart, Jr. transferred title to the runway to Defendant Chandelle Runway, LLC for \$10.00 recited consideration.

59. Upon information and belief, Chandelle Runway, LLC was not yet formed or in legal existence at the time of the aforementioned deed from CSC and John R. Stewart, Jr.

60. Upon information and belief, Chandelle Runway, LLC is a shell corporation

formed to shield the runway as an asset of Defendants John R. Stewart, Jr. and CSC.

61. Chandelle Runway, LLC unfairly purports to hold legal title to the runway as a result of the unconscionable, deceptive, and fraudulent actions of CSC, John R. Stewart, Jr., Raymond M. Clark, Jr., Douglas E. Cobb, Marilyn N. Berry, and/or Chandelle Runway, LLC.

62. Some of the purported runway license agreements between Chandelle Runway, LLC and property owners actually predate the formation of Chandelle Runway, LLC and/or the aforementioned deed purporting to transfer title to Chandelle Runway, LLC.

63. As of May 11, 2014, the Chandelle website indicated that the Runway at Chandelle Private Aviation Estates was for “Private use only” and stated “Continued operation assured in future.”

64. On or about July 15, 2014, the CSC, John R. Stewart, Jr. Douglas E. Cobb, and/or Marilyn N. Berry removed the representation stating “Continued operation assured in future.”

65. As of May 11, 2014, a separate page of the Chandelle website entitled “Covenants” stated “The Owners have guaranteed continued use of the 3700 foot runway to Homeowners living in Chandelle.”

66. On or about July 15, 2014, CSC, John R. Stewart, Jr. Douglas E. Cobb, and/or Marilyn N. Berry removed the statement guaranteeing continued use of the runway from the Covenants page of the website.

67. Upon information and belief, the Chandelle website no longer exists.

68. CSC, John R. Stewart, Jr. Douglas E. Cobb, Raymond Clark, Jr. and/or Marilyn N. Berry also represented other property as being common areas, including the property where the neighborhood monument is located, but failed to convey such property to Plaintiff.

69. Upon information and belief, James P. Brockman, Sr. was involved in the development of Chandelle Subdivision and holds title to certain lands that were represented and

designated as common areas of Chandelle Subdivision, but has failed to convey title to such lands to Plaintiff.

70. Article XVI, Section 16.2 of the official Declaration states that the Declarant, CSC, may expand Chandelle Subdivision by recording a Declaration of Annexation before December 31, 2001, describing the real property to be annexed and submitting it to the Declaration.

71. However, in the altered Declaration, Article XVI, Section 16.2 of the Declaration was altered to remove the Annexation deadline contained in the official Declaration.

72. CSC continued to attempt to annex property after the annexation date of the Declaration. Specifically, the following instruments were recorded:

- a. Amendments to Covenants, Conditions and Restrictions of Chandelle Subdivision dated December 28, 2004 and recorded December 28, 2004 in the Register of Deeds Office for Spartanburg County in Book 81-Y at Page 823 and purporting to annex Chandelle Section 1-A, Lot 39 (Section 3a), Lot 39a and Lots 40 through 47 (Chandelle Section 3).
- b. Amendments to Covenants, Conditions and Restrictions of Chandelle Subdivision dated April 11, 2007 and recorded April 17, 2007 in the Register of Deeds Office for Spartanburg County in Book 88-H at Page 448 and purporting to annex Lots 33 and 37 (Section 4); 29, 30 and 34 (Section 6); and 27 and 28 (Section 7).
- c. Amendments to Covenants, Conditions and Restrictions of Chandelle Subdivision dated November 2, 2011 and recorded November 2, 2011 in the Register of Deeds Office for Spartanburg County in Book 99-L at Page 999 and purporting to annex Lots 32 and 36 (Section 4A); 31 and 35 (Section 5); and 55, 56 and 57 (Section 8).

73. CSC, John R. Stewart, Jr., Raymond M. Clark, Jr., Douglas E. Cobb, and/or Marilyn N. Berry distributed unofficial and inaccurate copies of the Declaration to lot purchasers that lacked the annexation date to conceal the fact that CSC lacked the ability to continue annexing property and submitting property to the Declaration.

74. CSC, either intentionally or unintentionally, failed to record an instrument purporting to annex those lots depicted in the Chandelle Section 2A plat recorded with the Spartanburg County Register of Deeds (Lots 50, 51, 52, 53, and 54) even though those lots were represented as being part of the Chandelle Subdivision in the development and marketing of the Chandelle Subdivision.

75. Upon information and belief, CSC failed to annex all lots and properties that were represented and marketed as being part of the Chandelle Subdivision and bound by the Declaration.

76. CSC attempted to make several unilateral amendments to the Declaration and Bylaws that were recorded with the Spartanburg County Register of Deeds.

77. Some of the unilateral amendments were actually predicated on the terms of the altered Declaration, which were not even actually part of the official recorded Declaration. For example, the “Amendments to Covenants, Conditions and Restrictions of Chandelle Subdivision” recorded at Deed Book 72G, Pg. 843, purports to grant the “Licensor” the right to control the use of the runway and taxiway, even though no such thing as a “Licensor” exists/existed under the official Declaration.

78. Upon information and belief, some of the provisions of the purported amendments to the Declaration do not comply with the amendment provisions of the Declaration (Article XII, Section 12.2) because they are less restrictive than those contained in the original official Declaration.

79. Upon information and belief, some of the provisions of the purported amendments to the Declaration do not comply with the amendment provisions of the Declaration (Article XII, Section 12.2) because they violate the community development plan, including, but not limited to those provisions purporting to materially alter ownership, control, and use of the runway.

80. Upon information and belief, some of the provisions of the purported amendments to the Declaration do not comply with South Carolina law pertaining to unilateral amendments, including, but not limited to those provisions purporting to materially alter ownership, control, and use of the runway.

81. Upon information and belief, some of the purported unilateral amendments to the Declaration and bylaws by CSC occurred after CSC lost its Class B status and the right or ability to unilaterally amend the Declaration.

82. Article V, Section 5.11 of the Bylaws for Chandelle Property Owners Association states that quorum does not exist for a meeting of the membership without the presence of the Declarant (CSC). Upon information and belief, such provision is unconscionable, void, violates public policy, and/or is otherwise unenforceable.

83. Upon information and belief, the remaining owners of property in the Chandelle Subdivision that are not named as defendants have executed a "Consent Agreement and Ratification Addendum Chandelle Property Owners Association" whereby they have voluntarily agreed to encumber and subject their Lots to the Declaration, including submitting themselves to membership in the Plaintiff, and they also voluntarily agreed to be bound by the outcome of this suit, and reference is craved to such agreements as to their exact terms and conditions.

84. The board of directors of Plaintiff is valid and Plaintiff is properly authorized to bring this action.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment – as to all Defendants)
S.C. Code Ann. § 15-53-10, *et. seq.*

85. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

86. This action is brought pursuant to S.C. Code § 15-53-10 *et seq.*, seeking an Order of this Court declaring the rights of the parties.

87. A justiciable controversy exists between the parties hereto and the parties hereto have or claim to have an interest which would be affected by this declaratory judgment.

88. The Chandelle Subdivision has been operated as a covenant restricted community since inception; however, due to the aforementioned acts of CSC, John R. Stewart, Jr., Raymond M. Clark, Jr., Douglas E. Cobb, and/or Marilyn N. Berry, questions have been raised, disputes have arisen, and uncertainties have resulted as to what properties are in fact encumbered by the Declaration, what provisions of the Declaration and amendments thereto are valid and binding, what property Owners are mandatory members of the Association, whether the Plaintiff may properly levy and collect assessments, and many other uncertainties affecting the title to the properties that are or should be part of the Chandelle Subdivision, including ownership, control, maintenance, and use of the runway located in the Chandelle Subdivision. Plaintiff seeks to resolve all such disputes, questions, and uncertainties through this action.

89. The Plaintiff is informed and believes that it is entitled to an order of this Court declaring:

- a. Which properties are part of the Chandelle Subdivision and subject to and encumbered by the Declaration and any amendments thereto;
- b. Which lands are common areas of Chandelle Subdivision;
- c. Which provisions of the Declaration and the Bylaws, and any amendments thereto are valid and binding;

- d. Which provisions of the Declaration and Bylaws, and any amendments thereto are invalid, void, or otherwise unenforceable;
- e. The validity and authority of Plaintiff as the property owners association for Chandelle subdivision;
- f. The validity and authority of Plaintiff's board of directors, including their actions;
- g. Mandatory membership in Plaintiff by the lot owners as the valid property owners association for Chandelle Subdivision;
- h. That any provision of the Bylaws and/or Declaration requiring the presence of the Declarant (CSC) to obtain a quorum for a meeting of the membership to be unconscionable, void, violative of public policy, and/or otherwise unenforceable.
- i. The ability of the Plaintiff levy assessments;
- j. That Plaintiff is the rightful owner of the runway located within Chandelle Subdivision and that title to the runway should be transferred to Plaintiff;
- k. That the circumstances regarding Chandelle Runway, LLC's purported ownership of the runway property are inequitable; therefore, a constructive or resulting trust exists in favor of Plaintiff pertaining runway in the Chandelle Subdivision.
- l. That a constructive or resulting trust exists for the benefit of the Plaintiff relating to the runway and other common area property.
- m. That the runway is a Common Area.
- n. That regardless of title to the runway in the Chandelle Subdivision, Plaintiff as well as the residents of Chandelle Subdivision have special property interest in the runway as well as an express and/or implied easement and right to unobstructed use and enjoyment of the runway;
- o. That regardless of title to other common area in the Chandelle Subdivision,

Plaintiff as well as the residents of the Chandelle Subdivision have a special property interest in the other common areas as well as an express and/or implied easement and right to unobstructed use of the other common areas.

- p. The existence of reciprocal negative easements in the Chandelle Subdivision;
- q. All rights, duties, and obligations of the parties pertaining to ownership, maintenance, and use of the runway in the Chandelle Subdivision, including the validity of any runway license agreements;
- r. Such other relief as is just and proper, including, but not limited to, reforming the Declaration and Bylaws and/or, the use of the Court's inherent equitable powers to provide relief from the consequences of accident, mistake, and/or fraud.

FOR A SECOND CAUSE OF ACTION
(Quiet Title – as to all Defendants)

- 90. Plaintiff incorporates all previous allegations as if repeated verbatim herein.
- 91. This action is brought pursuant to S.C. Code Ann. § 15-67-10, *et seq.* seeking to quiet title to the property identified in the Third Amended *Lis Pendens* filed herewith and incorporated herein by reference.
- 92. The Defendants have claimed or may claim ownership of or an interest in the aforementioned property.
- 93. Plaintiff is informed and believes that it is entitled to an order of this Court quieting title to the aforementioned property by:
 - a. Determining which properties are part of the Chandelle Subdivision and subject to and encumbered by the Declaration and any amendments thereto;
 - b. Determining which lands are common areas of the Chandelle Subdivision;
 - c. Determining which provisions of the Declaration and Bylaws, and any amendments thereto are valid and binding on the properties;

- d. Determining which provisions of the Declaration and Bylaws, and any amendments thereto are invalid, void, or otherwise unenforceable with respect to the properties;
- e. Determining that Plaintiff is the rightful owner of the runway located within Chandelle Subdivision and that title to the runway should be transferred to Plaintiff;
- f. Determining the existence of a constructive or resulting trust for the benefit of the Plaintiff pertaining to the runway and other common areas in Chandelle Subdivision.
- g. Determining that the runway is a Common Area.
- h. Determining that regardless of title to the runway in the Chandelle Subdivision, Plaintiff as well as the residents of Chandelle Subdivision have special property interest in the runway as well as an express and/or implied easement and right to unobstructed use and enjoyment of the runway;
- i. Determining that regardless of title to other common area in the Chandelle Subdivision, Plaintiff as well as the residents of the Chandelle Subdivision have a special property interest in the other common areas as well as an express and/or implied easement and right to unobstructed use of the other common areas.
- j. Determining the existence of reciprocal negative easements in the Chandelle Subdivision;
- d. Determining all rights, duties, and obligations of the parties pertaining to ownership, maintenance, and use of the runway in the Chandelle Subdivision, including the validity of any runway license agreements;
- k. Such other relief as is just and proper, including, but not limited to, reforming the

Declaration and Bylaws and/or, the use of the Court's inherent equitable powers to provide relief from the consequences of accident, mistake, and/or fraud.

FOR A THIRD CAUSE OF ACTION

(Negligence as to Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., John R. Stewart, Jr., CSC Developers, LLC, and Chandelle Runway, LLC)

94. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

95. Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., John R. Stewart, Jr., CSC, and Chandelle Runway, LLC owe a duty of care to Plaintiff.

96. Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., John R. Stewart, Jr., CSC, and Chandelle Runway, LLC were negligent, negligent *per se*, careless, reckless, grossly negligent, willful, and wanton in the following particulars:

- a. Failing to timely establish the property owners association for the Chandelle Subdivision;
- b. Failing to timely and properly annex and/or subject to the Declaration all property represented and marketed as being part of the Chandelle Subdivision;
- c. Failing to record the subdivision plat referenced in the Declaration;
- d. Attempting to annex property beyond the stated deadline for annexation;
- e. Attempting to annex and bind property not owned by the Declarant;
- f. Attempting amendments to the Declaration that were improper and also that did not comply with the amendment provisions of the Declaration;
- g. Improperly altering the terms of the Declaration and Bylaws;
- h. Knowingly distributing unofficial, inaccurate, modified, and materially altered versions of the Declaration and Bylaws to Plaintiff, lot owners, and potential purchasers;
- i. Withholding the runway from being a common area of the Chandelle Subdivision

and failing to maintain the runway while purporting to exert ownership and control of the runway to the exclusion of Plaintiff;

- j. Transferring and/or allowing the transfer of the runway to Chandelle Runway, LLC;
- k. Failing to obtain title to and convey title to all property represented as common area to Plaintiff.
- l. Failing to attend meetings of the Plaintiff's membership, preventing a quorum from being obtained; and
- m. In such other particulars as shall be shown at trial.

all of which combined and concurred as a direct and proximate cause of the injuries and damages suffered by Plaintiff.

97. The Plaintiff has suffered and continues to suffer damages as a result of the foregoing breaches of duty.

98. The Plaintiff is informed and believes that it is entitled to judgment against Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., John R. Stewart, Jr., CSC, and Chandelle Runway, LLC for actual and punitive damages.

FOR A FOURTH CAUSE OF ACTION

(Unfair Trade Practices Act Violation as to Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., John R. Stewart, Jr., CSC Developers, LLC, and Chandelle Runway, LLC)
S.C. Code Ann. § 39-5-10 *et seq.*

99. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

100. This action is brought pursuant to the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*

101. CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. represented and marketed the Chandelle Subdivision as being a covenant restricted

community.

102. Upon information and belief, CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. failed to timely and properly annex and/or subject to the Declaration all property represented and marketed as being part of the Chandelle Subdivision.

103. Contrary to the terms of the official Declaration, CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. attempted to annex property into the Chandelle Subdivision and submit it to the Declaration after the deadline for Declarant's annexation of property had passed; however, they nonetheless represented and marketed such property as being covenant restricted.

104. Upon information and belief, the reason for continuing to annex property beyond the stated deadline of December 31, 2001, was to sell lots and generate a profit.

105. Upon information and belief, CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. removed said annexation deadline from the version of the Declaration they distributed to lot purchasers to conceal the fact that the annexations were untimely.

106. CSC, John R. Stewart, Jr., Douglas E. Cobb, Raymond M. Clark, Jr., and/or Marilyn N. Berry improperly and inappropriately altered the Declaration and Bylaws without proper amendment and distributed unofficial and inaccurate copies of the Declaration to Plaintiff, lot purchasers, and potential purchasers.

107. By representing that Chandelle Subdivision was a covenant restricted private aviation community, CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John Stewart, Jr. caused lot purchasers to pay substantially more for their lots than the average market value for property in this vicinity.

108. By representing that Chandelle Subdivision was a covenant restricted private aviation community, CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. caused Plaintiff to operate as a property owners association for Chandelle Subdivision as a covenant restricted community.

109. CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., Raymond M. Clark, Jr., and Chandelle Runway, LLC have participated in unfairly, deceptively, and improperly misappropriating the runway that was intended as a common area of Chandelle Subdivision.

110. Chandelle Runway, LLC's unfair and deceptive purported ownership and control of the runway is based upon a deed that predates the legal existence of Chandelle Runway, LLC, and is based on purported runway license agreements, many of which predate the existence of Chandelle Runway, LLC.

111. CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., Raymond M. Clark, Jr., and Chandelle Runway, LLC have unfairly, deceptively, and improperly asserted ownership and control of the runway by misrepresenting and concealing material information, including improperly, inappropriately, and fraudulently altering the terms of the Declaration and Bylaws and distributing the altered Declaration and altered bylaws.

112. CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., Raymond M. Clark, Jr., and Chandelle Runway, LLC unfairly and deceptively induced persons to enter into runway license agreements by misrepresenting and concealing material information, including improperly, inappropriately, and fraudulently altering the terms of the Declaration and Bylaws and distributing the altered Declaration and altered Bylaws.

113. CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., Raymond M. Clark, Jr., and Chandelle Runway, LLC have withheld or otherwise have willfully and

knowingly failed to convey title to Plaintiff with respect to property intended as common area for the Chandelle Subdivision.

114. CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., Raymond M. Clark, Jr. and Chandelle Runway, LLC have unfairly, deceptively, and improperly attempted to exclude Plaintiff and certain property owners from using the runway.

115. CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., Raymond M. Clark, Jr., and Chandelle Runway, LLC's willful and wanton actions have directly influenced commerce and trade.

116. Lot purchasers within Chandelle Subdivision failed to receive the benefit for the increased purchase price of the property due to later discovered uncertainties surrounding whether it is actually a covenant restricted planned development and due to the withholding of or misappropriation of property intended as common area of the Chandelle Subdivision by CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Raymond M. Clark, Jr., and Chandelle Runway, LLC.

117. Plaintiff has suffered damages due to later discovered uncertainties surrounding whether Chandelle Subdivision is actually a covenant restricted planned development, which provisions of the Declaration and the Bylaws (including any amendments) are valid and binding, which properties are encumbered by the Declaration, and due to common areas/amenities, including the runway, being withheld by CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Raymond M. Clark, Jr., and Chandelle Runway, LLC.

118. CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., Raymond M. Clark, Jr., and Chandelle Runway, LLC's actions are unfair and deceptive, have an impact on the public interest, and are capable of repetition and have potential for repetition.

119. The acts of CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr.,

Raymond M. Clark, Jr., and Chandelle Runway, LLC, as set forth herein, constitute a willful or knowing violation of the South Carolina Unfair Trade Practices Act.

120. As a direct and proximate result of CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., Raymond M. Clark, Jr., and Chandelle Runway, LLC's violations of the South Carolina Unfair Trade Practices Act, Plaintiff has suffered and continues to suffer damages.

121. Plaintiff is informed and believes that it is entitled to judgment against the CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., Raymond M. Clark, Jr., and Chandelle Runway, LLC for actual damages, punitive damages, treble damages and attorney's fees and costs incurred.

FOR A FIFTH CAUSE OF ACTION

(Fraudulent Misrepresentation/Negligent Misrepresentation as to Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., Raymond M. Clark, Jr., and CSC Developers, LLC)

122. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

123. CSC, John R. Stewart, Jr., Douglas E. Cobb, Raymond M. Clark, Jr., and/or Marilyn N. Berry improperly and inappropriately altered the Declaration without proper amendment and distributed unofficial and inaccurate copies of the Declaration to Plaintiff, lot purchasers, and potential purchasers, thus misrepresenting the actual terms of the Declaration and Bylaws.

124. CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. represented and marketed the Chandelle Subdivision as being a covenant restricted community.

125. The representations made by CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. concerning Chandelle Subdivision as being a covenant restricted community are false to the extent that they may have failed to properly annex and

encumber the properties in Chandelle Subdivision, as set forth above.

126. CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. represented that certain property was part of or would be part of the Chandelle Subdivision, a covenant restricted community.

127. The representations made by CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. concerning the property that was part of or would be part of the Chandelle Subdivision and bound by the Declaration were false to the extent that they may have failed to properly annex and encumber all such properties and to the extent that they failed to convey certain common areas to Plaintiff.

128. CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. also represented that membership in Plaintiff, as the property owners association, was mandatory by virtue of taking title to a lot within the community.

129. The representations made by CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. regarding mandatory membership in the Association were false to the extent that they may have failed to properly annex and encumber the properties in Chandelle Subdivision and/or failed to timely establish the Association, as set forth above.

130. The lack of an annexation deadline in the altered Declaration, is a false representation because it conflicts with the terms of the official Declaration.

131. CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. knew or should have known of the falsity of their representations.

132. CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. had a financial and pecuniary interest in making the aforementioned representations and also had a duty to see that truthful information was conveyed to Plaintiff, purchasers, and potential purchasers.

133. CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. made these representations for the purpose of selling lots within the Chandelle Subdivision, which they advertised as a private aviation community with mandatory membership in Plaintiff.

134. The Plaintiff and its members justifiably relied upon the representations of CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr., which were material, by purchasing lots in the community and operating a covenant restricted community.

135. The Plaintiff and its members were not aware of the falsity of the representations.

136. Plaintiff had a right to rely on the representations of CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. and did in fact make such reliance.

137. As a direct and proximate result of CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr.'s misrepresentations, Plaintiff has and continues to suffer damages.

138. Plaintiff is informed and believes that it is entitled to judgment against CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and/or John R. Stewart, Jr. for actual and punitive damages for their fraudulent and/or negligent misrepresentations.

FOR A SIXTH CAUSE OF ACTION
(Breach of Contract as to CSC Developers, LLC)

139. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

140. Under South Carolina law, the Declaration for Chandelle Subdivision constitutes a binding contract.

141. CSC violated the contract by one or more of the following particulars:

- a. Failing to record the subdivision plat as required in the recitals to the Declaration;

- b. Failing to timely establish the property owners association for the Chandelle Subdivision;
- c. Failing to timely and properly annex and/or subject to the Declaration all property represented and marketed as being part of the Chandelle Subdivision;
- d. Attempting amendments to the Declaration that were improper and also that did not comply with the amendment provisions of the Declaration;
- e. By improperly, inappropriately, and fraudulently altering the terms of the Declaration and Bylaws and distributing altered versions of the same;
- f. Failing to obtain title to and failing to convey title to all property represented as common area to Plaintiff;
- g. Failing to attend meetings of the Plaintiff's membership, preventing a quorum from being obtained;
- h. Withholding the runway from being a common area of the Chandelle Subdivision and misappropriating the runway;
- i. Participating in deeding the runway to Chandelle Runway, LLC and fraudulently inducing persons to enter into runway license agreements based on altered versions of the Declaration and Bylaws, and
- j. Such other particulars as shall be shown at trial.

142. As a direct and proximate result of CSC's breach of contract, Plaintiff has suffered and continues to suffer damages.

143. Plaintiff is informed and believes that it is entitled to judgment against CSC for actual damages for its breach of contract and attorney's fees.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act – as to CSC Developers, LLC)

144. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

145. Under South Carolina law, the Declaration for Chandelle constitutes a binding contract.

146. CSC violated the contract by one or more of the following particulars:

- a. Failing to record the subdivision plat as required in the recitals to the Declaration;
- b. Failing to timely establish the property owners association for the Chandelle Subdivision;
- c. Failing to timely and properly annex and/or subject to the Declaration all property represented and marketed as being part of the Chandelle Subdivision;
- d. Attempting amendments to the Declaration that were improper and also that did not comply with the amendment provisions of the Declaration;
- e. By improperly, inappropriately, and fraudulently altering the terms of the Declaration and Bylaws and distributing altered versions of the same;
- f. Failing to obtain title to and failing to convey title to all property represented as common area to Plaintiff;
- g. Failing to attend meetings of the Plaintiff's membership, preventing a quorum from being obtained;
- h. Withholding the runway from being a common area of the Chandelle Subdivision and misappropriating the runway;
- i. Participating in deeding the runway to Chandelle Runway, LLC and fraudulently inducing persons to enter into runway license agreements based on altered versions of the Declaration and Bylaws, and
- j. Such other particulars as shall be shown at trial.

147. CSC demonstrated fraudulent intent and fraudulent actions by circulating an unofficial and inaccurate copy of the Declaration and Bylaws to the Plaintiff, purchasers, and

potential purchaser, which lacked the provision relating to the Declarant's deadline for annexing property into the Association and also contained invalid and inaccurate provisions concerning ownership and control of the runway.

148. The purpose for circulating this unofficial copy of the Declaration was to conceal the fact that CSC lacked the ability continue to annex property into Chandelle and to conceal or misrepresent ownership and control of the runway for financial gain.

149. Upon information and belief, CSC intentionally and fraudulently failed to attend meetings of Plaintiff's membership in an effort to hinder or impair Plaintiff's ability to operate and function as the property owners association for the Chandelle Subdivision;

150. As a direct and proximate result of CSC's breach of contract accompanied by fraudulent acts, Plaintiff has suffered and continues to suffer damages.

151. Plaintiff is informed and believes that it is entitled to judgment against CSC for actual and punitive damages for CSC's breach of contract accompanied by fraudulent acts as well as attorney's fees.

FOR AN EIGHTH CAUSE OF ACTION

(Tortious Interference With a Contractual Relationship – as to Chandelle Runway, LLC , Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr. and John R. Stewart, Jr.)

152. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

153. Restrictive Covenants, including the Declaration, are contractual in nature.

154. At all times relevant hereto, Chandelle Runway, LLC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and John R. Stewart, Jr. knew or should have known of the existence of the Declaration.

155. Chandelle Runway, LLC interfered with the Declaration in the following particulars:

- a. Improperly claiming ownership and control of the runway;

- b. Withholding the runway from being a common area of the Chandelle Subdivision;
- c. Preventing or otherwise interfering with Plaintiff's and the lot owner's use and enjoyment of the runway;
- d. Attempting to require license agreements to use the runway based on improperly and fraudulently altered versions of the Declaration and Bylaws, and contrary to the terms of the official Declaration; and
- e. Fraudulently inducing certain property owners to enter into runway license agreements based on misrepresentations and fraudulently altered versions of the Declaration and Bylaws;
- f. Interfering with the scheme of ownership, maintenance, control, and use of the runway as set forth in the Declaration; and
- g. Such other particulars as shall be shown at trial.

156. Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and John R. Stewart, Jr. interfered with the Declaration in the following particulars:

- a. In aiding and abetting the actions of CSC as set forth hereinabove in the causes of action against CSC for Breach of Contract and Breach of Contract Accompanied by a Fraudulent Act;
- b. By improperly, inappropriately, and fraudulently altering the terms of the Declaration and Bylaws and distributing altered versions of the same; and
- c. Such other particulars as shall be shown at trial.

157. Plaintiff has suffered and will continue to suffer damages as a direct and proximate result of the foregoing tortious interference with the Declaration.

158. Plaintiff is informed and believes that it is entitled to actual and punitive damages.

FOR A NINTH CAUSE OF ACTION
(Negligent Construction and Maintenance of the Runway - as to Chandelle Runway, LLC,

**CSC Developers, LLC, Douglas E. Cobb, Marilyn N. Berry, Raymond M. Clark, Jr.,
and John R. Stewart, Jr.)**

159. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

160. CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., Raymond M. Clark, Jr., and Chandelle Runway, LLC owed Plaintiff an obligation to construct and maintain the runway in a good and safe condition, as well as turn it over to Plaintiff in a state of good repair or provide funds sufficient to bring the runway up to a state of good repair.

161. CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., Raymond M. Clark, Jr., and Chandelle Runway, LLC have breached their duties by one or more of the following particulars:

- a. Failing to remediate poor drainage making it impossible to taxi due to standing water while purporting to exert ownership and control of the runway;
- b. Failing to regularly mow and landscape the runway and taxi areas while purporting to exert ownership and control of the runway; and
- c. Failing to remediate grading issues which allows water to undermine the pavement of the runway while purporting to exert ownership and control of the runway.
- d. Failing to turn the runway over to Plaintiff in a state of good repair or provide funds sufficient to bring the runway up to a state of good repair.

162. As a direct and proximate result of CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., Raymond M. Clark, Jr., and Chandelle Runway, LLC's breach of duty, Plaintiff has suffered and continues to suffer damages.

163. Plaintiff is informed and believes that it is entitled to judgment against the CSC, Marilyn N. Berry, Douglas E. Cobb, John R. Stewart, Jr., Raymond M. Clark, Jr., and Chandelle Runway, LLC for actual and punitive damages.

FOR AN TENTH CAUSE OF ACTION

(Breach of Fiduciary Duty - as to CSC Developers, LLC, John R. Stewart, Jr., Marilyn N. Berry, Raymond M. Clark, Jr., and Douglas E. Cobb)

164. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

165. Due to their roles in the development of the Chandelle Subdivision, CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and John R. Stewart, Jr. owed the Plaintiff and the lot owners fiduciary duties, including duties to properly develop the Chandelle Subdivision, to properly bind all property to the Declaration, to hold and maintain the common areas, including the runway, for the benefit of the Chandelle Subdivision and Plaintiff, and to turn over the common areas in good repair or provide funds sufficient to bring them up to a state of good repair.

166. CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and John R. Stewart, Jr. breached their fiduciary duties by one or more of the following particulars:

- a. Transferring and/or allowing the transfer of the runway to Chandelle Runway, LLC;
- b. Failing to adequately construct, maintain and repair the runway and taxiways;
- c. Failing to properly establish the Chandelle Subdivision and to properly encumber the property;
- d. Failing to timely establish the property owners association for the Chandelle Subdivision;
- e. Failing to record the subdivision plat referenced in the Declaration;
- f. Failing to timely and properly annex and/or subject to the Declaration all property represented and marketed as being part of the Chandelle Subdivision;
- g. Attempting amendments to the Declaration that were improper and also that did not comply with the amendment provisions of the Declaration;

- h. Improperly altering the terms of the Declaration and Bylaws;
- i. Knowingly distributing unofficial, inaccurate, modified, and materially altered versions of the Declaration and Bylaws to Plaintiff, lot owners, and potential purchasers;
- j. Withholding the runway from being a common area of the Chandelle Subdivision;
- k. Failing to obtain title to and convey title to all property represented as common area to plaintiff;
- l. Failing to attend meetings of the Plaintiff's membership, preventing a quorum from being obtained; and
- m. In such other particulars as shall be shown at trial.

167. As a direct and proximate result of CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and John R. Stewart, Jr.'s breach of fiduciary duty, Plaintiff has suffered and continues to suffer damages.

168. Plaintiff is informed and believes it is entitled to judgment against CSC, Marilyn N. Berry, Douglas E. Cobb, Raymond M. Clark, Jr., and John R. Stewart, Jr. for actual and punitive damages.

FOR A ELEVENTH CAUSE OF ACTION
(Reciprocal Negative Easements – as to all Defendants)

169. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

170. The development of Chandelle subdivision created negative reciprocal easements.

171. It was represented that there was a common grantor of the lots within the Chandelle Subdivision.

172. The developer(s) of Chandelle Subdivision published a general plan or scheme of restrictions for Chandelle subdivision.

173. The developer(s) of Chandelle subdivision subdivided lots and designated the lots

in Chandelle Subdivision as subject to the general plan or scheme of restrictions.

174. The developer(s) of Chandelle Subdivision created restrictive covenants for the development, and these covenants run with the land in accordance with the general plan or scheme developed by the developer(s).

175. In granting the lots subject to the general scheme and restrictions, the Plaintiff and the owners of the lots stood to benefit from the scheme.

176. The general plan or scheme of restrictions evidence an intent that the entire tract be similarly treated, so that once the plan was effectively put into operation, the burden placed upon the land conveyed is by operation of law reciprocally placed upon the land retained.

177. Plaintiff seeks an order declaring the existence of reciprocal negative easements and injunctive relief in order to prevent any further violation of the easements.

FOR A TWELFTH CAUSE OF ACTION

**(Civil Conspiracy – as to CSC Developers, LLC, Chandelle Runway, LLC,
John R. Stewart, Jr., Marilyn N. Berry, Raymond M. Clark, Jr., and Douglas E. Cobb)**

178. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

179. CSC, Chandelle Runway, LLC, John R. Stewart, Jr., Marilyn N. Berry, Raymond M. Clark, Jr., and Douglas E. Cobb combined and conspired to misappropriate the runway intended as a common area of the Chandelle Subdivision for the purpose of injuring the Plaintiff in the following particulars:

- a. Removing website postings clearly stating that the runway would be transferred to the Plaintiff;
- b. Fraudulently, improperly, and inappropriately altering the terms of the Declaration and Bylaws;
- c. Knowingly distributing unofficial, inaccurate, modified, and materially altered versions of the Declaration and Bylaws to Plaintiff, lot owners, and potential

purchasers to deceive Plaintiff, lot owners, and potential purchasers and conceal the true provisions of the Declaration and Bylaws expressing clear intent that the runway be a common area;

- d. Attempting improper amendments to Declaration in an attempt to improperly alter ownership and control of the runway, some of which were predicated on the unofficial and improperly modified Declaration and Bylaws;
- e. Transferring and/or aiding and abetting in the transfer of title of the runway to Chandelle Runway, LLC contrary to the terms of the Official Declaration and thus misappropriating or converting it for improper financial gain and personal use, including seeking to require license agreements contrary to the terms of the Official Declaration; and
- f. Such other particulars as shall be shown at trial.

180. Plaintiff has suffered special damages as a result of such civil conspiracy, including:

- a. Attorney's fees and costs incurred to discover the true terms of the Declaration, including the cost of a title search;
- b. Attorney's fees and costs incurred in efforts to recover the runway as a common area of the Chandelle Subdivision, including pursuing this legal action;
- c. Attorney's fees and costs incurred with respect to addressing uncertainties surrounding ownership and control of the runway, including those attorney's fees and costs incurred with respect to obtaining legal advice concerning ownership, maintenance, and control of the runway;
- d. Lack of reserve funds to address ongoing maintenance and drainage concerns; and
- e. Such other particulars as shall be shown at trial.

181. CSC, John R. Stewart, Jr., and Douglas E. Cobb combined and conspired to interfere with the operations of Plaintiff by failing or refusing to attend meetings of Plaintiff's membership, thereby, preventing a quorum from being obtained to conduct business and hold elections of directors.

182. Plaintiff has suffered special damages, including attorney's fees and costs incurred in dealing with questions and challenges raised concerning the validity of Plaintiff's actions due to such civil conspiracy.

183. Plaintiff is informed and believes that it is entitled to judgment against CSC, Chandelle Runway, LLC, John R. Stewart, Jr., Marilyn N. Berry, Raymond M. Clark, Jr., and Douglas E. Cobb for special damages.

FOR A THIRTEENTH CAUSE OF ACTION
**(Piercing Corporate Veil – as to CSC Developers, LLC, John R. Stewart, Jr.,
 Raymond Clark, Jr., and Douglas E. Cobb)**

184. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

185. Upon information and belief, the controlling members of CSC have disregarded the corporate form, have failed to observe corporate formalities, and CSC has merely acted as a façade for the operations for its controlling members

186. Injustice or fundamental unfairness will occur if the corporate veil is not pierced and the acts of CSC are not regarded as the individual acts of John R. Stewart, Jr., Raymond Clark, Jr., and Douglas E. Cobb.

187. Therefore, the corporate veil of CSC should be pierced and John R. Stewart, Jr., Raymond Clark, Jr. and Douglas E. Cobb should be personally liable for the acts of CSC.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays unto this Honorable Court as follows:

1. Declaratory Judgment pursuant to Plaintiff's First Cause of Action, and as set

forth herein;

2. An order quieting title pursuant to Plaintiff's Second Cause of Action, and as set forth herein;

3. Judgment for actual and punitive damages as set forth in Plaintiff's Third Cause of Action for Negligence;

4. Judgment for actual damages, punitive damages, treble damages and attorney's fees as set forth in Plaintiff's Fourth Cause of Action for Unfair Trade Practices Act Violations;

5. Judgment for actual and punitive damages as set forth in Plaintiff's Fifth Cause of Action for Fraudulent Misrepresentation/Negligent Misrepresentation;

6. Judgment for actual damages and attorney's fees as set forth in Plaintiff's Sixth Cause of Action for Breach of Contract;

7. Judgment for actual damages, punitive damages, and attorney's fees as set forth in Plaintiff's Seventh Cause of Action for Breach of Contract Accompanied by Fraudulent Act;

8. Judgment for actual and punitive damages as set forth in Plaintiff's Eighth Cause of Action for Tortious Interference with a Contractual Relationship;

9. Judgment for actual and punitive damages as set forth in Plaintiff's Ninth Cause of Action for Negligent Construction and Maintenance of the Runway;

10. Judgment for actual and punitive damages as set forth in Plaintiff's Tenth Cause of Action for Breach of Fiduciary Duty;

11. An order declaring the existence of Reciprocal Negative Easements and injunctive relief as set forth in Plaintiff's Eleventh Cause of Action for Reciprocal Negative Easements;

12. Judgment for damages as set forth in Plaintiff's Twelfth Cause of Action for Civil Conspiracy;

13. An order piercing the corporate veil of CSC as set forth in Plaintiff's Thirteenth

Cause of Action for Piercing the Corporate Veil.

14. Attorney's fees and costs incurred; and

15. For such other and further relief as may be just and proper.

Plaintiff demands a jury trial.

MCCABE, TROTTER & BEVERLY, P.C.

s/ Ely O. Grote

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ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina
July 19, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
C.A. No. 2016-CP-42-01854

Chandelle Property Owners Association,)

Plaintiff,)

vs.)

**ANSWER, COUNTER-CLAIM AND
THIRD PARTY COMPLAINT OF
DEFENDANTS, JAMES DOUGLAS
ARMSTRONG, JANE ARMSTRONG,
WARREN JOHNSON, RHONDA
JOHNSON, JOHN K. PAYNE, & RUTH
G. PAYNE**

CSC Developers, LLC, Chandelle)

Runway, LLC, 331 South, LLC, Charlie)

M. Allison, Janice H. Allison, James)

Douglas Armstrong and Jane Armstrong,)

Marilyn N. Berry, Stephen Berry, James)

P. Brockman, Sr., Douglas E. Cobb,)

Nicole Cobb, Kenneth L. Galloway, Molly)

C. Galloway, Warren Johnson, Rhonda)

Johnson, Lawrence E. Lewis, Barbara L.)

Lewis, John K. Payne, Ruth G. Payne,)

John R. Stewart, Jr., Angela Tanner,)

Helmut Tuemmel, Silvia L. Tuemmel,)

Jane Van Wieren as Trustee of the Greer)

R.G. Irrevocable Property Trust dated)

October 25, 2006, Martin Tuemmel,)

Raymond M. Clark Jr., and also all other)

persons unknown, claiming any right, title,)

Estate, interest in or lien upon the real)

estate described in the complaint herein.)

Defendants.)

James Douglas Armstrong and Jane)

Armstrong, Warren Johnson, Rhonda)

Johnson, John K. Payne and Ruth G.)

Payne)

Third Party Plaintiffs)

vs)

Billy J. Israel, Bruce R. Goldberg, Cindy)

R. Goldberg and George Lynn Fleming in)

their personal and official capacities,)

Third Party Defendants

Defendants and Third Party Plaintiffs, James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne and Ruth G. Payne (hereinafter collectively, "Defendants") in answering the Complaint of the Plaintiff, asserting certain Counter Claims and by way of Third Party Complaint against Third Party Defendants, Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg and George Lynn Flemming (hereinafter "Third Party Defendants" or TPD's"), herein submit their Answer, Counter Claims and Third Party Complaint consistent herewith.

FOR A FIRST DEFENSE

(General Denials)

1. Each and every allegation of Plaintiff's Claim, not herein specifically admitted, is denied.
2. Defendants are without information or belief as to allegations of Paragraphs 1 through 12, Paragraphs 15 & 16, and Paragraphs 21 through 83, of the Plaintiff's Second Amended Complaint and therefore deny the same and demand strict proof thereof.
3. Defendants deny the allegations of Paragraph 84 of the Plaintiff's Second Amended Complaint.
4. Defendants admit the allegations of Paragraphs 13 & 14, Paragraphs 17 & 18, and Paragraphs 19 & 20 of the Plaintiff's Second Amended Complaint.
5. With respect to Paragraphs 85 through 89 (and all subparts thereto) of the Plaintiff's Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same.

6. With respect to Paragraphs 90 through 93 (and all subparts thereto) of the Plaintiff's Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same.

7. With respect to Paragraphs 94 through 98 (and all subparts thereto) of the Plaintiff's Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same. Further, such allegations are not directed toward these Defendants and no response is required from these Defendants.

8. With respect to Paragraphs 99 through 121 (and all subparts thereto) of the Plaintiff's Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same. Further, such allegations are not directed toward these Defendants and no response is required from these Defendants.

9. With respect to Paragraphs 122 through 138 (and all subparts thereto) of the Plaintiff's Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same. Further, such allegations are not directed toward these Defendants and no response is required from these Defendants.

10. With respect to Paragraphs 139 through 143 (and all subparts thereto) of the Plaintiff's Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same. Further, such allegations are not directed toward these Defendants and no response is required from these Defendants.

11. With respect to Paragraphs 144 through 151 (and all subparts thereto) of the Plaintiff's Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same. Further, such allegations are not directed toward these Defendants and no response is required from these Defendants.

12. With respect to Paragraphs 152 through 158 (and all subparts thereto) of the Plaintiff's Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same. Further, such allegations are not directed toward these Defendants and no response is required from these Defendants.

13 With respect to Paragraphs 159 through 163 (and all subparts thereto) of the Plaintiff's Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same. Further, such allegations are not directed toward these Defendants and no response is required from these Defendants.

14. With respect to Paragraphs 164 through 168 (and all subparts thereto) of the Plaintiff's Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same. Further, such allegations are not directed toward these Defendants and no response is required from these Defendants.

15. With respect to Paragraphs 169 through 177 (and all subparts thereto) of the Plaintiff's Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same. Furthermore, there is no allegation in the Plaintiff's Complaint that these Defendants have not "conformed" to the common scheme of development.

16. With respect to Paragraphs 178 through 183 (and all subparts thereto) of the Plaintiff's Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same. Further, such allegations are not directed toward these Defendants and no response is required from these Defendants.

17. With respect to Paragraphs 184 through 187 (and all subparts thereto) of the Plaintiff's Complaint, the Defendants are without information or belief as to such allegations

and therefore deny the same. Further, such allegations are not directed toward these Defendants and no response is required from these Defendants.

FOR A SECOND DEFENSE

(Affirmative Defenses)

18. Defendants incorporate and re-allege the allegations contained in its defenses and replies except as such are inconsistent herein.

19. Defendant herein asserts the affirmative defenses of Laches, Statute of Frauds, and Waiver.

FOR A THIRD DEFENSE

(Lack of Standing)

20. Defendants incorporate and re-allege the allegations contained in its defenses and replies except as such are inconsistent herein.

21. Defendants herein aver that the purported Board Members of the Plaintiff, Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg, and George Lynn Fleming, have no authority to bring the Complaint against these Defendants or any of Plaintiff's other claims for the following reasons to wit:

a. Assuming the purported Board Members were properly installed, these purported "Board Members" terms have expired. Section 5.3 of the By-Laws requires that the Board of Directors hold a meeting annually and Section 6.4 of the By-Laws provides that, "[t]he initial terms of the elected Directors shall be fixed at the time of their election as they themselves shall determine in order to establish a system of two (2) year terms in which at least one-half (1/2) of the Board is re-elected in each year. At the expiration of the initial term of office for each respective Director, a successor shall be elected to serve two (2) years.

Each director shall hold office until such Director's successor shall have been elected by the Association and qualified." Furthermore, Section 9.2 provides that, "The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members." Section 9.3 provides, "[t]he officers of the Association shall be elected annually by the Board, and each shall hold the office for one (1) year unless he shall sooner resign or shall be removed or otherwise disqualified to serve

b. Billy J. Israel was first appointed to the Board of Directors on January 15, 2010 by the Declarant (See, Exhibit E to Plaintiff's Memorandum in Opposition to John Payne, Ruth Payne, James D. Armstrong, Jane Armstrong, Warren Johnson and Rhonda Johnson's Motion to Dismiss. His term would have expired January 15, 2012.

c. Cindy R. Goldberg was first appointed to the Board of Directors on January 15, 2010 by the Declarant (See, Exhibit E to Plaintiff's Memorandum in Opposition to John Payne, Ruth Payne, James D. Armstrong, Jane Armstrong, Warren Johnson and Rhonda Johnson's Motion to Dismiss. Her term would have expired January 15, 2012.

d. Bruce R. Goldberg was first appointed to the Board of Directors on January 15, 2010 by the Declarant (See, Exhibit E to Plaintiff's Memorandum in Opposition to John Payne, Ruth Payne, James D. Armstrong, Jane Armstrong, Warren Johnson and Rhonda Johnson's Motion to Dismiss. His term would have expired January, 15, 2012.

e. George Lynn Fleming was never rightfully elected to the Board of Directors under the provisions of the By-Laws as there has never been no vote to re-elect a Board of Directors.

22. Therefore, each of these Directors are acting without authority and this action should be dismissed pursuant to SCRCP 12(b)(1).

FOR A FOURTH DEFENSE

(Equitable Estoppel/Unclean Hands)

23. Defendants incorporate and re-allege the allegations contained in its defenses and replies except as such are inconsistent herein.

24. Plaintiff asserts that these Defendants are subject the Restrictions and Covenants of the Chandelle Subdivision and that Plaintiffs by and through their "Directors" are entitled to bring this action. However, even if the Defendants are subject to the Restrictions and Covenants, the Plaintiff has intentionally refused the Defendants' right to vote and participate in the governance of the Association, and therefore, Plaintiff should be estopped from claiming that the Defendants are governed by Plaintiff's Director's rule.

25. Furthermore, if Plaintiff's "Directors" were acting in good faith, then its claim that no member of the association can vote to replace them because the Declarant would never make itself available at the meeting is simply untenable. It would be much easier to take the position that since the Declarant failed to appear at a meeting, it waived the right to be present and constitute a quorum. Such a position then forces the Declarant to take action to disturb the operation of the Association. Instead, the purported "Board" decided to disturb the operation of the Association and litigate the technicalities of the provisions of the Restrictions and Covenants.

26. The purported Board of Directors' decision to put the interest of the Declarant over the interest of its purported members in oxymoronic at best and gives the whiff that the rogue Director's desires to be in a position of power outweigh rational decisions of reasonable business men and women.

27. As such, the Plaintiff's assertions against these defendants should be dismissed and these Defendants would aver that those who entered into the agreements to be bound by the purported Board's decisions be subject to the consequences of the Board's actions and not these Defendants.

FOR A FIRST COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Conversion)

28. Defendants incorporate and re-allege the allegations contained in its defenses and replies except as such are inconsistent herein.

29. Defendants gave money to the TPD's under the pretense that the money would be used to maintain the common areas.

30. TPD's have not used the Defendant's money for the purposes intended and have instead used such money to fund this lawsuit and therefore assumed and exercised the rights of ownership over the money belonging to Defendants exclusive to the rights of the Defendants to have these funds used for the intended purposes.

31. TPD's committed the conversion was willful, intentional, recklessly and with conscious indifference to the rights of Defendants to receive the services they were to receive in exchange for the funds delivered to TPD's.

32. As such, TPD's are liable to Defendants in the amount of the sums paid, interest from the day of conversion and punitive damages.

FOR A SECOND COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Breach of Fiduciary Duty/Breach of Good Faith)

33. Defendants incorporate and re-allege the allegations contained in its defenses and replies except as such are inconsistent herein.

34. As purported Board Members and Officers of the Plaintiff corporation, the TPD's are fiduciaries to the Members of the Corporation. Furthermore, TPD's are charged by S.C. Code of Laws § 33-8-300 to act in good faith, in an ordinarily prudent person in a like position and in a manner that is reasonably believed to be in the best interest of the Corporation.

35. TPD's have breached these duties in collecting money under false pretenses and not using said money for the intended purposes.

36. Furthermore, if Plaintiff's "Directors" were acting in good faith, then its claim that no member of the association can vote to replace them because the Declarant would never make itself available at the meeting is simply untenable. It would be much easier to take the position that since the Declarant failed to appear at a meeting, it waived the right to be present and constitute a quorum.

37. The purported Board of Directors' decision to put the interest of the Declarant over the interest of its purported members is oxymoronic at best and gives the whiff that the rogue Director's desires to be in a position of power, outweigh rational decisions of reasonable business men and women.

38. As such TPD's are liable to said sums paid with pre-judgment interest thereon.

FOR A THIRD COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Equitable Indemnity)

39. Defendants incorporate and re-allege the allegations contained in its defenses and replies except as such are inconsistent herein.

40. TPD's have caused through their unreasonable undertakings to cause these Defendants to be subjected to this lawsuit and to have to defend themselves.

41. Defendants are entitled to equitable indemnification from TPD's in the form of the attorney's fees and costs of this action.

FOR A FOURTH COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Tortious Interference with Contractual Relations)

42. Defendants incorporate and re-allege the allegations contained in its defenses and replies except as such are inconsistent herein.

43. Defendants each had contractual agreements with Chandelle Runway, LLC to use the runway in the Chandelle subdivision.

44. TPD's were aware of such contractual relationships.

45. TPD's have intentionally caused material breaches with Chandelle Runway, LLC's ability to perform the requirements of the contracts which has caused Defendants damages in the form of a diminished ability to use the runway or otherwise participate in the maintenance of the runway which is causing accelerated deterioration of the runway.

46. TPD's actions are without justification and Defendants have been damaged in an amount to be determined by the trier of fact.

FOR A FIFTH COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Fraud)

47. Defendants incorporate and re-allege the allegations contained in its defenses and replies except as such are inconsistent herein.

48. In billing for and collecting annual sums from Defendants to pay for common area maintenance, TPD's represented to Defendants that said sums would actually be used to pay for common area maintenance and upkeep.

49. TPD's later actions in using the funds to pay for lawsuits demonstrates the falsity of TPD's representations, that TPD's knew of the falsity of their representations and that said representations were material in coaxing Defendants to pay the money and therefore act on the representations of TPD's.

50. Defendants were ignorant as to the falsity of TPD's representations.

51. Defendants relied upon the truth of TPD's representations and had a right to rely such representations.

52. As a result of the TPD's fraudulent actions, Defendants have suffered damages in the form of the lost benefit of the services they would have received if the TPD's had used the money for the intended purposes, and the actual costs incurred in paying for the services themselves.

FOR A SIXTH COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Declaratory Judgment)

53. Defendants incorporate and re-allege the allegations contained in its defenses and replies except as such are inconsistent herein.

54. This action is brought pursuant to S.C. Code of Laws § 15-53-10 *et seq.* seeking an Order of the Court to determine the rights of the parties in the following particulars to wit:

a. Is it an improper action of the purported "Board of Directors" to use annual assessments to fund the current lawsuit? (See Restrictions and Covenants, Section 11.1(a) and 11.4)

b. Is it an improper action of the purported "Board of Directors" to levy special assessments for any other purpose, but for those enumerated in Section 11.1 (b) and 11.5 of the Restrictions and Covenants?

c. Even if implied negative or reciprocal easements are imposed on these Defendants, does that necessarily impose a burden to be governed by the Plaintiff Association, or does simply impose an obligation to use and construct dwellings on the Defendant's property in accordance with the "common scheme" of development?

d. Even if implied negative or reciprocal easements are imposed on these Defendants, is that imposition of restrictions retroactive or prospective as to these Defendant's imposed obligations?

e. Are the amendments to the restrictive covenants executed and filed by CSC Developers, LLC in Deed Books 72-G, Page 843 (recorded 7/10/2000) and Deed Book 88-H, Page 488 (recorded April 11, 2007) valid and enforceable?

f. Are the amendments to the restrictive covenants executed and filed by the Board of Directors in Deed Books 99-L, Page 999 (recorded 11/02/2011) and Deed Book 101-Q, Page 96 (recorded 09/13/2012) valid and enforceable?

WHEREFORE, these Defendants pray as follows:

1. For a dismissal of Plaintiff's Complaint with prejudice;
2. An award of the attorneys fees and costs associated with this action pursuant to Section 13.9 of the Restrictions and Covenants;
3. A finding for these Defendants on their claim of entitlement to Equitable Estoppel;
4. A finding for these Defendants on their Counterclaim and Third Party

- Complaint for Conversion along with actual and punitive damages;
5. A finding for these Defendants on their Counterclaim and Third Party Complaint for Breach of Fiduciary Duty and Breach of Good Faith along with actual damages;
 6. A finding for these Defendants on their Counterclaim and Third Party Complaint for Equitable Indemnity;
 7. A finding for these Defendants on their Counterclaim and Third Party Complaint for Tortious Interference with Contractual Relations along with actual and punitive damages;
 8. A finding for these Defendants on their Counterclaim and Third Party Complaint for Fraud along with actual and punitive damages;
 9. A ruling regarding the declaratory judgment cause of action;
 10. An award of prejudgment interest; and
 11. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/ Wendell L. Hawkins
 Wendell L. Hawkins (S.C. Bar #: 13583)
 Aimee V. Leary (S.C. Bar #: 100657)
 Wendell L. Hawkins, PA
 103-C Regency Commons Dr. Greer, SC 29650
 (864) 848-9370 (Ph) (864) 848-9759 (Fax)
 wlh@wlhawkinslawfirm.com
 avl@wlhawkinslawfirm.com
 Attorneys for Defendant

Greer, South Carolina
 August 15, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
C.A. No. 2016-CP-42-01854

Chandelle Property Owners Association,)

Plaintiff,)

vs.)

**ANSWER, COUNTER-CLAIM AND
THIRD PARTY COMPLAINT OF
DEFENDANT JANE VAN WIEREN AS
TRUSTEE OF THE GREER R.G.
IRREVOCABLE PROPERTY TRUST
DATED OCTOBER 25, 2006**

CSC Developers, LLC, Chandelle)
Runway, LLC, 331 South, LLC, Charlie)
M. Allison, Janice H. Allison, James)
Douglas Armstrong and Jane Armstrong,)
Marilyn N. Berry, Stephen Berry, James)
P. Brockman, Sr., Douglas E. Cobb,)
Nicole Cobb, Kenneth L. Galloway, Molly)
C. Galloway, Warren Johnson, Rhonda)
Johnson, Lawrence E. Lewis, Barbara L.)
Lewis, John K. Payne, Ruth G. Payne,)
John R. Stewart, Jr., Angela Tanner,)
Helmut Tuemmel, Silvia L. Tuemmel,)
Jane Van Wieren as Trustee of the Greer)
R.G. Irrevocable Property Trust dated)
October 25, 2006, Martin Tuemmel,)
Raymond M. Clark Jr., and also all other)
persons unknown, claiming any right, title,)
Estate, interest in or lien upon the real)
estate described in the complaint herein.)
Defendants.)

James Douglas Armstrong and Jane)
Armstrong, Warren Johnson, Rhonda)
Johnson, John K. Payne and Ruth G.)
Payne)

Third Party Plaintiffs)

vs)

Billy J. Israel, Bruce R. Goldberg, Cindy)
R. Goldberg and George Lynn Fleming in)
their personal and official capacities,)

Third Party Defendants

Defendant and Third Party Plaintiff, Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006 (hereinafter, "JVW" or "Defendant") in answering the Complaint of the Plaintiff, asserting certain Counter Claims and by way of Third Party Complaint against Third Party Defendants, Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg and George Lynn Flemming (hereinafter "Third Party Defendants" or TPD's"), herein submit their Answer, Counter Claims and Third Party Complaint consistent herewith.

FOR A FIRST DEFENSE

(General Denials)

1. Each and every allegation of Plaintiff's Claim, not herein specifically admitted, is denied.
2. Defendant is without information or belief as to allegations of Paragraphs 1 through 23, Paragraphs 25 through 28, Paragraphs 30 through 89 (and all subparts thereto) of the Plaintiff's Second Amended Complaint and therefore denies the same and demands strict proof thereof.
3. Defendant admits the allegations of Paragraph 29 of the Plaintiff's Second Amended Complaint.
4. Defendant admits so much of the allegations Paragraphs 24 of the Plaintiff's Second Amended Complaint in that Jane Van Wieren is the Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006 and the owner of property that lies in the purported Chandelle Subdivision. To the extent the remaining allegations infer that JVW's property is subject to the restrictions and covenants which are the object of this litigation,

such allegations are legal conclusions that require no response, but to the extent a response is required such allegation are denied and JVW demands strict proof thereof.

5. With respect to Paragraphs 90 through 93 (and all subparts thereto) of the Plaintiff's Second Amended Complaint, the Defendant is without information or belief as to such allegations and therefore deny the same.

6. With respect to Paragraphs 94 through 98 (and all subparts thereto) of the Plaintiff's Second Amended Complaint, the Defendant is without information or belief as to such allegations and therefore deny the same. Further, such allegations are not directed toward this Defendant and no response is required from this Defendant.

7. With respect to Paragraphs 99 through 121 (and all subparts thereto) of the Plaintiff's Second Amended Complaint, the Defendant is without information or belief as to such allegations and therefore denies the same. Further, such allegations are not directed toward this Defendant and no response is required from this Defendant.

8. With respect to Paragraphs 122 through 138 (and all subparts thereto) of the Plaintiff's Second Amended Complaint, the Defendant is without information or belief as to such allegations and therefore denies the same. Further, such allegations are not directed toward this Defendant and no response is required from this Defendant.

9. With respect to Paragraphs 139 through 143 (and all subparts thereto) of the Plaintiff's Complaint, the Defendant is without information or belief as to such allegations and therefore denies the same. Further, such allegations are not directed toward this Defendant and no response is required from this Defendant.

10. With respect to Paragraphs 144 through 151 (and all subparts thereto) of the Plaintiff's Second Amended Complaint, the Defendant is without information or belief as to

such allegations and therefore denies the same. Further, such allegations are not directed toward this Defendant and no response is required from this Defendant.

11. With respect to Paragraphs 152 through 158 (and all subparts thereto) of the Plaintiff's Second Amended Complaint, the Defendant is without information or belief as to such allegations and therefore denies the same. Further, such allegations are not directed toward this Defendant and no response is required from this Defendant.

12. With respect to Paragraphs 159 through 163 (and all subparts thereto) of the Plaintiff's Second Amended Complaint, the Defendant is without information or belief as to such allegations and therefore denies the same. Further, such allegations are not directed toward this Defendant and no response is required from this Defendant.

13. With respect to Paragraphs 164 through 168 (and all subparts thereto) of the Plaintiff's Second Amended Complaint, the Defendant is without information or belief as to such allegations and therefore denies the same. Further, such allegations are not directed toward this Defendant and no response is required from this Defendant.

14. With respect to Paragraphs 169 through 177 (and all subparts thereto) of the Plaintiff's Second Amended Complaint, the Defendant is without information or belief as to such allegations and therefore denies the same. Furthermore, there is no allegation in the Plaintiff's Complaint that these Defendants have not "conformed" to the common scheme of development.

15. With respect to Paragraphs 178 through 183 (and all subparts thereto) of the Plaintiff's Second Amended Complaint, the Defendant is without information or belief as to such allegations and therefore denies the same. Further, such allegations are not directed toward this Defendant and no response is required from this Defendant.

16. With respect to Paragraphs 184 through 187 (and all subparts thereto) of the Plaintiff's Second Amended Complaint, the Defendant is without information or belief as to such allegations and therefore denies the same. Further, such allegations are not directed toward this Defendant and no response is required from this Defendant.

FOR A SECOND DEFENSE

(Affirmative Defenses)

17. Defendant incorporates and re-alleges the allegations contained in its defenses and replies except as such are inconsistent herein.

18. Defendant herein asserts the affirmative defenses of Laches, Statute of Frauds, and Waiver.

FOR A THIRD DEFENSE

(Lack of Standing)

19. Defendant incorporates and re-alleges the allegations contained in its defenses and replies except as such are inconsistent herein.

21. Defendant herein avers that the purported Board Members of the Plaintiff, Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg, and George Lynn Fleming, have no authority to bring the Complaint against the Defendant or any of Plaintiff's other claims for the following reasons to wit:

a. Assuming the purported Board Members were properly installed, these purported "Board Members" terms have expired. Section 5.3 of the By-Laws requires that the Board of Directors hold a meeting annually and Section 6.4 of the By-Laws provides that, "[t]he initial terms of the elected Directors shall be fixed at the time of their election as they themselves shall determine in order to establish a system of two (2) year terms in which at

least one-half (1/2) of the Board is re-elected in each year. At the expiration of the initial term of office for each respective Director, a successor shall be elected to serve two (2) years.

Each director shall hold office until such Director's successor shall have been elected by the Association and qualified." Furthermore, Section 9.2 provides that, "The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members." Section 9.3 provides, "[t]he officers of the Association shall be elected annually by the Board, and each shall hold the office for one (1) year unless he shall sooner resign or shall be removed or otherwise disqualified to serve

b. Billy J. Israel was first appointed to the Board of Directors on January 15, 2010 by the Declarant (See, Exhibit E to Plaintiff's Memorandum in Opposition to John Payne, Ruth Payne, James D. Armstrong, Jane Armstrong, Warren Johnson and Rhonda Johnson's Motion to Dismiss.) His term would have expired January 15, 2012.

c. Cindy R. Goldberg was first appointed to the Board of Directors on January 15, 2010 by the Declarant (See, Exhibit E to Plaintiff's Memorandum in Opposition to John Payne, Ruth Payne, James D. Armstrong, Jane Armstrong, Warren Johnson and Rhonda Johnson's Motion to Dismiss). Her term would have expired January 15, 2012.

d. Bruce R. Goldberg was first appointed to the Board of Directors on January 15, 2010 by the Declarant (See, Exhibit E to Plaintiff's Memorandum in Opposition to John Payne, Ruth Payne, James D. Armstrong, Jane Armstrong, Warren Johnson and Rhonda Johnson's Motion to Dismiss). His term would have expired January, 15, 2012.

e. George Lynn Fleming was never rightfully elected to the Board of Directors under the provisions of the By-Laws as there has never been a vote to re-elect a Board of Directors.

22. Therefore, each of these Directors are acting without authority and this action should be dismissed pursuant to SCRCF 12(b)(1).

FOR A FOURTH DEFENSE

(Equitable Estoppel/Unclean Hands)

23. Defendant incorporates and re-alleges the allegations contained in its defenses and replies except as such are inconsistent herein.

24. Plaintiff asserts that the Defendant is subject the Restrictions and Covenants of the Chandelle Subdivision and that Plaintiffs by and through their "Directors" are entitled to bring this action. However, even if the Defendant is subject to the Restrictions and Covenants, the Plaintiff has intentionally refused the Defendant's right to vote and participate in the governance of the Association, and therefore, Plaintiff should be estopped from claiming that the Defendants are governed by Plaintiff's Director's rule.

25. Furthermore, if Plaintiff's "Directors" were acting in good faith, then its claim that no member of the association can vote to replace them because the Declarant would never make itself available at the meeting is simply untenable. It would be much easier to take the position that since the Declarant failed to appear at a meeting, it waived the right to be present and constitute a quorum. Such a position then forces the Declarant to take action to disturb the operation of the Association. Instead, the purported "Board" decided to disturb the operation of the Association and litigate the technicalities of the provisions of the Restrictions and Covenants.

26. The purported Board of Directors' decision to put the interest of the Declarant over the interest of its purported members in oxymoronic at best and gives the whiff that the

rogue Director's desires to be in a position of power outweigh rational decisions of reasonable business men and women.

27. As such, the Plaintiff's assertions against these defendants should be dismissed and the Defendant would aver that those who entered into the agreements to be bound by the purported Board's decisions be subject to the consequences of the Board's actions and not the Defendant.

FOR A FIRST COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Conversion)

28. Defendant incorporates and re-alleges the allegations contained in its defenses and replies except as such are inconsistent herein.

29. Defendant gave money to the TPD's under the pretense that the money would be used to maintain the common areas.

30. TPD's have not used the Defendant's money for the purposes intended and have instead used such money to fund this lawsuit and therefore assumed and exercised the rights of ownership over the money belonging to Defendant exclusive to the rights of the Defendant to have these funds used for the intended purposes.

31. TPD's committed the conversion was willful, intentional, recklessly and with conscious indifference to the rights of Defendant to receive the services they were to receive in exchange for the funds delivered to TPD's.

32. As such, TPD's are liable to Defendants in the amount of the sums paid, interest from the day of conversion and punitive damages.

FOR A SECOND COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Breach of Fiduciary Duty/Breach of Good Faith)

33. Defendant incorporates and re-alleges the allegations contained in its defenses and replies except as such are inconsistent herein.

34. As purported Board Members and Officers of the Plaintiff corporation, the TPD's are fiduciaries to the Members of the Corporation. Furthermore, TPD's are charged by S.C. Code of Laws § 33-8-300 to act in good faith, in an ordinarily prudent person in a like position and in a manner that is reasonably believed to be in the best interest of the Corporation.

35. TPD's have breached these duties in collecting money under false pretenses and not using said money for the intended purposes.

36. Furthermore, if Plaintiff's "Directors" were acting in good faith, then its claim that no member of the association can vote to replace them because the Declarant would never make itself available at the meeting is simply untenable. It would be much easier to take the position that since the Declarant failed to appear at a meeting, it waived the right to be present and constitute a quorum.

37. The purported Board of Directors' decision to put the interest of the Declarant over the interest of its purported members is oxymoronic at best and gives the whiff that the rogue Director's desires to be in a position of power, outweigh rational decisions of reasonable business men and women.

38. As such TPD's are liable to said sums paid with pre-judgment interest thereon.

FOR A THIRD COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Equitable Indemnity)

39. Defendant incorporates and re-alleges the allegations contained in its defenses and replies except as such are inconsistent herein.

40. TPD's have cause through their unreasonable undertakings to cause these Defendants to be subjected to this lawsuit and to have to defend themselves.

41. Defendants are entitled to equitable indemnification from TPD's in the form of the attorney's fees and costs of this action.

FOR A FOURTH COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Tortious Interference with Contractual Relations)

42 Defendant incorporates and re-alleges the allegations contained in its defenses and replies except as such are inconsistent herein.

43. Defendant had contractual agreements with Chandelle Runway, LLC to use the runway in the Chandelle subdivision.

44. TPD's were aware of such contractual relationships.

45. TPD's have intentionally caused material breaches with Chandelle Runway, LLC's ability to perform the requirements of the contracts which has caused Defendants damages in the form of a diminished ability to use the runway or otherwise participate in the maintenance of the runway which is causing accelerated deterioration of the runway.

46. TPD's actions are without justification and Defendant has been damaged in an amount to be determined by the trier of fact.

FOR A FIFTH COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Fraud)

47. Defendant incorporates and re-alleges the allegations contained in its defenses and replies except as such are inconsistent herein.

48. In billing for and collecting annual sums from Defendant to pay for common area maintenance, TPD's represented to Defendant that said sums would actually be used to pay for common area maintenance and upkeep.

49. TPD's later actions in using the funds to pay for lawsuits demonstrates the falsity of TPD's representations, that TPD's knew of the falsity of their representations and that said representations were material in coaxing Defendant to pay the money and therefore act on the representations of TPD's.

50. Defendant was ignorant as to the falsity of TPD's representations.

51. Defendant relied upon the truth of TPD's representations and had a right to rely such representations.

52. As a result of the TPD's fraudulent actions, Defendant has suffered damages in the form of the lost benefit of the services it would have received if the TPD's had used the money for the intended purposes.

FOR A SIXTH COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Declaratory Judgment)

53. Defendants incorporate and re-allege the allegations contained in its defenses and replies except as such are inconsistent herein.

54. This action is brought pursuant to S.C. Code of Laws § 15-53-10 *et seq.* seeking an Order of the Court to determine the rights of the parties in the following particulars to wit:

a. Is it an improper action of the purported "Board of Directors" to use annual assessments to fund the current lawsuit ? (See Restrictions and Covenants, Section 11.1(a) and 11.4)

b. Is it an improper action of the purported "Board of Directors" to levy special assessments for any other purpose, but for those enumerated in Section 11.1 (b) and 11.5 of the Restrictions and Covenants?

c. Even if implied negative or reciprocal easements are imposed on the Defendant, does that necessarily impose a burden to be governed by the Plaintiff Association, or does it simply impose an obligation to use and construct dwellings on the Defendant's property in accordance with the "common scheme" of development?

d. Even if implied negative or reciprocal easements are imposed on Defendant, is that imposition of restrictions retroactive or prospective as to the Defendant's imposed obligations?

e. Are the amendments to the restrictive covenants executed and filed by CSC Developers, LLC in Deed Books 72-G, Page 843 (recorded 7/10/2000) and Deed Book 88-H, Page 488 (recorded April 11, 2007) valid and enforceable?

f. Are the amendments to the restrictive covenants executed and filed by the Board of Directors in Deed Books 99-L, Page 999 (recorded 11/02/2011) and Deed Book 101-Q, Page 96 (recorded 09/13/2012) valid and enforceable?

WHEREFORE, Defendant prays as follows:

1. For a dismissal of Plaintiff's Complaint with prejudice;
2. An award of the attorney's fees and costs associated with this action pursuant to Section 13.9 of the Restrictions and Covenants;
3. A finding for the Defendants on their claim of entitlement to Equitable Estoppel;
4. A finding for Defendant on its Counterclaim and Third Party Complaint for Conversion along with actual and punitive damages;

5. A finding for Defendant on its Counterclaim and Third Party Complaint for Breach of Fiduciary Duty and Breach of Good Faith along with actual damages;
6. A finding for Defendant on its Counterclaim and Third Party Complaint for Equitable Indemnity;
7. A finding for Defendant on its Counterclaim and Third Party Complaint for Tortious Interference with Contractual Relations along with actual and punitive damages;
8. A finding for the Defendant on its Counterclaim and Third Party Complaint for Fraud along with actual and punitive damages;
9. A ruling regarding the declaratory judgment cause of action;
10. An award of prejudgment interest; and
11. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/ Wendell L. Hawkins
Wendell L. Hawkins (S.C. Bar #: 13583)
Aimee V. Leary (S.C. Bar #: 100657)
Wendell L. Hawkins, PA
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Attorneys for Defendant

Greer, South Carolina
November 15, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
Case No.: 2016-CP-42-01854

Chandelle Property Owners Association,)
Plaintiff,)

**PLAINTIFF CHANDELLE PROPERTY
OWNERS ASSOCIATION'S REPLY
TO THE COUNTERCLAIM OF
DEFENDANTS JAMES DOUGLAS
ARMSTRONG, JANE ARMSTRONG,
WARREN JOHNSON, RHONDA
JOHNSON, JOHN K PAYNE & RUTH G.
PAYNE**

v.)
CSC Developers, LLC, Chandelle)
Runway, LLC, 331 South, LLC, Charlie)
M. Allison, Janice H. Allison, James)
Douglas Armstrong, Jane Armstrong,)
Marilyn N. Berry, Stephen Berry, James)
P. Brockman, Sr., Douglas E. Cobb,)
Nicole Cobb, Kenneth L. Galloway,)
Molly C. Galloway, Warren Johnson,)
Rhonda Johnson, Lawrence E. Lewis,)
Barbara L. Lewis, John K. Payne, Ruth G.)
Payne, John R. Stewart, Jr., Angela)
Tanner, Helmut Tuemmel, Silvia L.)
Tuemmel, Jane Van Wieren as trustee of)
the Greer R.G. Irrevocable Property Trust,)
dated October 25, 2006, Martin Tuemmel,)
Raymond M. Clark, Jr., and also all other)
persons unknown, claiming any right,)
title, estate, interest in or lien upon the)
real estate described in the complaint)
herein.,)

Defendants.)

James Douglas Armstrong and Jane)
Armstrong, Warren Johnson, Rhonda)
Johnson, John K. Payne and Ruth G.)
Payne,)

Third-Party Plaintiffs,)

v.)
)
 Billy J. Israel, Bruce R. Goldberg, Cindy)
 R. Goldberg and George Lynn Fleming in)
 their personal and official capacities,)
)
 Third-Party Defendants.)

TO: WENDELL L. HAWKINS AND AIMEE V. LEARY, ATTORNEYS FOR
 DEFENDANTS JAMES DOUGLAS ARMSTRONG, JANE ARMSTRONG, WARREN
 JOHNSON, RHONDA JOHNSON, JOHN K. PAYNE, AND RUTH G. PAYNE:

COMES NOW the Plaintiff, Chandelle Property Owners Association, Inc. (“Chandelle”), by and
 through its undersigned attorneys, replying to the Answer, Counterclaim, and Third-Party Complaint of
 Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, John K. Payne, and Ruth G.
 Payne, dated August 15, 2017, and would respectfully show unto this Court:

FOR A FIRST DEFENSE
 (Affirmation of Second Amended Complaint)

1. Chandelle reaffirms and restates all allegations contained in its Second Amended
 Complaint filed July 19, 2017.

FOR A SECOND DEFENSE
 (General Denial)

2. Each and every allegation not specifically admitted herein is denied. To the
 extent any allegation of pert thereof is not expressly referred to and specifically answered it is
 hereby denied and legal proof thereof is demanded.

3. Paragraphs 1 – 27 of the Answer, Counterclaim and Third-Party Complaint of
 Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, John K. Payne, and
 Ruth G. Payne, dated August 15, 2017, appear to be Defendants’ Answer to Chandelle’s
 Complaint and no response from Chandelle is necessary. To the extent a response is deemed

necessary, Paragraphs 1 - 27 are denied, including all subparagraphs, and strict proof thereof is demanded.

4. In response to paragraph 28 of the Answer, Counterclaim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, John K. Payne, and Ruth G. Payne, dated August 15, 2017, Chandelle restates and re-alleges its responses to paragraphs 1 through 27, where not inconsistent herewith, as if fully repeated herein. As to Paragraph 28, the plaintiff repeats and reiterates each and every defense raised in Paragraphs 1 through 3 above as if fully set forth verbatim herein.

5. Paragraph 29 is denied and strict proof thereof is demanded.

6. Paragraph 30 is denied and strict proof thereof is demanded.

7. Paragraph 31 is denied and strict proof thereof is demanded.

8. Paragraph 32 is denied and strict proof thereof is demanded.

9. In response to paragraph 33 of the Answer, Counterclaim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, John K. Payne, and Ruth G. Payne, dated August 15, 2017, Chandelle restates and re-alleges its responses to paragraphs 1 through 32, where not inconsistent herewith, as if fully repeated herein. As to Paragraph 33, the plaintiff repeats and reiterates each and every defense raised in Paragraphs 1 through 3 above as if fully set forth verbatim herein.

10. To the extent that paragraph 34 is an allegation of law, Chandelle is not required to admit or deny that paragraph; subject to the above, Chandelle craves reference to South Carolina law, and denies paragraph 34 to the extent that anything alleged therein conflicts with the applicable law of this State.

11. Paragraph 35 is denied and strict proof thereof is demanded.

12. Paragraph 36 is denied and strict proof thereof is demanded.

13. Paragraph 37 is denied and strict proof thereof is demanded.

14. Paragraph 38 is denied and strict proof thereof is demanded.

15. In response to paragraph 39 of the Answer, Counterclaim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, John K. Payne, and Ruth G. Payne, dated August 15, 2017, Chandelle restates and re-alleges its responses to paragraphs 1 through 38, where not inconsistent herewith, as if fully repeated herein. As to Paragraph 39, the plaintiff repeats and reiterates each and every defense raised in Paragraphs 1 through 3 above as if fully set forth verbatim herein.

16. Paragraph 40 is denied and strict proof thereof is demanded.

17. Paragraph 41 is denied and strict proof thereof is demanded.

18. In response to paragraph 42 of the Answer, Counterclaim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, John K. Payne, and Ruth G. Payne, dated August 15, 2017, Chandelle restates and re-alleges its responses to paragraphs 1 through 41, where not inconsistent herewith, as if fully repeated herein. As to Paragraph 42, the plaintiff repeats and reiterates each and every defense raised in Paragraphs 1 through 3 above as if fully set forth verbatim herein.

19. Chandelle is without sufficient information to form a belief regarding the allegations in Paragraph 43 and therefore denies Paragraph 43 and strict proof thereof is demanded.

20. Chandelle is without sufficient information to form a belief regarding the allegations in Paragraph 44 and therefore denies Paragraph 44 and strict proof thereof is demanded.

21. Paragraph 45 is denied and strict proof thereof is demanded.

22. Paragraph 46 is denied and strict proof thereof is demanded.

23. In response to paragraph 47 of the Answer, Counterclaim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, John K. Payne, and Ruth G. Payne, dated August 15, 2017, Chandelle restates and re-alleges its responses to paragraphs 1 through 46, where not inconsistent herewith, as if fully repeated herein. As to Paragraph 47, the plaintiff repeats and reiterates each and every defense raised in Paragraphs 1 through 3 above as if fully set forth verbatim herein.

24. Chandelle is without sufficient information to form a belief regarding the allegations in Paragraph 48 and therefore denies Paragraph 48 and strict proof thereof is demanded.

25. Paragraph 49 is denied and strict proof thereof is demanded.

26. Paragraph 50 is denied and strict proof thereof is demanded.

27. Paragraph 51 is denied and strict proof thereof is demanded.

28. Paragraph 52 is denied and strict proof thereof is demanded.

29. In response to paragraph 53 of the Answer, Counterclaim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, John K. Payne, and Ruth G. Payne, dated August 15, 2017, Chandelle restates and re-alleges its responses to paragraphs 1 through 52, where not inconsistent herewith, as if fully repeated herein. As to Paragraph 53, the plaintiff repeats and reiterates each and every defense raised in Paragraphs 1 through 3 above as if fully set forth verbatim herein.

30. To the extent that paragraph 54 is an allegation of law, Chandelle is not required to admit or deny that paragraph; subject to the above, Chandelle craves reference to South Carolina law, and denies paragraph 54 to the extent that anything alleged therein conflicts with the applicable law of this State. Any remaining factual allegations in Paragraph 54, including subparagraphs a. through f., are denied and strict proof thereof is demanded.

31. All other allegations in the Answer, Counterclaim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, John K. Payne, and Ruth G. Payne, dated August 15, 2017, that are not specifically addressed herein are hereby denied.

FOR A THIRD DEFENSE
(Privilege)

32. Plaintiff would show, upon information and belief, that he filing of the *Lis Pendens* is absolutely and/or qualifiedly privileged, therefore, defendant cannot recover from plaintiff any sum whatsoever.

FOR A FOURTH DEFENSE
(Failure to Mitigate)

33. The defendants' claims are barred, in whole or in part, for failure to mitigate their damages.

FOR A FIFTH DEFENSE
(Waiver and Estoppel)

34. The defendants' claims are barred by the doctrine of waiver and estoppel.

FOR A SIXTH DEFENSE
(Doctrine of Unclean Hands)

35. The defendants' claims are barred by the doctrine of unclean hands.

FOR A SEVENTH DEFENSE
(Dismissal Pursuant to SCRCP 12(b)(6))

36. The defendant's Counterclaims fail to state a claim against plaintiff for which relief can be granted, therefore, they should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A EIGHTH DEFENSE
(Statutes of Limitations and Repose/Laches)

37. Some or all of the defendant's Counterclaims are barred by the applicable Statues of Limitations and Repose and/or the equitable doctrine of laches.

FOR AN NINTH DEFENSE
(Business Judgment Rule)

38. Plaintiff would show, upon information and belief, that its actions are subject to the Business Judgment Rule, and plaintiff asserts the Business Judgment Rule as a defense to the defendants' claims, and for that reason, defendants cannot recover from plaintiff in any sum whatsoever.

FOR A TENTH DEFENSE
(Compliance with S.C. Code Ann. § 33-31-830)

39. Plaintiff would show, upon information and belief, that plaintiff, acting through its Board of Directors, complied with the applicable standard of care set forth in S.C. Code Ann. § 33-31-830; therefore, defendants cannot recover from plaintiff in any sum whatsoever.

FOR A ELEVENTH DEFENSE
(Intervening Negligence)

40. Plaintiff alleges that even if it was negligent or reckless in any respect which is expressly denied, and admitted solely for the purpose of this defense and no other, it is not liable to the defendants for the resulting damages of the defendants, if any, because of the intervening negligent, grossly negligent, reckless, willful and wanton acts of the defendants and/or an unknown third party, which negligent and reckless acts were not reasonably foreseeable and intervened and acted as a direct and proximate cause of the incident, and the resulting damages, if any, sustained by the defendants.

FOR AN TWELFTH DEFENSE
(Allocation of Fault)

41. Plaintiff alleges that even if it was negligent, careless, grossly negligent, reckless, willful or wanton in any respect whatsoever, which is expressly denied and admitted solely for the purpose of this defense and no other, and even if any such conduct on its part operated as a greater than 50% cause of the incident and the defendants' resulting injuries and damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, it is entitled to a determination as to the percentage which defendants' negligent, grossly negligent, reckless, willful and wanton conduct contributed to the incident and to a reduction of any amount awarded to the defendants in an amount equal to that percentage of the defendants' own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A THIRTEENTH DEFENSE
(Contributory Negligence)

42. Plaintiff alleges that even assuming it was negligent, careless, grossly negligent, willful, wanton or reckless in any respect, and that any such conduct on its part operated as a proximate cause of the defendants' resulting injuries and damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, that defendants' negligent, grossly negligent, reckless, willful and wanton conduct contributed more than 50% to the cause of the incident and their resulting injuries and damages, if any. For that reason, plaintiff is not liable to the defendants in any sum whatsoever.

FOR A FOURTEENTH DEFENSE
(Punitive Damages Unconstitutional)

43. The defendants are not entitled to recover punitive damages in this action because:

i. An award of punitive damages would violate the Eighth Amendment to the United States Constitution and Article I Section XV of the South Carolina Constitution in that any award of punitive damages would constitute an excessive fine;

ii. An award of punitive damages would violate both the Fourteenth Amendment to the United States Constitution and Article I Section III of the South Carolina Constitution in that the power of the court to award punitive damages in any amount it chooses would be wholly devoid of any meaningful standard and would be inconsistent with the guarantees of due process of law;

iii. An award of punitive damages would violate the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I Section III of the South Carolina Constitution because even if a standard governing the imposition of punitive damages exists, that standard is void for vagueness;

iv. An award of punitive damages would violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I Section III of the South Carolina Constitution in that an award of punitive damages would be based in part on the wealth of defendants; and

v. An award of punitive damages would violate the Federal Doctrine of Separation of Powers and Article I Section VIII of the South Carolina Constitution because punitive damages are a creation of the judicial branch of government, the creation of which invades the province of the legislative branch.

FOR A FIFTEENTH DEFENSE
(Reservation and Non-Waiver)

44. Chandelle reserves and does not waive any additional or further defenses as may be revealed by additional information acquired through discovery or otherwise.

WHEREFORE, having fully answered the Answer, Counterclaim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, John K. Payne, and Ruth G. Payne, dated August 15, 2017, the plaintiff prays that this court grant the following relief:

1. That Chandelle be granted judgment against the defendants as requested in its Complaint;
2. That the defendant's Counterclaims be dismissed with prejudice;
3. That should the defendants be awarded judgment on their Counterclaim (which is denied), any such sums be set off or offset from the amount for which the defendants are found liable to the plaintiff; and
4. For such other relief as this Court may deem just and proper.

s/James P. Walsh

James P. Walsh (15180)
 John D. Harjehausen (76194)
 Clarkson, Walsh, & Coulter, P.A.
 P.O. Box 6728
 Greenville, SC 29606
 (864) 232-4400
 (864) 235-4399 (fax)
 Attorneys for plaintiff

JURY TRIAL DEMANDED

s/James P. Walsh

James P. Walsh (15180)

Greenville, South Carolina
 August 30, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
Case No.: 2016-CP-42-01854

Chandelle Property Owners Association,)
Plaintiff,)

**PLAINTIFF CHANDELLE PROPERTY
OWNERS ASSOCIATION'S REPLY
TO THE COUNTERCLAIM OF
DEFENDANT JANE VAN WIEREN AS
TRUSTEE OF THE GREER R.G.
IRREVOCABLE PROPERTY TRUST
DATED OCTOBER 25, 2006**

v.)
CSC Developers, LLC, Chandelle)
Runway, LLC, 331 South, LLC, Charlie)
M. Allison, Janice H. Allison, James)
Douglas Armstrong, Jane Armstrong,)
Marilyn N. Berry, Stephen Berry, James)
P. Brockman, Sr., Douglas E. Cobb,)
Nicole Cobb, Kenneth L. Galloway,)
Molly C. Galloway, Warren Johnson,)
Rhonda Johnson, Lawrence E. Lewis,)
Barbara L. Lewis, John K. Payne, Ruth G.)
Payne, John R. Stewart, Jr., Angela)
Tanner, Helmut Tuemmel, Silvia L.)
Tuemmel, Jane Van Wieren as trustee of)
the Greer R.G. Irrevocable Property Trust,)
dated October 25, 2006, Martin Tuemmel,)
Raymond M. Clark, Jr., and also all other)
persons unknown, claiming any right,)
title, estate, interest in or lien upon the)
real estate described in the complaint)
herein.,)

Defendants.)

James Douglas Armstrong and Jane)
Armstrong, Warren Johnson, Rhonda)
Johnson, John K. Payne and Ruth G.)
Payne,)

Third-Party Plaintiffs,)

v.)
)
 Billy J. Israel, Bruce R. Goldberg, Cindy)
 R. Goldberg and George Lynn Fleming in)
 their personal and official capacities,)
)
 Third-Party Defendants.)

TO: WENDELL L. HAWKINS AND AIMEE V. LEARY, ATTORNEYS FOR
 DEFENDANT JANE VAN WIEREN AS TRUSTEE OF THE GREER R.G. IRREVOCABLE
 PROPERTY TRUST DATED OCTOBER 25, 2006:

COMES NOW the Plaintiff, Chandelle Property Owners Association, Inc. (“Chandelle”), by and
 through its undersigned attorneys, replying to the Answer, Counterclaim, and Third-Party Complaint of
 Defendant Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25,
 2006, and would respectfully show unto this Court:

FOR A FIRST DEFENSE
 (Affirmation of Second Amended Complaint)

1. Chandelle reaffirms and restates all allegations contained in its Second Amended
 Complaint filed July 19, 2017.

FOR A SECOND DEFENSE
 (General Denial)

2. Each and every allegation not specifically admitted herein is denied. To the
 extent any allegation of part thereof is not expressly referred to and specifically answered it is
 hereby denied and legal proof thereof is demanded.

3. Paragraphs 1 – 27 of the Answer, Counterclaim and Third-Party Complaint of
 Defendant Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated
 October 25, 2006, appear to be Defendant’s Answer to Chandelle’s Complaint and no response

from Chandelle is necessary.¹ To the extent a response is deemed necessary, Paragraphs 1 - 27 are denied, including all subparagraphs, and strict proof thereof is demanded.

4. In response to Paragraph 28 of the Answer, Counterclaim and Third-Party Complaint of Defendant Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, Chandelle restates and re-alleges its responses to paragraphs 1 through 27, where not inconsistent herewith, as if fully repeated herein. As to Paragraph 28, the plaintiff repeats and reiterates each and every defense raised in Paragraphs 1 through 3 above as if fully set forth verbatim herein.

5. Paragraph 29 is denied and strict proof thereof is demanded.

6. Paragraph 30 is denied and strict proof thereof is demanded.

7. Paragraph 31 is denied and strict proof thereof is demanded.

8. Paragraph 32 is denied and strict proof thereof is demanded.

9. In response to paragraph 33 of the Answer, Counterclaim and Third-Party Complaint of Defendant Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, Chandelle restates and re-alleges its responses to paragraphs 1 through 32, where not inconsistent herewith, as if fully repeated herein. As to Paragraph 33, the plaintiff repeats and reiterates each and every defense raised in Paragraphs 1 through 8 above as if fully set forth verbatim herein.

10. To the extent that paragraph 34 is an allegation of law, Chandelle is not required to admit or deny that paragraph; subject to the above, Chandelle craves reference to South Carolina law, and denies Paragraph 34 to the extent that anything alleged therein conflicts with the applicable law of this State.

11. Paragraph 35 is denied and strict proof thereof is demanded.

12. Paragraph 36 is denied and strict proof thereof is demanded.

¹ The Answer, Counterclaim and Third-Party Complaint of Defendant Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006 contains no Paragraph 20.

13. Paragraph 37 is denied and strict proof thereof is demanded.

14. Paragraph 38 is denied and strict proof thereof is demanded.

15. In response to Paragraph 39 of the Answer, Counterclaim and Third-Party Complaint of Defendant Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, Chandelle restates and re-alleges its responses to paragraphs 1 through 38, where not inconsistent herewith, as if fully repeated herein. As to Paragraph 39, the plaintiff repeats and reiterates each and every defense raised in Paragraphs 1 through 14 above as if fully set forth verbatim herein.

16. Paragraph 40 is denied and strict proof thereof is demanded.

17. Paragraph 41 is denied and strict proof thereof is demanded.

18. In response to Paragraph 42 of the Answer, Counterclaim and Third-Party Complaint of Defendant Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, Chandelle restates and re-alleges its responses to Paragraphs 1 through 41, where not inconsistent herewith, as if fully repeated herein. As to Paragraph 42, the plaintiff repeats and reiterates each and every defense raised in Paragraphs 1 through 17 above as if fully set forth verbatim herein.

19. Chandelle is without sufficient information to form a belief regarding the allegations in Paragraph 43 and therefore denies Paragraph 43 and strict proof thereof is demanded.

20. Chandelle is without sufficient information to form a belief regarding the allegations in Paragraph 44 and therefore denies Paragraph 44 and strict proof thereof is demanded.

21. Paragraph 45 is denied and strict proof thereof is demanded.

22. Paragraph 46 is denied and strict proof thereof is demanded.

23. In response to Paragraph 47 of the Answer, Counterclaim and Third-Party Complaint of Defendant Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25,

2006, Chandelle restates and re-alleges its responses to paragraphs 1 through 46, where not inconsistent herewith, as if fully repeated herein. As to Paragraph 47, the plaintiff repeats and reiterates each and every defense raised in Paragraphs 1 through 23 above as if fully set forth verbatim herein.

24. Chandelle is without sufficient information to form a belief regarding the allegations in Paragraph 48 and therefore denies Paragraph 48 and strict proof thereof is demanded.

25. Paragraph 49 is denied and strict proof thereof is demanded.

26. Paragraph 50 is denied and strict proof thereof is demanded.

27. Paragraph 51 is denied and strict proof thereof is demanded.

28. Paragraph 52 is denied and strict proof thereof is demanded.

29. In response to Paragraph 53 of the Answer, Counterclaim and Third-Party Complaint of Defendant Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, dated August 15, 2017, Chandelle restates and re-alleges its responses to Paragraphs 1 through 52, where not inconsistent herewith, as if fully repeated herein. As to Paragraph 53, the plaintiff repeats and reiterates each and every defense raised in Paragraphs 1 through 28 above as if fully set forth verbatim herein.

30. To the extent that Paragraph 54 is an allegation of law, Chandelle is not required to admit or deny that paragraph; subject to the above, Chandelle craves reference to South Carolina law, and denies Paragraph 54 to the extent that anything alleged therein conflicts with the applicable law of this State. Any remaining factual allegations in Paragraph 54, including subparagraphs a. through f., are denied and strict proof thereof is demanded.

31. All other allegations in the Answer, Counterclaim and Third-Party Complaint of Defendant Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, that are not specifically addressed herein are hereby denied.

FOR A THIRD DEFENSE
(Privilege)

32. Plaintiff would show, upon information and belief, that he filing of the *Lis Pendens* is absolutely and/or qualifiedly privileged, therefore, defendant cannot recover from plaintiff any sum whatsoever.

FOR A FOURTH DEFENSE
(Failure to Mitigate)

33. The defendant's claims are barred, in whole or in part, for failure to mitigate its damages.

FOR A FIFTH DEFENSE
(Waiver and Estoppel)

34. The defendant's claims are barred by the doctrine of waiver and estoppel.

FOR A SIXTH DEFENSE
(Doctrine of Unclean Hands)

35. The defendant's claims are barred by the doctrine of unclean hands.

FOR A SEVENTH DEFENSE
(Dismissal Pursuant to SCRCP 12(b)(6))

36. The defendant's Counterclaims fail to state a claim against plaintiff for which relief can be granted, therefore, they should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A EIGHTH DEFENSE
(Statutes of Limitations and Repose/Laches)

37. Some or all of the defendant's Counterclaims are barred by the applicable Statues of Limitations and Repose and/or the equitable doctrine of laches.

FOR AN NINTH DEFENSE
(Business Judgment Rule)

38. Plaintiff would show, upon information and belief, that its actions are subject to the Business Judgment Rule, and plaintiff asserts the Business Judgment Rule as a defense to the defendant's claims, and for that reason, defendant cannot recover from plaintiff in any sum whatsoever.

FOR A TENTH DEFENSE
(Compliance with S.C. Code Ann. § 33-31-830)

39. Plaintiff would show, upon information and belief, that plaintiff, acting through its Board of Directors, complied with the applicable standard of care set forth in S.C. Code Ann. § 33-31-830; therefore, defendant cannot recover from plaintiff in any sum whatsoever.

FOR A ELEVENTH DEFENSE
(Intervening Negligence)

40. Plaintiff alleges that even if it was negligent or reckless in any respect which is expressly denied, and admitted solely for the purpose of this defense and no other, it is not liable to the defendant for the resulting damages of the defendant, if any, because of the intervening negligent, grossly negligent, reckless, willful and wanton acts of the defendant and/or an unknown third party, which negligent and reckless acts were not reasonably foreseeable and intervened and acted as a direct and proximate cause of the incident, and the resulting damages, if any, sustained by the defendant.

FOR AN TWELFTH DEFENSE
(Allocation of Fault)

41. Plaintiff alleges that even if it was negligent, careless, grossly negligent, reckless, willful or wanton in any respect whatsoever, which is expressly denied and admitted solely for the purpose of this defense and no other, and even if any such conduct on its part operated as a greater than 50% cause of the incident and the defendant's resulting injuries and damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, it

is entitled to a determination as to the percentage which defendant's negligent, grossly negligent, reckless, willful and wanton conduct contributed to the incident and to a reduction of any amount awarded to the defendants in an amount equal to that percentage of the defendant's own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A THIRTEENTH DEFENSE
(Contributory Negligence)

42. Plaintiff alleges that even assuming it was negligent, careless, grossly negligent, willful, wanton or reckless in any respect, and that any such conduct on its part operated as a proximate cause of the defendant's resulting injuries and damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, that defendant's negligent, grossly negligent, reckless, willful and wanton conduct contributed more than 50% to the cause of the incident and their resulting injuries and damages, if any. For that reason, plaintiff is not liable to the defendants in any sum whatsoever.

FOR A FOURTEENTH DEFENSE
(Punitive Damages Unconstitutional)

43. The defendant is not entitled to recover punitive damages in this action because:

i. An award of punitive damages would violate the Eighth Amendment to the United States Constitution and Article I Section XV of the South Carolina Constitution in that any award of punitive damages would constitute an excessive fine;

ii. An award of punitive damages would violate both the Fourteenth Amendment to the United States Constitution and Article I Section III of the South Carolina Constitution in that the power of the court to award punitive

damages in any amount it chooses would be wholly devoid of any meaningful standard and would be inconsistent with the guarantees of due process of law;

iii. An award of punitive damages would violate the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I Section III of the South Carolina Constitution because even if a standard governing the imposition of punitive damages exists, that standard is void for vagueness;

iv. An award of punitive damages would violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I Section III of the South Carolina Constitution in that an award of punitive damages would be based in part on the wealth of defendants; and

v. An award of punitive damages would violate the Federal Doctrine of Separation of Powers and Article I Section VIII of the South Carolina Constitution because punitive damages are a creation of the judicial branch of government, the creation of which invades the province of the legislative branch.

FOR A FIFTEENTH DEFENSE
(Failure to plead fraud with particularity)

44. Defendant has failed to plead fraud with particularity as required by SCRCP 9(b)

FOR A SIXTEENTH DEFENSE
(Reservation and Non-Waiver)

45. Chandelle reserves and does not waive any additional or further defenses as may be revealed by additional information acquired through discovery or otherwise.

WHEREFORE, having fully answered the Answer, Counterclaim, and Third-Party Complaint of Defendant Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, the plaintiff prays that this court grant the following relief:

1. That Chandelle be granted judgment against the defendants as requested in its Complaint;
2. That the defendant's Counterclaims be dismissed with prejudice;
3. That should the defendants be awarded judgment on their Counterclaim (which is denied), any such sums be set off or offset from the amount for which the defendants are found liable to the plaintiff; and
4. For such other relief as this Court may deem just and proper.

s/James P. Walsh
James P. Walsh (15180)
John D. Harjehausen (76194)
Clarkson, Walsh, & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400
(864) 235-4399 (fax)
Attorneys for plaintiff

JURY TRIAL DEMANDED

s/James P. Walsh
James P. Walsh (15180)

Greenville, South Carolina
December 8, 2017

Information to identify the case:

Debtor

CSC Developers, LLC

EIN 58-2286904

Name

United States Bankruptcy Court District of South Carolina

Date case filed for chapter 11 4/23/18

Case number: 18-02053-hb

Official Form 309F (For Corporations or Partnerships)

Notice of Chapter 11 Bankruptcy Case

12/17

For the debtor listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor or the debtor's property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from the debtor by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

Confirmation of a chapter 11 plan may result in a discharge of debt. A creditor who wants to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadline specified in this notice. (See line 11 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

Do not file this notice with any proof of claim or other filing in the case.

1. Debtor's full name	CSC Developers, LLC	
2. All other names used in the last 8 years		
3. Address	c/o John R. Stewart, Jr. 2 Shannon Court Anderson, SC 29626	
4. Debtor's attorney Name and address	Robert H. Cooper The Cooper Law Firm 150 Milestone Way, Suite B Greenville, SC 29615	Contact phone 864-271-9911 Email <u>None</u>
5. Bankruptcy clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at www.pacer.gov .	J. Bratton Davis United States Bankruptcy Courthouse 1100 Laurel Street Columbia, SC 29201-2423	Hours open 9:00 am – 5:00 pm Contact phone 803-765-5436 Date: 4/24/18
6. Meeting of creditors The debtor's representative must attend the meeting to be questioned under oath. Creditors may attend, but are not required to do so.	June 1, 2018 at 09:30 AM Date Time The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.	Location: Donald Stuart Russell Federal Courthouse, 201 Magnolia Street, Spartanburg, SC 29306-2355

*** Valid photo identification required ***

For more information, see page 2 >

7. Proof of claim deadline	Deadline for filing proof of claim: 8/30/18 For a governmental unit: 10/22/18
A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office. You may file a claim electronically at http://www.scb.uscourts.gov/electronic-filing-claims.	
Your claim will be allowed in the amount scheduled unless:	
• your claim is designated as <i>disputed</i>, <i>contingent</i>, or <i>unliquidated</i>; • you file a proof of claim in a different amount; or • you receive another notice.	
If your claim is not scheduled or if your claim is designated as <i>disputed</i>, <i>contingent</i>, or <i>unliquidated</i>, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.	
You may review the schedules at the bankruptcy clerk's office or online at www.pacer.gov.	
Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.	
8. Exception to discharge deadline The bankruptcy clerk's office must receive a complaint and any required filing fee by the following deadline.	If §523(c) applies to your claim and you seek to have it excepted from discharge, you must start a judicial proceeding by filing a complaint by the deadline stated below.
Deadline for filing the complaint: 7/31/18	
9. Creditors with a foreign address	If you are a creditor receiving notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.
10. Filing a Chapter 11 bankruptcy case	Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the property and may continue to operate its business.
11. Discharge of debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt owed to you excepted from the discharge and §523(c) applies to your claim, you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk's office by the deadline.
12. Dismissal Notice	This case may be dismissed without further notice or hearing should the debtor fail to comply with SC LBR 1017-2 (providing for dismissal for a failure to: file or provide documents, obtain approval of a disclosure statement, obtain confirmation of a plan, or attend the meeting of creditors).
13. Miscellaneous Notice	The Voice Case Information System (VCIS) will give status information on cases filed or converted after 11/30/88. Call 1-866-222-8029. Please refer to the Court's web site at www.scb.uscourts.gov for further information.

Information to identify the case:

Debtor

Chandelle Runway, LLCEIN **82-5273361**

Name

United States Bankruptcy Court **District of South Carolina**Date case filed for chapter **11 4/23/18**Case number: **18-02054-hb****Official Form 309F (For Corporations or Partnerships)****Notice of Chapter 11 Bankruptcy Case**

12/17

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
C/A No.: 2016-CP-42-01854

Chandelle Property Owners Association,

Plaintiff,

v.

**NOTICE OF BANKRUPTCY COURT
ORDERS**

CSC Developers, LLC, Chandelle Runway, LLC, 331 South, LLC, Charlie M. Allison, Janice H. Allison, James Douglas Armstrong, Jane Armstrong, Marilyn N. Berry, Stephen Berry, Emma Jean Brockman as the Personal Representative of the Estate of James P. Brockman, Sr., Douglas E. Cobb, Nicole Cobb, Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, Lawrence E. Lewis, Barbara L. Lewis, John K. Payne, Ruth G. Payne, John R. Stewart, Jr., Angela Tanner, Helmut Tuemmle, Silvia L. Tuemmle, Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006, Martin Tuemmle, Raymond M. Clark, Jr., and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein,

Defendant(s).

James Douglas Armstrong and Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne and Ruth G. Payne and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006,

Third Party Plaintiff(s),

v.

Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg and George Lynn Fleming in their personal and official capacities,

Third Party Defendant(s).

018771.00006

YOU WILL PLEASE TAKE NOTICE that Chandelle Property Owners Association, by and through undersigned counsel, hereby gives notice of an ORDER ON MOTIONS FOR RELIEF FROM STAY, which was filed in the United States Bankruptcy Court for the District of South Carolina on May 21, 2020, in Case Nos. 18-02053-hb and 18-02054-hb. A copy of said Order filed in each of the aforesaid bankruptcy cases is attached hereto as **Exhibit A** and **Exhibit B**.

/s/ Ely O. Grote

Ely O. Grote, SC Bar No. 75379
D. Ryan McCabe, SC Bar No. 16977
MCCABE, TROTTER & BEVERLY, P.C.
4500 Fort Jackson Blvd., Suite 250 (29209)
P.O. Box 212069, Columbia, SC 29221
Phone: (803) 724-5000 Fax: (803) 724-5001
Email: Ely.Grote@mccabetrotter.com;
Ryan.McCabe@mccabetrotter.com
**ATTORNEYS FOR CHANDELLE
PROPERTY OWNERS ASSOCIATION**

July 15, 2020
Columbia, South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

CSC Developers, LLC,
Chandelle Runway, LLC

Debtor(s).

C/A No. 18-02053-HB

C/A No. 18-2054-HB

Chapter 7

**ORDER ON MOTIONS FOR RELIEF
FROM STAY**

THIS MATTER is before the Court pursuant to the identical motions (Doc. 165 and 149 respectively) filed in the above-referenced cases by Chandelle Property Owners Association (“Movant”) seeking relief from the automatic stay, or in the alternative an order confirming the automatic stay does not apply, to Movant’s pursuit of its state-court action against non-Debtors or those not released under the terms of the court-approved settlement agreement. The motions state Movant commenced a lawsuit in the Spartanburg County, SC, Court of Common Pleas (Civil Action No. 2016-CP-42-1854) in 2016.

Defendants were:

- CSC Developers, LLC, Chandelle Runway, LLC (the Debtors in these bankruptcy cases);
- John R. Stewart, Jr., Douglas E. and Nicole Cobb, and present or former officers, managers, employees, and agents of CSC Developers, LLC; and
- Various landowners in Chandelle Aviation Estates.

Causes of action included claims not only for money damages from Debtors and their agents but also for declaratory judgments declaring that the Declaration of Covenants, Conditions and Restrictions as amended applied to various lots in Chandelle Aviation Estates.

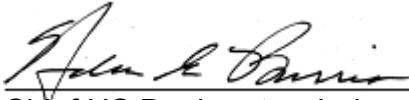
According to the certificate of Movant’s counsel, no objection to the requested relief has been filed. It appearing that the motions should be granted,

IT IS, THEREFORE, ORDERED that relief from the automatic stay is granted so that Movant may pursue its state-court remedies against non-Debtors and those not released under the terms of the court-approved settlement agreement, or alternatively, the automatic stay does not apply to the pursuit of the state-court action against non-Debtors or those not released under the terms of the court-approved settlement agreement, pursuant to 11 U.S.C. § 362(d) and (j).

**FILED BY THE COURT
05/21/2020**



Entered: 05/21/2020


Chief US Bankruptcy Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

CSC Developers, LLC,
Chandelle Runway, LLC

Debtor(s).

C/A No. 18-02053-HB

C/A No. 18-2054-HB

Chapter 7

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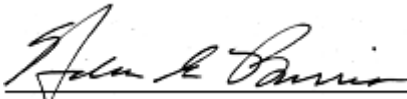
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**FILED BY THE COURT
05/21/2020**



Entered: 05/21/2020


Chief US Bankruptcy Judge
District of South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
C/A No.: 2016-CP-42-1854

Chandelle Property Owners Association,

Plaintiff,

v.

**THIRD AMENDED SUMMONS
(NON-JURY)**

Charlie M. Allison, Janice H. Allison, James Douglas Armstrong, Jane Armstrong, Emma Jean Brockman as the Personal Representative of the Estate of James P. Brockman, Sr., Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, Lawrence E. Lewis, Barbara L. Lewis, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein,

Defendant(s).

(018771.00006)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Third Amended Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 4500 Fort Jackson Boulevard, Suite 250 (29209), Post Office Box 212069, Columbia, South Carolina 29221, within forty-five (45) days¹ after service hereof, exclusive of the day of such service, and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Third Amended Complaint.

¹ 15 days + 30 days as provided by South Carolina Supreme Court Order 2020-04-22-01

**THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT.
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

/s/ Ely O. Grote

Ely O. Grote, SC Bar No. 75379

D. Ryan McCabe, Jr., SC Bar No. 16977

MCCABE, TROTTER & BEVERLY, P.C.

4500 Fort Jackson Blvd., Suite 250 (29209)

P. O. Box 212069, Columbia, SC 29221

Phone: (803) 724-5000 · Fax: (803) 724-5001

Email: ryan.mccabe@mccabetrotter.com;

ely.grote@mccabetrotter.com

ATTORNEYS FOR THE PLAINTIFF

November 3, 2020

Columbia, South Carolina

**THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT.
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
C/A No.: 2016-CP-42-1854

Chandelle Property Owners Association,

Plaintiff,

v.

**THIRD AMENDED COMPLAINT
(NON-JURY)**

Charlie M. Allison, Janice H. Allison, James Douglas Armstrong, Jane Armstrong, Emma Jean Brockman as the Personal Representative of the Estate of James P. Brockman, Sr., Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, Lawrence E. Lewis, Barbara L. Lewis, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein,

Defendant(s).

(018771.00006)

The Plaintiff herein, complaining of the acts or omissions of the Defendants would show unto this Honorable Court as follows:

1. The Plaintiff, Chandelle Property Owners Association (hereinafter “**Plaintiff**” or “**Association**”), is a nonprofit corporation organized and existing under the laws of the State of South Carolina and is the property owners association for the Chandelle Subdivision.

2. Emma Jean Brockman is the Personal Representative of the Estate of James P. Brockman, Sr. Upon information and belief, Emma Jean Brockman is a citizen and resident of Spartanburg County. Further, upon information and belief, James P. Brockman, Sr. was a citizen and resident of Spartanburg County at the time of his passing, and his probate estate is being

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administered in Spartanburg County. Upon information and belief, at the time of his passing, James P. Brockman, Sr. was the owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the fourth amended *Lis Pendens* filed herewith and incorporated herein by reference).

3. Upon information and belief, Defendant Lawrence E. Lewis is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the fourth amended *Lis Pendens* filed herewith and incorporated herein by reference).

4. Upon information and belief, Defendant Barbara L. Lewis is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the fourth amended *Lis Pendens* filed herewith and incorporated herein by reference).

5. Upon information and belief, Defendant Charlie M. Allison is a citizen and resident of Anderson County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the fourth amended *Lis Pendens* filed herewith and incorporated herein by reference).

6. Upon information and belief, Defendant Janice H. Allison is a citizen and resident of Anderson County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the fourth amended *Lis Pendens* filed herewith and incorporated herein by reference).

7. Upon information and belief, Defendant James Douglas Armstrong is a citizen

and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the fourth amended *Lis Pendens* filed herewith and incorporated herein by reference).

8. Upon information and belief, Defendant Jane Armstrong is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the fourth amended *Lis Pendens* filed herewith and incorporated herein by reference).

9. Upon information and belief, Defendant Kenneth L. Galloway is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the fourth amended *Lis Pendens* filed herewith and incorporated herein by reference).

10. Upon information and belief, Defendant Molly C. Galloway is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the fourth amended *Lis Pendens* filed herewith and incorporated herein by reference).

11. Upon information and belief, Defendant Warren Johnson is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the fourth amended *Lis Pendens* filed herewith and incorporated herein by reference).

12. Upon information and belief, Defendant Rhonda Johnson is a citizen and resident

of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the fourth amended *Lis Pendens* filed herewith and incorporated herein by reference).

13. Upon information and belief, Defendant John K. Payne is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the fourth amended *Lis Pendens* filed herewith and incorporated herein by reference).

14. Upon information and belief, Defendant Ruth G. Payne is a citizen and resident of Spartanburg County, and is an owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the fourth amended *Lis Pendens* filed herewith and incorporated herein by reference).

15. Upon information and belief, Jane Van Wieren is the trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006, which is the owner of property that is or should be part of the Chandelle Subdivision, said property being located in Spartanburg County (said property being described in the fourth amended *Lis Pendens* filed herewith and incorporated herein by reference).

16. This court has jurisdiction over the parties and the subject matter of this action.

17. Venue is proper in Spartanburg County.

ALLEGATIONS OF FACT

18. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

19. CSC Developers, LLC (hereinafter “CSC”) and persons affiliated with it, including without limitation John R. Stewart, Jr., Raymond M. Clark, Jr., Douglas E. Cobb, and/or Marilyn N. Berry, were involved in the development and marketing of the Chandelle

Subdivision, which was intended to be an aviation community containing an aircraft runway.

20. John R. Stewart, Jr., Douglas E. Cobb, and Raymond M. Clark, Jr. are/were members of CSC.

21. CSC had an agreement with James P. Brockman, Sr. pertaining to the development of Chandelle Subdivision, including an agreement to include the lands of James P. Brockman, Sr. in the Chandelle Subdivision, said agreement being entered into on or about February 15, 1997 (hereinafter, the “**Brockman Agreement**”), and James P. Brockman, Sr. was involved with the development of Chandelle Subdivision.

22. CSC executed a Declaration of Covenants, Conditions and Restrictions for Chandelle Subdivision on December 15, 1997, which was recorded December on 16, 1997, in the Office of the Register of Deeds for Spartanburg County in Book 67-A at Page 0583 (the “**Original Declaration**”). The Original Declaration, together with any valid amendments or supplements thereto, shall hereinafter be referred to as the “**Declaration**”.

23. A true and accurate copy of the Original Declaration is attached hereto as **Exhibit A.**

24. The Declaration purports to establish Plaintiff, the Chandelle Subdivision, and to encumber properties in the Chandelle Subdivision with certain covenants, conditions, restrictions and easements.

25. Plaintiff is the duly constituted property owners association for the Chandelle Subdivision and is the “Association” under the terms of the Declaration. Pursuant to the Declaration, membership in Plaintiff is appurtenant to lot ownership in the Chandelle Subdivision.

26. CSC was the original “Declarant” under the Declaration.

27. Pursuant to the recitals of the Original Declaration, it purported to initially encumber the property shown and depicted on a plat of Chandelle Subdivision, Section 1, dated September 24, 1997, prepared by Huskey & Huskey, Inc. to be recorded in the Office of the Register of Deeds for Spartanburg County (namely Lots 1 through 26); however, certain provisions of the Original Declaration, namely Article VIII, also referenced lots in addition to Lots 1 through 26. Further, the Original Declaration contemplated that additional property may be subjected to and encumbered by the Declaration.

28. Said plat referenced in the Original Declaration was approved for recording by the Spartanburg County Planning and Development Commission on February 16, 1998 and is on file with the Spartanburg County Planning and Development Department, but was never recorded with the Spartanburg County Register of Deeds.

29. Upon information and belief, CSC did not own the entirety of the property it sought to encumber at the time the Original Declaration was recorded.

30. Upon information and belief, at the time the Original Declaration was recorded, James P. Brockman, Sr. still owned a portion of the property sought to be encumbered via the terms of the Original Declaration.

31. CSC and others involved in the development and marketing of the Chandelle Subdivision represented and marketed that the Chandelle Subdivision was subject to and restricted by the covenants in the Declaration.

32. CSC and others involved in the development and marketing of the Chandelle Subdivision also initially represented that the aircraft runway was a common area of the Chandelle Subdivision when developing and selling lots within the Chandelle Subdivision. These representations were made both orally and through written marketing materials.

33. Further, the terms of the Original Declaration clearly indicate that the runway was intended as a common area/amenity of the Chandelle Subdivision.

34. Additionally, the terms of the Brockman Agreement indicate that the runway was to be a common area/amenity of the Chandelle Subdivision.

35. The Spartanburg County Planning and Development Commission, as a condition to approval of the Chandelle Subdivision, required a homeowners association to be formed and bear responsibility for perpetual easements and the runway.

36. Even though the runway was intended to be a common area of the Chandelle Subdivision, those involved in the development of Chandelle Subdivision failed to have title to the runway conveyed to Plaintiff.

37. Instead, those involved in the development and marketing of the Chandelle Subdivision improperly and inappropriately altered the Declaration and Bylaws of Plaintiff without proper amendment and distributed unofficial and inaccurate copies of the Declaration and Bylaws to Plaintiff, lot purchasers, and potential purchasers (hereinafter the “**altered Declaration**” and the “**altered Bylaws**”).

38. The altered Declaration and altered Bylaws were never recorded with the Spartanburg County Register of Deeds and contained material differences from the official Declaration and official Bylaws recorded with the Spartanburg County Register of Deeds.

39. Upon information and belief, the official Declaration and Bylaws were improperly and inappropriately modified, in part, in an attempt to improperly alter ownership and control of the runway and to induce lot owners or potential lot owners to enter into runway license agreements.

40. By way of example, among other things, the altered Declaration contains a

definition of “Licensor” as section 1.17, which defines the Licensor as “Chandelle Airport Corporation, LLC, A South Carolina Limited Liability Company, which owns the runway and will issue licenses for the use of said runway.” The altered Declaration also renumbers the subsequent definitions. The official Declaration does not contain a definition of a “Licensor”, but rather the official section 1.17 is the definition of a “Lot”.

41. By way of further example, Section 7.4 of the official Declaration was altered in the altered Declaration to change the rulemaking authority with respect to aircraft operations and the runway from “Declarant and Association” to “Declarant or Licensor.”

42. By way of further example, Section 4.3 of the official Bylaws was altered in the altered Bylaws to change “Common Area” to “Runway” in several instances.

43. By way of further example, Section 8.2(a) of the official Bylaws attached to the official Declaration provides that the Plaintiff has the power and duty to “administer and enforce the Covenants, Restrictions, Easement, *Aircraft and Runway Operations*, Uses, Limitations, Obligations and all other provisions set forth in the Declaration” (emphasis added); however, the altered Bylaws attached to the altered Declaration delete reference to “Aircraft and Runway Operations.”

44. Instead of the runway being transferred to Plaintiff as intended and as required, by deed dated May 19, 2006, and recorded May 24, 2006, in the Spartanburg County Register of Deeds Office in Book 85-V at Page 383, CSC and John R. Stewart, Jr. transferred title to the runway to Chandelle Runway, LLC for \$10.00 recited consideration.

45. Upon information and belief, Chandelle Runway, LLC was a shell company and a sham entity.

46. CSC, Chandelle Runway, LLC and/or others involved in the development and

marketing of the Chandelle Subdivision unfairly, deceptively, and fraudulently induced some lot owners to enter into runway license agreements by misrepresenting and concealing material information, including by improperly, inappropriately, and fraudulently altering the terms of the Declaration and Bylaws and distributing the same.

47. Chandelle Runway, LLC unfairly purported to hold legal title to the runway as a result of the unconscionable, deceptive, and fraudulent actions of CSC, John R. Stewart, Jr., Chandelle Runway, LLC, and/or others involved in the development and marketing of Chandelle Subdivision and was never the rightful owner of the runway.

48. During the time that Chandelle Runway, LLC unfairly and wrongfully purported to hold legal title to the runway, it purported to grant easements to Defendants James Douglas Armstrong, Jane G. Armstrong, Kenneth L. Galloway, Molly C. Galloway, Jane Van Wieren as Trustee of the Greer RG Irrevocable Property Trust dated October 25, 2006, Warren G. Johnson, and Rhonda B. Johnson, purporting to allow them to pave from their properties across the grass portion of the runway to access the paved portion of the runway. These include, without limitation, the following:

- a. Instrument entitled “Permanent Easement and Right” from Chandelle Runway, LLC to James Douglas Armstrong and Jane G. Armstrong, recorded on January 10, 2018, in the Office of the Register of Deeds for Spartanburg County in Deed Book 118-F at Page 502;
- b. Instrument entitled “Permanent Easement and Right” from Chandelle Runway, LLC to James Douglas Armstrong and Jane G. Armstrong, recorded on January 10, 2018, in the Office of the Register of Deeds for Spartanburg County in Deed Book 118-F at Page 507;

- c. Instrument entitled "Corrected Permanent Easement and Right" from Chandelle Runway, LLC to James Douglas Armstrong and Jane G. Armstrong, recorded on February 27, 2018, in the Office of the Register of Deeds for Spartanburg County in Deed Book 118-U at Page 35;
- d. Instrument entitled "Corrected Permanent Easement and Right" from Chandelle Runway, LLC to James Douglas Armstrong and Jane G. Armstrong, recorded on February 27, 2018, in the Office of the Register of Deeds for Spartanburg County in Deed Book 118-U at Page 40;
- e. Instrument entitled "Permanent Easement and Right" from Chandelle Runway, LLC to Kenneth L. Galloway and Molly C. Galloway, recorded on January 10, 2018, in the Office of the Register of Deeds for Spartanburg County in Deed Book 118-F at Pg. 497;
- f. Instrument entitled "Corrected Permanent Easement and Right" from Chandelle Runway, LLC to Kenneth L. Galloway and Molly C. Galloway, recorded on February 27, 2018, in the Office of the Register of Deeds for Spartanburg County in Deed Book 118-U at Page 30;
- g. Instrument entitled "Permanent Easement and Right of Way" from Chandelle Runway, LLC to Jane Van Wieren as Trustee of the Greer RG Irrevocable Property Trust, dated October 25, 2006, recorded on January 11, 2018, in the Office of the Register of Deeds for Spartanburg County in Deed Book 118-F at Page 760;
- h. Instrument entitled "Permanent Easement and Right of Way" from Chandelle Runway, LLC to Warren G. Johnson and Rhonda B. Johnson, recorded on

February 2, 2018, in the Office of the Register of Deeds for Spartanburg County in Deed Book 118-N at Page 280;

- i. Instrument entitled “Permanent Easement and Right of Way” from Chandelle Runway, LLC to Warren G. Johnson and Rhonda B. Johnson, recorded on February 2, 2018, in the Office of the Register of Deeds for Spartanburg County in Deed book 118-N at Page 284.

(the “**Paving Easements**”)

49. Chandelle Runway, LLC purported to convey said easements during the pendency of this action (in which title to the runway was disputed) and while a *lis pendens* was in place on the runway and said defendants’ properties.

50. Thereafter, on or about April 23, 2018, Chandelle Runway, LLC filed for Chapter 11 Bankruptcy in the United States Bankruptcy Court for the District of South Carolina (Case No. 18-02054-hb), which was subsequently converted to a Chapter 7 Bankruptcy (liquidation).

51. Additionally, on or about April 23, 2018, CSC also filed for Chapter 11 Bankruptcy in the United States Bankruptcy Court for the District of South Carolina (Case No. 18-02053-hb), which was also subsequently converted to a Chapter 7 Bankruptcy (liquidation).

52. Upon information and belief, Defendants were all named as creditors in the aforementioned bankruptcy actions.

53. Through the bankruptcy proceedings, title to the runway was conveyed to Plaintiff by deed of John K. Fort, as the Chapter 7 Bankruptcy Trustee, said deed being dated February 26, 2020, and recorded on March 6, 2020, in the Office of the Register of Deeds for Spartanburg County in Deed Book 127-E at Page 378.

54. In addition to the runway, CSC and others involved in the development and

marketing of Chandelle Subdivision also represented other property as being common areas of the Chandelle Subdivision, including the property where the neighborhood monuments are located, but failed to timely have such property conveyed to Plaintiff.

55. As part of the bankruptcy proceedings of CSC and Chandelle Runway, LLC, certain common areas titled in the name of CSC and Chandelle Runway, LLC were conveyed to Plaintiff.

56. However, certain lands that were represented and designated as common areas of the Chandelle Subdivision still remain titled in the name of James P. Brockman, Sr. and/or his estate, and James P. Brockman, Sr. and his estate have failed to convey title to such lands to Plaintiff.

57. The Declaration, in particular, Section 8.2 thereof, provides owners with a right of ingress and egress from their lots to the runway by way of permanent easement and notes that some of the easements are established along the rear and side lot lines as shown on the plat for Chandelle, Section 1, which was never recorded.

58. The plat for Chandelle, Section 1 (which is unrecorded) shows a 50' Aircraft Taxi Easement providing aircraft access to the runway for Lots 1 through 11.

59. Upon information and belief, said 50' Aircraft Taxi Easement is necessary to afford Lots 1 through 10 aircraft access to the runway, and Lots 1 through 10 would not have aircraft access to the runway without it.

60. Upon information and belief, portions of the 50' Aircraft Taxi Easement have been documented in recorded individual lot surveys as individual lots were sold.

61. Upon information and belief, the portions of said 50' Aircraft Taxi Easement located on land still owned by James P. Brockman, Sr. and/or his estate have not been formally

documented on a recorded plat.

62. Article XVI, Section 16.2 of the official Declaration states that the Declarant (originally, CSC) may expand Chandelle Subdivision by recording a Declaration of Annexation before December 31, 2001, describing the real property to be annexed and submitting it to the Declaration.

63. However, the December 31, 2001, deadline was removed in the altered Declaration that was distributed to lot owners and potential lot owners by CSC and others involved in the development and marketing of Chandelle Subdivision.

64. CSC continued to annex property after the date stated in the official Declaration and intended such property to be bound by the Declaration. Specifically, the following instruments were recorded:

- a. Amendments to Covenants, Conditions and Restrictions of Chandelle Subdivision dated December 28, 2004 and recorded December 28, 2004 in the Register of Deeds Office for Spartanburg County in Book 81-Y at Page 823, annexing Chandelle Section 1-A, Lot 39 (Section 3a), Lot 39a and Lots 40 through 47 (Chandelle Section 3).
- b. Amendments to Covenants, Conditions and Restrictions of Chandelle Subdivision dated April 11, 2007 and recorded April 17, 2007 in the Register of Deeds Office for Spartanburg County in Book 88-H at Page 448, annexing Lots 33 and 37 (Section 4); 29, 30 and 34 (Section 6); and 27 and 28 (Section 7).
- c. Amendments to Covenants, Conditions and Restrictions of Chandelle Subdivision dated November 2, 2011 and recorded November 2, 2011 in the Register of Deeds Office for Spartanburg County in Book 99-L at Page 999, annexing Lots 32 and

36 (Section 4A); 31 and 35 (Section 5); and 55, 56 and 57 (Section 8).

65. Additionally, CSC, James P. Brockman, Sr., and/or others involved in the development of the Chandelle Subdivision included language in certain deeds specifically referencing the Declaration, upon information and belief, intending to confirm that such property was subject to the Declaration and/or intending to subject such property to the Declaration.

66. Further, Defendants Lawrence E. Lewis and Barbara L. Lewis entered into an agreement known as the “Berry, Lewis, Stewart Agreement,” dated October 20, 2004, pertaining to the development of Chandelle Subdivision and the applicability of the Declaration to the lands of Defendants Lawrence E. Lewis and Barbara L. Lewis.

67. CSC, either intentionally or unintentionally, failed to record an instrument purporting to annex those lots depicted on the Chandelle Section 2A plat recorded with the Spartanburg County Register of Deeds (Lots 50, 51, 52, 53, and 54) even though those lots were represented as being part of the Chandelle Subdivision during the course of the development and marketing of the Chandelle Subdivision.

68. Upon information and belief, CSC failed to attempt to annex all lots and properties that were represented and marketed as being part of the Chandelle Subdivision and bound by the Declaration.

69. Other owners of property in the Chandelle Subdivision that are not named as defendants have executed a “Consent Agreement and Ratification Addendum Chandelle Property Owners Association” whereby they have voluntarily agreed to encumber and subject their Lots to the Declaration, including submitting themselves to membership in the Plaintiff, and they also voluntarily agreed to be bound by the outcome of this suit, and reference is craved to such agreements as to their exact terms and conditions.

70. Additionally, through the bankruptcy proceedings and through other agreements, other matters relating to the development of Chandelle Subdivision have been resolved, including the applicability of the Declaration to certain other lands that are not part of this action.

71. Through the bankruptcy proceedings, Plaintiff has also been assigned certain rights, interests, and claims of CSC and Chandelle Runway, LLC, including, but not limited to, in, to, and under the following:

- a. The Declaration;
- b. The Articles of Incorporation and Bylaws of Chandelle Property Owners Association;
- c. Chandelle Property Owners Association;
- d. The runway;
- e. An aircraft taxi easement;
- f. Certain claims, rights, and causes of action of CSC and Chandelle Runway, LLC;
- g. Any runway license agreements; and
- h. The purported Paving Easements.

Said assignment was recorded on May 15, 2020, in the Office of the Register of Deeds for Spartanburg County in Deed Book 127-X at Page 10, and is incorporated herein by reference.

72. Plaintiff has also been assigned CSC's rights and interest under the Brockman Agreement.

73. The board of directors of Plaintiff is valid and Plaintiff is properly authorized to bring this action.

74. Plaintiff previously filed a separate Complaint against Kenneth L. Galloway and Molly C. Galloway in civil action no. 2016-CP-42-74, and civil action no. 2016-CP-42-74 has

now been consolidated with this action. This Third Amended Complaint is not intended to supersede, replace, or in any way abrogate the Complaint filed by Plaintiff in civil action no. 2016-CP-42-74 or the claims asserted by Plaintiff in civil action no. 2016-CP-42-74. Plaintiff intends that such Complaint filed in civil action no. 2016-CP-42-74 shall remain in full force and effect. However, out of an abundance of caution and to the extent deemed necessary, Plaintiff hereby repeats, reasserts, and reaffirms all of its allegations and claims for relief in civil action no. 2016-CP-42-74, and hereby fully incorporates its Complaint in civil action no. 2016-CP-42-74 herein by this reference.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment – as to all Defendants)
 S.C. Code Ann. § 15-53-10, *et. seq.*

75. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

76. This action is brought pursuant to S.C. Code § 15-53-10 *et seq.*, seeking an Order of this Court declaring the rights of the parties.

77. A justiciable controversy exists between the parties hereto and the parties hereto have or claim to have an interest which would be affected by this declaratory judgment.

78. The Chandelle Subdivision has been operated as a covenant restricted community since inception; however, due to the development history of the Chandelle Subdivision, questions had been raised, disputes had arisen, and certain uncertainties existed as to what properties were in fact part of the Chandelle Subdivision and encumbered by the Declaration, what property owners were mandatory members of the Association and subject to assessments, and matters concerning ownership, control, maintenance, and use of the runway located in the Chandelle Subdivision. While many of these issues have now been resolved through the bankruptcy proceedings and through agreements by/with other property owners, Plaintiff seeks

to resolve any remaining matters with Defendants and their properties, and requests that the court declare the rights, status, and legal relationship between the parties, their properties, the Declaration, and the Chandelle Subdivision as necessary to resolve any disputes and/or eliminate any uncertainties.

79. Defendants' properties are or should be part of the Chandelle Subdivision and subject to and encumbered by the Declaration, including the attendant rights and responsibilities thereunder.

80. Any runway license agreements that exist are null, void, and of no force and effect. Among other things:

- a. The runway license agreements were procured through fraud, misrepresentation, and/or mistake.
- b. The runway license agreements are inconsistent with the system of ownership, maintenance, use, and control of the runway established by the Declaration, and are against public policy. Further not all Chandelle property owners executed a runway license agreement, and only a limited number of existing property owners actually executed one.
- c. The terms of the runway license agreements have never been adhered to, followed, or enforced, nor was there any consideration for them.
- d. Some of the license agreements actually predate the formation of Chandelle Runway, LLC and/or the purported transfer of title to the runway to Chandelle Runway, LLC.
- e. Upon information and belief, any claims to, under, or relating to the runway license agreements needed to be raised in the bankruptcy actions, and any claims

to, under, or relating to the runway license agreements have been lost and/or are otherwise barred as a result of the bankruptcy proceedings.

81. The purported Paving Easements are null, void, and of no force and effect.

Among other things:

- a. Chandelle Runway, LLC was not the rightful owner of the runway at the time the Paving Easements were purportedly conveyed, and thus lacked proper authority and standing to convey the purported easements.
- b. The Paving Easements were purportedly conveyed by Chandelle Runway, LLC during the pendency of this action (in which title to the runway was disputed and to which Defendants and Chandelle Runway, LLC were parties) and while a *lis pendens* was pending on the runway and the Defendants' properties.
- c. The Paving Easements constitute fraudulent conveyances and were intended to delay, hinder, defraud, or otherwise frustrate Plaintiff's claims concerning the ownership, maintenance, operation, and use of the runway. The Paving Easements are contrary to public policy and violative of South Carolina law, including without limitation, S.C. Code Ann. § 27-23-10.
- d. The Chandelle Subdivision runway was represented and marketed as having both paved and turf takeoff/landing strips.
- e. If the purported Paving Easements were exercised, it would render the grass portion of the runway unusable and unsafe for takeoffs and landings, essentially resulting in a closure of the grass portion of the runway. Article VII, Section 7.1 of the Declaration provides for the continued operation of the runway and requires that at least 90% of the Lot Owners consent to the discontinuation of its operation

as such. Thus, the Paving Easements are contrary to and in violation of the terms of the Declaration.

- f. If the purported Paving Easements were exercised, it would interfere with property owners' rights of use and enjoyment of the runway.
- g. Upon information and belief, any claims to, under, or relating to the purported Paving Easements needed to be raised in the bankruptcy actions, and any claims to, under, or relating to the purported Paving Easements have been lost and/or are otherwise barred as a result of the bankruptcy proceedings.

82. Plaintiff is informed and believes that it is entitled to an order of this Court declaring:

- a. That Defendants' properties are part of the Chandelle Subdivision and subject to and encumbered by the Declaration, and/or otherwise declaring the applicability of the Declaration to Defendants' properties as appropriate.
- b. The existence of reciprocal negative easements;
- c. That the runway is a common area of Chandelle Subdivision;
- d. That any runway license agreements are null, void, and of no force and effect;
- e. The rights, duties, and obligations of the parties pertaining to use of the runway;
- f. That the purported Paving Easements are null, void, and of no force and effect;
- g. The existence of the aforementioned 50' Aircraft Taxi Easement;
- h. That certain lands owned by James P. Brockman, Sr. and/or his estate are common area of Chandelle Subdivision and that Plaintiff and the property owners in Chandelle subdivision have an easement and right of use and enjoyment of such common area; and that such common area must be conveyed to Plaintiff or

that an appropriate easement must be conveyed to Plaintiff;

- i. Defendants' obligations to pay assessments under the Declaration;
- j. The rights, responsibilities, and obligations of Plaintiff, Emma Jean Brockman as the Personal Representative of the Estate of James P. Brockman, Sr., and any successors in title to the lands owned by James P. Brockman, Sr. and/or his estate under the Brockman Agreement, including a declaration of the validity of the assignment to Plaintiff; and
- k. Such other relief and/or declarations as are just and proper, including, but not limited to, reforming the Declaration and Bylaws and/or the use of the Court's inherent equitable powers to provide relief from the consequences of accident, mistake, and/or fraud.

FOR A SECOND CAUSE OF ACTION
(Quiet Title – as to all Defendants)

83. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

84. This action is brought pursuant to S.C. Code Ann. § 15-67-10, *et seq.* seeking to quiet title to the property identified in the fourth amended *Lis Pendens* filed herewith and incorporated herein by reference, as well as to the runway.

85. The Defendants have claimed or may claim ownership of or an interest in the aforementioned property.

86. Plaintiff is informed and believes that it is entitled to an order of this Court quieting title to the aforementioned property by:

- a. Determining that Defendants' properties are part of the Chandelle Subdivision and subject to and encumbered by the Declaration, and/or otherwise determining the applicability of the Declaration to Defendants' properties as appropriate.

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- b. Determining the existence of reciprocal negative easements;
- c. Determining that the runway is a common area of Chandelle Subdivision;
- d. Determining that any runway license agreements are null, void, and of no force and effect;
- e. Determining the rights, duties, and obligations of the parties pertaining to use of the runway;
- f. Determining that the purported Paving Easements are null, void, and of no force and effect;
- g. Determining and establishing the existence of the aforementioned 50' Aircraft Taxi Easement;
- h. Determining that certain lands owned by James P. Brockman, Sr. and/or his estate are common area of Chandelle Subdivision and that Plaintiff and the property owners in Chandelle subdivision have an easement and right of use and enjoyment of such common area; and that such common area must be conveyed to Plaintiff or that an appropriate easement must be conveyed to Plaintiff;
- i. Determining Defendants' obligations to pay assessments under the Declaration;
- j. Determining the rights, responsibilities, and obligations of Plaintiff, Emma Jean Brockman as the Personal Representative of the Estate of James P. Brockman, Sr., and any successors in title to the lands owned by James P. Brockman, Sr. and/or his estate under the Brockman Agreement, including a declaration of the validity of the assignment to Plaintiff; and
- k. Making such other determinations and/or granting such other relief as is just and proper, including, but not limited to, reforming the Declaration and Bylaws and/or

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the use of the Court's inherent equitable powers to provide relief from the consequences of accident, mistake, and/or fraud.

FOR A THIRD CAUSE OF ACTION
(Reciprocal Negative Easements – as to all Defendants)

87. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

88. The development of Chandelle Subdivision created reciprocal negative easements.

89. It was represented that there was a common grantor of the lots within the Chandelle Subdivision.

90. The developer(s) of Chandelle Subdivision created and published a general plan or scheme of restrictions for Chandelle Subdivision.

91. The developer(s) of Chandelle Subdivision subdivided the land and designated the lots/land in Chandelle Subdivision as subject to the restrictions and the general plan or scheme of restrictions.

92. The developer(s) of Chandelle Subdivision created restrictive covenants for the development, and these covenants run with the land in accordance with the general plan or scheme of restrictions developed by the developer(s).

93. In granting the lots subject to the general scheme of restrictions, the developer(s), Plaintiff, the lot owners, and the retained land stood to benefit from the scheme.

94. The general plan or scheme of restrictions, and the conveyance of lots/land subject to the same, evidence a scheme and an intent that the entire tract be similarly treated, so that once the plan was effectively put into operation, the burden placed upon the land conveyed is by operation of law reciprocally placed upon the land retained.

95. Plaintiff seeks an order declaring the existence of reciprocal negative easements

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and the applicability of the Declaration to Defendants' properties.

FOR A FOURTH CAUSE OF ACTION

**(Breach of Governing Documents/Collection of Assessments and Other Allowable Charges
– as to James Douglas Armstrong, Jane Armstrong, Kenneth L. Galloway, Molly C.
Galloway, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane
Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25,
2006)**

96. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

97. At all times relevant hereto, Defendants James Douglas Armstrong, Jane Armstrong, Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 and their properties have been subject to and bound by the Declaration and other governing documents for Chandelle Subdivision.

98. By virtue of their ownership of properties subject to the Declaration and other governing documents for Chandelle Subdivision, Defendants James Douglas Armstrong, Jane Armstrong, Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 agreed to and are obligated to pay to Plaintiff assessments and other charges allowed by the Declaration and other governing documents for Chandelle Subdivision.

99. Defendants James Douglas Armstrong, Jane Armstrong, Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 have failed to pay assessments and other charges properly levied by Plaintiff pursuant to the Declaration and other governing documents for Chandelle Subdivision.

100. As of November 1, 2020, Defendants James Douglas Armstrong and Jane

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Armstrong owe Plaintiff \$44,489.51 in assessments, interest, late fees, and other allowable charges under the Declaration and other governing documents for Chandelle Subdivision, exclusive of attorney's fees and costs.

101. As of November 1, 2020, Defendants Kenneth L. Galloway and Molly C. Galloway owe Plaintiff \$23,953.20 in assessments, interest, late fees, and other allowable charges under the Declaration and other governing documents for Chandelle Subdivision, exclusive of attorney's fees and costs (including exclusive of those attorney's fees and costs pertaining to civil action no. 2016-CP-42-74 and the subject matter thereof).

102. As of November 1, 2020, Defendants Warren Johnson and Rhonda Johnson owe Plaintiff \$71,075.09 in assessments, interest, late fees, and other allowable charges under the Declaration and other governing documents for Chandelle Subdivision, exclusive of attorney's fees and costs.

103. As of November 1, 2020, Defendants John K. Payne and Ruth G. Payne owe Plaintiff \$22,362.96 in assessments, interest, late fees, and other allowable charges under the Declaration and other governing documents for Chandelle Subdivision, exclusive of attorney's fees and costs.

104. As of November 1, 2020, Defendants Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 owes Plaintiff \$74,315.69 in assessments, interest, late fees, and other allowable charges under the Declaration and other governing documents for Chandelle Subdivision, exclusive of attorney's fees and costs.

105. Plaintiff is entitled to recover its attorney's fees and costs.

106. Plaintiff is entitled to judgment against Defendants James Douglas Armstrong and Jane Armstrong (jointly and severally), Kenneth L. Galloway and Molly C. Galloway (jointly

and severally), Warren Johnson and Rhonda Johnson (jointly and severally), John K. Payne and Ruth G. Payne (jointly and severally), and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 for assessments, interest, late fees, attorney's fees, costs, and other allowable charges under the Declaration and other governing documents for Chandelle Subdivision.

FOR A FIFTH CAUSE OF ACTION

(Quantum Meruit – as to James Douglas Armstrong, Jane Armstrong, Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006)

107. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

108. Despite James Douglas Armstrong, Jane Armstrong, Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 failing or refusing to pay assessments and other charges, Plaintiff has conferred benefits upon them, including without limitation, providing services, enforcing the governing documents for Chandelle Subdivision, pursuing litigation, performing the Association's functions under the governing documents for Chandelle Subdivision, and expending funds for their benefit and for the common benefit of the Chandelle Subdivision lot owners and occupants, including taking actions and expending funds to promote the recreation, health, safety, and welfare of the property owners and occupants within Chandelle Subdivision.

109. Defendants James Douglas Armstrong, Jane Armstrong, Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 have realized the benefits conferred by Plaintiff.

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110. Defendants James Douglas Armstrong, Jane Armstrong, Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 have retained the benefits conferred by Plaintiff under circumstances that make it unjust and inequitable for them to retain said benefits without paying their value.

111. Plaintiff is entitled to judgment against Defendants James Douglas Armstrong and Jane Armstrong (jointly and severally), Kenneth L. Galloway and Molly C. Galloway (jointly and severally), Warren Johnson and Rhonda Johnson (jointly and severally), John K. Payne and Ruth G. Payne (jointly and severally), and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 for the value of the benefits conferred.

FOR A SIXTH CAUSE OF ACTION
(Reformation of Declaration and Bylaws – as to all Defendants)

112. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

113. CSC recorded an instrument entitled “Amendments to Covenants, Conditions and Restrictions of Chandelle Subdivision” on June 10, 2000, in the Office of the Register of Deeds for Spartanburg County in Deed Book 72-G at Pg. 843, which, among other things, purports to amend Section 7.3 of the Declaration, pertaining to control of the runway and taxiway, to reference “Licensor” instead of “Declarant and Association”, even though no such thing as a “Licensor” exists/existed under the official Declaration.

114. Upon information and belief, such purported change/amendment does not comply with the amendment provisions of the Declaration (Article XII, Section 12.2) because it violates the community development plan.

115. Upon information and belief, such purported change/amendment does not comply with South Carolina law pertaining to unilateral amendments.

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116. Additionally, no such thing as a “Licensor” exists/existed under the Declaration.

117. Further, as noted above, Plaintiff has been assigned any and all rights of Chandelle Runway, LLC under any purported runway license agreements, the validity of such license agreements being disputed by Plaintiff. Nonetheless, to the extent any license agreements are found to be valid, Plaintiff and the “Licensor” under the purported runway license agreements would be one and the same entity.

118. The above-referenced instrument recorded by CSC on June 10, 2000, should be reformed to replace “Licensor” with “Association”.

119. Plaintiff also requests that the Declaration and/or Bylaws be reformed as is just and proper, and as necessary to provide relief from the consequences of accident, mistake, and/or fraud.

FOR A SEVENTH CAUSE OF ACTION

(Specific Performance of the Brockman Agreement & Injunction – as to Emma Jean Brockman as the Personal Representative of the Estate of James P. Brockman, Sr.)

120. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

121. Plaintiff has been assigned CSC’s rights and interest under the Brockman Agreement.

122. The Brockman Agreement requires that the lands of James P. Brockman, Sr. and/or his estate be included in the Chandelle Subdivision and subject to the Declaration.

123. Upon information and belief, any and all conditions precedent of the Brockman Agreement have been performed for inclusion of the lands of James P. Brockman, Sr. and/or his estate in the Chandelle Subdivision.

124. Plaintiff and the property owners within Chandelle Subdivision will suffer irreparable harm if the lands of James P. Brockman, Sr. and/or his estate are not included in the

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Chandelle Subdivision, including if the 50' Aircraft Taxi Easement is not affirmed and if the common areas are not conveyed to Plaintiff or an appropriate common area easement is not conveyed to Plaintiff.

125. Plaintiff is willing and able to accept a conveyance of said common areas and to accept and recognize the inclusion of the lands of James P. Brockman, Sr. and/or his estate into the Chandelle Subdivision.

126. Plaintiff is entitled to specific performance of the Brockman Agreement and/or injunctive relief with respect to inclusion of the lands of James P. Brockman, Sr. and/or his estate in the Chandelle Subdivision, including without limitation:

- a. An order compelling that the lands owned by James P. Brockman, Sr. and/or his estate that are or were intended as common area of Chandelle Subdivision be conveyed to Plaintiff or that an appropriate easement be conveyed to Plaintiff;
- b. An order compelling Emma Jean Brockman as the Personal Representative of the Estate of James P. Brockman, Sr. to cause the land owned by James P. Brockman, Sr. or his estate to be platted and that said plat(s) be recorded, and that said plat(s) depict and designate the lots, common area, and the aforementioned 50' Aircraft Taxi Easement.
- c. An order otherwise compelling specific performance of the Brockman Agreement by Emma Jean Brockman as the Personal Representative of the Estate of James P. Brockman, Sr. and/or granting injunctive relief as is necessary to affirm, effectuate and/or compel the inclusion of the lands of James P. Brockman, Sr. or his estate in the Chandelle Subdivision, including the applicability of the Declaration to said lands.

FOR AN EIGHTH CAUSE OF ACTION
**(Specific Performance of the Berry, Lewis, Stewart Agreement & Injunction – as to
Lawrence E. Lewis and Barbara L. Lewis)**

127. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

128. Plaintiff and the owners of property within the Chandelle Subdivision are third-party beneficiaries of the Berry, Lewis, Stewart Agreement.

129. The Berry, Lewis, Stewart Agreement requires that the lands of Lawrence E. Lewis and Barbara L. Lewis be included in the Chandelle Subdivision and subject to the Declaration.

130. Plaintiff is willing and able to accept and recognize the inclusion of the lands of Lawrence E. Lewis and Barbara L. Lewis into the Chandelle Subdivision.

131. Plaintiff and the property owners within Chandelle Subdivision will suffer irreparable harm if the lands of Lawrence E. Lewis and Barbara L. Lewis are not included in the Chandelle Subdivision and not subject to the Declaration.

132. Plaintiff is entitled to specific performance of the Berry, Lewis, Stewart Agreement and/or injunctive relief with respect to inclusion of the lands of Lawrence E. Lewis and Barbara L. Lewis in the Chandelle Subdivision, including without limitation, an order compelling specific performance of the Berry, Lewis, Stewart Agreement by Lawrence E. Lewis and Barbara L. Lewis and/or granting injunctive relief as is necessary to affirm, effectuate, and/or compel the inclusion of the lands of Lawrence E. Lewis and Barbara L. Lewis in the Chandelle Subdivision, including the applicability of the Declaration to said lands.

FOR A NINTH CAUSE OF ACTION
(Injunction – as to all Defendants)

133. Plaintiff incorporates all previous allegations as if repeated verbatim herein.

134. Plaintiff and the property owners within Chandelle Subdivision will suffer

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irreparable harm if the lands of Defendants are not included in the Chandelle Subdivision and not subject to the Declaration.

135. Plaintiff is entitled to injunctive relief as is necessary to affirm, effectuate, and/or compel the inclusion of Defendants' lands in the Chandelle Subdivision, including the applicability of the Declaration to said lands, and/or as otherwise necessary to effectuate the development plan/intent for Chandelle Subdivision and/or to provide relief from the consequences of accident, mistake, and/or fraud.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays unto this Honorable Court as follows:

- a. For declaratory judgment, as set forth herein;
- b. An order quieting title, as set forth herein;
- c. For judgment against James Douglas Armstrong, Jane Armstrong, Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 as set forth in Plaintiff's Fourth and Fifth causes of action;
- d. For an order reforming the Declaration and/or Bylaws, as set forth herein;
- e. For specific performance and injunctive relief, as set forth herein;
- f. For an order declaring the existence of reciprocal negative easements, as set forth herein;
- g. For all damages and relief sought by Plaintiff in civil action no. 2016-CP-42-74.
- h. An award of attorney's fees and costs; and
- i. For such other and further relief as may be just and proper.

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/s/ Ely O. Grote

Ely O. Grote, SC Bar No. 75379

D. Ryan McCabe, Jr., SC Bar No. 16977

MCCABE, TROTTER & BEVERLY, P.C.

4500 Fort Jackson Blvd., Suite 250 (29209)

P. O. Box 212069, Columbia, SC 29221

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Email: ryan.mccabe@mccabetrotter.com;

ely.grote@mccabetrotter.com

ATTORNEYS FOR THE PLAINTIFF

November 3, 2020

Columbia, South Carolina

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EXHIBIT ATHIS DOCUMENT
MARGINAL
FOR IMAGING

DEED 67A PG 583

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions is made this 15th day of December, 1997, by CSC Developers, LLC, a South Carolina Limited Liability Company, hereinafter referred to as the "Declarant"

WHEREAS, the Declarant is the owner of certain real property located in Greer, South Carolina, and fully described as Section 1 of the Chandelle Plat of a survey prepared by Huskey & Huskey, Inc. dated September 24, 1997 and to be recorded herewith in the office of the RMC for Spartanburg County, Spartanburg, South Carolina, and desires to create thereon a residential planned development so improved as to afford each landowner the natural and structural beauty for the accommodation of a gracious living and at the same time provide convenience of facilities for the furtherance of their common interest in aviation.

WHEREAS, the Declarant desires to insure the values and amenities in said planned development, to prevent any future impairment thereof, and to provide for the maintenance of all common areas, by subjecting the real property, together with any additions to said property, to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each of which is and are for the benefit of each property and each owner thereof.

WHEREAS, the Declarant has deemed it desirable for the efficient preservation of the values and amenities in said planned development to create an agency to which will be delegated and assigned the powers of maintaining and administering the planned development properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created. For this purpose the Declarant has caused to be incorporated under the laws of South Carolina as a non-profit corporation, Chandelle Property Owners Association, Inc.

NOW, THEREFORE, Declarant, by this DECLARATION of Covenants, Conditions and Restrictions, does hereby declare that all the property described herein and shown as lots 1 through 26 on the Chandelle Subdivision plat dated September 24, 1997 by Huskey & Huskey, Inc. for Spartanburg County, South Carolina is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in the Declaration which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof

RMC
SPARTANBURG, S.C.

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DEED 67A PG 584

Declaration of Covenants, Conditions, and Restrictions

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ARTICLE I**Definitions**

Section 1.1 Adjoining Land shall mean and refer to land contiguous with the Property, whether or not owned by Declarant, which is or may be made subject to this Declaration.

Section 1.2 Annexation shall mean and refer to the process by which portions of the Expansion Property or Adjoining Land are made subject to this Declaration as provided in Article XVI below.

Section 1.3 Architectural Control Committee (ACC) shall mean and refer to a committee formed to maintain the quality and architectural harmony of improvements to the Development.

Section 1.4 Architectural Guidelines shall mean and refer to the guidelines and rules established and supplemented from time to time by the Architectural Control Committee.

Section 1.5 Articles or Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Association which will have been filed with the Secretary of State to create the Association.

Section 1.6 Assessments shall mean and refer to annual, special and default assessments levied pursuant to Article XI below to meet the estimated cash requirements of the Association.

Section 1.7 Association shall mean and refer to the Chandelle Property Owners Association, Inc., a non-profit South Carolina corporation its successors and assigns.

Section 1.8 Board of Directors shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.9 By-Laws shall refer to the bylaws of Chandelle Property Owners Association attached to the Declaration and incorporated herein by this reference.

Section 1.10 Chandelle shall mean and refer to the planned community created by this Declaration, consisting of the property and of all improvements located on the property.

Section 1.11 Chandelle Documents shall mean and refer to the basic documents creating and governing Chandelle, including but not limited to this Declaration, the Articles of Incorporation and Bylaws of the Association, the Architectural Guidelines and any Procedures, Rules, Regulations or Policies adopted under such documents by the Association of the Architectural Control Committee.

Section 1.12 Common Area shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now and hereafter owned by the Association for the common use and enjoyment of the Owners.

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Section 1.13 Declarant, shall mean and refer to CSC Developers, LLC a South Carolina Limited Liability Company, and its successors-in-title and assigns. It is expressly understood that there shall be only one person or legal entity entitled to exercise the right and power of the "Declarant".

Section 1.14 Declaration of Annexation shall mean and refer to a declaration prepared and recorded in accordance with Article XVI below to incorporate the Adjoining Land within the Property governed by this Declaration.

Section 1.15 Development/Properties, shall mean and refer to certain real property and interest therein described as Phase I of Chandelle Estates Plat attached hereto, and such additions thereto as made by the Declarant.

Section 1.16 Improvements shall mean and refer to all buildings and structures, parking areas, fences, walls, hedges, plantings, pools, driveways, ponds, lakes, recreational facilities, signs, changes in any exterior color or shape, excavation and all other site work including without limitation grading, road construction, utility improvement, removal of trees or plantings, and any new exterior construction or exterior improvement which may not be included in the foregoing. "Improvements" does not include turf, shrub or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearance. "Improvements" does include both original improvements and all later changes and improvements.

Section 1.17 Lot, shall mean and refer to any plot of land within the Chandelle properties whether or not improvements are constructed thereon, which constitutes or will constitute a single family dwelling. The ownership of each Lot shall include all the rights, title, and interest of an Owner in the Common Property, which shall include without limitation, membership in the Association.

Section 1.18 Maintenance Fund shall mean and refer to the fund created by assessments and fees levied pursuant to Article XI below to provide the Association with the funds required to carry out its duties under this Declaration.

Section 1.19 Member shall mean and refer to any person or entity holding membership in the Association.

Section 1.20 Mortgage shall mean and refer to any mortgage, deed to secure debt, deed of trust, and any and all similar instruments used for the purpose of encumbering real property in this Development as security for the payment or satisfaction of an obligation.

Section 1.21 Mortgagee shall mean and refer to a holder of a mortgage.

Section 1.22 Owner shall mean and refer to the record owner, whether one or more persons, of the fee simple title to a Lot located within the Development, and entitled to one vote per Lot as a member of the Chandelle Property Owners Association, but excluding those having such interest merely as security for the performance of an obligation.

DEED 67A PG 591

Section 1.23 Plat shall mean and refer to any plat (or as-built survey) depicting the Property filed in the R.M.C. office for the County of Spartanburg, State of South Carolina, as such Plat may be amended from time to time.

Section 1.24 Property shall mean and refer to the Property initially subject to this Declaration and any additional Real Property from time to time subject to these Covenants pursuant to the provisions of this Declaration.

Section 1.25 Recreational Facilities shall mean and refer to the recreational facilities or amenities owned by Declarant and located within the Property from time to time.

Section 1.26 Runway shall mean that property located at the center of the subdivision used for the purpose of aircraft takeoffs and landings.

Section 1.27. Taxiway shall mean and refer to those right-of-ways radiating from the runway or otherwise as shown on the Plat for the purpose of providing access for aircraft to and from the runway.

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ARTICLE II
The Association

Section 2.1 Dedication of Common Area. Declarant may hereafter convey to the Association certain parts of the property as Common Area intended for common use by the owners in Chandelle. Such designated areas shall, upon conveyance, be dedicated to the common use and enjoyment of owners, and their families, guests, tenants, and invitees.

Section 2.2 Responsibility for Common Area. Subject to the rights of the owners set forth in this Declaration, the Association shall be responsible for the management and control of the Common Area dedicated under Section 2.1 above and all improvements in the Common Area (including equipment related thereto), and shall keep it in good, clean and attractive condition and repair consistent with the requirements of a first class residential and recreational community, pursuant to the terms and conditions of this Declaration.

Section 2.3 Membership. Every Owner, by virtue of being an Owner and for as long as he is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. No Owner, whether one or more persons, shall have more than one membership per Lot owned, but all of the persons owning each Lot shall be entitled to rights of membership and of use and enjoyment appurtenant to such ownership. The combination of two or more original Lots will be considered a single Lot for membership and assessment purposes. The Articles of Incorporation and Bylaws of the Association may set forth additional classifications of membership, which Members may or may not be Owners.

Section 2.4 Classes of Membership and Voting Rights. Each Member shall be entitled to one vote for each Lot, according to the plat. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as the Owners among themselves determine, and the Secretary of the Association shall be notified of such designation prior to any meeting. In the absence of such notification, the vote allocated to the Lot shall be suspended in the event more than one person or entity seeks to exercise the right to vote. Any Owner of a Lot which is leased may assign his voting right to the tenant, provided that a copy of the Instrument of Assignment is furnished to the Secretary of the Association prior to any meeting at which the tenant exercises the voting right. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, the Bylaws, Architectural Guidelines, and the Restrictions and Covenants of the Chandelle Property. The lease shall also obligate the tenant to comply with the foregoing. Also fines may be levied against Owners or occupants, and if a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

Section 2.5 Compliance with the Document. Each Owner shall abide by and benefit from the Provisions, Covenants, Conditions, and Restrictions contained in the Chandelle Covenants and Restrictions and Bylaws. A copy of the Association Rules in effect shall be distributed to each Member of the Association, and any change in the Association rules shall be distributed to each Member within a reasonable time following the effective date of any change.

DEED 67-A PG 593

Section 2.6 Rules and Regulations. The Association from time to time and subject to the provisions of the Chandelle Documents, may adopt, amend and repeal rules and regulations, to be known as "Association Rules," governing, among other things and without limitations:

- a. The Use of Open Space,
- b. The Use of Private Roads,
- c. Collection and Disposal of Garbage and Trash,
- d. The Posting of Maximum Speeds for Vehicular Traffic and Other Traffic Rules,
- e. The Types of Vehicles and Times when any Vehicles (including Commercial Vehicles) may be permitted to use the roads within Chandelle or any other area of the Property.
- f. The Schedule of Fines for Infractions of the Association Rules or the Project Documents.

Section 2.7 Ownership of Personal and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, may accept any real or personal property, leasehold or other property interest within Chandelle conveyed to the Association by Declarant.

Section 2.8 Assistance to Architectural Control Committee. The Association shall all respects cooperate with and assist the ACC in the complete attainment of the ACC's functions and the enforcement of its architectural guidelines, rules regulations and decisions.

Section 2.9 Implied Rights and Obligations. The Association may exercise any other right or privilege given to it expressly by the Chandelle Documents, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege. The Association shall perform all of the duties and obligations imposed upon it expressly by the Chandelle Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Chandelle documents where reasonably necessary to satisfy any such duty of obligation.

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DEED 67A PG 594

ARTICLE III
Architectural Control Committee

Chandelle is designed as a private residential community with strict architectural controls which allows aircraft owners and pilots convenient access to the runway. To insure that the property will be developed harmoniously and that consistency is maintained throughout the Development, an Architectural Control Committee will formulate, review and control a comprehensive landscape plan, street lighting, signs, fencing, parking and site improvements including structures of all types as set forth in the Architectural Guidelines and Rules. .

The initial Architectural Control Committee shall consist of (3) members: John Stewart, Jr., Raymond Clark, Jr., Doug Cobb, or their designees. In the event of the failure or inability, for any reason, of a member to act, the vacancy created shall be filled temporarily or permanently, as necessary, by the remaining members of the ACC. At such a time as the Development is substantially completed (at least 75%) the above members or their designees, may relinquish the powers of the ACC to the Owner's Association. At that time, at least one of the members of the initial ACC may choose to continue their position on the new ACC, the other members shall be appointed by the Board of Directors of the Owner's Association. The new ACC will promulgate such guidelines as may be necessary to implement the architectural review process not inconsistent with established practice. Any expenses incurred by the ACC will be paid for by the Association.

The Architectural Control Committee shall:

- 3.1). regulate the external design, appearance, and location of the Properties and Lots and any improvements thereof.
- 3.2). adopt architectural guidelines and programs consistent with covenants and restrictions.
- 3.3). inspect for compliance with these guidelines.
- 3.4). adopt procedures for the exercise of its duties.
- 3.5). maintain complete and accurate records of all actions taken.

Notwithstanding anything to the contrary contained herein, the Architectural Control Committee or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application of enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the community.

DEED 67A PG 595

ARTICLE IV
Architectural Guidelines and Rules

Section 4.1. Land Use. All Lots shall be used for residential purposes only and common recreational purposes auxiliary thereto and for no other purpose. No lot shall be used as a right-of-way, street or road, or access to any property not included within the Properties of this Development without the written consent of the Declarant. Only one family may occupy a Lot as a principal residence at any one time. No structure, except as herein provided shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling and such accessory buildings or hangar as shall be used in connection with the dwelling or residence. Such accessory buildings or hangar may not be constructed prior to the completion of the dwelling unless waived by the ACC and then limited to a one year completion deadline. Furthermore the accessory building or hangar shall comply with all other restrictions contained herein for the main dwelling, including, but not limited to, exterior requirements, setback lines and permanent foundations. A guest suite or a like facility without a kitchen may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling. Furthermore, no airplane hangar, or any portion thereof, shall be used as a residence in any manner whatsoever.

Section 4.2. Partition of Combination of Lots. No Lot shall be subdivided or its boundary lines changed except with prior written approval of the Declarant. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots. Declarant's consent shall be conditioned upon payment by the Owner or Owners concerned of all expenses incident to giving the consent, including legal and accounting fees. Every agreement and recorded instrument for combination of Lots shall make adequate provisions for the adjustment of voting rights and liability for payment of assessments appurtenant to or imposed upon such Lots. Whether combined or unchanged, each Lot shall be conveyed, transferred, gifted, devised, bequeathed, encumbered or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or this Declaration, including the membership in any association and all the right thereof.

Section 4.3. Commercial Businesses Prohibited. No commercial business of any type shall be permitted; however, nothing herein contained shall be construed as preventing the Declarant from erecting and maintaining facilities of a commercial, recreational or community nature or facilities incident to the use of the runway, taxiway and easements. This should not exclude any home office, but no customer, clients, or patients can be seen on residential premises. No one, other than the Declarant, can allow the use of the airport or runway for commercial activity or for self-enterprise.

Section 4.4. Common Area. The Common Area shall be owned by the Declarant or the Association and no Owner shall bring any action for partition or division of the Common Area by acceptance of a deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other action designed to cause a division of the Common Area, and this section may be pleaded as a bar to any such action. Any owner who shall institute or maintain any such action shall be liable to the Declarant or the Association, and hereby agrees to reimburse the Declarant or the Association for its costs, expenses and reasonable attorney's fees in defending any such action.

DEED 67A PG 596

Section 4.5. Architectural Control. No dwelling unit, hangar or other building shall be erected, placed or altered on any Lot until the plans for each showing locations of the units on the Lot and the landscaping plan for the Lot have been submitted to and approved by the Architectural Control Committee. Such plans shall be reviewed as to quality of workmanship and materials, harmony of external design with existing dwelling units and hangars, and as to location with respect to topography and finish grade elevation, and both house, hangar and other buildings shall be of similar architectural design, before being approved by Architectural Control Committee or its successor or assigns. No home, garage, hangar or other building may be constructed on any lot unless such work meets all County Codes then in existence. A copy of the builder or contractor's license must be submitted with construction plans to the ACC.

Section 4.6. Dwelling Size. Each single family dwelling on a Lot shall have a heated square foot area of 2000 minimum, except lots 1-16 which shall have a minimum heated square foot area of 2500. No dwelling unit shall be permitted on any Lot that has a ground floor area of the main structure, exclusive of porches, patios, hangars and garages of less than 1500 square feet on the first floor for one and one-half story, split-level, and two story dwellings. If a dwelling incorporates a basement, such basement shall not be considered a "level" or "story" and the level of the dwelling immediately above the basement shall be considered the "first level" or "first story" of such dwelling. Each dwelling shall include space for parking at least two automobiles within an enclosed garage in accordance with Section 5.15.

Section 4.7. Location. In order to assure that all structures will be located with regard to the topography of each individual Lot, taking into consideration the elevation contours of the Lot, the location of adjoining dwellings, and similar considerations, the Declarant or the ACC reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any structure, improvements, and utilities upon all Lots and every Lot within the Development; provided, however, that such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site, and in any event all buildings (including eaves, decks, patios and steps) shall be constructed beyond the minimum setback lines.

Section 4.8. Structure Material. Unless specifically otherwise approved in writing by the ACC, all structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot. No dwelling shall have an exterior surface composed of asbestos siding, exposed concrete block, cinder block, aluminum siding, or other similar material. Vinyl siding products will be considered on a case by case basis.

Section 4.9. Kind of Home. No mobile or manufactured homes of any kind, or any home having the same general appearance, shall be permitted on any Lot. No building or structure of a temporary nature; trailer, tent, shack, garage or other out-building shall be erected or maintained on any Lot at any time. Furthermore, no building shall be permitted on any Lot unless it is erected on a solid foundation of brick or masonry from the ground level to the first floor level.

Section 4.10. Driveways. Driveways and walkways shall be constructed of concrete, brick or other suitable hard-top surface with a minimum thickness of four inches or as approved by the ACC. If any driveway is to cross a drainage ditch, the Owner will be required to install, at his own expense,

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all necessary culverts and coverings prior to the commencement of any other construction on the Lot. The installation of the culvert and any covering must be approved by the ACC.

Section 4.11. Drainage. No owner shall do or permit any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern of the Property, except to the extent such alteration and drainage pattern is approved in writing by the Declarant, and except for the rights reserved to Declarant to alter or change the drainage patterns.

Section 4.12. Continuity of Construction. All structures approved by the ACC must be completed insofar as the exterior finish is concerned within 12 months from the date of issuance of a building permit for said structure. The ACC may waive this requirement if construction delays have been caused by strikes, war, fire, or acts of God which render the completion of construction within such time impossible. All improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within 12 months of commencement, unless an exception is granted in writing by the ACC. If an Improvement is commenced and construction is then abandoned for more than ninety (90) days or if construction is not completed within required 12 month period, then after notice and hearing as provided in the By-Laws, the ACC may impose a fine of not less than One Hundred (\$100.00) Dollars per day on the Owner of the Lot. Furthermore, prior to occupancy of the dwelling or within one year after the issuance of a Building permit, the lot owner shall have his property sown in grass and have planted foundation plantings around the dwelling and other accessory buildings in accordance with the proposed landscaping plans previously submitted and approved.

Section 4.13. Reconstruction. Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must be rebuilt, or all debris from such building removed and the Lot restored to the condition it was in prior to commencement of construction of such building with reasonable promptness; provided, however, that any such reconstruction must be commenced within 3 months from the date of such destruction or if no reconstruction is to occur, then all such debris must be removed and the Lot restored to its prior condition within 2 months of such destruction.

Section 4.14. Construction Traffic. Construction traffic is prohibited on the common area runway, taxiway, and tiedown areas. The failure of a lot owner to prevent construction traffic associated with his lot from entering upon the common area runway, taxiway, and tiedown areas shall make that Lot owner liable for any necessary repairs caused by construction traffic upon these areas. Lot owners shall specifically include a clause in their construction contracts prohibiting contractor equipment from entering upon the common area runway, taxiway, and tiedown areas.

Section 4.15. Hangar Specifications. Each Lot adjoining the taxiway right-of-way may have a hangar for the storage of private aircraft. Such hangar if constructed, must be compatible with the adjoining dwelling unit and will be subject to ACC approval and architectural controls. No hangar shall be erected within the front yard (closer to the street than the front of the dwelling) on any Lot, and only within the rear or side yards unless approved by the ACC. No hangar shall be erected nearer than 15 feet from side Lot lines nor 35 feet from rear Lot lines and must conform with Section 8.1.

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All hangars erected, constructed or maintained upon any lot shall be fully enclosed permanent structures and shall not exceed 3600 interior square feet, which size shall include any space allocated for workshop, restroom facilities, storage area or any other purpose. A hangar may be built before the dwelling house only when permitted in writing by the Architectural Control Committee but substantial completion of the dwelling house insofar as the exterior finish is concerned must be accomplished within 12 months from date of issuance of building permits for hangar structure. Any change from the above specifications will require written permission of the ACC.

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ARTICLE V
Restrictions and Covenants

Section 5.1 Failing to Comply: In the event the owner of any lot shall fail to comply with any of the below mentioned criteria, or fails to maintain the premises and the exterior of the improvements situated thereon, or permits litter and debris to accumulate on his lot, or allows hedges or other plantings to obscure the view of the street traffic, or fails to comply with any other reasonable fire preventive requirements, the Declarant, through its agents and employees, shall have the right to enter upon such premises and to repair, maintain, rehabilitate and restore the exterior of any improvements situated thereon and/or clean or clear any lot of debris, or take any other steps necessary to remove litter and debris, or take any other steps necessary to meet reasonable fire preventive regulations; provided, however, that the Declarant, or its agents, shall first give written notice to the owner of said lot of its intention to make such repairs or of its intention to perform such clearing, maintenance or rehabilitation work, affording the owner of said lot 30 days in which to make said necessary repairs, maintenance, or clearing work. If at the end of this period the work to be performed has not been done by the owner, then the Declarant, or its agents, shall have the right, as set forth herein, to make such repairs, etc. Nothing herein contained shall be construed to grant to the Declarant or its agents, any right to enter into or inside of any building located on any lot without the consent of the owner thereof. Any costs incurred by the Declarant, or its agents, in enforcing and carrying out of the performance of this paragraph shall be charged against the owner of said lot, and a lien may be created on said lot until the Declarant, or its agents, has been paid in full for all cost incurred.

Section 5.2. Maintenance. All Owners shall keep their Lots, whether occupied or unoccupied, free of all tall grass, dead, diseased or decaying trees, weeds, trash, rubbish, and debris and keep all Lots in a neat and attractive condition. All improvements erected on Lots shall be maintained in a clean neat and orderly condition and in a good state of *maintenance and repair*.

Section 5.3. Sewage. No discharge, overflow, or accumulation of sewage effluent from any septic tank, drain field or other similar container shall be permitted to exist on any Lot.

Section 5.4 Toxic Disposal Prohibited. Disposal on the site of any substances which may be considered toxic or environmentally sensitive is expressly prohibited. Disposal of any substances which may contaminate the ground water of this subdivision or the surrounding area is prohibited. These substances include, for example, but are not limited to, paints, solvents, cleaning fluids, paint strippers, fuel and oil.

Section 5.5 Unightly Materials Prohibited. No rubbish, garbage, debris, junk, junk vehicles, or unsightly material shall be deposited on any of the lots at any time except building material during the course of construction on the site. All rubbish, waste, or garbage shall be kept in sanitary containers, and shall be removed from the premises at least once a week. Under no conditions shall the use of incinerators or burning be allowed on this property except during the construction phase. No dismembered aircraft parts nor nonoperative aircraft are to be left about the premises.

Section 5.6. Hazardous Activities. Nothing shall be done or kept on any Lot or in the Common

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Area which will increase the rate of insurance on the Common Areas or any other Lot without the prior written consent of the Declarant or the Association. No Owner shall permit anything to be done or kept on his Lot or in the Common Areas which would result in the cancellation of insurance on any part of the Common Areas, or which would be in violation of any law.

Section 5.7. Nuisance. No noxious or offensive activity shall be conducted upon any Lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

Section 5.8. Outside Toilets. Outside toilets or privies are expressly prohibited, except where required for construction purposes.

Section 5.9. Wall Hangings. An Owner shall not cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of his Dwelling or exterior buildings which may adversely affect the appearance of Chandelle without the prior written approval of the Architectural Control Committee.

Section 5.10. Children. Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Development and including full compliance by them with this rule and with all other rules and regulations of the Association. All children under twelve (12) years of age must be accompanied by a responsible adult when entering and/or utilizing any recreational facility. In order to control the overall appearance of the community, no swing sets, playsets, sandboxes, basketball backboards, tree houses, animal houses or animal pens shall be erected so as to be visible from any roadway or adjoining property, unless approved in advance by the ACC.

Section 5.11. Pets. Pets and other animals shall neither be kept nor maintained in or about the properties except in accordance with the following. Commercial breeding or feeding of horses, cattle, goats, hogs, sheep or poultry; the operation of a commercial dairy; dog boarding kennel or veterinary hospital; and the operation of a commercial livery or boarding stable for horse; or a riding academy; and the keeping of any hog or milk cow or horse, are strictly prohibited. It is understood, however, that this restriction shall not be construed to prohibit the keeping of a limit of three (3) domestic animals (canine or feline) for family pleasure, provided that domestic animals must be restrained by fence or other appropriate protective restraint. This restraint should be from the farthest possible point from the adjoining property, and all appropriate measures must be taken by the lot owner to eliminate and prevent offensive odors and any unsightly accumulations from said animals. Noisy animals, such as incessantly barking dogs, must be controlled by their owners. No pet shall be permitted outside of its owners Lot unless attended by an adult or child of more than ten (10) years of age and said pet must be on a lease of reasonable length. At no time are any unattended domestic animals or pets allowed on the runway or taxi-way easements.

Section 5.12. Noise. No Owner shall make or permit any disturbing noises on their Lot by himself or his family, servants, employees, agents, or visitors, nor permit any conduct by such persons that will interfere with the rights, comforts or convenience of other Owners. No Owner shall play or permit to be played any musical instrument, nor operate or permit to be operated a phonograph,

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television, radio or sound amplifier or any other sound equipment, nor conduct any vocal or instrumental instruction, on his Lot in such a manner as to disturb or annoy other residents at any time. There shall be no discharging of firearms or fireworks on the premises.

Section 5.13. Electronic Equipment. No electronic equipment may be permitted in or on any Lot which interferes with the television or radio reception of another Lot.

Section 5.14: Satellite Dish. No awning, canopy, shutter, enclosure, satellite dish or other projection shall be attached to or placed upon the outside wall or roof of any structure or on the Lot, except by the approval of the Architectural Control Committee. Small, inconspicuous satellite dishes will be most compatible.

Section 5.15. Vehicles and Parking. Each Owner shall provide space for parking at least two (2) automobiles on his Lot, within an enclosed garage, prior to the occupancy of any dwelling constructed on such Lot in accordance with reasonable standards established by the Architectural Control Committee. Carports are prohibited. No owners vehicles shall be parked on any street. No boat, motor home, travel trailer, golfcart, boat, other recreational vehicle, or commercial truck, may be stored overnight on any Lot unless the same be within an enclosed garage. Furthermore, no wrecked or junked motor vehicles or vehicles without a current license plate and registration shall be placed upon the premises, and no commercial vehicles shall be parked overnight in the subdivision without the prior written consent of the ACC. No motor vehicle or aircraft of any kind shall at any time be parked or tied down on any of the taxiways, overruns, roadways or rights-of-way, except as permitted by the ACC in writing.

Section 5.16. Fuel Storage. No bulk storage of flammable, combustible or explosive fluids, chemicals or substances shall be allowed in any Dwelling, or on any Lot, or on the Common Areas, except that small quantities of fuels used for common activities such as lawn mowing, BBQ grills and other like activities may be kept when stored in a manner which minimizes the risk of fire or explosion. Lot Owners may not store bulk quantities of fuels used for aviation purposes on Lots or in buildings. Aviation fuels may be provided in connection with the commercial activity located adjacent to the runway.

Section 5.17. Fences and Hedges. The erection or installation of fences and hedges may be undertaken only with the written approval of the ACC. All fencing shall be located behind the rear building line of the main dwelling; shall be composed of materials other than metal, except that vinyl coated chain link fence may be allowed by the ACC if the fence is built in such a way that it is not visible from any road in the Development, and in no event shall exceed five (5) feet in height. Decorative fences (meaning wooden fencing, split-rail fencing or wooden fencing which has holes in the posts with wood rails running from post to post) and hedges, no more than 36 inches in height, may be permitted in the front or side yards. No fencing of any kind is allowed on any easement, taxiway, or runway. Barbed wire is specifically prohibited.

Section 5.18. Signs. No signs of any character shall be erected, pasted, posted, or displayed upon or about any Lot or part of any Lot, or common Area, without the written permission of the ACC. The ACC shall have the right in its sole discretion to prohibit or to restrict and control the size,

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construction, material, wording, location and height of all signs and may summarily remove and destroy all unauthorized signs. Declarant and Lot owners, however, may post temporary "For Sale" or "For Rent" signs on the Properties and these signs must be approved before being put on any Lot. No sign shall be attached to any tree or shrubbery. All signs must be professionally lettered, and may not contain the price of the house or lot. Furthermore, signs used by a builder during construction or informational signs by the Declarant shall be allowed.

Section 5.19. Clothes Lines. No clothing, laundry, or wash shall be aired or dried on any portion of the Lots in an area with a substantial exposure to view from any other Lot or street. Drying areas will be permitted only in locations approved by the Architectural Control Committee and only when substantially protected from view by screening or fencing approved by the Architectural Control Committee.

Section 5.20. Flag Poles: Flag Poles are permitted, provided the pole is not more than 15 feet in height, unless otherwise approved by the Architectural Control Committee.

Section 5.21. Antennas. No radio or television aerial or antenna or any other external electronic equipment or devices may be installed or maintained on any exterior of any structure erected on a Lot unless the location, size, and design has been approved by the ACC. Said antennae or equipment shall be subject to FAA and FCC regulations concerning obstructions placed in the vicinity of airports. Furthermore, all electrical, telephone, other other utility lines shall be run underground.

Section 5.22. Outdoor Lighting. One or more hospitality light standards, of a design approved by the ACC, may be located within the front yard of any Owner's property. Any outdoor lighting positioned and installed by a lot owner shall be of such a nature and type so as not to present a hazardous or confusing condition to night air operations which may be conducted from said airport and be shaded so as not to create a nuisance to any other lot owner.

Section 5.23. Window Units: No window air conditioning unit shall be installed without the consent of the ACC.

Section 5.24. Mail Boxes. Each dwelling shall have a standard house number, mail box, and paper box with a design and location approved by the ACC.

Section 5.25. Swimming Pools. No non-permanent or "above ground" pools may be placed, maintained or kept on any Lot.

Section 5.26. Artificial Vegetation, Exterior Sculpture, Exterior Statuary, Etc. No artificial vegetation or plastic animal decorations, such as pink flamingos, etc., shall be permitted on the exterior of any property. Exterior sculpture, fountains, bird baths, bird houses, and similar items must be approved by the ACC, if visible from the front of any Lot or any adjoining street.

Section 5.27. Mining. No boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, or gases shall be conducted on the Property.

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Section 5.28. Trees. Trees having a diameter of four inches or more (measured four feet from ground level) may not be removed without the prior approval of the Architectural Control Committee. All requests for approval of tree removal shall be submitted in writing.

Section 5.29. Wells and Water Removal. No wells shall be drilled, dug or installed except with the approval of the ACC.

Section 5.30. Access. There shall be no overland vehicular access to any Lot except from designated roads and taxi-ways lying within the Common Areas. The Declarant, its agents or employees shall have access to each Lot from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Areas, or facilities situated upon such Lot which serve another Owner's Lot. The Declarant or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Areas or another Lot.

Section 5.31. Amendments to Regulations. Reasonable regulations governing the use of the Common Areas and external appearance of all structures erected on the Lots may be made and amended from time to time by the Declarant or the Architectural Control Committee; provided, however, that all such regulations and amendments thereto shall be approved by a majority vote of the Directors of the Owners Association before the same shall become effective.

Section 5.32. Waterfront Areas and Waterways. Any Lot which shall abut any lake, stream and pond shall be subject to the following restriction;

(a) The use and access to the inland lakes and lake front areas shall be restricted to the water front lot owners only.

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ARTICLE VI
Aircraft & Hangar Restrictions, and Parking

Section 6.1. Hangar & Tie-Down Space for Private Use Only. The airplane hangar or tie-down space on each lot shall be limited to strictly private use and only by the owner of the property on which the hangar or tie-down space is located except as permitted herein. No person who is not a member of the Owners Association shall be permitted to store, tie-down, or hangar any aircraft on Chandelle property without the express written permission of the Board of Directors. The Board of Directors will have the authority to specify the terms and conditions under which a non member's aircraft may be stored hangared or tied down.

Section 6.2. Aircraft Hangars. All hangars are subject to the Architectural Control Committee approval, and must be architecturally compatible with the primary structure on the Lot. All aircraft hangars must be constructed in conjunction with or subsequent to the construction of a residence. Hangars may be detached from or attached to a primary structure in accordance with local building regulations. Specifically, hangars shall be detached from the living area with a minimum of five (5) feet between the buildings including overhanging construction, unless approved fire proofing of the hangar removes risk of house damage from a fire within the hangar lasting for one hour or less.

Section 6.3. Two or More Aircraft. If two or more aircraft are owned by lot owner, one additional aircraft, not stored in a hangar, may be secured with tie downs adequate for the size and weight of the aircraft. Until a dwelling and hangar are under construction or built, no aircraft shall be tied down overnight on the lot. The one tied-down aircraft must be in airworthy condition as defined by current Federal Aviation Regulations (FAR's) except as permitted by the Board of Directors in writing.

Section 6.4. Unattended Aircraft. No aircraft shall be parked on any part of the runway, taxiway or easements and all aircraft parked or left for any period of time unattended within Lots shall be securely tied down. If any aircraft is found within any Lot, not tied down and unattended, the Board of Directors or its agents may, but are not obligated to secure it at the expense of the Owner of said aircraft.

Section 6.5. Run-ups. All aircraft "run-ups" shall be done only in designated areas. "Run-ups" and testing of engines within residential areas should be limited to the hours of 8:00 am and 6:00 pm. But in any event the "run-up" shall not be done in such a manner as to cause inconvenience or damage to the property of others.

Section 6.6. Stunt Flying. No low-level flying stunts nor other hazardous activities will be permitted about the subdivision. Each Owner is required to strictly observe all Federal, State, and Local Statutes, Regulations or Ordinances relative to the operation of civil aircraft.

Section 6.7. Aircraft Size. No aircraft with gross weight exceeding 10,000 lbs., and no jet aircraft may operate on the taxiways, easements, or runways without written permission of the ACC. The aircraft owner's manual specifications will be the source of the aircraft weight, and if no copy of the owner's manual is available, "Jane's Encyclopedia of Aviation" or equivalent reference manual may

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be used.

Section 6.8. Speed Limits. Aircraft shall taxi at less than 15 miles per hour on all taxiways. Pilots are cautioned to avoid increasing engine RPM to high levels as part of our noise abatement program and to avoid blowing sand and dirt on following aircraft and in residential areas.

Section 6.9. Taxi-Way Courtesy. Moving aircraft shall have the right of way at all times. Automotive traffic must yield at all taxiways crossings and on dual purpose streets. No taxiways other than those designated by Declarant as combination street/taxiways shall be used by any vehicle other than aircraft or aircraft service vehicles, unless pursuant to a valid access permit granted by the Association. No aircraft shall have a right of way on taxiways, and all aircraft on taxiways must anticipate use of passing areas for approaching aircraft.

Section 6.10. Commercial Business. No commercial aircraft business shall be permitted on a Lot.

Section 6.11. Storing Parts. There shall be no storage of dismantled or disabled aircraft on the Lots or the Common Areas. Aircraft being repaired and aircraft parts must be kept within an enclosed hangar building which has been approved by the Architectural Control Committee. Parts of aircraft, including but not limited to, fuselages, wings, engines, horizontal and vertical stabilizers, ailerons, rudders, landing gear and spare parts may not be stored in yards where visible from the street, taxiway, or adjoining lots, but must be stored inside the hangar or other building approved by the ACC.

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ARTICLE VII
Runway Assurances and Operations

Section 7.1. Continued Operation. Inasmuch as Chandelle subdivision is developed for individuals involved in the sport and hobby of aviation, every purchaser, lessee or grantee of any property now or hereafter subject to this declaration, by acceptance of a deed, lease or other conveyance thereof, thereby agrees that, the runway and taxiway shall remain and be maintained as such until such time as 90% of the Lot owners consent to its dissolution or its operation is interrupted or terminated by local, state or federal authorities. The Declarant warrants that the runway in existence on the property as of this date will continue to be operated as such.

Section 7.2. Complaints. As this is an aviation community, owners understand, and agree, that lot owners, their heirs, or assigns relinquish any right to complain, object, or take any legal remedies to stop aviation related activities in the Development.

Section 7.3. Control of Runway. The Declarant and Association shall have the right to control the use of the runway and taxiway and may prohibit the use of the runway or taxiway by any aircraft deemed unsafe to either the life or health of individuals or the condition and maintenance of the field by virtue of its size, design or state of repair.

Section 7.4. Control of Airport Grounds and Operation. The Declarant and Association shall have the right to make rules and regulations relative to the easements, taxiway, runway, air traffic patterns around the airport, grounds and related facilities, affecting the use of said premises, and all lot owners agree to comply with said rules and regulations and are subject thereto, including any such rules and regulations that may be added from time to time.

Section 7.5. Withholding of Use. The Declarant and Association shall have the right to withhold from, restrict, or charge an individual assessment for the use of the Common Area, including the runway, to any Owner:

- a) who is in default in the payment of any assessment fee, or
- b) who, in the judgement of the Declarant or the Owners Association, uses the Common Areas or his aircraft in a negligent manner or in a manner harmful to the rights of other users; or
- c) who, in general, violates the published rules and regulations of the Association.

Section 7.6. Limitation of Declarant's Obligations. It is expressly understood and agreed that the establishment of the Common Areas or the declaration of these restrictions does in no way place a burden of affirmative action on the Declarant to make any of the improvements noted herein, or extend to the grantee any service of any kind.

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ARTICLE VIII
Easements and Setbacks

Section 8.1. Setback Requirements. No house or building may be constructed within 75 feet of the centerline of any designated street or within 75 feet of any taxiway or runway boundary, except on lots 1-20, 24-28 and 32-34 where the setback is 30 feet from the centerline of the taxiways established along the rear and side lot lines as shown on the plat. For all lots the building setback line is 15 feet from any side lot line and 35 feet from any rear lot line. A 40 foot clear zone easement shall be established along all lot lines facing runways or taxiways where no aircraft may be parked; no trees or other obstacles are allowed in this area. A 5 foot easement along all sides of all lots and along all sides adjoining any designated street are reserved for underground utility and or drainage purposes. The established setbacks may be varied by the ACC following prescribed methods.

Section 8.2. Access. Owners of lots # 1-38 shall be and are herewith granted and conveyed a right of ingress and egress by way of a permanent easement from their lots onto the runway and taxiway, said easement to be for the use of the aircraft operated by the lot owners and their authorized guests. This easement is solely limited to aircraft traffic, to the exclusion of all other vehicular traffic unless specifically authorized by permit. Some of the easements are established along the rear and side lot lines as shown on the plat.

Section 8.3. During Construction. During the development period, the Declarant or its agent reserves a blanket easement and right on, over and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, take any grading of the soil, or to take any other similar action reasonably necessary, following which the Declarant or its agent shall restore the affected property to its original condition as near as possible. The Declarant or its agent shall give reasonable notice of intent to take such action to all affected Owners, unless, in the opinion of the Declarant or its agent, any emergency exists which precludes such notice. The Declarant or its agent, however, in the exercise of such easement rights shall not disturb any living dwelling or other substantial improvement upon any property.

Section 8.4. Maintenance. In order to implement effective insect and woods fire control the Declarant reserves for itself and its agents the right to enter upon any lot on which a residence has not been constructed and upon which no landscaping plan has been implemented (with prior written approval of the ACC for such plan), such entry to be made (at the expense of the Owner of the lot) by personnel with tractors or other suitable devices for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, or other unsightly growth, which in the opinion of the Declarant detracts from the overall beauty, setting and safety of the Property. Such entrance shall not be deemed a trespass. The Declarant and its agents may likewise enter upon such land to remove any trash which has collected on such Lot without such entrance and removal being deemed a trespass. The provisions in this paragraph shall not be construed as an obligation on the part of the Declarant to mow, clear, cut or prune any lot nor to provide garbage or trash removal services.

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ARTICLE IX

Insurance

Section 9.1. By the Declarant or Association. The Declarant or Association or its duly authorized agent shall have the right and power to obtain insurance to the extent reasonably available for all improvements on the Common Areas against loss or damage in an amount sufficient to cover 100 percent (100%) of the replacement cost of any repair or reconstruction work in the event of damage or destruction from any reasonable hazard, and shall also obtain a broad form public liability policy covering all Common Areas and activities of the Declarant. In the event of damage or destruction to property insured by the Declarant by fire or other casualty, the Declarant or its agent shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good a condition as formerly enjoyed. In the event the insurance proceeds are insufficient to pay all costs of repairing or rebuilding of such destroyed improvement, the Declarant or its agents shall levy a special assessment against all Owners to make up such deficiency. In the event the insurance proceeds exceed the cost of repair, the excess proceeds shall be distributed to the respective Owners and Mortgagees as their interests appear.

Section 9.2. Liability Insurance by Declarant or Association. The Declarant or Association shall have the right and power to obtain a comprehensive policy of public liability insurance insuring the Association and its Members for all liability for property damage, bodily injury or death in connection with the operation, maintenance and use of the Common Area within Chandelle Properties..

Section 9.3. By the Owner. It shall be the individual responsibility of each owner to provide, as he sees fit, insurance on the improvements on his Lot in the event of damage or destruction from all reasonable hazards. Each Owner shall provide as he sees fit homeowners liability insurance, theft and other insurance covering personal property damage or personal liability loss.

Section 9.4. Aircraft Liability Insurance. Every Owner or user of a certified aircraft, experimental aircraft or ultralight vehicle which is based on the Property shall provide the Declarant or the ACC or their agent with a current Certificate of Insurance for aircraft liability before they can use the runway. Failure to provide the Certificate of Insurance and to maintain such insurance shall result in the automatic suspension of the Owner or user's right to use the Common Area including the runway.

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ARTICLE X
Right of First Refusal

Section 10.1. Applicability. Except for sales and conveyances by the Declarant, no unimproved Lot may be sold by any Owner except in compliance with the provisions of this Article.

Section 10.2. Right of First Refusal. In the event any Owner receives a bona fide written offer from a third party to purchase his unimproved Lot, such Owner shall immediately notify the Declarant of such offer and shall forward a copy of said written offer, together with the name and address of the offeror, to the Declarant. Upon receipt of said notice, Declarant shall have fifteen (15) days to notify such Owner that it desires to purchase his Lot on the same terms and conditions as set forth in the offer. If Declarant notifies such Owner of its desire to purchase the Lot, then Owner shall convey the Lot to the Declarant according to the provisions of Section 10.3 below. In the event that the Declarant elects not to purchase the Lot or fails to notify the Owner of their decision within such fifteen (15) day period, then the Owner may sell the Lot to the third party offeror on terms and conditions no less favorable to the Owner than those set forth in the original offer; provided, however, that if such sale and conveyance does not take place to the original third party offeror within one hundred twenty (120) days after Declarant's failure to exercise its right of first refusal. Then the Lot shall again become subject to the terms and conditions of this Article X. Any conveyance by an Owner to third party offeror shall be subject to the terms and conditions of this Declaration.

Section 10.3. Transfer to Declarant. In the event that Declarant exercises its right of first refusal pursuant to Section 10.2 hereof, the closing of the conveyance of such Lot shall occur as provided in the third party offer. At the closing, Declarant shall make such payments in cash, by a promissory note, or otherwise to the Owner as described in the third party offer. Owner shall deliver to the Declarant a general warranty deed conveying the Lot free and clear of all exceptions except as may be set forth in the written offer and subject to this Declaration. In the event the closing occurs after the death of an Owner, Declarant may, in its discretion, require the personal representative of the Owner to post such bonds or other assurances as the Declarant may deem reasonable in order to protect the Declarant from any loss which might be caused by the failure to pay any federal or state inheritance tax or the failure to pay the claims of any creditors who may have a lien on the Lot superior to Declarant's rights as a purchaser of said Lot.

Section 10.4. Death of an Owner. The personal representative, heirs, successors and assigns of any Owner who dies while owning any Lot shall become an Owner subject to the terms and conditions of this Declaration and any subsequent sale, transfer, and conveyance of such Lot shall be governed by the provisions of this Article X.

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ARTICLE XI
Maintenance Assessments

Section 11.1. Creation of the Lien and Personal Obligation for Assessments. Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges as provided in this Declaration for the purpose of funding the maintenance fund.

(b) Special assessment for capital improvements and other purposes as stated in this Declaration; such annual and special assessments to be fixed, established and collected from time to time as provided below.

(c) Default assessments which may be assessed against an Owner's Lot pursuant to the Chandelle Documents for failure to perform an obligation under the Chandelle Documents or because the Association has incurred an expense on behalf of the Owner under the Chandelle Documents. The annual, special and default assessments, together with interest, costs and reasonable attorney's fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made until paid. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due.

Section 11.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of Chandelle and for the improvement and maintenance of the Common Area, including but not limited:

(a) to keep the Common Areas clean and free from debris and to maintain any amenities located thereon in a clean and orderly condition, to maintain the landscaping thereon in accordance with the highest standards for private parks including any necessary removal and replacement of landscaping, and to repair, replace, and provide for additions to the improvements as stated in the Chandelle Documents.

(b) to pay all taxes, if any, levied against the Common Areas and any properties owned by the Association.

(c) to install and maintain any light fixtures along roads and streets in the Development to provide street lighting therefore, as may be approved by the Association.

(d) to erect and maintain entrance signs at the entrances to the Development and signs on the Common Areas, said signs to be of standard construction and quality.

(e) to pay the premiums on all hazard insurance carried by the Association on the Common Areas and all public liability insurance carried by the Association pursuant to the By-Laws.

(f) to provide such security services as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire and damage from animals.

(h) to provide such garbage removal services as may be approved by the Association for all Lots.

Section 11.3. Date of Commencement of Annual Assessment; Due Dates. The annual assessments shall commence as to all Lots on January 1, 1998. Upon the sale of a Lot by Declarant to a new Owner, the annual assessments shall commence as to that Lot on the first day of the month

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following the conveyance of the Lot to the new Owner. In that case, the first annual assessments shall be prorated according to the number of months remaining in the calendar year. The initial assessment shall be 400 Dollars per Lot. Upon the platting and recordation of a Lot by Declarant, the annual assessments shall commence as to that Lot on the first day of the month following platting and recordation.

Section 11.4. Calculation and Apportionment of Annual Assessments. Beginning January 1, 1998, the Board of Directors shall prepare a budget by April 15 of each year estimating its net cash flow requirements for the next year and an estimate of the assessments to be charged each Owner, and the Board shall distribute the proposed budget to the Owners. On or before April 30 of each year, the Board shall approve the budget in final form and shall determine, levy and assess the Association's annual assessments for the approaching year. Each budget shall include funds for establishing and maintaining reserves for periodic repairs, replacement and maintenance of any improvements on the open space and Common Area which must be replaced on a periodic basis, and for taxes, capital improvements, deficiencies for the prior years maintenance fund and other purposes, and shall include any expected income and surpluses from the prior year's fund.

Section 11.5. Special Assessments. In addition to the annual assessments authorized in Section 11.1 above, the Board of Directors may levy in any fiscal year one or more special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement on the open space or Common Area, including the necessary fixtures and personal property related thereto, or to make up any shortfall in the current year's budget. Notice of the amount and due dates for each special assessment must be sent to each Owner at least (30) days prior to the due date.

Section 11.6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, except that the Board may provide for a reduced assessment to be paid by those Lot Owners whose property is undeveloped; provided, however, that the Owners of undeveloped Lots are assessed on a uniform basis. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

Section 11.7. Owner Liability. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Laws or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

Section 11.8. Default Assessments. All monetary fines assessed against an Owner pursuant to the Association documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association documents, shall be a default assessment and shall become a lien against such Owner's Lot which may

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be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such default assessment shall be sent to the Owner subject to such assessment at least thirty (30) days prior to the due date.

Section 11.9. Effect of Non-payment of Assessment; Lien; Remedies of Association. Any Association installment, whether pertaining to an annual, special or default assessment, which is not paid within thirty (30) days of its due date shall be delinquent. In the event that an assessment installment becomes delinquent, the Association, in its sole discretion may take any or all of the following actions:

- (a) Enforce a Late charge as provided in Section 8.2 (h) of the By-Laws.
- (b) Assess a late charge of at least 15% per delinquency.
- (c) Assess an interest charge from the date of delinquency at the rate per annum of 2 points above the prime rate charged by the Association's bank or such other rate as shall have been established by the Board of Directors.
- (d) Suspend the voting rights of the Owner during any period of delinquency.
- (e) Accelerate all remaining assessment installments for the fiscal year in question so that unpaid assessments for the remainder of the year shall be due and paid at once.
- (h) Bring legal action against any owner personally obligated to pay the delinquent installments.
- (i) File a statement of lien with respect to the Lot, and foreclose as set forth below:

The Association may file a statement of lien by recording with the Clerk of Court's office of Spartanburg County, South Carolina, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and amount of the delinquent assessments then owing, which statement shall be duly signed and acknowledged by the President or Vice-President of the Association or by the Manager, and which shall be served upon the Owner of the Lot by mail to the address of the Lot or at such other address as the Association may have in its records for the Owner. Thirty (30) days following the mailing of such Notice, the Association may proceed to foreclose the statement of lien in the same manner as provided for foreclosure of mortgages under the statutes of the State of South Carolina. Such lien shall be in favor of the Association and shall be for the benefit of all other Owners. In a foreclosure action, the Association shall be entitled to recover as a part of the action the interest, costs and reasonable attorney's fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The remedies herein provided shall not be exclusive and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

Section 11.10. Successor's Liability for Assessments. In addition to the personal obligation of each Owner to pay all assessments thereon and the Association's perpetual lien for such assessments, all successors to the fee simple title of a Lot, except as provided in Section 11.11 below, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid assessments, interest, late charges, cost, expenses and attorney's fees against such Lot without prejudice to any successor's right to recover from any prior Owner any amounts paid by such successor. The liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Lot. In addition, such successor shall be entitled to rely on

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the statement of the status of the assessments issued by or on behalf of the Association under Section 11.14 below.

Section 11.11. Subordination of the Lien. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage. The lien of the assessments shall be superior to and prior to any homestead exemption provided now or in the future by laws of the State of South Carolina. No sale or transfer of any Lot pursuant to a decree of foreclosure or by a Public Trustee's foreclosure or any other proceeding or deed in lieu of foreclosure for the purpose of enforcing a first mortgage shall extinguish the lien of such assessments as to installments which become due prior to such sale or transfer, and the amount of such extinguished lien may be reallocated and assessed to all Lots as a common expense at the direction of the Board of Directors. No sale or transfer shall relieve the purchaser or transferee of a Lot from liability for, nor the Lot from the lien of any assessments made after the sale of transfer.

Section 11.12. Notice of Action. Any First Mortgagee which makes a prior written request to the Secretary of the Association and furnishes its name and address in the legal description of the Lot in which it has an interest to the Secretary, shall be entitled to timely written notice of any delinquency in payment, special or default assessment levied against the Lot encumbered by its first mortgage. In addition, any such First Mortgage shall be entitled to cure such delinquency and obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 11.13. Exempt Property. The following portions of the property shall be exempt from the assessments, charges and liens created under this Declaration:

- (a) All properties and other interests therein dedicated and accepted by Spartanburg County and devoted to public use.
- (b) All utility easements, the open space and Common Area.

Section 11.14. Statement of Status of Assessments. Upon ten (10) days written notice to the Treasurer of the Association or the Manager and payment of a reasonable fee set by the Association from time to time, any Owner, prospective purchaser or mortgagee of a Lot shall be furnished a statement of the account for such Lot setting forth:

- (a) The amount of any unpaid assessments (whether annual, special or default assessments), interest, late charges, costs, expenses and attorney's fees then existing against a particular Lot,
- (b) The amount of the current periodic installments of the annual assessments and the date through which they are paid,
- (c) Any other information deemed proper by the Association. The information contained in such statement when signed by the Treasurer or Manager, shall be conclusive upon the Association as to the person or persons to whom such statement is issued and who rely upon it in good faith.

Section 11.15. Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification or release of any Owner from the obligation to pay assessments. In such event, the Owner shall continue to pay annual assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

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ARTICLE XII
Duration and Amendments

Section 12.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date of this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change covenants and restrictions, in whole or in part, or to terminate the same.

Section 12.2 Amendments. So long as it has the right to appoint a majority of the Board of Directors, the Declarant shall have the right and authority to modify and amend these Covenants and Restrictions without liability or notice to or joinder of any other party provided such modification and amendments do not violate the community development plan, and provided that such amendments do not establish covenants and restrictions which are less restrictive than those contained in said plan. No house, hangar, garage, tie-down, or pool which is complete or substantially complete at the time of the adoption of an amendment and which conforms to the Covenants and Restrictions prior to such amendment shall be rendered nonconforming by the adoption of an amendment. Any amendment so adopted shall become effective when a certificate thereof executed with the formality of a deed is recorded in the Public Records of Spartanburg County, South Carolina. Amendments to this Declaration may also be adopted by the membership of Chandelle Property Owners Association in the same manner and upon the same vote as required for amendments to the Bylaws of Chandelle Property Owners Association.

After the termination of the Declarant's right to appoint a majority of the Board of Directors, this Declaration may be amended only by the affirmative vote or written consent of Voting Members representing seventy-five (75%) percent of the total votes of the Association. No amendment may remove, revoke or modify any right or privilege of Declarant as specifically provided for in this Declaration of Amendments hereto without the written consent of the Declarant or the assignee of such right or privilege. Any amendment must be recorded in the R.M.C. Office for Spartanburg County, South Carolina.

The consent of at least two-thirds (2/3) of the Class "A" votes and of Declarant, so long as it owns any lands described in the Declaration, as exercised through their Voting Members, shall be required to terminate the Association and to make a material amendment to any provisions of this Declaration or the Articles of Incorporation or to add any material provisions thereto.

The Declarant shall have the right at any time within five (5) years from the date hereof to amend this Declaration to correct scrivener's errors and to clarify any ambiguities determined to exist herein, or to change or add provisions of this Declaration for the purpose of meeting the requirements of governmental agencies, including but not limited to the Federal Housing Administration and the Veterans Administration. Such amendment needs to be executed and acknowledged by the Declarant only, and need not be approved by the Association, the Owners, lienors and mortgagees of Lots, whether or not elsewhere required for amendments. No amendment shall alter the subordination provisions of this Declaration without the prior approval of any mortgagee enjoying such protection.

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Section 12.3 Effective on Recording Any modification or amendment shall be immediately effective upon recording in the R.M.C. Office for Spartanburg County, South Carolina, a copy of such amendment or modification, executed and acknowledged by the necessary number of Owners (and by Declarant, as required), together with a duly authenticated Certificate of the Secretary of the Board stating that the required number of consents of Owners were obtained and are on file in the office of the Association.

Section 12.4 Revocation This Declaration shall not be revoked except as provided in Article XIV regarding total condemnation without the consent of all of the Owners in a written instrument duly recorded.

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ARTICLE XIII

Enforcement of Covenants

Section 13.1 Violations Deemed a Nuisance. Every violation of this Declaration or any of the other Chandelle Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or in equity against anyone in violation of these Covenants shall be available.

Section 13.2 Compliance. Each Owner or other occupant of any part of the Property shall comply with the provisions of the Chandelle Documents as the same may be amended from time to time.

Section 13.3 Failure to Comply. Failure to comply with the Chandelle Documents shall be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the By-Laws shall be given to the delinquent party prior to commencing any legal proceedings.

Section 13.4 Who May Enforce. Any action to enforce the Chandelle Documents may be brought by Declarant or the Board or the Manager in the name of the Association on behalf of the Owners. If, after a written request from an aggrieved Owner, none of the foregoing persons or entities commences an action to enforce the Chandelle Documents, then the aggrieved Owner may bring such action.

Section 13.5 Remedies. In addition to the remedies set forth in this Article XIII, any violation of the Chandelle Documents shall give the Board, the Manager or Declarant, on behalf of the Owners, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify or replace, at the expense of the offending Owner, any structure, thing or condition that may exist thereon contrary to the interest and meaning of the Chandelle Documents. If the offense occurs on any easement, walkway, Common Area or the like, the cure shall be at the expense of the Owner or other person responsible for the offending condition.

Section 13.6 Non-exclusive Remedies. All the remedies set forth herein are cumulative and not exclusive.

Section 13.7 No Waiver. The failure of the Board of Directors, Declarant, the Manager, the ACC or any aggrieved Owner to enforce the Chandelle Documents shall not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Chandelle Documents.

Section 13.8 No Liability. No member of the Board of Directors, Declarant, the Manager, the ACC or any Owner shall be liable to any other Owner for the failure to enforce any of the Chandelle Documents.

Section 13.9 Recovery of Costs. If legal assistance is obtained to enforce any of the provisions of the Chandelle Documents, or in any legal proceeding (whether or not suit is

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brought) for damages or for the enforcement of the Chandelle Documents or the restraint of violations of the Chandelle Documents, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorney's fees as may be incurred, or if suit is brought, as may be determined by the Court.

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ARTICLE XIV
Principles of Interpretation

Section 14.1 Severability. This Declaration, to the extent possible, shall be construed or reformed so as to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

Section 14.2 Construction. In interpreting words in this Declaration, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

Section 14.3 Headings. The headings are included for purposes of convenient reference, and they shall not affect the meaning or interpretation of this Declaration.

Section 14.4 Registration of Mailing Address. Each Member shall register his mailing address with the Secretary of the Association from time to time, and notices or demands intended to be served upon or given to a Member shall be personally delivered or sent by mail, postage prepaid, addressed in the name of the member at such registered mailing address.

Section 14.5 Notice. All notices or requests required shall be in writing. Notice to any Member shall be considered delivered and effective upon personal delivery or three (3) days after posting, when sent by certified mail, return receipt requested, to the address of such Member on file in the records of the Association at the time of such mailing. Notice to the Board, the Association, the ACC or Manager shall be considered delivered and effective upon personal delivery or three (3) days after posting, when sent by certified mail, return receipt requested, to the Association, the Board, the ACC or the Manager at such address as shall be established by the Association from time to time by notice to the Members. General notices to all Members or any classification thereof need not be certified, but may be sent regular first class mail.

Section 14.6 Waiver. No failure on the part of the Association, the Board or the ACC to give notice of default or to exercise delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above in the event the board or the ACC fails to respond to certain requests. No waiver shall be effective unless it is in writing, signed by the President or Vice-president of the Board on behalf of the Association, or by the Chairman of the ACC on behalf of the ACC.

Section 14.7 Limitation of Liability on Indemnification. The Association shall indemnify every officer, director and committee member against any and all expenses, including trial and appellate attorney's fees and costs reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that

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such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association may, as a Common Expense, maintain adequate general liability insurance and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 14.8 Conflicts Between Documents. In case of conflict between this Declaration and the Articles of Incorporation or the By-Laws or the Covenants, this Declaration shall control. In case of conflict between the Articles of Incorporation or the Covenants and the Architectural Guidelines, the Architectural Guidelines shall control.

Section 14.9 Indemnity for Damages. Each and every Owner and future Owner, in accepting a deed or contract for any Lot subject to these restrictions, agrees to indemnify Declarant for any damage caused by such Owner, or the contractor, agent or employees of such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines, or sanitary sewer lines, or other utilities such as telephone, cable television, electricity or gas lines.

Section 14.10 Assignment. The Declarant may assign all or any part of its rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor shall be identified, the particular rights being assigned shall be specified, and, to the extent required, concomitant obligations shall be expressly assumed by such successor, all in written instrument duly recorded in the R.M.C. Office of Spartanburg County, South Carolina.

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ARTICLE XV

Condemnation

Section 15.1 Rights of Owners. Whenever all or any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation by the Board of Directors acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking, but the Association shall act as attorney-in-fact for all Owners in the proceeds incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 15.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If taking involves a portion of the Common Area on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners representing at least sixty-six (66%) percent of the Class "A" votes in the Association shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with the plans approved by the Board of Directors and the ACC. If such Improvements are to be repaired or restored, the provisions in this Article IX above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after such restoration or replacement is completed, then such award or net fund shall be distributed in equal shares per Lot, first to the Mortgagees and then to the Owners as their interests appear.

Section 15.3 Complete Condemnation. If all of Chandelle is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the Association created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Area shall be distributed as provided in Section 15.2 above.

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ARTICLE XVI**Expansion**

Section 16.1 Reservation of Right to Expand. Declarant shall expand the effect of this Declaration to include all of the Expansion Property which comes into the possession and control of Declarant. Declarant shall have the unilateral right to transfer to any other person this right to expand by an instrument duly recorded. Declarant shall pay all taxes and other governmental assessments relating to the Expansion Property until expansion.

Section 16.2 Declaration of Annexation. Such expansion may be accomplished by recording a Declaration of Annexation in the R.M.C. Office for Spartanburg County, South Carolina, before December 31, 2001, describing the real property to be annexed to the Property, submitting it to the covenants, conditions and restriction contained in this Declaration, designating it as a Project, in the Expansion Property parcel in that instance does in fact constitute a Project, and providing for voting rights and Assessment allocations as provided in this Declaration. Such Declaration of Annexation shall not require the consent of the Owners. Any such expansion shall be effective upon the filing for record of such Declaration of Annexation, unless otherwise provided therein. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Upon the recordation of any such Declaration of Annexation, the definitions used in this Declaration shall be expanded automatically to encompass and refer to Chandelle as expanded. Such Declaration of Annexation may add, delete or modify provisions of this Declaration as it applies to the Expansion Property already subject to this Declaration, except as provided in Article XII.

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Chandelle Property Owners Association

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BY-LAWS
Chandelle Property Owners Association

ARTICLE I
Name and Location

Section 1.1 Name and Location. The name of the corporation is Chandelle Property Owners Association, Inc., a South Carolina non-profit corporation. The principal office of the corporation is located in the subdivision of Chandelle in Greer, Spartanburg County, South Carolina, but meetings of the Members and Directors may be held at such places within the State of South Carolina as may be designated by the Board of Directors.

ARTICLE II
Purpose

Section 2.1 Purpose. The specific purposes for which the Association is formed are: to provide for the maintenance, preservation and control of the Common Area which is part of the real property located in Spartanburg County, South Carolina (the "Property"), which has been submitted to the Declaration of Covenants, Conditions, Restrictions and Easements for Chandelle dated _____, and recorded on _____, in the R.M.C. Office for Spartanburg County, South Carolina in Deed Book _____ at Page _____ (the "Declaration"); and to promote the health, safety and welfare of the Owners within Chandelle.

Section 2.2 Assent. All present and future Owners, their families, present or future tenants, and their guests and invitees, and any other person using the facilities of Chandelle in any manner are subject to the Chandelle Documents, including these By-Laws. The mere acquisition or rental of any lots in Chandelle or the mere act of occupancy of one of the Lots shall constitute ratification and acceptance of these By-Laws.

ARTICLE III
Definitions

Section 3.1 Definitions. The defined terms used in these By-Laws shall have those meanings that the same terms have in the Declaration.

ARTICLE IV
Membership and Voting

Section 4.1 Membership and Voting Rights Every Owner of a Lot which is subject to assessment 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, except as set forth in Section 4.3 below.

Section 4.2 Voting Rights The Association shall have two classes of voting membership:

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Class A. Class A members shall be all Lot Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member (s) shall be the Declarant, its assigns or successors, and shall be entitled to three votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership, when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B Membership.

Section 4.3 Associate Membership. In consideration for transfer and dedication to the Association of its interest in the real property which is the Common Area, and for development services rendered in connection with the Property, the Owners of Flight World (the current business operating adjacent to Chandelle Property) are hereby granted an Associate Membership in the Association. The Owner of Flight World may transfer or assign the right to use the Common Area pursuant to the Associate Membership and may receive a fee for that transfer. The Associate Member shall be entitled to use the Common Area for aircraft operations in accordance with the restrictions and regulations as are set forth in the Declaration, the Architectural Guidelines, the Bylaws of the Chandelle Property Owners Association, and in the Rules and Regulations adopted by the Association. The Association shall not be entitled to charge fees or collect assessments from the Associate Member. The Associate Member shall have no right to vote or participate in the operation of the Association. There shall be no rights in or to the real property which is the subject of this Declaration derived by the Associate Member.

Section 4.4 Proof of Membership. Any person or entity, on becoming an Owner of a Lot, shall furnish to the Manager or to the Secretary of the Association a photocopy or a certified copy of the recorded instrument vesting that person or entity with an ownership interest, which instrument shall remain in the files of the Association. An Owner shall not be deemed to be a Member of the Association in good standing and shall not be entitled to vote at any annual or special meeting of Members unless this requirement is first met.

ARTICLE V

Meetings

Section 5.1 Association Meetings, Voting and Proxies. The Association shall have two (2) classes of membership. Class "A" and "B", as more fully set forth in Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

Section 5.2 Place of Meeting. Meetings of the Association shall be held at such 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 5.3 Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Meetings of the Association shall be of the Voting Members or their alternates, and the voting rights of all Members shall be exercised through the Voting Member. The next annual meeting shall be set by the

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Board so as to occur within thirteen (13) months after the initial annual meeting. Subsequent regular annual meetings of the Voting Members 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 of the Association shall be held at a date and time as set by the Board of Directors.

Section 5.4 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 5.5 Notice of Meetings. Written or printed notice stating the place, day and hour of any meeting of the Association 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 meetings, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. If mailed, the notice of the meeting shall be deemed to be delivered when deposited in the United States Mail addressed to the Voting Member at his address as it last appeared on the records of the Association, with postage thereon pre-paid.

Section 5.6 Waiver of Notice. Waiver of notice of the meeting of the Association 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 meetings. Attendance at a meeting by a Voting Member shall be deemed waiver by such Voting Member of 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 at which proper notice was not given is raised before the business is put to a vote.

Section 5.7 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 his or her alternate, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Voting Members in the manner prescribed for regular meetings. The voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum, provided that at least twenty-five (25%) percent of the total votes of the Association remain present in person, and provided further that any action taken shall be approved by at least a majority of the Voting Members required to constitute a quorum.

Section 5.8 Voting. The voting and membership rights shall be set forth in the Declaration, and such voting and membership rights provisions specifically incorporated therein.

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Section 5.9 Proxies. Voting Members may vote by proxy or through an alternate Voting Member.

Section 5.10 Majority. As used in these By-Laws, the majority shall mean those votes, Owners or other group as the context may indicate, totaling more than fifty (50%) percent of the total number of votes.

Section 5.11 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 one-third (1/3) of the votes in the Association shall constitute a quorum but will not exist without the presence of Declarant, his heirs, successors and assigns. The Declarant may waive this provision in writing thereto to the Board of Directors after receiving notification of said meeting. Any provision in the Declaration concerning quorums is specifically incorporated herein.

Section 5.12 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 meetings, as well as a record of all transactions occurring thereat.

Section 5.13 Action Without a Meeting. Any action required by law to be taken at a meeting of the Association, or any action which may be taken at a meeting of the Association, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all 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 Association.

ARTICLE VI
Board of Directors

Section 6.1 Number and Initial Board. The affairs of the Association shall be managed by a Board of from two (2) to nine (9) Directors who shall be appointed as provided under Section 6.2 hereinbelow. The number of the Board of Directors shall be established from time to time by amendment to these By-Laws. The initial number of the Board of Directors shall be three (3). The names and addresses of the three persons who are to initially act in the capacity of Directors until the selection for their successors are:

NAME	ADDRESS
John R. Stewart	445 Crosswind Way , Greer, SC 29651
Raymond M. Clark, Jr.	2830 Cravenridge Dr., Atlanta, Ga. 30319
Doug Cobb	1735 Reidville Rd. Suite 9319, Spartanburg, SC 29301

Section 6.2 Directors During Declarant's Control. The Board of Directors shall be selected by Declarant and shall serve at the sole discretion of Declarant, except as provided in Section 6.4 below. Declarant may surrender its right to select the Board of Directors prior to termination of the Class B membership. The Directors selected by Declarant need not be Members of the Association.

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Section 6.3 Nominating Committee. Except with respect to Directors selected by Declarant, nominations for election to the Board of Directors shall be made by a Nominating Committee consisting of a chairman, who shall be a Member of the Board of Directors and two 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, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of vacancies or terms to be filled by vote of the members. 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 6.4 Election of Directors. Directors shall be elected as follows:

(a) **During Class B Membership.** Declarant's unilateral right to appoint Members of the Board of Directors as set forth in Section 6.2 above shall be modified by the right of the Class A Members to elect one or more Class A Directors as follows. Within (30) days of the time that the number of Class A Members other than Declarant is equal to or greater than fifteen (15), the Association will call a special meeting of Members at which the Class A Members shall elect Class A Directors according to the following schedule:

Class A Membership is equal to or greater than:

- fifteen (15), representation by one (1) elected Director
- thirty (30), representation by two (2) elected Directors
- forty-five (45), representation by three (3) elected Directors

The Directors so elected shall be subject to removal only as provided in these By-Laws, and not by Declarant acting alone, and shall be elected for a one-year term or until the next annual meeting of Members thereafter.

(b) **Subsequent to Termination of Class B Membership.** At the first meeting of the Members following the termination of the class B membership, the Members shall elect all the Board of Directors. Any terms of Class A Directors which have not expired shall terminate. At each annual meeting of Members thereafter, Directors shall be elected. There shall be up to nine Directors elected from and representing Chandelle Property Owners. All Members of the Association shall vote upon Directors. The nine candidates receiving the majority vote shall be elected.

(c) **Terms of Office.** The initial terms of the elected Directors shall be fixed at the time of their election as they themselves shall determine in order to establish a system of two (2) year terms in which at least one-half (1/2) of the Board is re-elected in each year. At the expiration of the initial term of office of each respective Director, a successor shall be elected to serve two (2) years. Each director shall hold office until such Director's successor shall have been elected by the Association and qualified.

Section 6.5 Voting Procedures for Directors. Elections for the first three (3) Directors elected by the Association will be conducted pursuant to Section 6.4 (a), unless that Section is rendered inapplicable by surrender by Declarant of its right to select Directors. The first general election of the Board shall be conducted at the first meeting of Members following termination of the Class B

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membership. At such election, Members of the Association may cast votes as they are entitled to exercise under the provisions of Section 4.1 above. Voting for Directors shall be by secret written ballot.

Section 6.6 Removal of Directors; Vacancies. Directors may be removed and vacancies on the Board may be filled as follows:

(a) **By the Members.** During the term of Class B membership in the Association, any members of the Board of Directors elected by Class A Members may be removed by a majority of votes of the Class A Members, with or without cause, at any regular or special meeting of the Members duly called. Following termination of the Class B membership, any Director may similarly be removed, with or without cause, at any regular or special meeting of the Members, but the votes cast to remove a Director may only represent those Members entitled to vote for a successor. A successor to any Director removed may then and there be elected to fill the vacancy created. A Director whose removal is proposed by the Members shall be given at least, ten (10) days' notice of the date and purpose of the meeting, and shall be given opportunity to be heard at the meeting.

(b) **By the Board.** Any Director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in payment of any Assessment for more than thirty (30) days may be removed by a majority vote 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 6.7 Compensation. No director shall receive compensation for any service he or she may render to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of such Director's duties.

Section 6.8 Action Taken Without a Meeting. The Directors shall have the right to take any action which they could take at a meeting in the absence of a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at the meeting of the Directors.

ARTICLE VII

Meetings of Directors

Section 7.1 Regular Meetings. Regular meetings of the Board of Directors shall be held at least quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the board. Should the meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. At all meetings of the Board, the President or in his absence, the chairman chosen by the Directors present, shall preside.

Section 7.2 Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association or by any two Directors, after not less than three (3) days notice to each Director.

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Section 7.3 Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board.

Section 7.4 Waiver of Notice. The transactions of any meetings of the Board of Directors, however called and notice 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. 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 7.5 Telephone Participation. One or more Directors may participate in any regular or special meeting of the Board by telephone conference call and those Directors so participating shall be counted for quorum purposes.

ARTICLE VIII

Powers and Duties of Board of Directors

Section 8.1 General. The Board of Directors shall have the powers and duties necessary for the administration of the business affairs of the Association. The Board of Directors may do all such acts and things as are not by law or by the Articles of Incorporation, these By-Laws or the Declaration directed to be exercised or done by the Members. The Directors shall act only as a Board and the individual directors shall have no power as such.

Section 8.2 Specific Powers and Duties. Without limiting the generality of powers and duties set forth in Section 8.1 above, the Board of Directors shall be empowered and shall have the powers and duties as follows:

(a) To administer and enforce the Covenants, Restrictions, Easement, Aircraft and Runway Operations, Uses, Limitations, Obligations and all other provisions set forth in the Declaration.

(b) To establish, make and enforce compliance with such reasonable rules and regulations as may be necessary for the operation, use and occupancy of Chandelle, with the right to amend same from time to time. A copy of such rules and regulations shall be delivered to or mailed to each Member promptly after adoption.

(c) To keep in good order, condition and repair all the Common Area and all items of personal property, if any, used in the enjoyment of the Common Area. No approval of the Members is required for expenditures for these purposes, except as otherwise required by the Declaration.

(d) To insure and keep insured all the insurable property contained in the Common Area and to maintain casualty and other insurance, all as required by the Declaration.

(e) To fix, determine, levy and collect the prorated annual Assessments to be paid by each of the Members towards the gross expenses of Chandelle, and to adjust, decrease or increase the amount of the Assessments, and to credit any excess of the Assessments over expenses and cash reserves to the Members against the next succeeding Assessment period.

(f) To levy and collect special Assessments whenever, in the opinion of the Board, it is necessary to do so in order to meet increased operating or maintenance expenses or costs, or additional capital

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expenses, or because of emergencies. All special Assessments shall be in statement form and shall set forth in detail the various expenses for which the Assessments are being made.

(g) To levy and collect default Assessments for violation of the Chandelle Documents or because the Association has incurred an expense on behalf of a Member under the Chandelle Documents.

(h) To collect delinquent Assessments by suit or otherwise and to enjoin or seek damages from an Owner as provided in the Declaration and these By-Laws; to enforce a late charge of not less than One Hundred Dollars and no/100 (\$100.00) in connection with any Assessments remaining unpaid more than thirty (30) days from the due date for payment; to collect interest at two(2) points above the prime rate charged by the Association's bank or such other rate set by the Board on unpaid Assessments in accordance with Section 5.8 of the Declaration; and to exercise other remedies for delinquent Assessments as set forth in the Declaration.

(i) To borrow funds in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the Declaration and these By-Laws and to authorize the appropriate officers to execute all such instruments evidencing such indebtedness as the Board of Directors may deem necessary; provided, however, that the Board shall not borrow more than Fifty thousand and no/100 (\$50,000.00) Dollars or cause the Association to be indebted for more than \$50,000.00 at any one time without the prior approval of a majority of votes of both classes of membership.

(j) To enter into contracts within the scope of their duties and powers.

(k) To establish a bank account for the operating account of the Association and for all separate funds which are required or may be deemed advisable by the Board of Directors.

(l) To cause to be kept and maintained full and accurate books and records showing all of the receipts, expenses or disbursements and to permit examination thereof by Members or their Mortgagee at convenient weekday business hours.

(m) To cause any and all access roads, parking areas and entrances in and to Chandelle and across the Property to be maintained.

(n) To cause the maintenance of the lawn, trees, shrubs and other vegetation, and the sprinkler or other irrigation systems located on the Lots and Common Area for the benefit of the Members.

(o) To delegate to the Manager or any other person or entity such of the Associations's duties or responsibilities as may be more conveniently or efficiently performed by another than by the Association, and to agree to assess to the Members a reasonable fee for such services, except that the duties set forth in Subsections (e), (f), (g), (i) and (j) shall not be so delegated.

(p) To assist the Architectural Control Committee (the "ACC") in the performance of its functions.

Section 8.3 Manager. (a) The Board of Directors may employ for Chandelle, a professional management agent or agents as manager at a compensation established by the Board to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the 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 Subsection (e), (f), (g), (i) and (j) of Section 8.2 above. Declarant or an affiliate or employee of Declarant may be employed as Manager.

(b) No management contract may have a term in excess of three (3) years and must permit termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

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Section 8.4 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.

(b) Accounting and controls should conform with established AICPA guidelines and principles. A segregation of accounting duties should be maintained, and disbursements by check shall require two signatures. Cash disbursements shall be limited to amounts of Twenty-five Dollars and not over \$25.00 (\$25.00) and under.

(c) Cash accounts of the Association shall not be co-mingled with any other accounts.

(d) No remuneration shall be accepted by the Board of Directors or the Manager from vendors, independent contractors or others providing goods or services to the Association, whether in the form of commissions, finder's fees, prizes, gifts or otherwise (except that such persons may be employees of Declarant during the period of Class B membership); anything of value shall benefit the Association.

(e) Any financial or other interest which the Manager or a Member of the Board of Directors may have in any firm (other than Declarant) providing goods or services to the Association shall be disclosed promptly to the Board of Directors.

(f) Commencing at the end of the calendar quarter in which the first Annual Assessment is levied and continuing on a quarterly basis, financial reports shall be prepared for the Board of Directors containing:

- (i) An income statement reflecting all income and expense activity for the preceding three (3) months on an accrual basis;
- (ii) An account activity statement reflecting all receipt and disbursement activity for the preceding three (3) months on an accrual basis; and
- (iii) A delinquency report listing all Owners who have been delinquent in paying the monthly installments of Assessments during the preceding three (3) month period and who remain delinquent at the time of the report, and describing the status of any action to collect such installments which remain delinquent.

(g) A Balance sheet as of the last day of the Association's fiscal year and an operating statement for said fiscal year shall be distributed to the Members. At the written request of an Owner or First Mortgagee, such statements shall be audited at their expense. Any such audited statements shall be delivered to any Owner requesting the report and to the Association upon payment of a reasonable fee for copying.

(h) An account report reflecting the status of all accounts in an "actual" versus "approved" budget format shall be prepared, along with a report reflecting any actual or pending obligations which are in excess of budgeted amounts especially those in excess of the operating reserves or ten (10%) percent of a major budget category (as distinct from a specific line in an expanded chart of accounts) shall be prepared for the Board periodically and available to all Members on an annual basis.

Section 8.5 Hearing Procedure. The Board shall not impose a fine, suspend voting rights or suspend any rights of a Member or other occupant for violations of rules and regulations or of the provisions of Chandelle Documents unless and until the following procedure is followed:

(a) **Demand.** Written demand to cease and desist from the alleged violation shall be served upon an alleged violator specifying:

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(i) The alleged violation;
(ii) The action required to abate the alleged violation; and
(iii) A time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any additional similar violation may result in the imposition of a sanction after notice and hearing, if the violation is not continuing.

(b) **Notice.** At any time within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty or if the same rule is subsequently violated, the Board or its delegate shall serve the violator with written notice of a hearing to be held by the Board. The notice shall contain:

- (i) The nature of the alleged violation;
- (ii) The time and place of the hearing which time shall not be less than ten (10) days from the giving of the notice;
- (iii) An invitation to attend the hearing and produce any statement, evidence and witness on the Member's behalf; and
- (iv) The proposed sanction to be imposed.

(c) **Appeal.** The Board may, in its discretion, appoint a Hearing Committee to hear the matter. In such event the above procedure will apply except that either party may appeal the decision of the Hearing Committee to the Board by written notice to the Hearing Committee, the other party and the Board. The Board shall consider the minutes of the hearing and report the decision of the Board within a reasonable period of time not exceeding ninety (90) days after receipt of the notice. The decision of the Board shall be final.

The procedures shall not be necessary in order to impose any sanction or penalty for non-payment of a delinquent Assessment. The ACC shall employ the above procedures before ordering modification or removal of any Improvement erected without its proper consent. Owners shall follow the above procedure in contesting a decision of the ACC, except that instead of employing Subparagraph (a), the aggrieved Owner shall proceed to Subparagraph (b), and the Owner shall give the ACC and the Board notice of the decision appealed from, including a copy of the decision. The Board shall then give the notice of hearing consistent with Subsections 8.5 (b)(i), (ii), (iii) and (iv) above, and the Board shall consider appeals regarding such matters in the manner set forth above.

ARTICLE IX

Officers and Their Duties

Section 9.1 Enumeration of Officers. The officers of the Association shall be a President, Vice President, Secretary and Treasurer, who shall at all times be Members of the Board of Directors, and such other officers as the Board may from time to time by resolution create.

Section 9.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 9.3 Term. The officers of the Association shall be elected annually by the Board, and each shall hold the office for one (1) year unless he shall sooner resign or shall be removed or otherwise disqualified to serve.

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Section 9.4 Special Appointments. The Board may appoint such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may from time to time determine.

Section 9.5 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified in the notice, and unless otherwise specified in the notice, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 9.7 Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the remaining offices except in the case of special offices created pursuant to Section 9.4 above.

Section 9.8 Duties. The duties of the officers are as follows:

(a) **President.** The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and shall co-sign all checks and promissory notes.

(b) **Vice President.** The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) **Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board.

(d) **Treasurer.** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and the financial statements provided for by Section 8.4 above; and deliver or make copies available of each to the Members.

ARTICLE X

Committees

Section 10.1 General. Committees 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 are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. 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

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the Board of Directors.

Section 10.2 Covenants Committee. The Board of Directors may appoint a Covenants Committee consisting of at least three (3) 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 shall be the hearing tribunal of the Association.

Section 10.3 Architectural Control Committee. The Board of Directors shall appoint an Architectural Control Committee in accordance with the provisions of Article III of the Declaration.

ARTICLE XI

Indemnification

Section 11.1 Indemnification. The Association shall indemnify every Director and officer, or former Director or officer, and their respective successors, personal representatives and heirs against all loss, costs and expenses, including counsel fees reasonably incurred by such person in connection with any action, suit or proceeding to which such person may be made a party by reason of such person's being or having been a Director or officer of the Association, except as to matters as to which such person shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of such persons' duties as such Director or officer. The foregoing rights shall not be exclusive of other rights to which such Director or officer may be entitled. All liability, loss, damage, cost and expense arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as a common expense.

ARTICLE XII

Amendments

Section 12.1 Amendments. These By-Laws may be amended at a regular or special meeting of the Board, by a vote of a majority of a quorum of Directors present in person or by proxy, but amendment of Article VI or XII or any portion of those Articles shall require approval of all Directors. So long as the Declarant owns any Lot, the By-Laws of the Association may not be amended without its written consent.

ARTICLE XIII

Miscellaneous

Section 13.1 Fiscal Year. The fiscal year of the Association shall begin the first day of January and end on the 31st day of December of each year, except that the first fiscal year shall begin on the date of incorporation.

Section 13.2 Conflict of Documents. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal this:

WITNESSES:

CSC DEVELOPERS, LLC

Marilyn N. Berry

By: John R Stewart Jr
Its: Member/Manager

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF SPARTANBURG

PERSONALLY appeared before me the undersigned witness and made oath that he/she saw the within named CSC Developers, LLC, by and through John R. Stewart Jr its member/manager, sign seal and as its act and deed deliver the within written Declaration of Covenants and Restrictions and that he/she with the other witness above named, witnessed the execution thereof.

Marilyn N. Berry

SWORN to subscribed before me this the

15th day of December, 1997.

George Bond (SEAL)

Notary Public for South Carolina

My Commission Expires: 1-19-2000

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
C.A. No. 2016-CP-42-01854

Chandelle Property Owners Association,)

Plaintiff,)

vs.)

Charlie M. Allison, Janice H. Allison,
James Douglas Armstrong and Jane
Armstrong, Emma Jean Brockman as the
Personal Representative of the Estate of
James P. Brockman, Sr., Warren Johnson,
Rhonda Johnson, John K. Payne, Ruth G.
Payne, and Jane Van Wieren as Trustee of
the Greer R.G. Irrevocable Property Trust
dated October 25, 2006, and also all other
persons unknown, claiming any right, title,
Estate, interest in or lien upon the real
estate described in the complaint herein.)

Defendants.)

James Douglas Armstrong and Jane
Armstrong, Warren Johnson, Rhonda
Johnson, John K. Payne and Ruth G.
Payne)

Third Party Plaintiffs)

vs)

Billy J. Israel, Bruce R. Goldberg, Cindy
R. Goldberg and George Lynn Fleming in
their personal and official capacities,)

Third Party Defendants)

**THIRD AMENDED ANSWER,
COUNTER-CLAIM AND THIRD PARTY
COMPLAINT OF DEFENDANTS,
JAMES DOUGLAS ARMSTRONG, JANE
ARMSTRONG, WARREN JOHNSON,
RHONDA JOHNSON, JOHN K. PAYNE,
RUTH G. PAYNE AND JANE VAN
WIRREN AS TRUSTEE IF THE GREER
R.G. IRREVOCABLE PROPERTY
TRUST DATED OCTOBER 25, 2006
(Jury Trial Requested)**

Defendants and Third Party Plaintiffs, James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006 (hereinafter collectively, "Defendants") in answering the Complaint of the Plaintiff, asserting certain Counterclaims and by way of Third Party Complaint against Third Party Defendants, Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg and George Lynn Flemming (hereinafter "Third Party Defendants" or TPD's"), herein submit their Third Amended Answer, Counterclaims and Third Party Complaint consistent herewith.

FOR A FIRST DEFENSE

(General Denials)

1. Each and every allegation of Plaintiff's Claim, not herein specifically admitted, is denied.
2. Defendants are without information or belief as to allegations of Paragraphs 1 through 6, 9 and 10 of the Plaintiff's Third Amended Complaint and therefore deny the same and demand strict proof thereof.
3. Defendants admit the allegations of Paragraphs 7, 8, 11, 12, 13, 14, 15, 16, 17 and 53 of Plaintiff's Third Amended Complaint.
4. With respect to Paragraphs 18 through 21, 24, 25 through 47, 50 through 52, 54 through 72 and 74 (and all subparts thereto) of the Plaintiff's Third Amended Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same or with respect to any references of what particular documents may say or read, Defendants defer to those documents themselves as to what they say or mean and deny the Plaintiff's depiction of the meaning of such documents.

5. With respect to Paragraph 48 (and all subparts thereto) of the Plaintiff's Third Amended Complaint, the Defendants admit that they were granted easements to pave from their properties to the paved portion of the Runway but would aver, as further asserted herein, that there is only one "Runway" in the community as defined in Section 1.26 of the Restrictive Covenants which is "that property located at the center of the subdivision used for the purpose of aircraft takeoff and landings." The only runway in the center of the subdivision is the paved runway.

6. Defendants admit Paragraphs 22, 23, 26 and 49 of the Plaintiff's Third Amended Complaint.

7. Defendants deny Paragraph 73 of the Plaintiff's Third Amended Complaint.

8. Paragraph 75 is re-incorporation of previous allegations to which a response is not required, but to the extent one is required Defendant denies such allegations to the extent not inconsistent herewith.

9. Defendants admit the allegations of Paragraphs 76 and 77 of the Plaintiff's Third Amended Complaint.

10. Defendants admit so much of Paragraph 78 of the Plaintiff's Third Amended Complaint in that certain questions and disputes exist with respect to the governance of the Chandelle Subdivision, the applicability of the Restrictions of certain lots, validity of prior agreements, amendments, actions of the purported Board of Directors (the "Board"), designation of "Grass Runways," validity of the actions of the purported Board and other matters concerning the ownership, control, maintenance and use of the Runway. Defendants admit that these matters need to be settled by the Court for the purposes of the future governance of the subdivision in a normal and orderly fashion.

11. Paragraph 79 of the Plaintiff's Third Amended Complaint are conclusions of law and fact which are reserved to the Court and finder of fact, and therefore denied by Defendants.

12. Paragraph 80 and 81 of the Plaintiff's Third Amended Complaint are conclusions of law and fact which are reserved to the Court and finder of fact, and therefore denied by Defendants.

13. Paragraph 82 of the Plaintiff's Third Amended Complaint is a prayer for relief to which no response is required, however, to the extent a response is required, the allegations are denied.

14. Paragraph 83 is re-incorporation of previous allegations to which a response is not required, but to the extent one is required Defendant denies such allegations to the extent not inconsistent herewith.

15. Paragraph 84 of the Plaintiff's Third Amended Complaint is a statement of the statutory basis of the Plaintiff's claim which does not require a response, but to the extent a reply is required, such allegations are denied.

16. Defendants admit the allegations of Paragraph 85 of the Plaintiff's Third Amended Complaint.

17. Paragraph 86 of the Plaintiff's Third Amended Complaint is a prayer for relief which does not require a response, but to the extent a response is required, such allegations are denied.

18. Paragraph 87 is re-incorporation of previous allegations to which a response is not required, but to the extent one is required, Defendants deny such allegations to the extent not inconsistent herewith.

19. Paragraphs 88 through 94 of the Plaintiff's Third Amended Complaint are general conclusions or assertions of fact of which the Defendants are without information or belief as to such allegations and therefore deny the same.

20. Paragraph 95 of the Plaintiff's Third Amended Complaint is a prayer for relief which does not require a response, but to the extent a response is required, such allegations are denied.

21. Paragraph 96 is re-incorporation of previous allegations to which a response is not required, but to the extent one is required Defendants deny such allegations to the extent not inconsistent herewith.

22. Defendants deny the allegations of Paragraphs 97 through 106 of the Plaintiff's Third Amended Complaint.

23. Paragraph 107 is re-incorporation of previous allegations to which a response is not required, but to the extent one is required Defendants deny such allegations to the extent not inconsistent herewith.

24. Defendants deny the allegations of Paragraphs 108 through 111 of the Plaintiff's Third Amended Complaint.

25. Paragraph 112 is re-incorporation of previous allegations to which a response is not required, but to the extent one is required Defendants deny such allegations to the extent not inconsistent herewith.

26. With respect to Paragraphs 113 through 119 of the Plaintiff's Third Amended Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same.

27. Paragraph 120 is re-incorporation of previous allegations to which a response is not required, but to the extent one is required Defendants deny such allegations to the extent not inconsistent herewith.

28. With respect to Paragraphs 121 through 126 of the Plaintiff's Third Amended Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same.

29. Paragraph 127 is re-incorporation of previous allegations to which a response is not required, but to the extent one is required Defendants deny such allegations to the extent not inconsistent herewith.

30. With respect to Paragraphs 128 through 132 of the Plaintiff's Third Amended Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same.

31. Paragraph 133 is re-incorporation of previous allegations to which a response is not required, but to the extent one is required Defendants deny such allegations to the extent not inconsistent herewith.

32. With respect to Paragraphs 134 through 135 of the Plaintiff's Third Amended Complaint, the Defendants are without information or belief as to such allegations and therefore deny the same.

FOR A SECOND DEFENSE

(Affirmative Defenses)

33. Defendants incorporate and re-allege the allegations contained in its defenses and replies except as such are inconsistent herein.

34. Defendant herein asserts the affirmative defenses of Laches, Statute of Frauds, and Waiver.

FOR A THIRD DEFENSE

(Lack of Authority/Lack of Standing)

35. Defendants incorporate and re-allege the allegations contained in its defenses and replies except as such are inconsistent herein.

36. Defendants herein aver that the purported Board Members of the Plaintiff, Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg, and George Lynn Fleming, have no authority to bring the Complaint against these Defendants or any of Plaintiff's other claims for the following reasons to wit:

a. Assuming the purported Board Members were properly installed, these purported "Board Members" terms have expired. Section 5.3 of the By-Laws requires that the Board of Directors hold a meeting annually and Section 6.4 of the By-Laws provides that, "[t]he initial terms of the elected Directors shall be fixed at the time of their election as they themselves shall determine in order to establish a system of two (2) year terms in which at least one-half (1/2) of the Board is re-elected in each year. At the expiration of the initial term of office for each respective Director, a successor shall be elected to serve two (2) years. Each director shall hold office until such Director's successor shall have been elected by the Association and qualified." Furthermore, Section 9.2 provides that, "The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members." Section 9.3 provides, "[t]he officers of the Association shall be elected annually by the Board, and each shall hold the office for one (1) year unless he shall sooner resign or shall be removed or otherwise disqualified to serve

b. Billy J. Israel was first appointed to the Board of Directors on January 15, 2010 by the Declarant (See, Exhibit E to Plaintiff's Memorandum in Opposition to John Payne, Ruth Payne, James D. Armstrong, Jane Armstrong, Warren Johnson and Rhonda Johnson's Motion to Dismiss. His term would have expired January 15, 2012.

c. Cindy R. Goldberg was first appointed to the Board of Directors on January 15, 2010 by the Declarant (See, Exhibit E to Plaintiff's Memorandum in Opposition to John Payne, Ruth Payne, James D. Armstrong, Jane Armstrong, Warren Johnson and Rhonda Johnson's Motion to Dismiss. Her term would have expired January 15, 2012.

d. Bruce R. Goldberg was first appointed to the Board of Directors on January 15, 2010 by the Declarant (See, Exhibit E to Plaintiff's Memorandum in Opposition to John Payne, Ruth Payne, James D. Armstrong, Jane Armstrong, Warren Johnson and Rhonda Johnson's Motion to Dismiss. His term would have expired January, 15, 2012.

e. George Lynn Fleming was never rightfully elected to the Board of Directors under the provisions of the By-Laws as there has never been no vote to re-elect a Board of Directors.

37. Therefore, each of these Directors are acting without authority and this action should be dismissed pursuant to SCRCF 12(b)(1).

FOR A FOURTH DEFENSE

(Equitable Estoppel/Unclean Hands)

38. Defendants incorporate and re-allege the allegations contained in its defenses and replies except to the extent such are inconsistent herein.

39. Plaintiff asserts that these Defendants are subject the Restrictions and Covenants of the Chandelle Subdivision and that Plaintiffs by and through their "Directors"

are entitled to bring this action. However, even if the Defendants are subject to the Restrictions and Covenants, the Plaintiff has intentionally refused the Defendants' right to vote and participate in the governance of the Association, and therefore, Plaintiff should be estopped from claiming that the Defendants are governed by Plaintiff's Director's rule.

40. Furthermore, if Plaintiff's "Directors" were acting in good faith, then its claim that no member of the association can vote to replace them because the Declarant would never make itself available at the meeting is simply untenable. It would be much easier to take the position that since the Declarant failed to appear at a meeting, it waived the right to be present and constitute a quorum. Such a position then forces the Declarant to take action to disturb the operation of the Association. Instead, the purported "Board" decided to disturb the operation of the Association and litigate the technicalities of the provisions of the Restrictions and Covenants.

41. The purported Board of Directors' decision to put the interest of the Declarant over the interest of its purported members is oxymoronic at best and gives the whiff that the rogue Director's desires to be in a position of power outweigh rational decisions of reasonable business men and women.

42. The Plaintiff's actions in the imposition of assessments violate the Restrictive Covenants and therefore the Plaintiffs should be barred from trying to impose such assessments.

43. As such, the Plaintiff's assertions against these Defendants should be dismissed and these Defendants would aver that those who entered into the agreements to be bound by the purported Board's decisions be subject to the consequences of the Board's unauthorized actions and not these Defendants.

FOR A FIRST COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Conversion)

44. Defendants incorporate and re-allege the allegations contained in its defenses and replies except to the extent such are inconsistent herein.

45. Defendants gave money to the Plaintiffs and/or TPD's under the pretense that the money would be used to maintain the common areas.

46. Plaintiffs and/or TPD's have not used the Defendant's money for the purposes intended and have instead used such money to fund this lawsuit and therefore assumed and exercised the rights of ownership over the money belonging to Defendants exclusive to the rights of the Defendants to have these funds used for the intended purposes.

47. Plaintiffs and/or TPD's committed the conversion was willful, intentional, recklessly and with conscious indifference to the rights of Defendants to receive the services they were to receive in exchange for the funds delivered to TPD's.

48. As such, Plaintiffs and/or TPD's are liable to Defendants in the amount of the sums paid, and interest from the day of conversion and punitive damages.

FOR A SECOND COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Breach of Fiduciary Duty/Breach of Good Faith)

49. Defendants incorporate and re-allege the allegations contained in its defenses and replies except to the extent as such are inconsistent herein.

50. As purported Board Members and Officers of the Plaintiff corporation, the Plaintiff and/or TPD's are fiduciaries to the Members of the Corporation. Furthermore, TPD's are charged by S.C. Code of Laws § 33-8-300 to act in good faith, in an ordinarily prudent

person in a like position and in a manner that is reasonably believed to be in the best interest of the Corporation.

51. TPD's have breached these duties in collecting money under false pretenses and not using said money for the intended purposes along with incurring debt in excess of the provisions of the Restrictions.

52. Furthermore, if Plaintiff's "Directors" were acting in good faith, then its claim that no member of the association can vote to replace them because the Declarant would never make itself available at the meeting is simply untenable. It would be much easier to take the position that since the Declarant failed to appear at a meeting, it waived the right to be present and constitute a quorum.

53. The purported Board of Directors' decision to put the interest of the Declarant over the interest of its purported members is oxymoronic at best and gives the whiff that the rogue Director's desires to be in a position of power, outweigh rational decisions of reasonable business men and women.

54. As such TPD's are liable to said sums paid with pre-judgment interest thereon.

FOR A THIRD COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Equitable Indemnity)

55. Defendants incorporate and re-allege the allegations contained in its defenses and replies except to the extent such are inconsistent herein.

56. Plaintiffs and/or TPD's have caused, through their unreasonable undertakings, to cause these Defendants to be subjected to this lawsuit and to have to defend themselves.

57. Defendants are entitled to equitable indemnification from Plaintiffs and/or TPD's in the form of the attorney's fees and costs of this action along with any debts which

may come from this lawsuit in excess of Defendants' pro-rata share of the maximum debt limit of \$50,000.00.

FOR A FOURTH COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Tortious Interference with Contractual Relations)

58. Defendants incorporate and re-allege the allegations contained in its defenses and replies except to the extent such are inconsistent herein.

59. Defendants each had contractual agreements with Chandelle Runway, LLC to use the runway in the Chandelle subdivision.

60. Plaintiffs and/or TPD's were aware of such contractual relationships.

61. Plaintiffs and/or TPD's have intentionally caused material breaches with Chandelle Runway, LLC's ability to perform the requirements of the contracts which has caused Defendants damages in the form of a diminished ability to use the runway or otherwise participate in the maintenance of the runway which is causing accelerated deterioration of the runway.

62. Plaintiffs and/or TPD's actions are without justification and Defendants have been damaged in an amount to be determined by the trier of fact.

FOR A FIFTH COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Fraud)

63. Defendants incorporate and re-allege the allegations contained in its defenses and replies except to the extent such are inconsistent herein.

64. In billing for and collecting annual sums from Defendants to pay for common area maintenance, Plaintiff and/or TPD's represented to Defendants that said sums would actually be used to pay for common area maintenance and upkeep.

65. Plaintiff and/or TPD's later actions in using the funds to pay for lawsuits demonstrates the falsity of Plaintiff and/or TPD's representations, that Plaintiff and/or TPD's knew of the falsity of their representations and that said representations were material in coaxing Defendants to pay the money and therefore act on the representations of Plaintiff and/or TPD's.

66. Defendants were ignorant as to the falsity of Plaintiff and/or TPD's representations.

67. Defendants relied upon the truth of Plaintiff and/or TPD's representations and had a right to rely such representations.

68. As a result of the Plaintiff and/or TPD's fraudulent actions, Defendants have suffered damages in the form of the lost benefit of the services they would have received if the Plaintiff and/or TPD's had used the money for the intended purposes, and the actual costs incurred in paying for the services themselves.

FOR A SIXTH COUNTER CLAIM AND THIRD PARTY COMPLAINT

(Declaratory Judgment)

69. Defendants incorporate and re-allege the allegations contained in its defenses and replies except to the extent such are inconsistent herein.

70. This action is brought pursuant to S.C. Code of Laws § 15-53-10 *et seq.* seeking an Order of the Court to determine the rights of the parties in the following particulars to wit:

a. Is it an improper action of the purported "Board of Directors" to use annual assessments to fund the current lawsuit? (See Restrictions and Covenants, Section 11.1(a) and 11.4)

b. Is it an improper action of the purported "Board of Directors" to levy special assessments for any other purpose, but for those enumerated in Section 11.1 (b) and 11.5 of the Restrictions and Covenants?

c. Even if implied negative or reciprocal easements are imposed on these Defendants, does that necessarily impose a burden to be governed by the Plaintiff Association, or does simply impose an obligation to use and construct dwellings on the Defendant's property in accordance with the "common scheme" of development?

d. Even if implied negative or reciprocal easements are imposed on these Defendants, is that imposition of restrictions retroactive or prospective as to these Defendant's imposed obligations?

e. Are the amendments to the restrictive covenants executed and filed by CSC Developers, LLC in Deed Books 72-G, Page 843 (recorded 7/10/2000) and Deed Book 88-H, Page 488 (recorded April 11, 2007) valid and enforceable?

f. Are the amendments to the restrictive covenants executed and filed by the Board of Directors in Deed Books 99-L, Page 999 (recorded 11/02/2011) and Deed Book 101-Q, Page 96 (recorded 09/13/2012) valid and enforceable?

g. May the association impose "Annual Assessments" or "Special Assessments" for anything other than those purposes enumerated in the Protective Covenants?

h. Did the incompetent actions of the Plaintiff and/or TPD's violate the "business judgement rule" entitling Defendants to avoid the consequences of such decisions?

FOR A SEVENTH COUNTERCLAIM AND THIRD PARTY COMPLAINT

(Self Dealing)

71. Defendants incorporate and re-allege the allegations contained in its defenses and replies except to the extent such are inconsistent herein.

72. Officers lending money to the corporation in excess of that allowed by the restrictions and re-paying the sums advanced in priority of other debts incurred through act of ultra vires to the detriment of Defendants.

73. Switching the "Grass Runway" from the Board's housing side of the paved runway to the Defendants' side of the "Grass Runway."

FOR AN EIGHTH COUNTERCLAIM AND THIRD PARTY COMPLAINT

(Negligence)

74. Defendants incorporate and re-allege the allegations contained in its defenses and replies except to the extent such are inconsistent herein.

75. Plaintiffs and/or Third Party Defendants owed Defendants a duty of care in discharging their duties as directors of the Board.

76. Plaintiffs and/or Third Party Defendants were careless, reckless and willful in one or more of the following particulars:

- a. Failing to call a vote of the shareholders at the end of their term and ascertain a new board despite the Declarant's refusal to show up for a quorum;
- b. Failing to apply to the court of common pleas for a Court-Ordered meeting pursuant to SC Code of Laws § 33-31-703 which would allow the court to set the quorum requirement;

c. Subjecting members of the association to exorbitant attorney's fees and costs while knowing or should have know the reputation of the counsel it hired to bill excessive of amounts of fess to homeowner's associations;

77. If Defendants are found to be liable for any amount of fees, assessments or other charges, then Plaintiff and/or Third Party Defendants are the proximate cause of such damages and the Plaintiff and Third Party Defendants are liable to the defendants for such damages.

FOR A NINTH COUNTERCLAIM AND THIRD PARTY COMPLAINT

(Accounting)

78. Defendants incorporate and re-allege the allegations contained in its defenses and replies except to the extent such are inconsistent herein.

79. Defendants herein make a demand upon Plaintiffs and/or Third Party Defendants for an accounting of their accounts complained of including, but not limited to:

a. The amount of attorney's fees attributable to Defendants' actions or inactions and not as an aggregate;

b. The amount of "Annual Assessments" due and invoices for such appropriate expenditures;

c. The amount of "Special Assessments" due and invoices for such appropriate expenditures; and

d. The amount of Defendant's accounts attributable to the attorney's fees and costs of this action based on a right to attorney's fees and costs which have yet to be established by the Court.

FOR AN TENTH COUNTERCLAIM AND THIRD PARTY COMPLAINT

(Breach of the Restrictive Covenants/Damages, Fees and Costs)

80. Defendants incorporate and re-allege the allegations contained in its defenses and replies except to the extent such are inconsistent herein.

81. Plaintiffs and/or Third Party Defendants violated the Restrictions when they incurred debt in excess of that allowed by the Restrictions and therefor, to the extent these Defendants are liable for any portion thereof, the breach of the Restrictions has caused damages to the Defendants in such amounts that would be in excess of what would have been Defendants' damages under the \$50,000.00 limitation of debt.

82. Plaintiffs and/or Third Party Plaintiffs violated the restrictive covenants by using "Annual Assessments" for purposes other than those enumerated in § 11.1(a).

83. Plaintiffs and/or Third Party Defendants violated the Restrictive Covenants by imposing "special assessments" for purpose other than those enumerated in § 11.1(b) § 11.5.

84. Pursuant to § 13.9 of the Restrictions, Plaintiffs and/or Third Party Defendants are liable to these Defendants for the attorney's fees and costs of this action.

85. As a result of the Plaintiff's and Third Party Defendants' Breach of the Restrictive Covenants, Plaintiff and Third Party Defendants are liable to Defendants for any "Assessments" over the Defendant's pro-rata obligations above the entire \$50,000.00 limit prescribed in the Restrictive Covenants and in the alternative any assessments under collection that are not allowed by the Restrictive Covenants.

WHEREFORE, these Defendants pray as follows:

1. For a dismissal of Plaintiff's Complaint with prejudice;
2. An award of the attorney's fees and costs associated with this action pursuant to Section 13.9 of the Restrictions and Covenants;

3. A finding for these Defendants on their defense of Lack of Authority/Lack of Standing;
4. A finding for these Defendants on their Defense of Equitable Estoppel/Unclean Hands;
5. A finding for these Defendants on the First Counterclaim and Third Party Complaint for Conversions along with actual and punitive damages and the attorney's fees and costs associated with this action.
5. A finding for these Defendants on their Second Counterclaim and Third Party Complaint for Breach of Fiduciary Duty and Breach of Good Faith along with actual damages;
6. A finding for these Defendants on their Counterclaim and Third Party Complaint for Equitable Indemnity;
7. A finding for these Defendants on their Counterclaim and Third Party Complaint for Tortious Interference with Contractual Relations along with actual and punitive damages;
8. A finding for these Defendants on their Counterclaim and Third Party Complaint for Fraud along with actual and punitive damages;
10. A finding for these Defendants on their Counterclaim and Third Party Complaint for a Declaratory Judgment on the issues before the Court for such cause of action;
11. A finding for the Defendants on their Counterclaim and Third Party Complaint for Self-Dealing;
12. A finding for these Defendants on their Counterclaim and Third Party Complaint

- for Negligence along with actual damages;
13. A finding for these Defendants on their Counterclaim and Third Party Complaint for a Declaratory Judgment on the issues before the Court for such cause of action;
 14. A finding for these Defendants on their Counterclaim and Third Party Complaint for an Accounting to determine amounts actually due, if any;
 15. A finding for these Defendants on their Counterclaim and Third Party Complaint for a Breach of the Restrictive Covenants and an Award of actual damages along with the attorney's fees and costs associated with such cause of action;
 16. A trial by jury;
 17. An award of prejudgment interest; and
 18. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/ Wendell L. Hawkins
Wendell L. Hawkins (S.C. Bar #: 13583)
Wendell L. Hawkins, PA
103-C Regency Commons Dr. Greer, SC 29650
(864) 848-9370 (Ph) (864) 848-9759 (Fax)
wlh@wlhawkinslawfirm.com

Greer, South Carolina
November 24, 2020

Attorneys for Defendants

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT
Case No.: 2016-CP-42-01854

Chandelle Property Owners Association,

Plaintiff,

v.

Charlie M. Allison, Janice H. Allison,
James Douglas Armstrong, Jane
Armstrong, Emma Jean Brockman as the
Personal Representative of the Estate of
James P. Brockman, Sr., Kenneth L.
Galloway, Molly C. Galloway, Warren
Johnson, Rhonda Johnson, Lawrence E.
Lewis, Barbara L. Lewis, John K. Payne,
Ruth G. Payne, and Jane Van Wieren as
Trustee of the Greer R.G. Irrevocable
Property Trust dated October 25, 2006,
and also all other persons unknown,
claiming any right, title, Estate, interest in
or lien upon the real estate described in the
complaint herein.

Defendants.

James Douglas Armstrong and Jane
Armstrong, Warren Johnson, Rhonda
Johnson, John K. Payne and Ruth G.
Payne,

Third-Party Plaintiffs,

v.

Billy J. Israel, Bruce R. Goldberg, Cindy

**PLAINTIFF CHANDELLE PROPERTY
OWNERS ASSOCIATION'S REPLY
TO THE COUNTERCLAIM OF
DEFENDANTS JAMES DOUGLAS
ARMSTRONG, JANE ARMSTRONG,
WARREN JOHNSON, RHONDA
JOHNSON, JOHN K. PAYNE, RUTH G.
PAYNE AND JANE VAN WIEREN AS
TRUSTEE OF THE GREER R.G.
IRREVOCABLE PROPERTY TRUST
DATED OCTOBER 25, 2006**

(JURY TRIAL DEMANDED)

**THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT. ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

R. Goldberg and George Lynn Fleming in)
 their personal and official capacities,)
)
 Third-Party Defendants.)
)

TO: WENDELL L. HAWKINS AND WENDELL L. HAWKINS, P.A., ATTORNEYS
 FOR DEFENDANTS JAMES DOUGLAS ARMSTRONG, JANE ARMSTRONG, WARREN
 JOHNSON, RHONDA JOHNSON, JOHN K PAYNE, RUTH G. PAYNE AND JANE VAN
 WIEREN AS TRUSTEE OF THE GREER R.G. IRREVOCABLE PROPERTY TRUST
 DATED OCTOBER 25, 2006:

COMES NOW the Plaintiff, Chandelle Property Owners Association (“Chandelle”), by
 and through its undersigned attorneys, replying to the Third Amended Answer, Counterclaim,
 and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren
 Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne and Jane Van Wieren as Trustee of the
 Greer R.G. Irrevocable Property Trust Dated October 25, 2006, and would respectfully show
 unto this Court:

FOR A FIRST DEFENSE

(Affirmation of Third Amended Complaint)

1. Chandelle reaffirms and restates all allegations contained in its Third Amended
 Complaint filed November 3, 2020.

FOR A SECOND DEFENSE

(General Denial)

2. Each and every allegation not specifically admitted herein is denied. To the extent
 any allegation of part thereof is not expressly referred to and specifically answered it is hereby
 denied and legal proof thereof is demanded.

3. Paragraphs 1-43 of the Third Amended Answer, Counter-claim and Third-Party
 Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda

**THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT. ANY
 INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, appear to be Defendants' Answer to Chandelle's Third Amended Complaint and no response from Chandelle is necessary. To the extent a response is deemed necessary, Paragraphs 1 - 43 are denied, including all subparagraphs, and strict proof thereof is demanded.

4. In response to Paragraph 44 of the Third Amended Answer, Counter-claim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, Chandelle restates and re-alleges its responses to paragraphs 1 through 43 and defenses raised, where not inconsistent herewith, as if fully repeated herein.

5. Paragraph 45 is denied and strict proof thereof is demanded.

6. Paragraph 46 is denied and strict proof thereof is demanded.

7. Paragraph 47 is denied and strict proof thereof is demanded.

8. Paragraph 48 is denied and strict proof thereof is demanded.

9. In response to paragraph 49 of the Third Amended Answer, Counter-claim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, Chandelle restates and re-alleges its responses to paragraphs 1 through 48 and defenses raised, where not inconsistent herewith, as if fully repeated herein.

10. To the extent that paragraph 50 is an allegation of law, Chandelle is not required to admit or deny that paragraph; subject to the above, Chandelle craves reference to South Carolina

**THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT. ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

law, and denies Paragraph 50 to the extent that anything alleged therein conflicts with the applicable law of this State.

11. Paragraph 51 is denied and strict proof thereof is demanded.

12. Paragraph 52 is denied and strict proof thereof is demanded.

13. Paragraph 53 is denied and strict proof thereof is demanded.

14. Paragraph 54 is denied and strict proof thereof is demanded.

15. In response to Paragraph 55 of the Third Amended Answer, Counter-claim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, Chandelle restates and re-alleges its responses to paragraphs 1 through 54 and defenses raised, where not inconsistent herewith, as if fully repeated herein.

16. Paragraph 56 is denied and strict proof thereof is demanded.

17. Paragraph 57 is denied and strict proof thereof is demanded.

18. In response to Paragraph 58 of the Third Amended Answer, Counter-claim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, Chandelle restates and re-alleges its responses to Paragraphs 1 through 57 and defenses raised, where not inconsistent herewith, as if fully repeated herein.

19. Paragraph 59 is denied and strict proof thereof is demanded.

20. Paragraph 60 is denied and strict proof thereof is demanded.

21. Paragraph 61 is denied and strict proof thereof is demanded.

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22. Paragraph 62 is denied and strict proof thereof is demanded.

23. In response to Paragraph 63 of the Third Amended Answer, Counter-claim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, Chandelle restates and re-alleges its responses to paragraphs 1 through 62 and defenses raised, where not inconsistent herewith, as if fully repeated herein.

24. Paragraph 64 is denied and strict proof thereof is demanded.

25. Paragraph 65 is denied and strict proof thereof is demanded.

26. Paragraph 66 is denied and strict proof thereof is demanded.

27. Paragraph 67 is denied and strict proof thereof is demanded.

28. Paragraph 68 is denied and strict proof thereof is demanded.

29. In response to Paragraph 69 of the Third Amended Answer, Counter-claim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, Chandelle restates and re-alleges its responses to Paragraphs 1 through 68 and defenses raised, where not inconsistent herewith, as if fully repeated herein.

30. To the extent that Paragraph 70 is an allegation of law, Chandelle is not required to admit or deny that paragraph; subject to the above, Chandelle craves reference to South Carolina law, and denies Paragraph 70 to the extent that anything alleged therein conflicts with the applicable law of this State. Any remaining factual allegations in Paragraph 70, including subparagraphs a. through h, are denied and strict proof thereof is demanded.

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31. In response to Paragraph 71 of the Third Amended Answer, Counter-claim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, Chandelle restates and re-alleges its responses to Paragraphs 1 through 70 and defenses raised, where not inconsistent herewith, as if fully repeated herein.

32. Paragraph 72 is denied and strict proof thereof is demanded.

33. Paragraph 73 is denied and strict proof thereof is demanded.

34. In response to Paragraph 74 of the Third Amended Answer, Counter-claim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, Chandelle restates and re-alleges its responses to Paragraphs 1 through 73 and defenses raised, where not inconsistent herewith, as if fully repeated herein.

35. To the extent that paragraph 75 is an allegation of law, Chandelle is not required to admit or deny that paragraph; subject to the above, Chandelle craves reference to South Carolina law, and denies Paragraph 75 to the extent that anything alleged therein conflicts with the applicable law of this State.

36. Paragraph 76 is denied, including but not limited to subparts a. through c. and strict proof thereof is demanded.

37. Paragraph 77 is denied and strict proof thereof is demanded.

38. In response to Paragraph 78 of the Third Amended Answer, Counter-claim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren

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Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, Chandelle restates and re-alleges its responses to Paragraphs 1 through 77 and defenses raised, where not inconsistent herewith, as if fully repeated herein.

39. To the extent that Paragraph 79 states no fact allegations or represents an allegation of law, Chandelle is not required to admit or deny that paragraph; subject to the above, Chandelle craves reference to South Carolina law, and denies Paragraph 79 including subparts a. through d. to the extent that anything alleged therein conflicts with the applicable law of this State. Chandelle denies any factual allegations in Paragraph 79.

40. In response to Paragraph 80 of the Third Amended Answer, Counter-claim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, Chandelle restates and re-alleges its responses to Paragraphs 1 through 79 and defenses raised, where not inconsistent herewith, as if fully repeated herein.

41. Paragraph 81 is denied and strict proof thereof is demanded.

42. Paragraph 82 is denied and strict proof thereof is demanded.

43. Paragraph 83 is denied and strict proof thereof is demanded.

44. Paragraph 84 is denied and strict proof thereof is demanded.

45. Paragraph 85 is denied and strict proof thereof is demanded.

46. All other allegations in the Third Amended Answer, Counter-claim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G.

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Irrevocable Property Trust Dated October 25, 2006, that are not specifically addressed herein are hereby denied.

FOR A THIRD DEFENSE
(Privilege)

47. Plaintiff would show, upon information and belief, that he filing of the *Lis Pendens* is absolutely and/or qualifiedly privileged, therefore, defendants cannot recover from plaintiff any sum whatsoever.

FOR A FOURTH DEFENSE
(Failure to Mitigate)

48. The defendants' claims are barred, in whole or in part, for failure to mitigate their damages.

FOR A FIFTH DEFENSE
(Waiver and Estoppel)

49. The defendants' claims are barred by the doctrine of waiver and estoppel.

FOR A SIXTH DEFENSE
(Doctrine of Unclean Hands)

50. The defendants' claims are barred by the doctrine of unclean hands.

FOR A SEVENTH DEFENSE
(Dismissal Pursuant to SCRCP 12(b)(6))

51. The defendants' Counterclaims fail to state a claim against plaintiff for which relief can be granted, therefore, they should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A EIGHTH DEFENSE
(Statutes of Limitations and Repose/Laches)

52. Some or all of the defendants' Counterclaims are barred by the applicable Statues of Limitations and Repose and/or the equitable doctrine of laches.

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FOR AN NINTH DEFENSE
(Business Judgment Rule)

53. Plaintiff would show, upon information and belief, that its actions are subject to the Business Judgment Rule, and plaintiff asserts the Business Judgment Rule as a defense to the defendants' claims, and for that reason, defendant cannot recover from plaintiff in any sum whatsoever.

FOR A TENTH DEFENSE
(Compliance with S.C. Code Ann. § 33-31-830)

54. Plaintiff would show, upon information and belief, that plaintiff, acting through its Board of Directors, complied with the applicable standard of care set forth in S.C. Code Ann. § 33-31-830; therefore, defendants cannot recover from plaintiff in any sum whatsoever.

FOR A ELEVENTH DEFENSE
(Intervening Negligence)

55. Plaintiff alleges that even if it was negligent or reckless in any respect which is expressly denied, and admitted solely for the purpose of this defense and no other, it is not liable to the defendants for the resulting damages of the defendants, if any, because of the intervening negligent, grossly negligent, reckless, willful and wanton acts of the defendants and/or an unknown third party, which negligent and reckless acts were not reasonably foreseeable and intervened and acted as a direct and proximate cause of the incident, and the resulting damages, if any, sustained by the defendants.

FOR AN TWELFTH DEFENSE
(Allocation of Fault)

56. Plaintiff alleges that even if it was negligent, careless, grossly negligent, reckless, willful or wanton in any respect whatsoever, which is expressly denied and admitted solely for the

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purpose of this defense and no other, and even if any such conduct on its part operated as a greater than 50% cause of the incident and the defendants' resulting injuries and damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, it is entitled to a determination as to the percentage which defendants' negligent, grossly negligent, reckless, willful and wanton conduct contributed to the incident and to a reduction of any amount awarded to the defendants in an amount equal to that percentage of the defendants' own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A THIRTEENTH DEFENSE
(Contributory Negligence)

57. Plaintiff alleges that even assuming it was negligent, careless, grossly negligent, willful, wanton or reckless in any respect, and that any such conduct on its part operated as a proximate cause of the defendants' resulting injuries and damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, that defendants' negligent, grossly negligent, reckless, willful and wanton conduct contributed more than 50% to the cause of the incident and their resulting injuries and damages, if any. For that reason, plaintiff is not liable to the defendants in any sum whatsoever.

FOR A FOURTEENTH DEFENSE
(Punitive Damages Unconstitutional)

58. The defendants are not entitled to recover punitive damages in this action because:

- i. An award of punitive damages would violate the Eighth Amendment to the United States Constitution and Article I Section XV of the South Carolina Constitution in that any award of punitive damages would constitute an excessive fine;

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ii. An award of punitive damages would violate both the Fourteenth Amendment to the United States Constitution and Article I Section III of the South Carolina Constitution in that the power of the court to award punitive damages in any amount it chooses would be wholly devoid of any meaningful standard and would be inconsistent with the guarantees of due process of law;

iii. An award of punitive damages would violate the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I Section III of the South Carolina Constitution because even if a standard governing the imposition of punitive damages exists, that standard is void for vagueness;

iv. An award of punitive damages would violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I Section III of the South Carolina Constitution in that an award of punitive damages would be based in part on the wealth of defendants; and

v. An award of punitive damages would violate the Federal Doctrine of Separation of Powers and Article I Section VIII of the South Carolina Constitution because punitive damages are a creation of the judicial branch of government, the creation of which invades the province of the legislative branch.

FOR A FIFTEENTH DEFENSE
(Failure to plead fraud with particularity)

59. Defendants have failed to plead fraud with particularity as required by SCRCP 9(b).

FOR A SIXTEENTH DEFENSE
(Claims Required to Be Brought Derivately; Failure to Comply with Requirements for Derivative Suit)

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60. Plaintiff would show, upon information and belief, that some or all of defendants' claims must be asserted derivatively, and that defendants have failed to meet the applicable requirements for a derivative suit, including, but not limited to the requirements of Rule 23, SCRCF. Therefore, defendants' claims must be dismissed.

FOR A SEVENTEENTH DEFENSE
(Breach of Governing Documents by Defendants)

61. Plaintiff would show, upon information and belief, that some or all of defendants' claims are barred by defendants' breach(es) of the governing documents for Chandelle and the Chandelle Subdivision.

FOR AN EIGHTEENTH DEFENSE
(Reservation and Non-Waiver)

62. Chandelle reserves and does not waive any additional or further defenses as may be revealed by additional information acquired through discovery or otherwise.

WHEREFORE, having fully answered the Third Amended Answer, Counter-claim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006, the plaintiff prays that this court grant the following relief:

1. That Chandelle be granted judgment against the defendants as requested in its Third Amended Complaint;
2. That the defendants' Counterclaims be dismissed with prejudice;
3. That should the defendants be awarded judgment on their Counterclaim (which is denied), any such sums be set off or offset from the amount for which the defendants are found liable to the plaintiff; and

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4. For such other relief as this Court may deem just and proper.

s/James P. Walsh

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s/Ely O. Grote

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Chandelle Property Owners Association

Greenville, South Carolina
December 7, 2020

**THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT. ANY
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	Case No.: 2016-CP-42-01854
	)	
Chandelle Property Owners Association,	)	
	)	
Plaintiff,	)	PLAINTIFF CHANDELLE PROPERTY
	)	OWNERS ASSOCIATION'S AND
v.	)	THIRD-PARTY DEFENDANTS BILLY J.
	)	ISRAEL, BRUCE R. GOLDBERG, CINDY
Charlie M. Allison, Janice H. Allison,	)	R. GOLDBERG, AND GEORGE LYNN
James Douglas Armstrong, Jane	)	FLEMING'S PARTIAL MOTION TO
Armstrong, Emma Jean Brockman as the	)	DISMISS OR ALTERNATIVELY FOR
Personal Representative of the Estate of	)	PARTIAL SUMMARY JUDGMENT
James P. Brockman, Sr., Kenneth L.	)	REGARDING COUNTERCLAIMS AND
Galloway, Molly C. Galloway, Warren	)	THIRD-PARTY CLAIMS OF JAMES
Johnson, Rhonda Johnson, Lawrence E.	)	DOUGLAS ARMSTRONG, JANE
Lewis, Barbara L. Lewis, John K. Payne,	)	ARMSTRONG, WARREN JOHNSON,
Ruth G. Payne, and Jane Van Wieren as	)	RHONDA JOHNSON, JOHN K. PAYNE,
Trustee of the Greer R.G. Irrevocable	)	RUTH G. PAYNE, AND JANE VAN
Property Trust dated October 25, 2006, an	)	WIRREN AS TRUSTEE OF THE GREER
also all other persons unknown, claiming	)	R.G. IRREVOCABLE PROPERTY TRUST
any right, title, Estate, interest in or lien	)	DATED OCTOBER 25, 2006
upon the real estate described in the	)	
complaint herein.	)	
	)	
Defendants.	)	
	)	
James Douglas Armstrong and Jane	)	
Armstrong, Warren Johnson, Rhonda	)	
Johnson, John K. Payne and Ruth G.	)	
Payne,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
v.	)	
	)	
Billy J. Israel, Bruce R. Goldberg, Cindy	)	
R. Goldberg and George Lynn Fleming in	)	
their personal and official capacities,	)	

Third-Party Defendants.)
)
)

TO: WENDELL L. HAWKINS AND WENDELL L. HAWKINS, P.A., ATTORNEYS FOR DEFENDANTS JAMES DOUGLAS ARMSTRONG, JANE ARMSTRONG, WARREN JOHNSON, RHONDA JOHNSON, JOHN K. PAYNE, RUTH G. PAYNE AND JANE VAN WIEREN AS TRUSTEE OF THE GREER R.G. IRREVOCABLE PROPERTY TRUST DATED OCTOBER 25, 2006:

PLEASE TAKE NOTICE that Plaintiff Chandelle Property Owners Association (“Plaintiff” or “POA”) and Third-Party Defendants Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg and George Lynn Fleming, in their personal and official capacities (“Third-Party Defendants”), by and through the undersigned attorneys, pursuant to Rule 12(b)(6), Rule 23(b)(1), and alternatively, Rule 56, of the South Carolina Rules of Civil Procedure, will move at a time and place designated by the Court, for an Order dismissing the counterclaims and third-party claims of the Defendants and Third-Party Plaintiffs, James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006 for (1) Conversion; (2) Breach of Fiduciary Duty; (3) Equitable Indemnity; (4) Fraud; (5) Breach of Covenants; and (6) Self-Dealing. Counterclaimants and Third-Plaintiffs’ Claims must be dismissed pursuant to Rule 12(b)(6) and Rule 23(b)(1) because these claims allege corporate malfeasance that has resulted in harm to members of the community and the Third-Party Complaint does not meet the pleading requirements of Rule 23(b)(1) for a derivative action. Alternatively, the POA and the third-party defendants are entitled to summary judgment under Rule 56 because there are no genuine issue of facts supporting these claims, they are subject to the “business judgment rule,” and because there is no evidence third-party defendants acted with corrupt motives or in bad faith.

This motion will be based upon the pleadings, parties' written discovery responses, deposition testimony, and discovery undertaken thus far, documents produced, motion briefs and memoranda, and such evidence which may later be submitted.

s/John D. Harjehausen

James P. Walsh (15180)

John D. Harjehausen (76194)

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(864) 232-4400

(864) 235-4399 (fax)

Attorneys for Chandelle Property Owners Association as to
Counterclaims and Third-Party Defendants

Billy Israel, Bruce R. Goldberg, Cindy R. Goldberg and
George Lynn Fleming

Greenville, South Carolina

July 26, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	Case No.: 2016-CP-42-01854
	)	
Chandelle Property Owners Association,	)	
	)	
Plaintiff,	)	PLAINTIFF CHANDELLE PROPERTY
	)	OWNERS ASSOCIATION AND THIRD-
v.	)	PARTY DEFENDANTS BILLY J. ISRAEL,
	)	BRUCE R. GOLDBERG, CINDY R.
Charlie M. Allison, Janice H. Allison,	)	GOLDBERG, AND GEORGE LYNN
James Douglas Armstrong, Jane	)	FLEMING'S MEMORANDUM IN
Armstrong, Emma Jean Brockman as the	)	SUPPORT OF PARTIAL
Personal Representative of the Estate of	)	MOTION TO DISMISS OR
James P. Brockman, Sr., Kenneth L.	)	ALTERNATIVELY FOR PARTIAL
Galloway, Molly C. Galloway, Warren	)	SUMMARY JUDGMENT REGARDING
Johnson, Rhonda Johnson, Lawrence E.	)	COUNTERCLAIMS AND THIRD-PARTY
Lewis, Barbara L. Lewis, John K. Payne,	)	CLAIMS OF JAMES DOUGLAS
Ruth G. Payne, and Jane Van Wieren as	)	ARMSTRONG, JANE ARMSTRONG,
Trustee of the Greer R.G. Irrevocable	)	WARREN JOHNSON, RHONDA
Property Trust dated October 25, 2006, an	)	JOHNSON, JOHN K. PAYNE, RUTH G.
also all other persons unknown, claiming	)	PAYNE, AND JANE VAN WIEREN AS
any right, title, Estate, interest in or lien	)	TRUSTEE OF THE GREER R.G.
upon the real estate described in the	)	IRREVOCABLE PROPERTY TRUST
complaint herein.	)	DATED OCTOBER 25, 2006
	)	
Defendants.	)	
	)	
James Douglas Armstrong and Jane	)	
Armstrong, Warren Johnson, Rhonda	)	
Johnson, John K. Payne and Ruth G.	)	
Payne,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
v.	)	
	)	
Billy J. Israel, Bruce R. Goldberg, Cindy	)	
R. Goldberg and George Lynn Fleming in	)	
their personal and official capacities,	)	

Third-Party Defendants.)
)
)

I. Introduction

Plaintiff Chandelle Property Owners Association (“Plaintiff” or “POA”) and Third-Party Defendants Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg and George Lynn Fleming, in their personal and official capacities (“Third-Party Defendants”), move the court pursuant to Rule 12(b)(6), Rule 23(b)(1), and alternatively, Rule 56, of the South Carolina Rules of Civil Procedure, for an Order dismissing the counterclaims and third-party claims of the Defendants and Third-Party Plaintiffs, James Douglas Armstrong and Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust Dated October 25, 2006 for (1) Conversion; (2) Breach of Fiduciary Duty; (3) Equitable Indemnity; (4) Fraud; (5) Breach of Covenants; and (6) Self-Dealing. Counterclaimants and Third-Plaintiffs’ Claims must be dismissed pursuant to Rule 12(b)(6) and Rule 23(b)(1) because these claims allege corporate malfeasance that has resulted in harm to members of the community and the Counterclaims and Third-Party Complaint do not meet the pleading requirements of SCRCP 23(b)(1) for a derivative action. Alternatively, the POA and third-party defendants are entitled to summary judgment under Rule 56 because their acts are subject to the “business judgment rule” and because there is no evidence the POA or third-party defendants acted with corrupt motives or in bad faith.

II. Procedural Background

On May 16, 2016, the Chandelle Property Owners Association (“POA”) filed a complaint against CSC Developers, LLC (“CSC”), Chandelle Runway, LLC (“Chandelle Runway”), and others seeking, among other things, a declaratory judgment that properties owned by certain individuals

were subject to the covenants, conditions and restrictions (“CCRs”) for the development, and it also sought to quiet title to the paved and grass runways around which the subdivision was developed. After this litigation ensued, CSC and Chandelle Runway filed for bankruptcy and, as part of a settlement agreement, the title to the runways was transferred to the POA. During the course of this litigation, numerous individual property owners have entered into agreements with the POA acknowledging that their lots are subject to the CCRs for the development.

On November 3, 2020, the POA filed a Third Amended Complaint. The Third Amended Complaint was filed to reflect the remaining individual defendants who continued to contest that their properties were subject to the CCRs as well as the POA’s claim for unpaid past dues and assessments. Since the filing of the Third Amended Complaint, the POA has been able to resolve its claims against several remaining defendants and each acknowledged their respective properties are subject to the CCRs for the development.¹ On April 20, 2022, the Court executed a Consent Order Granting Plaintiff’s Motion for Partial Summary Judgment Against Kenneth L. Galloway and Molly C. Galloway. In that Order the Galloway defendants acknowledged that their property is bound by “a Declaration of Covenants, Conditions and Restrictions for Chandelle Subdivision that was recorded in the Office of the Register of Deeds for Spartanburg County in Book 67-A at Page 0583.” At this time, of the original defendants in this action, only the following defendants continue to contest and refuse to acknowledge that their properties are subject to CCRs: James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006 (hereinafter collectively “the Armstrong defendants”).

¹ On August 17, 2021, the POA filed a Consent Stipulation of Dismissal with Prejudice as to Charlie M. Allison and Janice H. Allison. On October 28, 2021, a Consent Order of Dismissal of Lawrence E. Lewis and Barbara L. Lewis with Prejudice was filed with the Court. On January 24, 2022, the Court executed a Consent Order of Dismissal of Emma Jean Brockman as the Personal Representative of the Estate of James P. Brockman, Sr., with Prejudice.

On November 24, 2020, in response to the POA's Third Amended Complaint, the Armstrong, defendants filed a Third Amended Answer, Counterclaim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payment and Jane Van Wieren as Trustee of the Greer. The pleading asserts counterclaims against the POA as well as third-party claims against certain current and former board members Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg, and George Lynn Fleming.² For the reasons discussed below, the Plaintiff and Third-party Defendants move the court to dismiss certain counterclaims and third-party claims or, alternatively, to grant the Plaintiff and Third-Party Defendants summary judgment on those claims.

III. Standard for Dismissal or, Alternatively, Summary Judgment

In considering a motion to dismiss pursuant to South Carolina Rule of Civil Procedure 12(b)(6), the circuit court must base its ruling solely on allegations set forth in the complaint. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). A Rule 12(b)(6) motion converts to a Rule 56, SCRCPP motion for summary judgment if the court considers matters outside the pleadings. See Rule 12(b), SCRCPP ("If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56").

Pursuant to Rule 56, SCRCPP, summary judgment is warranted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a

² Of these individuals, only Billy J. Israel continues to serve on the POA board.

matter of law.” Rule 56(c), SCRCF. “Summary judgment should be granted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ.” NationsBank v. Scott Farm, 320 S.C. 299, 302-03, 465 S.E.2d 98, 100 (Ct. App. 1995). “When a party makes no factual showing in opposition to a motion for summary judgment, the trial ‘court must grant summary judgment to the moving party if, under the facts presented, the latter is entitled to summary judgment as matter of law.’” S.C. Elec. & Gas Co. v. Combustion Eng'g, Inc., 283 S.C. 182, 189, 322 S.E.2d 453, 457 (Ct. App. 1984). “[T]o resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial.” NationsBank, 320 S.C. at 303, 465 S.E.2d at 100; see also Rule 56(e), SCRCF (“When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him”).

IV. Discussion

A. The Armstrong Defendants Claim for Conversion Fails To State A Claim Upon Which Relief May Be Granted

The first cause of action asserted by the Armstrong defendants against the POA and the third-party defendants is for conversion. The Armstrong defendants allege that they “gave money *to the Plaintiffs* and/or TPD’s [third-party defendants] under the pretense that the money would be used to maintain the common areas.” Third-Party Complaint, ¶ 45. (*italics added*). The Armstrong defendants allege “Plaintiffs and/or TPD’s have not used the Defendants’ money for the purposes intended *and have instead used such money to fund this lawsuit*.” Id. at ¶ 46. In other words, the Armstrong defendants allege that they paid the POA dues to maintain the common areas but the third-party defendants “have instead used such money to fund this lawsuit” initiated by the POA. Id. The

Armstrong defendants' claim for conversion must be dismissed because it fails to state a claim upon which relief can be granted. That is, the Armstrong defendants effectively allege a claim for breach of fiduciary duty, and a claim for breach of fiduciary duty is derivative in nature and must be brought pursuant to SCRCP 23.

The POA's Third Amended Complaint alleged that each of the Armstrong defendants "is the owner of property that is or should be part of the Chandelle Subdivision." See Third Amended Complaint dated November 3, 2020, ¶¶ 7-8, 11-12- 13-14, and 15. The Armstrong defendants each admitted this allegation and stated "Defendants admit the allegations of Paragraphs 7, 8, 11, 12, 13, 14, 15, 16 , 17 and 53 of Plaintiff's Third Amended Complaint. See Third Amended Answer, Counterclaim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payment and Jane Van Wieren as Trustee of the Greer, ¶ 3. Nonetheless, the Armstrong defendants continue to deny that their properties are subject to the CCRs for the development. In fact, they fail to take an unequivocal position that they are even members of the POA for purposes of paying assessments. For example, they state: "Plaintiff asserts that these Defendants are subject [to] the Restrictions and Covenants of the Chandelle Subdivision and that Plaintiffs by and through their 'Directors' are entitled to bring this action. However, even if the Defendants are subject to the Restrictions and Covenants, the Plaintiff has intentionally refused the Defendants' right to vote." Id. ¶ 39. While not admitting they are members of the POA, they simultaneously allege they have rights under the CCRs. They state: "The Plaintiff's actions in the imposition of assessments violate the Restrictive Covenants and therefore the Plaintiffs should be barred from trying to impose such assessments." Id. at ¶42.

"Conversion" is defined as the unauthorized assumption and exercise of the rights of ownership over goods or personal chattels belonging to another, to the alteration of their condition or

to the exclusion of the rights of the owner. Green v. Waidner, 284 S.C. 35, 37, 324 S.E.2d 331, 333 (Ct.App.1984). To prevail in an action for conversion, the plaintiff must prove either title or right to possession of the property at the time of the alleged conversion. Causey v. Blanton, 281 S.C. 163, 314 S.E.2d 346 (Ct.App.1984). Conversion cannot arise from the defendant's exercise of a legal right over the property. Castell v. Stephenson Finance Co., 244 S.C. 45, 135 S.E.2d 311 (1964). "There can be no conversion of money unless there is an obligation on the defendant to deliver a specific, identifiable fund to the plaintiff." Dawkins v. National Liberty Life Insurance Co., 263 F.Supp. 119 (D.S.C.1967). In the instant case, the Armstrong defendants do not allege, nor is there any evidence to substantiate, that they had title or right to the possession of the funds at issue at the time of the alleged conversion. Rather they allege that either the POA or the third-party defendants had the title or right to possess the money, subject to the condition that it be used for common repairs. However, there can be no conversion because neither the POA or third-party defendants owed an obligation to deliver specific identifiable funds to the Armstrong defendants. Instead, the POA simply exercised a legal right with the funds into which it came into possession. See Richardson's Rests., Inc. v. Nat'l Bank of S.C., 304 S.C. 289, 294, 403 S.E.2d 669, 672 (Ct.App.1991). The Armstrong defendants claim that the third-party defendant board members or POA used the funds for an unauthorized purpose (litigation instead of common repairs). However, this allegation effectively asserts a claim for breach of fiduciary duty, not conversion. See Seebaldt v. First Fed. Sav. & Loan Ass'n, 269 S.C. 691, 692, 239 S.E.2d 726, 727 (1977)(holding "[t]he character of an action is primarily determined by the allegations contained in the complaint."). To the extent the purported claim for conversion is essentially a disguised claim for breach of fiduciary duty, it must be dismissed because, as discussed below, the plaintiff's claim for breach of fiduciary duty is derivative in nature and does not comply with SCRCP 23. Lastly, there is no evidence that the Armstrong defendants paid any money to the

third-party defendants, as opposed to the POA. Accordingly, the third-party defendants are alternatively entitled to summary judgment on the Armstrong defendants' claim of conversion.

B. The Armstrong Defendants Claim for Breach of Fiduciary Duty Is Derivative In Nature And Fails To Comply With SCRCP 23

The Armstrong defendants' second cause of action alleges that the POA and third-party defendants "are fiduciaries to the Members of the Corporation" and must act in good faith in the best interest of the corporation.³ See Third Amended Answer, Counterclaim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payment and Jane Van Wieren as Trustee of the Greer, ¶50. They allege that the third-party defendants "breached these duties in collecting money under false pretenses and not using said money for the intended purposes along with incurring debt in excess of the provisions of the Restrictions." *Id.* at ¶ 51

It is well establish that an action seeking to remedy a loss to the corporation is generally a derivative one. *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 361, 409 S.E.2d 340, 342 (1991), overruled on other grounds by *Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995). In *Brown v. Stewart*, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App 2001), the Court of Appeals recognized that "[t]he fiduciary obligation of dominant or controlling stockholders or directors is ordinarily enforceable through a stockholder's derivative action." *Brown* teaches that the Armstrong defendants' breach of fiduciary duty claim must be enforced derivatively. Further, S.C. Code Ann. § 33-31-304, which addresses *ultra vires* actions by a non-profit corporation, makes

³ It is unclear whether the claim for breach of fiduciary duty is asserted against both the POA and the third-party defendants. The "SECOND COUNTER CLAIM AND THIRD PARTY COMPLAINT" appears directed only toward the third-party defendants to the extent it alleges "TPD's have breached these duties." *Id.* at ¶51.

clear that the Armstrong defendants' third-party claim should have been enforced derivatively. Section § 33-31-304 states:

- a. Except as provided in subsection (b), the validity of a corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.
- b. A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights. The proceeding may be brought...by a member or members in a derivative proceeding.

A plain reading of this Section conclusively establishes that a member who contends a non-profit corporate action was beyond the corporation's authority must assert that claim through a derivative proceeding. Here the Armstrong defendants essentially allege acts of mismanagement which have dissipated assets of the corporation. *Id.* at 49, 557 S.E.2d at 685 (quoting *Stewart v. Ficken*, 151 S.C. 424, 427, 149 S.E. 164, 165 (1929)).

The Armstrong defendants third-party claim for breach of fiduciary duty fails to comply with the requirements of SCRCP 23(b)(1) for derivative actions. That rule provides that in a derivative action "to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, **the complaint shall be verified and shall alleged that the plaintiff was a shareholder or member of the time of the transaction of which he complains.**" (bold added). First, the Armstrong defendants have not filed a "verified" complaint. Second, at no place in the third-party complaint do the Armstrong defendants respectively state "the plaintiff was a shareholder or member." In fact, the Armstrong defendants have wanted to play proverbially "on both sides of the fence" during this litigation. That is, on one side they claim they are not members and their property is not subject to the CCRs. On the other side, they claim they are entitled to sue individual third-party defendant board members for breach of their fiduciary duties on the purported basis that they *ARE* members of the POA. The Armstrong defendants have failed to satisfy the

requirement of SCRCP 23 by filing a verified complaint stating that they are a “shareholder or member” of the POA. Moreover, the complaint fails to “allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors.” Accordingly, the claim for breach of fiduciary duty, as well as all other third-party claims that are effectively disguised claims for breach of fiduciary duty, fail as a matter of law and must be dismissed. Carolina First Corp. v. Whittle, 343 S.C. 176, 539 S.E.2d 402 (Ct.App.2000)(holding a derivative action that does not meet the pleading requirements of Rule 23(b)(1), SCRCP, is properly dismissed pursuant to Rule 12(b)(6)).

C. The Third-Party Complaint Fails to State a Claim for Equitable Indemnity Or Acts By Third-Party Defendants In Their Individual Capacities

The Armstrong defendants allege a third-cause of action and claim they are entitled to equitable indemnity from the POA and third-party defendants. They state: “Plaintiffs and/or TPD’s have caused, through their unreasonable undertakings, to cause these Defendants to be subject to this lawsuit and to have to defend themselves.” See Third Amended Answer, Counterclaim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payment and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Trust Dated October 25, 2006 ¶ 56. The further claim that they are “entitled to equitable indemnification from Plaintiffs and/or TPD’s in the form the attorney’s fees and costs of this action along with any debts which may come from this lawsuit in excess of defendants pro-rata share of the maximum debt limit of \$50,000.” Id. at 57. Notably, the Armstrong defendants do not allege they have a special relationship with the POA or third-party defendants Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg or George Lynn Fleming in any personal or official capacity. See Toomer v. Norfolk Southern Railway, 344 S.C. 486, 544 S.E.2d 634 (2002)(In order to sustain a claim for equitable indemnity, the existence of some

special relationship between the parties must be established.”) Accordingly, the third-party complaint fails to state a claim for equitable indemnity upon which relief may be granted. While the Armstrong defendants have alleged that third-party defendants served as directors with respect to their claim for breach of fiduciary, the third-party complaint does not allege other facts giving rise to a potential special relationship or consequent duty of indemnity. Yet again, the Armstrong defendants have not pled or affirmatively stated that they are owners of property and members of the POA. Rather, they continue to deny such a relationship. In any event, the Armstrong defendants’ claim for equitable indemnity appears to be a disguised claim for breach of fiduciary duty which, for the reasons discussed above, fails as a matter of law. Further, the Armstrong defendants have not alleged any facts or specified any alleged acts of omissions of any third-party defendant in their individual capacity. Accordingly, any claims against them in their individual capacity must be dismissed.

D. The Armstrong Defendants Claims For Fraud and Breach of Covenants Should Be Dismissed As Disguised Breach of Fiduciary Duty Claims

In order to prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. King v. Oxford, 282 S.C. 307, 318 S.E.2d 125 (Ct.App.1984). A complaint is fatally defective if it fails to allege all nine elements of fraud. Inman v. Ken Hyatt Chrysler Plymouth, Inc., 294 S.C. 240, 363 S.E.2d 691 (1988). Where the complaint omits allegations on any element of fraud, the trial court should grant the defendant's motion to dismiss the claim. Id.

The Armstrong defendants allege fraud exists based on “billing for and collecting annual sums from Defendants to pay for common area maintenance, Plaintiff and/or TPD’s represented to Defendants that said sums would be used to pay for common area maintenance and upkeep.” See Third Amended Answer, Counterclaim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payment and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006, ¶ 64. They allege that “using the funds to pay for lawsuits demonstrates the falsity of Plaintiff and/or TPD’s representations, that Plaintiff and/or TPD’s knew of the falsity of their representations and that said representations were material in coaxing Defendants to pay the money and therefore act on the representations.” Id. at 65. The Armstrong defendants allege they were ignorant of the falsity of the representations and relied upon them. As a result they allegedly suffered “damaged in the form of the lost benefit of the services they would have received if the Plaintiff and/or TPD’s had used the money for the intended purposes.” Id. at 68. Notably, the Armstrong defendants’ third-party complaint does not allege “intent that the representation be acted upon” and, therefore, fails to state a proper claim for fraud. In any event, the ***claim for fraud alleges the same set of facts as the claim for breach of fiduciary duty***; that money paid ostensibly for common area repairs was used to fund a lawsuit. “The character of an action is primarily determined by the allegations contained in the complaint.” Seebaldt v. First Fed. Sav. & Loan Ass’n, 269 S.C. 691, 692, 239 S.E.2d 726, 727 (1977). Here, the fraud claim is simply a disguised claim for breach of fiduciary duty. See Stoneledge at Lake Keowee Owners’ Ass’n, Inc. v. Clear View Const., LLC, 413 S.C. 615, 776 S.E. 2d 426 (Ct. App. 2015)(finding claim for negligence based on the allegations in the complaint was a disguised claim for equitable indemnity).

The Armstrong defendants also assert that the POA and third-party defendants breached a covenant limiting the incursion of debt beyond \$50,000, and used proceeds of assessments to fund the instant lawsuit rather than common area repairs. See Third Amended Answer, Counterclaim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payment and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006, ¶¶ 81-82. Like the claims for equitable indemnity and fraud, the claim for breach of the covenants is nothing more than a claim for breach of fiduciary duty by the third-party defendants. That is, the Armstrong defendants seek to remedy an alleged dissipation of assets or alleged wrongful allocation of assets of the POA by the third-party defendants. However, the Armstrong defendants have no standing to assert such claims to the extent that they have not admitted that they are members of the POA or that their properties are subject to assessment. In fact, the POA has sued the Armstrong defendants due to their failure to pay assessments and dues. Yet again, the Armstrong defendants want to assert a claim against the POA, without filing a verified complaint pursuant to SCRCP 23 acknowledging that they are members of it. As discussed above, the Armstrong defendants have not complied with SCRCP 23 and, therefore, this claim should be dismissed as well.

Alternatively, the POA and third-party defendants assert there is no evidence or any representation that assessments would be used for common area repairs and instead were used to fund the instant lawsuit. Accordingly, the POA and third-party defendants are entitled to summary judgment on this claim.

E. The Armstrong defendants Claim for Self-Dealing Fails to State A Claim Upon Which Relief May Be Granted

The Armstrong defendants allege the POA and third-party defendants have engaged in self-dealing. The Armstrong defendants allege that “[o]fficers lending money to the corporation in excess of that allowed by the restrictions and re-paying the sums advanced in prior of other debts incurred through act of ultra vires to the detriment of Defendants.” See Third Amended Answer, Counterclaim and Third-Party Complaint of Defendants James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payment and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006, ¶72. However, this vague claim appears to be, yet again, a disguised claim for breach of fiduciary duty that the POA utilized assessments or incurred debt to fund one POA priority instead of another. Notably, the Armstrong defendants do not allege, nor is there evidence of, any acts by the POA’s directors which allegedly sacrificed the POA’s interests for their own interests. Accordingly, this claim must be dismissed or, alternatively, summary judgment should be granted.

F. There is No Evidence the POA or Third-Party Defendants Acted in Bad Faith or With Corrupt Motives

The POA and third-party defendants alternatively move the court for summary judgment on the Armstrong defendants’ claims for 1) Conversion; (2) Breach of Fiduciary Duty; (3) Equitable Indemnity; (4) Fraud; and (5) Self-dealing; and (6) Breach of Covenants. To the extent the Armstrong defendants allege that third-party defendants incurred debt on behalf of the POA beyond \$50,000, and used the proceeds of assessments to fund the instant lawsuit rather than for the repair of common area, their decision is protected by the business judgment rule since there is no evidence third-party defendants acted in bad faith or with corrupt motives.

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 within its authority and 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) (quoting Dockside Ass'n v. Detyens, 291 S.C. 214, 217, 352 S.E.2d 714, 716 (Ct.App.1987)); see also Dockside Ass'n v. Detyens, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987) (“We now uphold the [c]ourt of [a]ppeals' determination that the business judgment rule precludes judicial review of actions taken by a corporate governing board absent a showing of a lack of good faith, fraud, self-dealing or unconscionable conduct.”). The business judgment rule applies to disputes between directors of a homeowners' association and aggrieved homeowners, and as the 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)). The Armstrong defendants are the only remaining original defendants that have not acknowledged that their lots are subject to the CCRs for the development. Nonetheless, they continue to challenge the actions of the POA. It is clear that the instant lawsuit has clarified the rights and obligations of individuals owning property around this aviation subdivision. In fact, the POA has obtained title to the runways for the common interest of all owners. There is simply no evidence that the third-party defendants have prosecuted this lawsuit in bad faith or for an improper motive. Accordingly, the POA and third-party defendants respectfully request that if their motion to dismiss is denied, that the court grant summary judgment in their favor based on the business judgment rule and the absence of bad faith or unconscionable conduct by the third-party defendants.

V. Conclusion

For all the reasons discussed above, the POA third-party defendants respectfully request that the Court dismiss the Armstrong defendants counterclaims and third-party plaintiffs' claims for 1) Conversion; (2) Breach of Fiduciary Duty; (3) Equitable Indemnity; (4) Fraud; (5) Breach of Covenants; and (6) Self-Dealing. Alternatively, the POA and third-party defendants request that the Court grant summary judgment on these claims.

Respectfully submitted,

s/John D. Harjehausen

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Attorneys for Plaintiff Chandelle Property Owners Association Third-Party Defendants as to Counterclaims, and Attorneys for Third-Party Defendants Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg, and George Fleming

Greenville, South Carolina
July 26, 2022

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
C/A No: 2016-CP-42-01854

Chandelle Property Owners Association,

Plaintiff,

vs.

James Douglas Armstrong, Jane Armstrong, Sr., Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein,

Defendants.

James Douglas Armstrong and Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne and Ruth G. Payne,

Third-Party Plaintiffs,

v.

Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg and George Lynn Fleming in their personal and official capacities,

Third-Party Defendants.

**PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT
AGAINST JAMES DOUGLAS
ARMSTRONG, JANE ARMSTRONG,
WARREN JOHNSON, RHONDA
JOHNSON, JOHN K. PAYNE, RUTH G.
PAYNE, AND JANE VAN WIEREN AS
TRUSTEE OF THE GREER R.G.
IRREVOCABLE PROPERTY TRUST,
DATED OCTOBER 25, 2006**

018771.00006

COMES NOW, pursuant to Rule 56, SCRCP, Plaintiff, Chandelle Property Owners Association, by and through its undersigned counsel, and hereby moves the Court for an Order granting partial summary judgment against James Douglas Armstrong, Jane Armstrong, Warren

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ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 (collectively, the “**Subject Defendants**”) as to the matters set forth below. Specifically, Plaintiff asserts that there is no genuine issue of material fact as to the following matters:

1. John K. Payne, Ruth G. Payne (the “**Paynes**”) – Lot 1

- a. That the Paynes are the owners of Lot 1 in Chandelle Subdivision.
- b. That Lot 1 is subject to and bound by the Declaration of Covenants, Conditions and Restrictions for Chandelle Subdivision recorded on December 16, 1997, in the Office of the Register of Deeds for Spartanburg County in Book 67-A at Page 0583, as amended and supplemented (as amended and supplemented, the “**Declaration**”).
- c. That the Paynes are members of Plaintiff.
- d. That the Paynes are delinquent in the payment of assessments to Plaintiff and owe Plaintiff assessments and associated late charges and interest. Plaintiff intends to hereafter file an affidavit setting forth the amount of the debt owed by the Paynes to Plaintiff.

2. Warren Johnson and Rhonda Johnson (the “**Johnsons**”) – Lots 28, 29, 30 & 34

- a. That the Johnsons are the owners of Lots 28, 29, 30 & 34 in Chandelle Subdivision.
- b. That Lots 28, 29, 30 & 34 are subject to and bound by the Declaration.
- c. That the Johnsons are members of Plaintiff.
- d. That the Johnsons are delinquent in the payment of assessments to Plaintiff and owe Plaintiff assessments and associated late charges and interest. Plaintiff intends to hereafter file an affidavit setting forth the amount of the debt owed by the Johnsons to Plaintiff.

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3. Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 (“Van Wieren”) – Lots 31, 32, 33, 35, 36, and 37
 - a. That Van Wieren is the owner of Lots 31, 32, 33, 35, 36, and 37 in Chandelle Subdivision.
 - b. That Lots 31, 32, 33, 35, 36, and 37 are subject to and bound by the Declaration.
 - c. That Van Wieren is a member of Plaintiff.
 - d. That Van Wieren is delinquent in the payment of assessments to Plaintiff and owes Plaintiff assessments and associated late charges and interest. Plaintiff intends to hereafter file an affidavit setting forth the amount of the debt owed by Van Wieren to Plaintiff.
4. James Douglas Armstrong and Jane Armstrong (the “Armstrongs”) – Lots 55, 56, and 57
 - a. That the Armstrongs are the owners of Lots 55, 56, and 57 in Chandelle Subdivision.
 - b. That Lots 55, 56, and 57 are subject to and bound by the Declaration.
 - c. That the Armstrongs are members of Plaintiff.
 - d. That the Armstrongs are delinquent in the payment of assessments to Plaintiff and owe Plaintiff assessments and associated late charges and interest. Plaintiff intends to hereafter file an affidavit setting forth the amount of the debt owed by the Armstrongs to Plaintiff.

Therefore, Plaintiff is entitled to judgment as a matter of law on the foregoing issues. In support of this motion, Plaintiff would assert and show as follows:

- All of the above-referenced Lots have been platted as Lots in Chandelle Subdivision.

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- The legal descriptions in the deeds for the above-referenced Lots identify the lots as lots in Chandelle Subdivision.
- All of the above-referenced Lots were either identified as being bound by the Declaration in the Declaration as originally recorded, or in subsequently recorded instruments supplementing or amending the Declaration.
- The deeds in the chain of title for some of the above-referenced Lots specifically reference the property being subject to the Declaration.
- John Stewart, Jr. has been deposed as a 30(b)(6) designee/representative of CSC Developers, LLC, the developer of Chandelle Subdivision. John Stewart has testified in his deposition that all of the above-referenced Lots were intended to be part of Chandelle Subdivision and subject to and bound by the Declaration.
- Some of the Subject Defendants have executed mortgages with Planned Unit Development riders, acknowledging that the property is part of a planned unit development, and specifying that that they must comply with all of the community's "constituent documents".
- Further, the Subject Defendants have taken actions and have engaged in a course of conduct in conformity with being part of Chandelle Subdivision, and have consequently either expressly or implicitly admitted to/acquiesced to being part of Chandelle Subdivision, including being subject to the Declaration and being members of Plaintiff. Such conduct and actions include, without limitation: (1) attending membership meetings of Plaintiff; (2) payment of assessments to Plaintiff under the Declaration; (3) seeking architectural approval under the Declaration; (4) seeking Declarant approval to combine Lots under the

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Declaration; (5) using common property of Plaintiff; and (6) other correspondence and/or conduct in conformity with being part of Chandelle Subdivision and a member of Plaintiff.

Plaintiff intends to further support this motion with a memorandum of law, affidavit(s), deposition testimony, discovery responses, and/or other relevant information or documents.

CONCLUSION

Based on all of the foregoing, there is no genuine issue of material fact as to the foregoing issues and Plaintiff is entitled to judgment as a matter of law on the foregoing issues, and an award of attorney's fees and costs.

Respectfully submitted,

s/ D. Ryan McCabe, Jr.

D. Ryan McCabe, Jr., SC Bar No. 16977

Ely O. Grote, SC Bar No. 75379

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**ATTORNEYS FOR CHANDELLE PROPERTY
OWNERS ASSOCIATION**

August 19, 2022
Columbia, South Carolina

**THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT.
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
C.A. No. 2016-CP-42-01854

Chandelle Property Owners Association,

Plaintiff,

vs.

**DEFENDANT JAMES DOUGLAS
ARMSTRONG, JANE ARMSTRONG,
WARREN JOHNSON, RHONDA
JOHNSON, JOHN K. PAYNE, RUTH G.
PAYNE AND JANE VAN WIEREN AS
TRUSTEE OF THE GREER R.G.
IRREVOCABLE PROPERTY TRUST
DATED OCTOBER 25, 2006's
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

CSC Developers, LLC, Chandelle
Runway, LLC, 331 South, LLC, Charlie
M. Allison, Janice H. Allison, James
Douglas Armstrong and Jane Armstrong,
Marilyn N. Berry, Stephen Berry, James
P. Brockman, Sr., Douglas E. Cobb,
Nicole Cobb, Kenneth L. Galloway, Molly
C. Galloway, Warren Johnson, Rhonda
Johnson, Lawrence E. Lewis, Barbara L.
Lewis, John K. Payne, Ruth G. Payne,
John R. Stewart, Jr., Angela Tanner,
Helmut Tuemmle, Silvia L. Tuemmle,
Jane Van Wieren as Trustee of the Greer
R.G. Irrevocable Property Trust dated
October 25, 2006, Martin Tuemmle,
Raymond M. Clark Jr., and also all other
persons unknown, claiming any right, title,
Estate, interest in or lien upon the real
estate described in the complaint herein.
Defendants.

James Douglas Armstrong and Jane
Armstrong, Warren Johnson, Rhonda
Johnson, John K. Payne and Ruth G.
Payne

Third Party Plaintiffs

vs

Billy J. Israel, Bruce R. Goldberg, Cindy
R. Goldberg and George Lynn Fleming in
their personal and official capacities,

Third Party Defendants

Defendants, James Douglas Armstrong and Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006 (hereinafter collectively "Defendants") presents the following Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment in the above captioned matter.

BACKGROUND

Plaintiff's Motion appears to be for a determination that there is no genuine issue of material fact in the determination that Defendants are subject to the Restrictions and Covenants of the Chandelle Subdivision as originally filed and amended from time to time by the Declarant, CSC Developers, LLC ("CSC") and the Board of Directors originally appointed by CSC (the "Restrictions"). Plaintiff further eludes to the fact that it intends to submit affidavits regarding the debt owed and, assuming the Court makes a determination that these Defendants are subject to the Restrictions, Plaintiff intends to submit conclusive evidence of the debt despite the fact that the Treasurer has not been deposed, but was scheduled to be deposed prior to this hearing date.

DISCUSSION

I. MOTION FOR SUMMARY JUDGMENT

a. Summary Judgment Standard

Rule 56(c) of the South Carolina Rules of Civil Procedure states a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In

determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). *Catawba Indian Nation v. State*, 407 S.C. 526, 535–36, 756 S.E.2d 900, 905–06 (2014). When evidence is susceptible to more than one reasonable inference, the issue should be submitted to the jury, rather than resolved at summary judgment stage. Rules Civ.Proc., Rule 56(c). Murphy v. Tyndall (S.C.App. 2009) 384 S.C. 50, 681 S.E.2d 28, *rehearing denied*. Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. Rules Civ.Proc., Rule 56(c). Murphy v. Tyndall (S.C.App. 2009) 384 S.C. 50, 681 S.E.2d 28, *rehearing denied*.

Generally, only a mere scintilla of evidence is required to defeat a motion for summary judgment when the burden of proof is by a preponderance of the evidence. Rules Civ.Proc., Rule 56(c). Weston v. Kim's Dollar Store (S.C.App. 2009) 385 S.C. 520, 684 S.E.2d 769, *rehearing denied, certiorari granted, affirmed and remanded* 399 S.C. 303, 731 S.E.2d 864. Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery; nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition. Dawkins v. Fields (S.C. 2003) 354 S.C. 58, 580 S.E.2d 433, *rehearing denied*.

Furthermore, summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Cunningham v. Anderson County (S.C.App. 2013) 402 S.C. 434, 741 S.E.2d 545, *rehearing denied, affirmed in part, reversed in part* 414 S.C. 298, 778 S.E.2d 884. This is an important issue because the

deposition of the Treasurer, Jeff Cooper, was scheduled to be taken prior to this hearing and opposing counsel cancelled that hearing under the guise of delivering a reasonable settlement offer that turned out to unreasonable and Plaintiff has never even responded to these Defendants counter offers. Jeff Cooper is believed by these Defendants to be a fairly neutral party that would not cover up for or assist Billy Israel in misconception or misleading conduct.

II. ARGUMENTS IN OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT ON THE ISSUE OF IMPOSITION OF RESTRICTIONS ON DEFENDANTS

Plaintiff seeks Summary Judgment based on the following: (a) Imposition of Restrictions by reference to Plats; (b) Language in Deed Legal Descriptions; (c) inclusion in the Original Restrictions and Subsequently Recorded Instruments, (d) Deeds in the Chain of Title, (e) John Stewart’s Intention That these Lots were intended to be a part of the Chandelle Subdivision, (f) the Execution of PUD Riders in Mortgages, and (g) the Engagement in a Course of Conduct in Conformity of being Part of the Chandelle Community. These issues are addressed separately as set forth below.

a. General Arguments and Facts Asserted By Plaintiff

The Plaintiff’s Third Amended Complaint appears to seek imposition of the Restrictions upon these Defendants by three (3) causes of action, Declaratory Judgment (Third Amended Complaint ¶ 75-82), a Quiet Title Action (Third Amended Complaint ¶ 83-86) and Reciprocal Negative Easements (Third Amended Complaint ¶ 87-95).

(i) Declaratory Judgment

S.C. Code Ann. § 15-53-30 provides, “[a]ny person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations

are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” The case at hand, however does not involve the construction of matters reduced to writings. The case at hand involves the imposition of covenants for which it is questionable as to whether such restrictions are applicable to these Defendants which requires looking further in to the law and facts which lie outside the four corners of any document. This is the very reason for which South Carolina recognizes the legal imposition of Negative Covenants, providing the Plaintiff can meet the burdens of such equitable cause of action. As such, Plaintiff’s Declaratory Judgment action would be the improper cause of action to grant summary judgment on.

(ii) Quiet Title Action

The Defendant’s argument on this cause of action is the same as the Declaratory Judgment Argument. The Plaintiff’s cause of action for a Quiet Title determination even goes so far as to ask for the imposition of reciprocal negative easements which is a completely separate cause of action. However, if the Court finds the imposition of negative easements appropriate, the Plaintiff would be granted the same remedy it seeks under the Quiet Title action.

(iii) Negative Reciprocal Easements

An action for the imposition of negative reciprocal easements is an action in equity. See e.g., Bomar v. Echols, 270 S.C. 676, 681, 244 S.E.2d 308, 310 (1978); citing Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976). “The essential elements for proof of a reciprocal negative easement are (1) a common grantor, (2) a

designation of land subject to restrictions, (3) a general plan or scheme of restrictions, and (4) covenants running with the land in accordance with such plan or scheme. *Bomar v. Echols*, 270 S.C. 676, 244 S.E.2d 308 (1978); *McDonald v. Welborn*, 220 S.C. 10, 66 S.E.2d 327 (1951). In order for reciprocal negative easements to be created by implication, the implication must be plain and unmistakable. *Edwards v. Surratt*, 228 S.C. 512, 90 S.E.2d 906 (1956). *Shipyard Prop. Owners' Ass'n v. Mangiaracina*, 307 S.C. 299, 309, 414 S.E.2d 795, 801–02 (Ct. App. 1992).

It is equally important to note that the Shipyard court went on to say, “[h]ere, we think it important to examine the record for evidence whether at the time the last fixed assessment covenant was recorded there was in place a general scheme of covenants burdening the properties in the PUD with variable assessments. **This is important because reciprocal negative easements are never retroactive.** Citing *Sanborn v. McLean*, 233 Mich. 227, 206 N.W. 496 (1925) (emphasis added). *Id.* at 802. Where it is asserted that a restrictive covenant arises by implication, the implication must be “plain and unmistakable.” *Bomar v. Echols*, 270 S.C. 676, 680, 244 S.E.2d 308, 310 (1978).

The actions which are cited in the Plaintiff’s Motion for Partial Summary Judgment i.e., imposition of restrictions by reference to plats, language in deed legal descriptions, inclusion in the original Restrictions and subsequently recorded instruments, deeds in the chain of title, John Stewart’s intention that these lots were intended to be a part of the Chandelle Subdivision, and the execution of PUD Riders in Mortgages, the engagement in a course of conduct in conformity of being part of the Chandelle Community predate the Plaintiff and its attorney’s representations to these Defendants (and the entire community) that there were defects in the processes employed in the development of the Subdivision that made

the imposition of such Restrictions defective. One thing for sure is that even if CSC intended for the Defendant's lots to be subject to the Restrictions, it intended them to be subject to the restrictions originally filed which would not support the Plaintiff's actions. In the Bomar case, the court refused to impose restrictions that were not in conformity with the originally filed Restrictions. In Bomar, the court refused to impose "variable rate assessments" on owners brought in by negative covenants because **it was not plain and unmistakable** that the Developer intended for lots to bear burdens of "variable rate assessments." Id. at 310.

Because of these prior holdings, the Plaintiff's at best could only argue the imposition of the original covenants as applied to the specific relief requested and there is no proof in the record that (1) the "assessments" attempted to be collected are in fact the type of assessments contemplated by CSC, (2) that the current Board Members have any authority because of the two year limitations on terms imposed by the original Restrictions and By-Laws, (3) that the Board had the authority to switch the grass runway and taxiway sides, (4) that the Developer intended for the Board to incur greater than \$50,000.00 in debt without a vote of the association, (5) that Defendants such as these would not be able to vote during times where such matters as those complained of in the Complaint were litigated, (6) that the Board had the authority to hire lawyers for the declaration of negative covenants and charge the members with such fees, (7)

The Defendants have also asserted various defenses to the cause of action for the imposition of Negative Covenants namely Laches, Waiver and Equitable Estoppel/Unclean Hands. The Defendants have also raised the defense of Lack of Authority/Lack of Standing as a legal bar to the Plaintiff's claims.

The doctrine of unclean hands “precludes a plaintiff from recovering **in equity** if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.” Aaron v. Mahl, 381 S.C. 585, 594, 674 S.E.2d 482, 487 (2009). *Citing, Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107 n. 2, 531 S.E.2d 287, 292 n. 2, (2000) (emphasis added). Just one instance of unfair acting is illustrated by Billy Israel’s response to a few questions asked by me in his deposition. The dialogue is as follows:

Israel, Jr., Billy James - Vol. I, (Pages 109:7 to 111:18)

109

8 Q. Here is (I), 8.2(I) with respect to borrowing money.

9 Can you read that?

10 A. I can. "To borrow funds" -- excuse me. Part of my

11 responsibility would be, "To borrow funds in order to

12 pay for any expenditure or outlay required pursuant to

13 the authority granted by the provisions of the

14 Declaration and these Bylaws and to authorize

15 appropriate officers to execute all such instruments

16 evidencing such indebtedness as the Board of Directors

17 may deem necessary; provided, however, that the Board

18 shall not borrow more than \$50,000 or cause the

19 Association to be indebted for more than \$50,000 at any

20 one time without the prior approval of a majority of

21 votes of both classes of membership."

22 ***Q. Have you applied or asked for a vote from the members***

23 *of the association to accumulate more than \$50,000 in*
24 *debt?*

25 A. No.

110

1 Q. *And you have accumulated more than \$50,000 in debt?*

2 A. Yes.

3 Q. *And you won't even tell them what the balance of that*
4 *debt is, are you?*

5 MR. GROTE:

6 *Object to the form.*

7 EXAMINATION RESUMED BY MR. HAWKINS:

8 A. *I haven't. I don't know about the word won't, but I*
9 *haven't.*

10 Q. *Let me ask you. In your opinion, the way these bylaws*
11 *read, are you committing -- and I think you said the*
12 *word ultra vires. Right?*

13 A. *I learned that from the lawyers, yes.*

14 Q. What does that mean?

15 A. Outside -- operating outside of my authority as a
16 director.

17 Q. So in committing the association to more than \$50,000
18 in debt, and you're continuing to accumulate that debt,
19 are you acting ultra vires?

20 MR. HARJEHAUSEN:

21 Object to the form of the question.

22 MR. GROTE:

23 Object to the form.

24 EXAMINATION RESUMED BY MR. HAWKINS:

25 Q. As you understand the term to be?

111

1 A. I don't believe I am in this particular instance.

2 Q. You don't believe you've exceeded your authority or
3 violated the bylaws?

4 A. No.

5 Q. And why is that?

6 A. Because I think that there are circumstances that the
7 board was put into when we started this suit that there
8 would have been no way that we could have known that we
9 were going to be in this situation to start with. So,
10 and this was a concern. ***This -- this paragraph in the***
11 ***bylaws was a concern of ours, and the legal advice that***
12 ***we got was not to be concerned about it, that, you***
13 ***know, we're doing what we believe is the best thing to***
14 ***do. And, again, because of the adversaries that belong***
15 ***to the association, we have not shared all of this***
16 ***information about these legal fees with them, and --***

17 *and there's advice from my attorney that I can't*

18 *discuss with you about that matter.*

(See, “**Exhibit A**”; Deposition of Billy Israel)

So just in this excerpt alone, Billy Israel testifies that he acted *ultra vires*, he accumulated debt in excess of the sums allowed by the Restrictions and By-Laws, he didn't seek a required vote of the Association as required, he didn't disclose the debt to anyone, his attorneys told him not to worry about it (because all of the debt was going to them) and he especially didn't disclose the debt because some of the members (such as these Defendants) were “adversaries” from the beginning and he has clearly acted with unclean hands.

Furthermore, if the Plaintiffs were seeking to advance good faith in this matter in efforts to have Defendants sign a consent to being subject to the Restrictions without a six (6) year lawsuit, these Defendants had already offered to do so, but neither Plaintiff nor its counsel would accept such a consent. The Defendants were given a “take it or leave” it choice to sign the consent presented or be sued. The Consent contained in the Defendant's Joint Affidavit (“Affidavit”) submitted herewith contains such consent which was fraught with unfair and ridiculous terms that no person with a bit of sense would even think about signing.

In fact, Defendants feel as they were almost baited into this lawsuit by the Plaintiff's attorneys. At a meeting on May 12, 2016, both Billy Israel and Ryan McCabe were present and made various statements which are contrary to the position taken in the Complaint. The comments are referred to in the Affidavit. The comments were previously made a part of the record as a Plaintiff's Exhibit in a previous filing.

Page 2

Ryan McCabe:

“I never said anyone couldn’t vote.”

“We never told anyone they couldn’t vote.”

Page 3

“Ultimately, as to who is in and who is out will be determined by a judge unless people sign the consent.”

(Speaking to Warren Johnson) “If you have a lawyer, I can’t talk to you about your situation, but what I would say is, a couple of things: one is that the consent has to be the same for everybody so is (sic) someone were to ask me to adjust their consent just for them, I can’t do it because it eliminates the whole point that every body is bound by the same language and restrictions.”

(See “**Exhibit B**”; Transcript of May 12, 2016 POA Meeting)

The legal advice given by McCabe to the Warren Johnson at the time was that the consents all had to be the same, yet in the deposition of Doug Armstrong, McCabe reveals that not everyone did sign the same consent. The dialogue is as follows:

McCabe questioning Armstrong

Armstrong, James D., (Pages 76:24 to 77:14)

76

24 Q. And you are aware that some of the other people

25 signed different —

77

1 A. Well, I’ve — I said that previously. Yes, I

2 know.

3 Q. Like Mr. —

4 A. But I haven't seen specifically what that is.

5 Q. Like the Burtons didn't sign the original, or

6 neither did Morgan Allison.

7 A. Yeah.

8 Q. You're aware of that?

9 A. Well, both of them were under duress.

10 Q. ***Well, one had a lawyer negotiate. The other***

11 ***asked for changes, and they were made at his —***

12 A. ***Yeah.***

13 Q. ***At his request.*** But my original question wasn't

14 about the consent.

Again, this case is filled with so much misrepresentation, deceit, cover-ups, and blatant violations of restrictions just to mention a few, it cannot simply be whittled down to a simple “the Defendants though they were part of the subdivision, so they are.” Defendants should have the opportunity to fully present their case and feel that they have certainly met the scintilla of evidence standard to withstand summary judgment.

In its broadest sense, equitable estoppel is a means of preventing a party from asserting a legal claim or defense that is contrary or inconsistent with his or her prior action or conduct.” *Rodarte v. Univ. of S.C.*, 419 S.C. 592, 601, 799 S.E.2d 912, 916 (2017) (quoting 28 Am. Jur. 2d *Estoppel and Waiver* § 27 (2011)). “The essential elements

of equitable estoppel are divided between the estopped party and the party claiming estoppel.” *Strickland v. Strickland*, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007).

Elements of equitable estoppel as to the party estopped are: (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts. Essential elements of estoppel as related to the party claiming the estoppel are: (1) lack of knowledge and of means of knowledge of truth as to facts in question; (2) *404 reliance upon conduct of the party estopped; and (3) prejudicial change in position. *Regions Bank v. Schmauch*, 354 S.C. 648, 674-75, 582 S.E.2d 432, 446 (Ct. App. 2003) (quoting *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001)). “Estoppel cannot exist if the knowledge of both parties is equal and nothing is done by one to mislead the other.” *Evins v. Richland Cty. Historic Pres. Comm’n*, 341 S.C. 15, 20, 532 S.E.2d 876, 878 (2000). “[R]eliance by the party seeking to assert estoppel must be reasonable.” *S. Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth.*, 311 S.C. 29, 34, 426 S.E.2d 748, 751 (1993). *Mac Papers, Inc. v. Genesis Press, Inc.*, 426 S.C. 393, 403–04, 826 S.E.2d 874, 880 (Ct. App. 2019). The previously mentioned excerpts alone would bar any action under equitable estoppel because of the presence of false representations and concealment of material facts by both Billy Israel and his lawyers. Furthermore, in the May 12 2016 meeting, Ryan McCabe says, “...if I take different consents and some people agree to be bound by certain provisions and some of you do not agree to be bound by other provisions, then it doesn’t work. ***I have to bring a suit and the lawsuit isn’t one asking any member for money.*** What we are doing is asking the court to say that everyone is a member of this association; everyone’s got the same got the same rights privileges with respect to the runway,

the common areas and the taxiways.” This case has turned into nothing other than about money and the Association, because of the prior statements and representations by its lawyer, should be estopped for asking for money from these Defendants.

(iv) Money Damages

With respect to the request for money damages, the same should be barred for the reasons mentioned above under the doctrine of Laches. Laches is an equitable doctrine defined as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” *Hallums v. Hallums*, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). In order to establish laches as a defense, a defendant must show that the complaining party unreasonably delayed its assertion of a right, resulting in prejudice to the defendant. *Kelley v. Kelley*, 368 S.C. 602, 606, 629 S.E.2d 388, 391 (Ct.App.2006). *Cited in, Strickland v. Strickland*, 375 S.C. 76, 83, 650 S.E.2d 465, 469 (2007). Furthermore, the Defendants particular issues have sat at bay in furtherance of Plaintiff’s lawyers (including James Smith) bids for political office, political duties, a COVID pandemic, the Association’s driving CSC into Bankruptcy thereby delaying the process and such delays have increased the Plaintiff’s request for damages in the form of interest and penalties. Furthermore, the actions taken in furtherance of the Board are without authority because the Board is approximately 5 terms or more beyond their terms and the Restrictions as originally filed do not allow the assessments for the purposes claimed. (Assuming the Defendants are subject to those Restrictions at all).

CONCLUSION

For the reasons stated herein, Defendants pray that should the Court grant Plaintiff’s Motion for Summary Judgment on the imposition of the original restrictions, the Court deny

any modifications to those restrictions as to these defendants and find that the Plaintiff has not met its burden of proof on the issues brought before the Court that were not proven to be unmistakable and clear intentions of CSC in the original filing of the Restrictions.

Respectfully submitted,

s/ Wendell L. Hawkins
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Attorneys for Defendants

September 8, 2022
Greer, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
C.A. No. 2016-CP-42-01854

Chandelle Property Owners Association,)

Plaintiff,)

vs.)

CSC Developers, LLC, Chandelle)
Runway, LLC, 331 South, LLC, Charlie)
M. Allison, Janice H. Allison, James)
Douglas Armstrong and Jane Armstrong,)
Marilyn N. Berry, Stephen Berry, James)
P. Brockman, Sr., Douglas E. Cobb,)
Nicole Cobb, Kenneth L. Galloway, Molly)
C. Galloway, Warren Johnson, Rhonda)
Johnson, Lawrence E. Lewis, Barbara L.)
Lewis, John K. Payne, Ruth G. Payne,)
John R. Stewart, Jr., Angela Tanner,)
Helmut Tuemmle, Silvia L. Tuemmle,)
Jane Van Wieren as Trustee of the Greer)
R.G. Irrevocable Property Trust dated)
October 25, 2006, Martin Tuemmle,)
Raymond M. Clark Jr., and also all other)
persons unknown, claiming any right, title,)
Estate, interest in or lien upon the real)
estate described in the complaint herein.)

Defendants.)

James Douglas Armstrong and Jane)
Armstrong, Warren Johnson, Rhonda)
Johnson, John K. Payne and Ruth G.)
Payne)

Third Party Plaintiffs)

vs)

**DEFENDANT JAMES DOUGLAS
ARMSTRONG, JANE ARMSTRONG,
WARREN JOHNSON, RHONDA
JOHNSON, JOHN K. PAYNE, RUTH G.
PAYNE AND JANE VAN WIEREN AS
TRUSTEE OF THE GREER R.G.
IRREVOCABLE PROPERTY TRUST
DATED OCTOBER 25, 2006's
MEMORANDUM IN OPPOSITION TO
THIRD PARTY DEFENDANT AND
PLAINTIFF CHANDELLE PROPERTY
OWNERS ASSOCIATION AND THIRD
PARTY DEFENDANTS BILLY J.
ISRAEL, BRUCE GOLDBERG, AND
GEORGE LYNN FLEMMING'S
REGARDING COUNTERCLAIMS AND
THRID PARTY CLAIMS OF
DEFENDANT JAMES DOUGLAS
ARMSTRONG, JANE ARMSTRONG,
WARREN JOHNSON, RHONDA
JOHNSON, JOHN K. PAYNE, RUTH G.
PAYNE AND JANE VAN WIEREN AS
TRUSTEE OF THE GREER R.G.
IRREVOCABLE PROPERTY TRUST
DATED OCTOBER 25, 2006**

Billy J. Israel, Bruce R. Goldberg, Cindy)
 R. Goldberg and George Lynn Fleming in
 their personal and official capacities,

Third Party Defendants

Defendants, James Douglas Armstrong and Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006 (hereinafter collectively "Third Party Plaintiffs ("TPP's") and Counter Claimants" ("CC's")) present the following Memorandum in Opposition to Chandelle Property Owner's Association and Third Party Defendants Billy J. Israel, Bruce Goldberg, Cindy R. Goldberg and George Lynn Fleming's Motion to Dismiss or Alternatively for Partial Summary Judgment Regarding Third Party Claims and Counterclaims of **JAMES DOUGLAS ARMSTRONG, JANE ARMSTRONG, WARREN JOHNSON, RHONDA JOHNSON, JOHN K. PAYNE, RUTH G. PAYNE AND JANE VAN WIEREN AS TRUSTEE OF THE GREER R.G. IRREVOCABLE PROPERTY TRUST DATED OCTOBER 25, 2006's** in the above captioned matter.

BACKGROUND

Third Party Defendant and Plaintiff's (collectively referred to as "Defendants") Motion appears to aver that there is no genuine issue of material fact in the determination that Defendants are liable to TPD's and CC's for the claims of (1) Conversion, (2) Breach of Fiduciary Duty, (3) Equitable Indemnity, (4) Fraud, (5) Breach of Covenants, and (6) Self-Dealing. Defendants further aver TPP and CC's actions should be dismissed because Defendants believe TPP's and CC's brought a derivative action and did not meet the pleading requirements of SCRCF Rule 23(b)(1). Defendants further claim that they are entitled to summary judgment on the theory that Defendants are shielded from suit by the "business

judgment rule” and because there is no evidence the POA or Third Party Defendants acted with ‘corrupt motives’ or in “bad faith”.

DISCUSSION

I. MOTION FOR SUMMARY JUDGMENT

a. Summary Judgment Standard

Rule 56(c) of the South Carolina Rules of Civil Procedure states a motion for summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). *Catawba Indian Nation v. State*, 407 S.C. 526, 535–36, 756 S.E.2d 900, 905–06 (2014). When evidence is susceptible to more than one reasonable inference, the issue should be submitted to the jury, rather than resolved at summary judgment stage. Rules Civ.Proc., Rule 56(c). Murphy v. Tyndall (S.C.App. 2009) 384 S.C. 50, 681 S.E.2d 28, rehearing denied. Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. Rules Civ.Proc., Rule 56(c). Murphy v. Tyndall (S.C.App. 2009) 384 S.C. 50, 681 S.E.2d 28, rehearing denied.

Generally, only a mere scintilla of evidence is required to defeat a motion for summary judgment when the burden of proof is by a preponderance of the evidence. Rules Civ.Proc., Rule 56(c). Weston v. Kim's Dollar Store (S.C.App. 2009) 385 S.C. 520, 684 S.E.2d 769, rehearing denied, certiorari granted, affirmed and remanded 399 S.C. 303, 731 S.E.2d 864.

Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery; nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition. Dawkins v. Fields (S.C. 2003) 354 S.C. 58, 580 S.E.2d 433, *rehearing denied*.

Furthermore, summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Cunningham v. Anderson County (S.C.App. 2013) 402 S.C. 434, 741 S.E.2d 545, *rehearing denied, affirmed in part, reversed in part* 414 S.C. 298, 778 S.E.2d 884. This is an important issue because the deposition of the Treasurer, Jeff Cooper, was scheduled to be taken prior to this hearing and opposing counsel cancelled that hearing under the guise of delivering a reasonable settlement offer that turned out to unreasonable and Plaintiff has never even responded to these Defendants counter offers. Jeff Cooper is believed by these Defendants to be a fairly neutral party that would not cover up for or assist Billy Israel in misconception or misleading conduct.

II. ARGUMENTS ON CAUSES OF ACTIONS AND COUNTERCLAIMS

a. Conversion

Conversion has been defined in our case law as an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the exclusion of the owner's rights. *Ray v. Pilgrim Health & Life Ins. Co.*, 206 S.C. 344, 34 S.E.2d 218, 34 S.E.2d 218 (1945). Conversion may arise by some illegal use or misuse, or by illegal detention of another's chattel. *Castell v. Stephenson Finance Co.*, 244 S.C. 45, 135 S.E.2d 311 (1964). Money may be the subject of conversion, when it is capable of being

identified, and there may be conversion of determinate sums even though the specific coin and bills are not identified. 89 C.J.S. Trover and Conversion s 23, p. 541 (1955). However, there can be no conversion where there is a mere obligation to pay a debt. *Id.* Thus, where there is merely the relationship of debtor and creditor, an action based on conversion of the funds representing the debt is improper. 18 Am.Jur.2d Conversion s 10 p. 164 (1965). Owens v. Andrews Bank & Tr. Co., 265 S.C. 490, 496–97, 220 S.E.2d 116, 119 (1975)

Defendant's arguments on this cause of action are based on flawed logic and conclusory presumptions. First of all, as is done many times in the Defendant's Memorandum, the Defendant makes a conclusory statement that this cause of action is disguised as a "breach of fiduciary duty" and therefore barred by SCRPC Rule 23. It is common knowledge that parties can plead in the alternative and the pleadings on this action are quite clear and TPP's and CC's have even gone so far as to aver a separated case of action for breach of fiduciary duty. Secondly, it is a common theme of the Defendants as referred to in this brief and the Plaintiff's Memorandum on its causes of action to say that the "Armstrong Defendants" are and have always been members of the Association when it is convenient for the Complaint and then and then as Defendants to the TPP and CC's they say the "Armstrong Defendants" claimed not to be members so the Board owes them no duty in any fashion. The argument is barred by equitable estoppel and the whole purpose of this lawsuit was to be for the Court to make the determination of whether the Armstrong Defendants are bound by the Covenants or not. Until that determination is made, all of these parties stand in limbo under all claims. Lastly, the arguments presume that the Board was acting with vested authority which is challenged. Defendants state in their brief, "there can be no conversion because neither the POA or third-party defendants owed an obligation to deliver specific identifiable funds to the

Armstrong Defendants. Conversion may arise by some illegal use or misuse, or by illegal detention of another's chattel. *Castell v. Stephenson Finance Co.*, 244 S.C. 45, 135 S.E.2d 311 (1964). It seems pretty clear that the Board took the Armstrong Defendant's money which was supposed to be used for the purposes of assessments as defined in the Restrictions and they did not do that. He Board spent the money on something that it was not authorized to spend the money on and the money is gone making it impossible to return it. Billy Israel was quite notorious for doing things *ultra vires*. See Deposition of Billy Israel.

Israel, Jr., Billy James - Vol. I, (Pages 109:7 to 111:18)

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8 Q. Here is (I), 8.2(I) with respect to borrowing money.

9 Can you read that?

10 A. I can. "To borrow funds" -- excuse me. Part of my
 11 responsibility would be, "To borrow funds in order to
 12 pay for any expenditure or outlay required pursuant to
 13 the authority granted by the provisions of the
 14 Declaration and these Bylaws and to authorize
 15 appropriate officers to execute all such instruments
 16 evidencing such indebtedness as the Board of Directors
 17 may deem necessary; provided, however, that the Board
 18 shall not borrow more than \$50,000 or cause the
 19 Association to be indebted for more than \$50,000 at any
 20 one time without the prior approval of a majority of
 21 votes of both classes of membership."

22 Q. *Have you applied or asked for a vote from the members*
23 *of the association to accumulate more than \$50,000 in*
24 *debt?*

25 A. No.

110

1 Q. *And you have accumulated more than \$50,000 in debt?*

2 A. Yes.

3 Q. *And you won't even tell them what the balance of that*
4 *debt is, are you?*

5 MR. GROTE:

6 *Object to the form.*

7 EXAMINATION RESUMED BY MR. HAWKINS:

8 A. *I haven't. I don't know about the word won't, but I*
9 *haven't.*

10 Q. *Let me ask you. In your opinion, the way these bylaws*
11 *read, are you committing -- and I think you said the*
12 *word ultra vires. Right?*

13 A. *I learned that from the lawyers, yes.*

14 Q. What does that mean?

15 A. Outside -- operating outside of my authority as a
16 director.

Billy Israel also misrepresented what his assessments were for and actively concealed those facts and admitted that he spent the money for the purposes that the assessments were not represented to be for. *Id.* at pp. 95-99; 102-104. He further testified that he did not spend collected money for common area maintenance because he felt the Association did not own common area property. *Id.* at pp. 112-117. If he was not maintaining the common areas, what was he doing with it? Defendant's have produced the deposition in its entirety because it is so replete with inconsistent answers, evasive answers, evidence of combativeness and evidence of illogical conclusions and positions that it is impossible to bring them all out in a memorandum. The trier of fact has just got to hear this guy testify to be able to make a judgment as to his credibility and the motion for summary judgment should be denied.

b. Breach of Fiduciary Duty

The common law fiduciary duty, first recognized in 1913, owed to shareholders by corporate officers and directors has been codified by §§ 33–8–300 and –420. The trial court correctly held that appellants' breach of fiduciary duty claims against Bunting must be brought within the statute's terms. Clearwater Tr. v. Bunting, 367 S.C. 340, 350, 626 S.E.2d 334, 339 (2006) Section 33–8–420, at issue here, sets forth the standards for corporate officers, while S.C.Code Ann. § 33–8–300 (1990) covers the standards for corporate directors. The Reporters' Comments to the officers' statute state, “This section basically applies the standards of Section 33–8–300 to officers. Clearwater Tr. v. Bunting, 367 S.C. 340, 349, 626 S.E.2d 334, 338 (2006). In the case at hand, each member of the Board is an Officer and Director and would thus be charged with the most stringent duty of each of the statutes to the extent they conflict.

[T]he General Assembly intended the South Carolina Business Corporation Act (Act) to codify² the common law duties owed to shareholders by officers and directors is made clear by the South Carolina Reporters' Comments (Reporters' Comments). Section 33-8-420, at issue here, sets forth the standards for corporate officers, while S.C.Code Ann. § 33-8-300 (1990) covers the standards for corporate directors. The Reporters' Comments to the officers' statute state, "This section basically applies the standards of Section 33-8-300 to officers. The [Reporters' Comments] to Section 33-8-300 apply." We therefore look to those directors' comments in aid of determining the legislature's intent with regard to fiduciary duties.

The Reporters' Comments to § 33-8-300 contain the following:

As the foregoing authorities suggest, the underlying principle of shareholders being express beneficiaries of fiduciary duties predates the technical amendment made in 1963. South Carolina case law since *Black v. Simpson*, 94 S.C. 312, 77 S.E. 1023 (1913), has firmly embraced the notion that officers and directors owe duties to shareholders as well as the entity. The principle has been applied in insider trading cases (see *Jacobson v. Yaschik*, 249 S.C. 577, 584, 155 S.E.2d 601, 605 (1967)) and squeeze-out cases (see *Dibble v. Sumter Ice & Fuel Co.*, 283 S.C. 278, 322 S.E.2d 674 (1984)).

In 1981, the Model Act's articulation of duties owed was adopted verbatim with the exception that the established principle that shareholders of South Carolina corporations are express statutory beneficiaries of duties owed was retained.

....

Basically, the drafters of the current [1988] revision faced three alternatives: follow the [1984] Model Act entirely; continue the pattern of following the Model Act but with added

express recognition of the legal principle that duties run to shareholders; or opt for a very pro-insider statute along the lines recently adopted by Delaware.

....

The decision of whether to adhere strictly to the Model Act, to maintain the status quo in this State, or to opt for the Delaware approach (or one even more liberal) raised philosophical points.... One concern of proponents of the status quo is that dropping from the statute a duty that previously existed can hardly be taken as anything different than a repudiation of prior law.

....

After detailed discussion and analysis, the decision was made to retain mention in this provision of a direct duty owed to shareholders. *Id.*

S.C.Code Ann. § 33-8-300 (1990) provides,

(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner he reasonably believes to be in the best interests of the corporation and its shareholders.

(b) 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:

- (1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
- (3) a committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

Section 33-8-420 provides,

- (a) An officer with discretionary authority shall discharge his duties under that authority:

- (1) in good faith;
- (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) in a manner he reasonably believes to be in the best interests of the corporation and its shareholders.

- (b) In discharging his duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or
- (2) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

- (c) An officer is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable for any action taken as an officer, or any failure to take any action, if he performed the duties of his office in compliance with this section.

(e) An action against an officer for failure to perform the duties imposed by this section must be commenced within three years after the cause of action has accrued, or within two years after the time when the cause of action is discovered, or should reasonably have been discovered, whichever sooner occurs. This limitations period does not apply to breaches of duty which have been concealed fraudulently. Billy Israel testified in his deposition that he acted ultra vires and concealed the fact that he incurred debt on behalf of the corporation and that he did not even solicit the vote of the members because “he had adversaries.”

There is no proof in the record that Billy Israel or any of the other officers and directors met the requirements of the statutes to warrant dismissal of this action on Summary Judgment. If anything there is only evidence to the contrary. Furthermore, § 33-31-304 (b) applies to “third parties” not members.

c. Equitable Indemnity

“This Court has long recognized the principle of equitable indemnification.” *See e.g. Stuck v. Pioneer Loggins Machinery, Inc.*, 279 S.C. 22, 301 S.E.2d 552 (1983); *Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971); *South Carolina Electric & Gas Co. v. Utilities Construction Co.*, 244 S.C. 79, 135 S.E.2d 613 (1964). The damages which can be claimed under equitable indemnity may include the amount the innocent party must pay to a third party because of the at-fault party's breach of contract or negligence as well as attorney fees and costs which proximately result from the at-fault party's breach of contract or negligence. *See Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971); *South Carolina Electric*

& *131 *Gas Co. v. Utilities Construction Co.*, 244 S.C. 79, 135 S.E.2d 613 (1964). The principle of equitable indemnity including attorney fees and costs is not new to American law.

In the early part of this century, the Maryland Court of Appeals wrote:

The general rule is that costs and expenses of litigation, other than the usual and ordinary court costs, are not recoverable in an action for damages, nor are such costs even recoverable in a subsequent action; but, where the wrongful acts of the defendant have involved the plaintiff in litigation with others, or placed him in such relations with others as make it necessary to incur expenses to protect his interest, such costs and expenses should be treated as the legal consequences of the original act. McGaw v. Acker, Merrall & Condit Co., 111 Md. 153, 73 A. 731 (1909). “In Addy v. Bolton, 257 S.C. 28, 183 S.E.2d 708 (1971), this Court allowed the owner/lessor to recover attorney fees and costs from the contractor who negligently set fire to the building damaging the lessee's property. The lessee, Addy, sued the lessor Bolton and the contractor Thompson. The jury found Thompson negligent and exonerated Bolton. This Court allowed Bolton to recover attorney fees and costs from Thompson incurred in defending for Thompson's negligence.” Town of Winnsboro v. Wiedeman-Singleton, Inc., 307 S.C. 128, 130–31, 414 S.E.2d 118, 120 (1992).

Defendant’s make the argument that the Armstrong Defendants did not plead a “special relationship” with the POA. The Defendant’s own case law , however, says the relationship has to be established and the Rules of Civil Procedure do not require parties to plead particular elements. Establishment of the relationship can be proven at trial and there is no evidence that no relationship exists so the grant of Summary Judgment on this basis would be in error.

d. Fraud and Breach of Covenants

“Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. In order to prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct.App.1984). A complaint is fatally defective if it fails to allege all nine elements of fraud. *Inman v. Ken Hyatt Chrysler Plymouth, Inc.*, 294 S.C. 240, 363 S.E.2d 691 (1988).” *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993) “To establish constructive fraud, all elements of actual fraud except the element of intent must be established. *O'Quinn v. Beach Associates*, 272 S.C. 95, 249 S.E.2d 734 (1978). Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud while intent to deceive is an essential element of actual fraud. The presence or absence of such an intent distinguishes actual fraud from constructive fraud. *Giles v. Lanford & Gibson, Inc.*, 285 S.C. 285, 328 S.E.2d 916 (Ct.App.1985). However, in a constructive fraud case, where there is no confidential or fiduciary relationship, and an arm's length transaction between mature, educated people is involved, there is no right to rely. *Poco-Grande Investments v. C & S Family Credit, Inc.*, 301 S.C. 322, 391 S.E.2d 735 (Ct.App.1990). This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests. *Id.*

Once again, Defendants argue the Fraud cause of action is a cause of action disguised as one for breach of fiduciary duty and TPC and CC's pleadings do not meet the standards of a derivative action. TPP and CC's refer to their prior arguments on this issue. Secondly, it is

not required to plead intent if the Court finds there to be constructive fraud. For these reasons, it would be improper to grant summary judgment on this cause of action.

Defendants also tiresomely challenge the TPP and CC's Breach of Covenants cause of action on the conclusory statement that this cause of action is simply "disguised as a Breach of Fiduciary Duty claim." Restrictive covenants are contractual in nature, thus the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document. *Palmetto Dunes Resort, Div. of Greenwood Dev. Corp. v. Brown*, 287 S.C. 1, 6, 336 S.E.2d 15, 18 (Ct.App.1985). "A restrictive covenant will be enforced if the covenant expresses the party's intent or purpose, and this rule will not be used to defeat the clear express language of the covenant." *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987). Ambiguities in a restrictive covenant are to be strictly construed against the party seeking to enforce it; however, the rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument. *Palmetto Dunes Resort*, 287 S.C. at 6, 336 S.E.2d at 18–19. George v. Wendell, No. 2011-UP-005, 2011 WL 11730280, at *1 (S.C. Ct. App. Jan. 20, 2011). A Breach of Covenants has nothing to do with a breach of a fiduciary duty. If the Court were to adopt the Defendant's arguments regarding all causes of action being disguised as breaches of fiduciary duty, I suppose the appellate courts would have tossed out every cause of action against a corporation as a disguised action for breach of fiduciary duty and simply analyzed the derivative action requirements and made quick disposal of all cases. TTP and CC's counsel can find no cases on point to support this position.

f. Self-Dealing

“We now uphold the Court of Appeals' determination that the business judgment rule precludes judicial review of actions taken by a corporate governing board absent a showing of a lack of good faith, fraud, self-dealing or unconscionable conduct. *See Papalexiou v. Tower West Condominium*, 167 N.J.Super. 516, 401 A.2d 280, 286 (Chanc.Div.1979). We also affirm the Court of Appeals' holding that 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). We believe the previous briefings show at least one instance of lack of good faith (concealing the incurring of debt without even informing the members or taking a vote). Billy Israel’s deposition also shows many other such instances, such as switching the taxiway and grass runway areas to benefit his personal needs (See Exhibit A, Page 209-211) and so that his buddy and fellow director and officer Bruce Goldberg could build a pool, changing the threshold, etc.

g. No evidence the POA or Third-Party Defendants Acted in Bad Faith or With corrupt Motives

The Defendants seem to be asking the Court to dismiss all of the TTP and CC’s causes of actions and counterclaims for the blanket argument that there is no proof that the third party defendants have prosecuted this lawsuit in bad faith or for an improper motive and that the Defendants are shielded by the “business judgement rule”. It has been previously illustrated that the Board took actions with corrupt motives and in bad faith and admittedly without authority and it is also undisputed that the majority of the board of Directors and Officers have made these decisions after their terms had expired which are further acts all without authority. “A corporation may exercise only those powers which are granted to it by

law, by its charter or articles of incorporation, and any by-laws made pursuant thereto. *Lurie v. Arizona Fertilizer & Chemical Co.*, 101 Ariz. 482, 421 P.2d 330 (1966). Acts beyond the scope of a corporation's powers as defined by law or its charter are *ultra vires*. *United States Rubber Products, Inc. v. Town of Batesburg*, 183 S.C. 49, 190 S.E. 120 (1937). In determining a corporation's powers, its charter is to be construed strictly; any ambiguity in the terms of a corporate charter must operate against the corporation. *Creech v. South Carolina Public Service Authority*, 200 S.C. 127, 20 S.E.2d 645 (1942). The specification of certain powers operates as a limitation on such objects as are embodied therein and is an implied prohibition of the exercise of other and distinct powers. *Id.* “A similar rule of strict construction applies to the enforcement of covenants against real property. Covenants purporting to impose affirmative obligations on the grantee are to be strictly construed and not enforced unless the obligation is imposed in clear and unambiguous language which is sufficiently definite to guide the courts in its application. *Beech Mountain Property Owners Association, Inc. v. Seifart*, 48 N.C.App. 286, 269 S.E.2d 178 (1980); *cf.*, *Sprouse v. Winston*, 212 S.C. 176, 46 S.E.2d 874 (1948) (restrictive covenants are to be construed most strictly against the grantor and liberally in favor of the grantee). *Lovering v. Seabrook Island Prop. Owners Ass'n*, 289 S.C. 77, 82, 344 S.E.2d 862, 865 (Ct. App. 1986), overturned due to legislative action, aff'd as modified, 291 S.C. 201, 352 S.E.2d 707 (1987), overturned due to legislative action. Defendants claim protection from all causes of action except for negligence under the “business judgment rule”. “The “business judgment” rule applies to intra vires action of the corporation, not to ultra vires acts.” *Seabrook Island Prop. Owners Ass'n v. Pelzer*, 292 S.C. 343, 356 S.E.2d 411 (Ct. App. 1987). As such, and the Court should deny the motions for summary judgment.

A corporation may exercise only those powers which are granted to it by law, by its charter or articles of incorporation, and any by-laws made pursuant thereto. *Lurie v. Arizona Fertilizer & Chemical Co.*, 101 Ariz. 482, 421 P.2d 330 (1966). Acts beyond the scope of a corporation's powers as defined by law or its charter are *ultra vires*. *United States Rubber Products, Inc. v. Town of Batesburg*, 183 S.C. 49, 190 S.E. 120 (1937). In determining a corporation's powers, its charter is to be construed strictly; any ambiguity in the terms of a corporate charter must operate against the corporation. *Creech v. South Carolina Public Service Authority*, 200 S.C. 127, 20 S.E.2d 645 (1942). The specification of certain powers operates as a limitation on such objects as are embodied therein and is an implied prohibition of the exercise of other and distinct powers. *Id.*

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Further, “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 within its authority and 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) (quoting *Dockside Ass'n v. Detyens*, 291 S.C. 214, 217, 352 S.E.2d 714, 716 (Ct.App.1987)); *see also Dockside Ass'n v. Detyens*, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987) (“We now uphold the [c]ourt of [a]ppeals' determination that the business judgment rule precludes judicial review of actions taken by a corporate governing board absent a showing of a lack of good faith, fraud, self-dealing or unconscionable conduct.”). The business judgment rule applies to disputes between directors of a homeowners' association and aggrieved homeowners, and as the court of appeals has stated, “the conduct of the directors should be judged by the ‘business judgment rule’ and absent a showing of bad *271 faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action.” *Goddard v. Fairways Dev. Gen. **911 P'ship*, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct.App.1993) (citing 4 S.C. Juris. *Condominiums* § 42 (1991)). *Fisher v. Shipyard Vill. Council of Co-Owners, Inc.*, 415 S.C. 256, 270–71, 781 S.E.2d 903, 910–11 (2016).

Defendant’s arguments fail because the prerequisite to the need of an examination into the **acts without corrupt motives and in good faith is precluded by the fact that Billy Israel, on at lest one occasion, acted outside of his corporate authority on many occasions** . Billy Israel, now the President of the Board for 10 some odd years, testified that at a minimum he committed an act of ultra vires in incurring more that 50,000.00 of debt on behalf of the Association without a vote.

Israel, Jr., Billy James - Vol. I, (Pages 109:7 to 111:18)

109

8 Q. Here is (I), 8.2(I) with respect to borrowing money.

9 Can you read that?

10 A. I can. "To borrow funds" -- excuse me. Part of my
11 responsibility would be, "To borrow funds in order to
12 pay for any expenditure or outlay required pursuant to
13 the authority granted by the provisions of the
14 Declaration and these Bylaws and to authorize
15 appropriate officers to execute all such instruments
16 evidencing such indebtedness as the Board of Directors
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18 shall not borrow more than \$50,000 or cause the
19 Association to be indebted for more than \$50,000 at any
20 one time without the prior approval of a majority of
21 votes of both classes of membership."

22 ***Q. Have you applied or asked for a vote from the members***
23 ***of the association to accumulate more than \$50,000 in***
24 ***debt?***

25 A. No.

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1 ***Q. And you have accumulated more than \$50,000 in debt?***

2 A. Yes.

3 ***Q. And you won't even tell them what the balance of that***

4 ***debt is, are you?***

5 **MR. GROTE:**

6 ***Object to the form.***

7 ***EXAMINATION RESUMED BY MR. HAWKINS:***

8 ***A. I haven't. I don't know about the word won't, but I***

9 ***haven't.***

10 ***Q. Let me ask you. In your opinion, the way these bylaws***

11 ***read, are you committing -- and I think you said the***

12 ***word ultra vires. Right?***

13 ***A. I learned that from the lawyers, yes.***

14 ***Q. What does that mean?***

15 ***A. Outside -- operating outside of my authority as a***

16 ***director.***

This excerpt alone demonstrates bad-faith and corrupt motives. The TPP and CC further point the Court's attention to their Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and Billy Israel's deposition for further instances on bad-faith and corrupt motives and again reiterates that the trier of fact needs to hear the Board Members testify to ascertain credibility. For these reasons, the court should deny the motions for summary judgment. Respectfully submitted,

s/ Wendell L. Hawkins
Wendell L. Hawkins (S.C. Bar #: 13583)
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Attorneys for TPPs and CCs

September 8, 2022
Greer, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
C/A No: 2016-CP-42-01854

Chandelle Property Owners Association,

Plaintiff,

vs.

James Douglas Armstrong, Jane Armstrong, Emma Jean Brockman as the Personal Representative of the Estate of James P. Brockman, Sr., Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein,

Defendants.

James Douglas Armstrong and Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne and Ruth G. Payne,

Third-Party Plaintiffs,

v.

Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg and George Lynn Fleming in their personal and official capacities,

Third-Party Defendants.

018771.00006

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT
AGAINST JAMES DOUGLAS
ARMSTRONG, JANE ARMSTRONG,
WARREN JOHNSON, RHONDA
JOHNSON, JOHN K. PAYNE, RUTH G.
PAYNE, AND JANE VAN WIEREN AS
TRUSTEE OF THE GREER R.G.
IRREVOCABLE PROPERTY TRUST,
DATED OCTOBER 25, 2006**

COMES NOW, Plaintiff, Chandelle Property Owners Association, by and through its undersigned counsel, and hereby submits this memorandum in support of its Motion for Partial

**THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT.
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

Summary Judgement against James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 (collectively, the “**Subject Defendants**”), which was filed on August 19, 2022. Plaintiff, asserts that the Subject Defendants’ properties described in Plaintiff’s motion and in this memorandum are subject to the restrictive covenants for Chandelle Subdivision, and thus Subject Defendants are members of Plaintiff and are subject to assessments under the restrictive covenants. Plaintiff further asserts that Subject Defendants are delinquent on the payment of assessments to Plaintiff, and owe Plaintiff assessments and other authorized charges as provided herein.

FACTUAL BACKGROUND

1. Development Background

CSC Developers, LLC was the primary developer of Chandelle Subdivision.¹ As in initial matter, it is noted that John Stewart, Jr., an owner/member of CSC Developers, LLC, has been deposed individually and as a Rule 30(b)(6) designee of CSC Developers, LLC.² This deposition took place on January 12, 2018 (Volume 1) and was continued on January 29, 2018 (Volume 2), and for ease of reference, references to the transcripts will be referred to as Stewart Deposition Volume 1 or Volume 2. In February of 1997, CSC Developers, LLC entered into an agreement with James P. Brockman, Sr. to include approximately thirteen (13) acres of Mr. Brockman’s land in the Chandelle Subdivision that was going to be developed.³ A copy of the February 15, 1997 Agreement between CSC Developers, LLC and James P. Brockman, Sr. is attached as **Exhibit 3**

¹ Stewart Deposition, Vol. 1 (excerpts attached as **Exhibit 1**), p. 42, lns. 1-2.

² See Stewart Deposition, Vol. 1 (excerpts attached as **Exhibit 1**), pp. 1-13; p. 22, lns.14-19; p. 26, lns. 4-21.

³ Stewart Deposition, Vol. 1 (excerpts attached as **Exhibit 1**), p. 59, ln. 23 to p. 60, ln. 4; p. 60 ln. 16 to p. 61, ln. 7; p. 65, ln. 8 to p. 66, ln. 23; and Exhibit 6 thereto. (indicating that James Brockman, Sr. agreed to include his parcel of land (13 acres, which includes the property designated as Lots 1-10 on the plat) in Chandelle Subdivision.

(hereinafter, the “**Brockman Agreement**”).⁴ The Brockman Agreement provided that CSC Developers, LLC was developing a parcel of land at the intersection of Highway 101 and Brockman Road as more fully shown on the plat for Chandelle Estates. The Brockman Agreement also noted that a portion of the land shown on the plat of Chandelle Estates was owned by James Brockman, Sr., while the remainder of the land was owned by CSC Developers, LLC.⁵ The Brockman Agreement further provides that the agreement was being made to address the cooperative arrangement for the development of Lots 1-10 owned by Mr. Brockman and the remainder of Phase 1 owned by CSC Developers, LLC. Per the Brockman Agreement, Mr. Brockman agreed to include his land (consisting of approximately 13 acres) in Chandelle Subdivision,⁶ and the Brockman Agreement addresses the splitting or allocation of the development costs for Phase/Section 1 of Chandelle Subdivision. Mr. Stewart testified on behalf of CSC Developers, LLC that Mr. Brockman’s property was included in Chandelle Subdivision this way rather than CSC Developers, LLC purchasing the land from Mr. Brockman because CSC Developers, LLC didn’t have enough money to purchase the property from Mr. Brockman.⁷

In connection with the development of Chandelle Subdivision, CSC Developers, LLC recorded a Declaration of Covenants, Conditions and Restrictions for Chandelle Subdivision on December on 16, 1997, in the Office of the Register of Deeds for Spartanburg County in Deed Book 67-A at Page 0583 (the “**Original Declaration**”). A copy of the Original Declaration is included in Exhibit A to the Affidavit of Billy J. Israel, Jr. attached as **Exhibit 4** hereto and

⁴ See also, Stewart Deposition, Vol. 1 (excerpts attached as **Exhibit 1**), p. 65, lns. 8-21, and Exhibit 6 thereto.

⁵ See also, Stewart Deposition, Vol. 1 (excerpts attached as **Exhibit 1**), p. 59, ln. 23 to p. 60, ln. 4.

⁶ See also, Stewart Deposition, Vol. 1 (excerpts attached as **Exhibit 1**), p. 59, ln. 23 to p. 60, ln. 4; p. 60 ln. 16 to p. 61, ln. 7; p. 69, ln. 17 to p. 70, ln. 2; and Exhibit 3 thereto.

⁷ Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 66, lns. 19-23.

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incorporated herein by reference. The Original Declaration, as amended and supplemented, shall hereinafter be referred to as the “**Declaration**”.⁸

The Original Declaration originally specified that Lots 1 through 26 were subject to and bound by the Declaration. Specifically, the Original Declaration provided on the first page thereof as follows:

NOW, THEREFORE, Declarant, by this DECLARATION of Covenants, Conditions and Restrictions does hereby declare that all the property described herein and shown as lots 1 through 26 on the Chandelle Subdivision plat dated September 24, 1997 by Huskey & Huskey, Inc. for Spartanburg County, South Carolina is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in the Declaration which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure for the benefit of each owner thereof.

A copy of the above-referenced September 24, 1997 plat by Huskey & Huskey, Inc. (hereinafter, the “**Section 1 Plat**”) is attached as **Exhibit 5** and incorporated herein by reference.⁹ The land owned by James Brockman, Sr. included on the Section 1 Plat encompassed roughly Lots 1-10. Mr. Stewart testified that Mr. Brockman was provided a copy of the Section 1 Plat and was aware that his lands were included on the plat.¹⁰ Although the Section 1 plat was approved for recording, Mr. Stewart testified that the Section 1 Plat was just kept on file with the Spartanburg County Planning Commission and the lots in Section 1 were sold by reference to individual lots surveys in order to save on taxes.¹¹

⁸ A copy of all amendments and supplements to the Original Declaration known to the Board of Directors of Plaintiff are also included in Exhibit A to the Affidavit of Billy J. Israel, Jr., which is attached as **Exhibit 4** hereto (See Affidavit of Billy J. Israel, Jr.)

⁹ See also, Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 79, lns.6-20, and Exhibits 7 and 8 thereto.

¹⁰ Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 82, lns. 6-9.

¹¹ Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 84, ln. 24 to p. 87, ln. 23.

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In his deposition, John Stewart, Jr. confirmed that all of the property shown on the Section 1 Plat was intended to be part of the Chandelle Subdivision and bound by the Declaration.¹² Further, Mr. Stewart specifically testified that Lots 1-10 were intended to be part of Chandelle Subdivision and encumbered by the Declaration.¹³ Out of Lots 1-10, Lots 1, 5, 7, 8, 9, and 10 have been sold thus far, and all of the deeds from Mr. Brockman to the initial purchasers of these Lots specifically reference the property as being subject to the Declaration.¹⁴

Further, the Declaration envisions and authorizes additional property being subjected to the Declaration and added to Chandelle Subdivision.¹⁵ After the Original Declaration was recorded, CSC Developers, LLC did in fact continue to expand Chandelle Subdivision. After the Original Declaration was recorded, the following plats of additional sections of Chandelle Subdivision were recorded:

- Chandelle Section 1-A, recorded on September 1, 1998 in Plat Book 142, Pg. 376¹⁶
 - o Depicting roads and Lots 13 and 22.
- Chandelle Section 2A, recorded November 8, 2000 in Plat Book 149, Pg. 64¹⁷
 - o Depicting Lots 50, 51, 52, 53, and 54
- Chandelle Section 3-A, recorded September 26, 2002 in Plat Book 153, Pg. 97¹⁸

¹² Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 99, ln. 21 to p. 100, ln. 1. *See also*, Stewart Deposition Vol. 2 (excerpts attached as **Exhibit 2**), p. 149, lns. 6-23.

¹³ Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 68, lns. 4-23.

¹⁴ See deeds attached as **Exhibit 6**. *See also*, Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 68, lns. 4-18.

¹⁵ See Original Declaration and amendments/supplements thereto, which are included in Exhibit A to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**) – recitals and Sections 1.1, 1.2, 1.14, 1.15, 1.24, 12.2, 16.1, and 16.2.

¹⁶ A copy of this plat is attached as **Exhibit 7**. *See also*, Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 96, ln. 13 to p. 97, ln. 7, and Exhibit 11 thereto.

¹⁷ A copy of this plat is attached as **Exhibit 8**. *See also*, Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 182, lns. 11-17, and Exhibit 25 thereto.

¹⁸ A copy of this plat is attached as **Exhibit 9**. *See also*, Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 185, ln. 22 to p. 186, ln. 8, and Exhibit 28 thereto.

- o Depicting Lot 39
 - Chandelle Section 3, recorded November 5, 2004 in Plat Book 156, Pg. 982¹⁹
 - o Depicting Lots 39A, 40, 41, 42, 43, 44, 45, 46, and 47, and additional land.

Thereafter, CSC Developers, LLC recorded an instrument on December 28, 2004 in Deed Book 81-Y, Pg. 823 to annex the following lots into Chandelle Subdivision and subject them to the Declaration: Chandelle Section 1A; Lot 39 (Section 3A); Lots 39a and 40-47 (Section 3).²⁰ John Stewart, Jr. testified that CSC Developers, LLC believed that it had the authority to do this, and by this instrument intended to include these lots in Chandelle Subdivision and subject them to the Declaration.²¹ John Stewart, Jr. also testified that CSC Developers, LLC intended these lots to be part of Chandelle Subdivision and bound by the Declaration.²²

Subsequently, the following plats of additional sections of Chandelle Subdivision were then recorded:

- Chandelle Section 4, recorded November 1, 2005 in Plat Book 158, Pg. 840²³
 - o Depicting Lots 33 and 37
- Chandelle Section 7, recorded December 6, 2005 in Plat Book 159, Pg. 9²⁴
 - o Depicting Lots 27 and 28

¹⁹ A copy of this plat is attached as **Exhibit 10**. *See also*, Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 187, lns. 8-14, and Exhibit 30 thereto.

²⁰ A copy of this instrument is attached as **Exhibit 11**. *See also*, Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 190, Ln. 11 to p. 191, ln. 23, and Exhibit 31 thereto.

²¹ Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 191, lns. 1-23.

²² Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 191, lns. 16-23. *See also*, Stewart Deposition Vol. 2 (excerpts attached as **Exhibit 2**), p. 149, lns. 6-23.

²³ A copy of this plat is attached as **Exhibit 12**. *See also*, Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 196, lns. 8-17, and Exhibit 32 thereto.

²⁴ A copy of this plat is attached as **Exhibit 13**. *See also*, Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 196, ln. 19 to p. 197, ln. 5, and Exhibit 33 thereto.

- Chandelle Section 6, recorded December 14, 2006 in Plat Book 160, Pg. 852²⁵
 - o Depicting Lots 29, 30 and 34

Thereafter, CSC Developers, LLC recorded an instrument on April 17, 2007 in Deed Book 88-H, Pg. 448, to annex the following lots into Chandelle Subdivision and subject them to the Declaration: Lots 33 and 37 (Section 4); Lots 29, 30, and 34 (Section 6); Lots 27 and 28 (Section 7).²⁶ John Stewart, Jr. testified that CSC Developers, LLC believed that it had the right and authority to do this, and by this instrument intended to include these lots in Chandelle Subdivision and subject them to the Declaration.²⁷ John Stewart, Jr. also testified that CSC Developers, LLC intended these lots to be part of Chandelle Subdivision and bound by the Declaration.²⁸

Subsequently, the following plats of additional sections of Chandelle Subdivision were then recorded:

- Chandelle Section 4A, recorded January 8, 2009 in Plat Book 163, Pg. 885²⁹
 - o Depicting Lots 32 and 36
- Chandelle Section 5, recorded November 20, 2009 in Plat Book 164, Pg. 709³⁰
 - o Depicting Lots 31 and 35
- Chandelle Section 8, recorded October 21, 2011 in Plat Book 166, Pg. 249³¹

²⁵ A copy of this plat is attached as **Exhibit 14**. *See also*, Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 198, ln.20 to p. 199, ln. 4, and Exhibit 34 thereto.

²⁶ A Copy of this instrument is attached as **Exhibit 15**. *See also*, Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 199, ln. 5 to p. 200, ln. 21, and Exhibit 35 thereto.

²⁷ Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 199, ln. 5 to p. 200, ln. 21.

²⁸ Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 199, ln. 5 to p. 200, ln. 21. *See also*, Stewart Deposition Vol. 2 (excerpts attached as **Exhibit 2**), p. 149, lns. 6-23.

²⁹ A copy of this plat is attached as **Exhibit 16**. *See also*, Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 200, ln. 24 to p. 201, ln. 5, and Exhibit 36 thereto.

³⁰ A copy of this plat is attached as **Exhibit 17**. *See also*, Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 201, lns. 6-14, and Exhibit 37 thereto.

³¹ A copy of this plat is attached as **Exhibit 18**. *See also*, Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 201, ln. 15 to p. 202, ln. 1, and Exhibit 38 thereto.

o Depicting Lots 55, 56, and 57

Thereafter, an instrument was recorded on November 2, 2011 in Deed Book 99-L, Pg. 999, to annex the following lots into Chandelle Subdivision and subject them to the Declaration: Lots 32 and 36 (Section 4A); Lots 31 and 35 (Section 5); and Lots 55, 56, and 57 (Section 8).³² While this instrument was signed by two Board members for Plaintiff rather than CSC Developers, LLC, John Stewart, Jr. testified that everyone thought that this was the proper way to do it now that homeowners had been appointed to the Board of Directors for Plaintiff.³³ John Stewart, Jr. also testified that CSC Developers, LLC was in agreement with the Board members signing the instrument and CSC Developers, LLC knew it was being done.³⁴ Further, an Affidavit of Billy J. Israel, Jr. is attached as **Exhibit 4**. Billy J. Israel, Jr. was one of the signatories to the instrument on behalf of Chandelle Property Owners Association, and in his affidavit, he states that: (1) this instrument was drafted by CSC Developers, LLC; (2) it was presented by CSC Developers, LLC to the Board of Directors of Chandelle Property Owners Association for execution; and (3) the Board members thought they were simply certifying the instrument as being proper pursuant to CSC Developers, LLC's authority.³⁵ Further, John Stewart, Jr. testified in his deposition that it was CSC Developers, LLC's intent that these lots be part of Chandelle Subdivision and bound by the Declaration, and that is what CSC Developers, LLC intended to do by this instrument.³⁶

³² A copy of this instrument is attached as **Exhibit 19**. *See also*, Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 202, ln 6 to p. 204, ln. 19, and Exhibit 39 thereto.

³³ Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 202, ln 6 to p. 204, ln. 19.

³⁴ Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 202, ln 6 to p. 204, ln. 19. Stewart Deposition Vol. 2 (excerpts attached as **Exhibit 2**), p. 13, ln. 15 to p. 14, ln. 10.

³⁵ Affidavit of Billy Israel (attached as **Exhibit 4**)

³⁶ Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 202, ln 6 to p. 204, ln. 19. Stewart Deposition Vol. 2 (excerpts attached as **Exhibit 2**), p. 13, ln. 6 to pg. 14, ln. 22; p. 47, ln. 5 to p. 48, ln. 13. *See also*, Stewart Deposition Vol. 2 (excerpts attached as **Exhibit 2**), p. 103, ln. 12 to p. 104, ln. 7; p. 113, lns. 17-24; p. 149, lns. 6-23.

Additionally, CSC Developers, LLC recorded a revised plat for Chandelle, Section 8, on December 13, 2016 in Plat Book 171, Pg. 927, depicting Lots 55, 56, and revised Lot 57.³⁷

Further, it should be noted that CSC Developers, LLC was required to get approval from the Spartanburg County Planning Commission in order to plat a section of Chandelle Subdivision.³⁸

While Section 16.2 of the Declaration recorded with the Register of Deeds contained a purported annexation deadline of December 31, 2001, this purported deadline had been removed from the copy of the restrictive covenants distributed by CSC Developers, LLC to purchasers and prospective purchasers.³⁹ Therefore, what was provided to purchasers and prospective purchasers didn't include any purported annexation deadline. While John Stewart, Jr. testified that he had no explanation as to how that deadline got omitted from the version distributed to purchasers and prospective purchasers, he testified that CSC Developers, LLC intended all of the foregoing annexations to be binding and proper.⁴⁰

2. *John K. Payne and Ruth G. Payne – Lot 1*

John K. Payne and Ruth G. Payne (the “**Paynes**”) are the owners of Lot 1 in Chandelle Subdivision. The Paynes are also the Owner of Lot 51, which is not part of this motion for summary judgment. Relevant recorded documents in the chain of title for Lot 1 are attached as **Exhibit 22**,⁴¹ Lot 1 being more particularly described in the deeds and plat included in **Exhibit**

³⁷ A copy of this plat is attached as **Exhibit 20**.

³⁸ Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 185, lns. 17-20.

³⁹ Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 112, ln. 18 to p. 113, ln. 2; p. 118, ln. 2-21; p. 205, lns. 6-20; and Exhibit 12 thereto. Deposition of Marilyn Berry (excerpts attached as **Exhibit 21**), p. 146, ln. 23 to p. 148, ln. 2. Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**) and Exhibit B thereto.

⁴⁰ Stewart Deposition Vol. 1 (excerpts attached as **Exhibit 1**), p. 205, lns. 6-20.

⁴¹ See also Deposition of John K. Payne (excerpts attached as **Exhibit 23**), p. 38, lns. 10-18, and Exhibit 1 thereto.

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22. As set forth above, Lot 1 was included in the land originally described in the Original Declaration as being bound by the Declaration.

The title records contained in **Exhibit 22** reflect that Lot 1 was originally conveyed by James P. Brockman, Sr. to Larry Dee Davis and Angela Davis by deed recorded in December 19, 1997 in Deed Book 67-A, Pg. 958.⁴² This deed specifically provided that “This conveyance is specifically made subject to those certain Protective Covenants recorded in Book 67-A at Page 583” (i.e., the Declaration). Lot 1 was subsequently conveyed by Larry Dee Davis and Angela Davis to John K. Payne and Ruth G. Payne by deed recorded on June 2, 2000, in Deed Book 72-C, Pg. 145.⁴³ This deed again specifically provided that “THIS CONVEYANCE is being made subject to Protective Covenants as recorded on December in Deed Book 67-A at Page 583 in the Office of the Register of Deeds for Spartanburg County” (i.e., the Declaration). The Paynes then deeded Lot 1 to themselves as joint tenants by Deed recorded on March 7, 2006 in Deed Book 85-F, Pg. 538.⁴⁴ The legal descriptions in the aforementioned deeds describe the property as “Lot No. 1, Chandelle Estates” and the plat referenced in the legal descriptions⁴⁵ does reference “Chandelle Est.”

Further, the Paynes executed a mortgage with respect to Lot 1, which was recorded on June 20, 2000 in Book 2352, Pg. 420, and which contained a Planned Unit Development Rider.⁴⁶ The Planned Unit Development Rider states that the property is part of a planned unit development (“PUD”) and the property includes the Borrower’s interest in the homeowners association. The PUD Rider also provides that the Borrower is required to perform all of the Borrower’s obligations

⁴² A copy of this deed is included in **Exhibit 22**.

⁴³ A copy of this deed is included in **Exhibit 22**.

⁴⁴ A copy of this deed is included in **Exhibit 22**.

⁴⁵ Plat Book 139, Pg. 931 – Included in **Exhibit 22**.

⁴⁶ A copy of this mortgage is included in **Exhibit 22**.

under the PUD's Constituent Documents, including the Declaration, and bylaws or rules and regulations of the Owners Association. The PUD rider also provides that the Borrower shall promptly pay all dues and assessments imposed pursuant to the Constituent Documents.

Also, during the pendency of this lawsuit, the Paynes executed another mortgage with respect to Lot 1, which was recorded on January 6, 2020 in Book 5736, Pg. 666, and which also contained a PUD Rider.⁴⁷ The PUD Rider provides that the property is part of a planned unit development known as Chandelle, and again specifies that the Borrower must perform their obligations under the Constituent Documents and must pay all dues and assessments imposed pursuant to the Constituent Documents.

The Paynes did pay assessments levied by Plaintiff under the Declaration up until 2017, and also paid a special assessment levied by Plaintiff in 2021, but have maintained a delinquent balance since 2017.⁴⁸

Additionally, John K Payne was deposed on August 2, 2022. Excerpts from the transcript of his deposition are attached as **Exhibit 23**. In his deposition, Mr. Payne testified that he had some involvement with the development of Chandelle Subdivision, including helping with drafting the Declaration, helping manage the neighborhood early on, and serving on the architectural control committee for approximately fifteen (15) years.⁴⁹ In his deposition, Mr. Payne confirmed that Lots one (1) through ten (10) were actually owned by James Brockman, but James Brockman and John Stewart had an agreement to include that property in Chandelle Subdivision and that it would be subject to the Declaration.⁵⁰ Further, in his deposition, Mr. Payne specifically admitted

⁴⁷ A copy of this mortgage is included in **Exhibit 22**.

⁴⁸ Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

⁴⁹ Deposition of John K. Payne (excerpts attached as **Exhibit 23**), p. 19, ln. 20 to p. 22, ln. 16.

⁵⁰ Deposition of John K. Payne (excerpts attached as **Exhibit 23**), p. 40, lns. 6-25.

that Lot 1 is subject to the Declaration.⁵¹ Mr. Payne also testified that he had attended at least one meeting of Plaintiff⁵² and had also sought approval to remove a tree because that was required by the Declaration.⁵³ Additionally, Mr. Payne acknowledged that he has, at least historically, paid assessments under the Declaration with respect to Lot 1.⁵⁴

Further, Ruth Payne was also deposed on August 2, 2022. Excerpts from the transcript of her deposition are attached as **Exhibit 24**. In her deposition, Ruth Payne seemed to admit that (1) she owned a Lot in Chandelle subdivision at the corner of Brockman Rd. and Air Park Dr. (i.e., Lot 1);⁵⁵ (2) she has paid assessments to plaintiff,⁵⁶ but stopped paying assessments because she disagreed with the judgment of the board of directors of Plaintiff;⁵⁷ and that she has attended a meeting of Plaintiff.⁵⁸

3. Warren Johnson and Rhonda Johnson – Lots 28, 29, 30 and 34

Warren Johnson and Rhonda Johnson (the “**Johnsons**”) are the owners of Lots 28, 29, 30 and 34 in Chandelle Subdivision. Relevant recorded documents in the chain of title for Lots 28, 29, 30, and 34 are attached as **Exhibit 25**, Lots 28, 29, 30 and 34 being more particularly described in the deeds and plats included in **Exhibit 25**. As set forth above, Lot 28 was platted by CSC Developers, LLC as part of Chandelle Section 7, and Lots 29, 30, and 34 were platted by CSC Developers, LLC as Chandelle Section 6.⁵⁹ Further, as set forth above, Lots 28, 29, 30, and 34

⁵¹ Deposition of John K. Payne (excerpts attached as **Exhibit 23**), p. 41, lns. 16-25; p. 46, lns. 3-8.

⁵² Deposition of John K. Payne (excerpts attached as **Exhibit 23**), p. 53, ln. 17 to p. 54, ln.

⁵³ Deposition of John K. Payne (excerpts attached as **Exhibit 23**), p. 61, lns.1-11.

⁵⁴ Deposition of John K. Payne (excerpts attached as **Exhibit 23**), p. 69, ln. 3 to p. 70, ln. 22; p. 82, lns. 3-18; P. 89, lns.14-17.

⁵⁵ See Deposition of Ruth Payne (excerpts attached as **Exhibit 24**), p. 16, Lns15-20; p. 20, lns. 12-19

⁵⁶ Deposition of Ruth Payne (excerpts attached as **Exhibit 24**), p. 17, lns.2-8.

⁵⁷ See Deposition of Ruth Payne (excerpts attached as **Exhibit 24**), p. 19, lns. 7-16.

⁵⁸ Deposition of Ruth Payne (excerpts attached as **Exhibit 24**), p. 15, lns. 9-11.

⁵⁹ A copy of these plats are also included in **Exhibit 25**.

were all included in the annexation instrument recorded on April 17, 2007 in Deed Book 88-H, Pg. 448.

Lots 28 and 29 were later shown as combined on a Closing Survey for Warren G. Johnson and Rhonda B. Johnson recorded on June 24, 2009 in Plat Book 164, Pg. 328.⁶⁰ The notes to this closing survey specifically state: “BEING LOT 28 OF CHANDELLE SEC. 7 AS SHOWN ON OUR PLAT DATED NOV. 28, 2005 AND LOT 29 OF CHANDELLE SEC. 6 AS SHOWN ON OUR PLAT DATED AUG. 1 2006.” Lots 28 and 29 were conveyed to Warren G. Johnson and Rhonda B. Johnson by CSC Developers, LLC by deed recorded on June 24, 2009, in Deed Book 94-A, Pg. 978.⁶¹ The legal description in the deed references the closing survey and specifically refers to the property as “LOT NO. 28 AND LOT NO. 29 OF CHANDELLE SUBDIVISION, SECTION 7.”

Subsequent to the recording of the Chandelle Section 7 plat noted above, Lots 30 and 34 were later shown as combined on a Closing Survey for Warren G. Johnson and Rhonda B. Johnson recorded on February 17, 2016 in Plat Book 170, Pg. 822.⁶² The notes to this closing survey specifically state: “BEING LOTS 30 AND 34 OF CHANDELLE SEC. 6 AS SHOWN ON OUR PLAT DATED AUG. 1, 2006.” Lots 30 and 34 were conveyed to Warren G. Johnson and Rhonda B. Johnson by CSC Developers, LLC by deed recorded on April 19, 2016 in Deed Book 111-X,

⁶⁰ A copy of this plat is included in **Exhibit 25**. See also Deposition of Rhonda Johnson (excerpts attached as **Exhibit 26**), p. 34, lns. 7-25 and Exhibit 5 thereto.

⁶¹ A copy of this deed is included in **Exhibit 25**. See also, Deposition of Rhonda Johnson (excerpts attached as **Exhibit 26**), p. 31, lns. 1-25, and Exhibit 4 thereto.

⁶² A copy of this plat is included in **Exhibit 25**. See also, Deposition of Rhonda Johnson (excerpts attached as **Exhibit 26**), p. 37, lns. 12-18, and Exhibit 6 thereto. See also Deposition of Warren Johnson (excerpts attached as **Exhibit 27**), p. 20, ln 15 to p. 21, ln. 18, and Exhibit 6 to the Deposition of Rhonda Johnson.

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Pg. 568.⁶³ The legal description in the deed references the closing survey and specifically refers to the property as: “Lot No. 30 and Lot No. 34 of Chandelle Subdivision, Section 6.”

Subsequently, Lots 28, 29, 30, and 34 were shown as all being combined into a single parcel on a Closing Survey for Warren G. Johnson and Rhonda B. Johnson, recorded on February 2, 2018, in Plat Book 173, Pg. 674.⁶⁴ The notes to this closing survey specifically state: “BEING LOT 28 OF CHANDELLE SEC. 7 AS SHOWN ON OUR PLAT DATED NOV. 28, 2005 AND LOTS 29, 30, AND 34 OF CHANDELLE SEC. 6 AS SHOWN ON OUR PLAT DATED AUG. 1, 2006.” Notably, this closing survey was recorded during the pendency of this litigation.

Additionally, the Johnsons sought approval from the Architectural Control Committee under the Declaration to build their residence on Lots 28 and 29.⁶⁵ In connection with seeking such architectural approval, Warren Johnson executed a Chandelle Private Aviation Estates Building Construction Form, which specifically included a certification, which stated in part: “I (we) certify that the above information constitutes a description of the proposed building and accessory construction and of the location and the site of all items of construction and the same will be in accordance with the Chandelle Covenants and Restrictions.”⁶⁶ (emphasis added). Further, the Chandelle Subdivision Architectural Control Committee (the architectural review authority established under the Declaration) engaged in a series of communications with the Johnsons in 2011-2012 regarding adherence to the continuity of construction requirements found in the

⁶³ A copy of this deed is included in **Exhibit** (excerpts attached as **Exhibit 26**). *See also*, Deposition of Rhonda Johnson (excerpts attached as **Exhibit 26**), p. 40, lns. 2-19, and Exhibit 7 thereto.

⁶⁴ A copy of this plat is included in **Exhibit 25**. *See also*, Deposition of Rhonda Johnson (excerpts attached as **Exhibit 26**), p. 43, lns. 4-25, and Exhibit 8 thereto. *See also* Deposition of Warren Johnson (excerpts attached as **Exhibit 27**), p. 22, lns. 6-16.

⁶⁵ *See*, Deposition of Rhonda Johnson (excerpts attached as **Exhibit 26**), p. 112, ln. 23 to p. 113, ln. 7. *See*, Deposition of Warren Johnson (excerpts attached as **Exhibit 27**), p. 11, ln. 24 to p. 12, ln. 3; p. 32, ln. 20 to p. 33, ln. 8.

⁶⁶ *See*, Deposition of Rhonda Johnson (excerpts attached as **Exhibit 26**), p. 91, lns. 1-14 and Exhibit 15 thereto (indicating that Warren Johnson signed the building construction form).

Declaration.⁶⁷ At no point in these communications did the Johnsons ever assert that they and/or their property were not subject to the Declaration.⁶⁸ Further, on January 17, 2012, the Board of Directors of Plaintiff sent out a newsletter to the residents of Chandelle Subdivision, including to the Johnsons, which in part congratulated the Johnsons on moving into their new home in Chandelle and noting that they were a welcome addition to the community.⁶⁹ The Johnsons never raised any objection to the Board of Directors regarding being classified as being in Chandelle Subdivision in this newsletter.⁷⁰ Further, in 2012, the Johnsons sought and received approval from the Architectural Review Committee under the Declaration for the erection of fencing on their lots.⁷¹ Additionally, Plaintiff sent notices to the Johnsons pertaining to violations of the Declaration for barking dogs, and the Johnsons never raised as a defense that they were not subject to the Declaration.⁷² Further, in 2013, the Johnsons sought and received approval from the Architectural Control Committee to add a concrete extension to their exiting hangar ramp pad on their property.⁷³ Further, the Johnsons sought to combine Lots 28, 29, 30, and 34 into a single lot for purposes of the assessments under the Declaration and provided the Board of Directors of Plaintiff with documentation indicating that CSC Developers, LLC, as the Declarant under the Declaration, had approved such combination.⁷⁴ It should be noted that Article IV, Section 4.2 of the Declaration requires written approval of the “Declarant” to combine Lots under the

⁶⁷ Affidavit of George Lynn Fleming (attached as **Exhibit 28**).

⁶⁸ Affidavit of George Lynn Fleming (attached as **Exhibit 28**). *See also*, Deposition of Rhonda Johnson (excerpts attached as **Exhibit 26**), p. 97, ln. 3 to p. 99. Ln. 24; p. 111, ln. 4 to p. 112, ln. 20; and Exhibits 17 and 23 thereto.

⁶⁹ Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

⁷⁰ Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

⁷¹ Affidavit of George Lynn Fleming (attached as **Exhibit 28**). *See also*, Deposition of Rhonda Johnson (excerpts attached as **Exhibit 26**), p. 112, ln. 23 to p. 113, ln. 7.

⁷² Affidavit of George Lynn Fleming (attached as **Exhibit 28**). Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**). *See also*, Deposition of Rhonda Johnson (excerpts attached as **Exhibit 26**), p. 109, ln. 13 to p. 110, ln. 17.

⁷³ Affidavit of George Lynn Fleming (attached as **Exhibit 28**).

⁷⁴ Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**). *See also*, Deposition of Warren Johnson (excerpts attached as **Exhibit 27**), p. 22, ln. 22 to p. 23, ln. 11.

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Declaration.⁷⁵ In his deposition, Mr. Johnson did acknowledge that he sought and obtained permission from the developer (CSC Developers, LLC) to combine all four (4) of the lots because that was required by the Declaration.⁷⁶

The Johnsons did pay assessments levied by Plaintiff under the Declaration until 2016, but have maintained a delinquent balance since 2016.⁷⁷

In his deposition, Mr. Johnson also confirmed that he has attended a bunch of annual meetings for Plaintiff and had paid assessments to Plaintiff until being named as a party in this lawsuit.⁷⁸ Further, during her deposition, Mrs. Johnson admitted that she has attended meetings of Plaintiff and has paid assessments to Plaintiff.⁷⁹ In her deposition, Mrs. Johnson admitted that she had paid assessments for at least the years 2010, 2011, 2012, 2013, and 2014 because she believed she was a member of the POA at that time.⁸⁰

4. Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 – Lots 31, 32, 33, 35, 36, and 37

Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 (“**Van Wieren**”) is the owner of Lots 31, 32, 33, 35, 36, and 37 in Chandelle Subdivision. Relevant recorded documents in the chain of title for Lots 31, 32, 33, 35, 36, and 37 are attached as **Exhibit 29**, Lots 31, 32, 33, 35, 36, and 37 being more particularly described in the deeds and plats included in **Exhibit 29**. Robin Graham was deposed on July 13, 2022. In his deposition, he

⁷⁵ A copy of the Original Declaration and amendments/supplements thereto are included in Exhibit A to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**)

⁷⁶ Deposition of Warren Johnson (excerpts attached as **Exhibit 27**), p. 22, ln. 22 to p. 23, ln. 11.

⁷⁷ Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

⁷⁸ Deposition of Warren Johnson (excerpts attached as **Exhibit 27**), p. 31, lns. 14-22.

⁷⁹ See e.g., Deposition of Rhonda Johnson (excerpts attached as **Exhibit 26**), p. 22, lns. 6-20; p. 80, ln. 8 to p. 82, ln. 25.

⁸⁰ Deposition of Rhonda Johnson (excerpts attached as **Exhibit 26**), p. 82, ln. 11 to p. 83, ln. 6.

testified that the Greer R.G. Irrevocable Property Trust, dated October 25, 2006, was established by his late mother, Ruth Graham.⁸¹ Robin Graham also testified that his sister, Jane Van Wieren, is the trustee of the trust, and that he is the sole beneficiary of the trust.⁸² In his deposition, Robin Graham indicated that he believes that he has the power to modify the terms of the trust.⁸³ Mr. Graham also indicated in his deposition that he is the witness that is going to testify on behalf of the trust.⁸⁴

As set forth above, Lots 33 and 37 were platted by CSC Developers, LLC as Chandelle Section 4. As set forth above, Lots 33 and 37 were included in the annexation instrument recorded on April 17, 2007 in Deed Book 88-H, Pg. 448. Additionally, as set forth above, Lots 32 and 36 were platted by CSC Developers, LLC as Chandelle Section 4A, and Lots 31 and 35 were platted by CSC Developers, LLC as Chandelle Section 5. Further, as set forth above, Lots 31, 32, 35, and 36 were included in the annexation instrument recorded on November 2, 2011 in Deed Book 99-L, Pg. 999.

On September 24, 2005, Robin Graham, acting on behalf of his mother, Ruth Graham, entered into a Contract of Sale on behalf of Ruth Graham for the purchase of Lot 33 in Chandelle Subdivision from CSC Developers, LLC.⁸⁵ This Contract of Sale specifically stated that “Purchaser agrees to abide by the Chandelle Covenants, Conditions and Restrictions and Revisions recorded at the ROD Office of Spartanburg County” and that “Purchaser also understands that the

⁸¹ Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 16, lns. 20-24; p. 18, lns. 11-22.

⁸² Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 16, ln. 25 to p. 19, ln. 25.

⁸³ Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 17, ln. 19 to 18, ln. 1.

⁸⁴ *See, e.g.*, Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 138, ln. 20 to p. 139, ln. 10; p. 145, lns. 22-24; p. 152, lns. 19-25.

⁸⁵ Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 55, ln. 7 to p. 56, ln. 20, and Exhibit 6 thereto. A copy of the Contract of Sale is included as Exhibit 6 to the deposition of Robin Graham. *See also, id.*, p. 58, ln. 13 to p. 59, ln. 13, and Exhibit 7 thereto.

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minimum home heated square foot requirements are in the process of being changed from 2000 to 2600 square feet.”⁸⁶ Lot 33 was conveyed to Ruth Graham by CSC Developers, LLC by deed recorded on December 9, 2005 in Deed Book 84-P, Pg. 931.⁸⁷ This deed specifically provided that Lot 33 was being conveyed subject to the Declaration and specifically stated, in part:

THIS conveyance is subject to all rights-of-way, easements, and protective covenants affecting the same appearing upon the public records of Spartanburg County, including, but not limited to those restrictive covenants entitled The Chandelle Covenants, Conditions & Restrictions that are recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Deed Book 67-A, Page 583.

(emphasis in original). Further, the legal description in the deed describes the property as Lot No. 33 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Phase IV. Lot 33 was then subsequently quitclaimed from Ruth Graham to Van Wieren by deed recorded on February 12, 2007, in Deed Book 87-V, Pg. 167.⁸⁸ This deed also again specifically stated that the conveyance was subject to “those restrictive covenants entitled The Chandelle Covenants, Conditions & Restrictions that are recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Deed Book 67-A, Page 583” (i.e., the Declaration).

Lot 37 was conveyed to The Greer RG Irrevocable Property Trust by CSC Developers, LLC by deed recorded on October 23, 2007 in Deed Book 89-V, Pg. 897.⁸⁹ The legal description in the deed refers to the property as “Lot No. 37 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Section IV.” Lot 37 was subsequently quitclaimed from The

⁸⁶ Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 55, ln. 7 to p. 56, ln. 20, and Exhibit 6 thereto.

⁸⁷ A copy of this deed is included in **Exhibit 29**. See also, Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 72, ln. 6 to p. 73 ln. 12, and Exhibit 14 thereto.

⁸⁸ A copy of this deed is included in **Exhibit 29**. See also, Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 73, ln. 14 to p. 74, ln. 19, and Exhibit 15 thereto.

⁸⁹ A copy of this deed is included in **Exhibit 29**. See also, Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 71, lns. 1-6, and Exhibit 12 thereto.

Greer RG Irrevocable Property Trust to Van Wieren by deed recorded on May 25, 2011 in Deed Book 98-M, Pg. 700.⁹⁰ The legal description in this deed again refers to the property as “Lot No. 37 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Section IV.”

Lots 32 and 36 were conveyed to Van Wieren by CSC Developers, LLC by deed recorded on April 24, 2017 in Deed Book 115-N, Pg. 632.⁹¹ The legal description in this deed refers to the property as “Lot 32 and Lot 36 on a plat entitled ‘Chandelle, Section 4A’”.

Subsequently, Lots 32, 33, 36, and 37 were all shown as being combined into a single parcel on a survey entitled “Combination Survey for Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust Chandelle, Sec. 4 and 4A Lots 32, 33, 36, and 37”, which was recorded on December 6, 2017 in Plat Book 173, Pg. 419.⁹²

Lots 31 and 35 were conveyed to Van Wieren by CSC Developers, LLC by deed recorded on April 24, 2017 in Deed Book 115-N, Pg. 628.⁹³ The legal description in this deed refers to the property as “Lot 31 and Lot 35 on a plat entitled ‘Chandelle, Section 5’”. Lots 31 and 35 were subsequently shown as being combined into a single parcel on a survey entitled “Combination Survey for Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust Chandelle, Sec. 5 Lots 31 and 35.”, which was recorded on December 12, 2017, in Plat Book 173, Pg. 448.⁹⁴

⁹⁰ A copy of this deed is included in **Exhibit 29**. *See also*, Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 71, ln. 7 to p. 72, ln. 5, and exhibit 13 thereto.

⁹¹ A copy of this deed is included in **Exhibit 29**. *See also*, Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 74, ln. 21 to p. 75, ln. 14, and Exhibit 16 thereto.

⁹² A copy of this survey is included in **Exhibit 29**. *See also*, Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 65, ln. 20 to p. 66, ln. 6; p. 70, lns. 7-11; and exhibit 11 thereto.

⁹³ A copy of this deed is included in **Exhibit 29**. *See also*, Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 79, lns. 2-5, and Exhibit 20 thereto.

⁹⁴ A copy of this survey is included in **Exhibit 29**. *See also*, Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 76, ln. 24 to p. 77, ln. 22, and Exhibit 19 thereto.

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Van Wieren did pay assessments levied by Plaintiff under the Declaration until 2016, but has maintained a delinquent balance since 2016.⁹⁵

In his deposition, Robin Graham testified that he had been provided a copy of the Declaration prior to him/the trust purchasing any property within Chandelle Subdivision.⁹⁶ Robin Graham also admitted during his deposition that the trust had paid assessments to Plaintiff in the past, but he seemed to assert that the trust stopped paying assessments once they began being used to pay legal fees.⁹⁷ Mr. Graham testified that he believes that the trust last paid assessments to Plaintiff in approximately 2015 or 2016.⁹⁸ In his deposition, Robin Graham also admitted that architectural approval was sought to build a house on Lot 33.⁹⁹ Mr. Graham also testified that in connection therewith, he signed a Chandelle Private Aviation Estates Building Construction Form that stated in part: "I (we) certify that the above information constitutes a description of the proposed building and accessory construction and of the location and the site of all items of construction and the same will be in accordance with the Chandelle Covenants and Restrictions."¹⁰⁰ In his deposition, Mr. Graham also acknowledged receiving a notice of a violation of the Declaration in 2010 and that he complied after receiving the notice.¹⁰¹ Additionally, in his deposition, Mr. Graham also acknowledged receiving and responding to a notice from the Chandelle Architectural Control Committee in August 2012 regarding property maintenance concerns, but he did not challenge the authority of the Architectural Control

⁹⁵ Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

⁹⁶ Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 36, ln. 16 to p. 37, ln. 1.

⁹⁷ Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 28, ln. 8 to p. 29, ln. 17; p. 94, ln. 7 to p. 96, ln. 1.

⁹⁸ Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 160, lns. 2-6; p. 161, lns. 20-25.

⁹⁹ Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 36, lns. 2-15; p. 79, ln. 18 to p. 83, ln. 23, and Exhibit 22 and 23 thereto.

¹⁰⁰ Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 82, ln. 24 to p. 83, ln. 23, and Exhibit 23 thereto.

¹⁰¹ Deposition of Rob Graham (excerpts attached as **Exhibit 30**), p. 84, lns. 2-9, and Exhibit 24 thereto.

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Committee or the Board of Directors of Plaintiff in response to the notice.¹⁰² Further, in his deposition, Robin Graham acknowledged seeking approval from the Chandelle Architectural Control Committee to build a hangar on Lots 32 and 33, and that he complied with the Chandelle Architectural Control Committee's requests in connection with the same.¹⁰³ Mr. Graham also admitted during his deposition that he thought the lots held by the trust were part of Chandelle Property Owners Association up until the point he claims that Plaintiff's counsel told him otherwise at a meeting and/or the time this lawsuit was instituted.¹⁰⁴ In his deposition, Mr. Graham indicated that he had attended meetings of Plaintiff.¹⁰⁵

Further, Mr. Graham, on behalf of the trust, sought approval from the Declarant, CSC Developers, LLC, as required by the Declaration, to combine Lots 32, 33, 36, and 37,¹⁰⁶ and to also combine Lots 31 and 35, and provided proof of the same to the Board of Directors for Plaintiff.¹⁰⁷ Notably, the combination of these lots occurred in 2017, during the pendency of this lawsuit.

5. James Douglas Armstrong and Jane Armstrong – Lots 55, 56, and 57

James Douglas Armstrong and Jane Armstrong (the “**Armstrongs**”) are the owners of Lots 55, 56, and 57 in Chandelle Subdivision. Relevant recorded documents in the chain of title for Lots 55, 56, and 57 are attached as **Exhibit 31**, Lots 55, 56, and 57 being more particularly described in the deeds and plats included in **Exhibit 31**. As set forth above, Lots 55, 56, and 57

¹⁰² Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 86, ln. 14 to p. 89, ln. 18, and Exhibits 25 and 26 thereto.

¹⁰³ Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 90, ln. 11 to p. 92, ln. 2; p. 93, ln. 17 to p. 94, ln. 5; p. 96, ln. 4 to p. 97, ln. 6; and Exhibits 28, 29, 31, and 32 thereto.

¹⁰⁴ See Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 150, lns. 1-22; p. 159, lns. 11-20.

¹⁰⁵ See Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 109, lns. 14-18.

¹⁰⁶ Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**). See also, Deposition of Robin Graham (excerpts attached as **Exhibit 30**), p. 92, ln. 5 to p. 93, ln. 16, and Exhibit 30 thereto.

¹⁰⁷ Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

were platted by CSC Developers, LLC as Chandelle, Section 8. Further, as set forth above, Lots 55, 56, and 57 were included in the annexation instrument recorded on November 2, 2011 in Deed Book 99-L, Pg. 999.

By deed recorded on November 3, 2011, in Deed Book 99-M, Pg. 48, Lot 55 was conveyed to Joseph G. Kohn and Dale D. Kohn.¹⁰⁸ This deed specifically provided that “THIS PROPERTY IS SPECIFICALLY SUBJECT TO THE RESTRICTIVE COVENANTS OF CHANDELLE SUBDIVISION AS RECORDED IN DEED BOOK 67-A AT PAGE 583, DEED BOOK 72-G AT PAGE 843 AND DEED BOOK 88-H AT PAGE 448.” The legal description in this deed also referred to the property as “Lot No. 55 of Chandelle, Section 8.” By deed recorded on June 21, 2012, in Deed Book 100-H, Pg. 363, Lot 56 was conveyed to Joseph G. Kohn and Dale D. Kohn.¹⁰⁹ This deed also specifically provided that: “THIS PROPERTY IS SPECIFICALLY SUBJECT TO THE RESTRICTIVE COVENANTS OF CHANDELLE SUBDIVISION AS RECORDED IN DEED BOOK 67-A AT PAGE 583, DEED BOOK 72-G AT PAGE 843 AND DEED BOOK 88-H AT PAGE 448.” Further, the legal description in this deed refers to the property as “Lot No. 56 of Chandelle, Section 8.” Lots 55 and 56 were then subsequently conveyed to the Armstrongs by Joseph and Dale Kohn by deed recorded on December 16, 2014 in Deed Book 107-U, Pg. 361.¹¹⁰ A house had already been built on Lots 55 and 56 at the time the Armstrongs purchased Lots 55 and 56.¹¹¹ In connection with the construction of the house and hangar on Lots 55 and 56, Joseph and Dale Kohn did seek and obtain approval of the Chandelle Architectural Committee under the

¹⁰⁸ A copy of this deed is included in **Exhibit 31**.

¹⁰⁹ A copy of this deed is included in **Exhibit 31**.

¹¹⁰ A copy of this deed is included in **Exhibit 31**. *See also*, Deposition of Jane Armstrong (excerpts attached as **Exhibit 32**), p. 20, ln. 11 to p. 21, ln. 11, and Exhibit 4 thereto. *See also*, Deposition of James D. Armstrong (excerpts attached as **Exhibit 33**), p. 45, lns.4-13.

¹¹¹ Deposition of Jane Armstrong (excerpts attached as **Exhibit 32**), p. 15, lns.4-7.

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Declaration.¹¹² The legal description in this deed again refers to the lots as “Lot Nos. 55 and 56 of Chandelle, Section 8.” Further, the Armstrongs executed a mortgage with respect to Lots 55 and 56, which was recorded on December 16, 2014 in Book 4923, Pg. 812, and which contained a PUD Rider.¹¹³ The PUD Rider provides that the Borrower is required to perform all of the Borrowers obligations under the PUD’s Constituent Documents.¹¹⁴ The PUD Rider also provides that the Borrower shall promptly pay all dues and assessments imposed pursuant to the Constituent Documents. Further, the Declaration was listed as an exception to the Armstrongs’ title insurance policy with respect to Lots 55 and 56.¹¹⁵ Further, in connection with the closing on Lots 55 and 56, the Armstrongs executed a document entitled “HOMEOWNERS ASSOCIATION INFO” acknowledging that they had received a copy of the Declaration and all documents related to Chandelle and that they had been advised regarding the upcoming homeowners association dues, and it was their responsibility to pay the same.¹¹⁶ Further, in his deposition, James D. Armstrong testified that when they went to the closing on Lots 55 and 56 they were presented with the documents and thought they were part of the community.¹¹⁷

Lot 57 was conveyed to James Douglas Armstrong and Jane G. Armstrong by deed recorded on January 30, 2017 in Deed Book 114-Q, pg. 424.¹¹⁸ The legal description in the deed

¹¹² Affidavit of George Lynn Fleming (attached as **Exhibit 28**).

¹¹³ A copy of this mortgage is included in **Exhibit 31**. *See also*, Deposition of Jane Armstrong (excerpts attached as **Exhibit 32**), p. 21, ln. 12 to p. 23, ln. 5, and Exhibit 5 thereto. *See also*, Deposition of James D. Armstrong (excerpts attached as **Exhibit 33**), p. 45, ln. 16 to p. 47, ln. 21.

¹¹⁴ *Id.*

¹¹⁵ Deposition of Jane Armstrong (excerpts attached as **Exhibit 32**), p. 23, ln. 6 to p. 24, ln. 8, and Exhibit 6 thereto. *See also*, Deposition of James D. Armstrong (excerpts attached as **Exhibit 33**), p. 50, ln. 13 to p. 52, ln. 8.

¹¹⁶ *See* Deposition of Jane Armstrong (excerpts attached as **Exhibit 32**), p. 24, ln. 9 to p. 25, ln. 16, and Exhibit 7 thereto. *See also*, Deposition of James D. Armstrong (excerpts attached as **Exhibit 33**), p. 52, ln. 9 to p. 53, ln. 7.

¹¹⁷ Deposition of James D. Armstrong (excerpts attached as **Exhibit 33**), p. 20, lns. 6-12.

¹¹⁸ A copy of this deed is included in **Exhibit 31**. *See also*, Deposition of Jane Armstrong (excerpts attached as **Exhibit 32**), pg. 27, ln. 16 to p. 28, ln. 1, and Exhibit 8 thereto. *See also*, Deposition of James D. Armstrong (excerpts attached as **Exhibit 33**), p. 53, lns. 8-19.

refers to the property as lot number 57 of Chandelle, Section 8. Further, the Declaration was listed as an exception to the Armstrong's title insurance commitment/policy for Lot 57.¹¹⁹

The Armstrongs did pay assessments levied by Plaintiff under the Declaration up until 2017, and also paid a special assessment levied by Plaintiff in 2021, but have maintained a delinquent balance since 2017.¹²⁰

Additionally, Jane Armstrong testified in her deposition that they were presented that they were members of Chandelle Property Owners Association, and thought they were members of Plaintiff until being named as parties in this lawsuit.¹²¹ Likewise, James D. Armstrong seemed to admit in his deposition that they had always thought that they were part of the community and that their property was subject to the Declaration, but that attorney Ryan McCabe had indicated that they were not.¹²² Further, in his deposition, James D. Armstrong testified that he does want to be a member of Chandelle Property Owners Association.¹²³ Jane Armstrong also acknowledged in her deposition that they have sought architectural approval for some landscaping work on their property.¹²⁴ In her deposition, Jane Armstrong also acknowledged that they have paid some assessments to Plaintiff, including a special assessment levied by Plaintiff in 2021 relating to runway repairs, but they have withheld payment of other assessments since 2016 because they don't agree with how the money is being spent.¹²⁵ James D. Armstrong also testified similarly in

¹¹⁹ See Deposition of Jane Armstrong (excerpts attached as **Exhibit 32**), p. 28, ln. 6 to p. 29, ln. 2, and Exhibit 9 thereto. See also, Deposition of James D. Armstrong (excerpts attached as **Exhibit 33**), p. 54, ln. 5 to p. 55, ln. 16.

¹²⁰ Affidavit of Billy Israel (**Exhibit 4**).

¹²¹ Deposition of Jane Armstrong (excerpts attached as **Exhibit 32**), p. 14, ln. 24 to p. 25, ln. 19.

¹²² See Deposition of James D. Armstrong (excerpts attached as **Exhibit 33**), p. 27, ln. 8 to p. 31, ln. 19; p. 49, ln. 12 to p. 50, ln. 1; p. 54, ln. 18 to p. 55, ln. 6; p. 94, ln. 23 to p. 95, ln. 6.

¹²³ Deposition of James D. Armstrong (excerpts attached as **Exhibit 33**), p. 95, lns. 4-6.

¹²⁴ Deposition of Jane Armstrong (excerpts attached as **Exhibit 32**), p. 31, lns. 8-18.

¹²⁵ Deposition of Jane Armstrong (excerpts attached as **Exhibit 32**), p. 25, ln. 17-23; p. 32, ln. 13 to p. 33, ln. 1; p. 37, lns. 19-20; p. 39, ln. 17 to p. 40, ln. 24.

this respect.¹²⁶ In fact, James D. Armstrong testified that they paid the \$2,000 special assessment in 2021 (during the pendency of this lawsuit) because he thought he was a member of Chandelle Property Owners Association.¹²⁷ Further, in his deposition, James D. Armstrong acknowledged that he had attended meetings of Chandelle Property Owners Association.¹²⁸

6. Marketing

Additionally, CSC Developers, LLC marketed all of the Subject Defendants' lots described above as being part of Chandelle Subdivision.¹²⁹ Likewise, similar information was provided by CSC Developers, LLC to the Spartanburg County Planning Commission.¹³⁰ These marketing materials included various statements and information indicating that the entirety of Chandelle Subdivision was subject to and bound by the Declaration. For example, marketing brochures described Chandelle Subdivision as a "master-planned private aviation estate" and contain maps showing the lots in Chandelle.¹³¹ These marketing brochures mention an Architectural Committee, and some specifically provide that "Architectural Control Committee oversees building in accordance with *Covenants, Conditions and Restrictions*."¹³² Additionally, the marketing materials refer to the restrictions for the community and state that "All plans for homes, hangars, and landscaping reviewed by Architectural Control Committee" and "Recorded Restrictions

¹²⁶ Deposition of James D. Armstrong (excerpts attached as **Exhibit 33**), p. 38, lns. 1-18; p. 39, lns. 10-23; p. 50, lns. 2-9; p. 92, ln 3 to p. 93, ln. 14.

¹²⁷ Deposition of James D. Armstrong (excerpts attached as **Exhibit 33**), p. 104, ln. 11 to p. 105, ln. 19 and Exhibit 10 to the Deposition of Jane Armstrong.

¹²⁸ Deposition of James D. Armstrong (excerpts attached as **Exhibit 33**), p. 72, ln. 15 to p. 73, ln. 4.

¹²⁹ See Exhibits C and D to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**). See Stewart Deposition Vol. 2 (attached as **Exhibit 2**), p. 16, ln. 13 to p. 17, ln. 13; p. 34 ln. 12 to p. 35, ln. 25; p. 49, ln. 24 to p. 51, ln. 23; and Exhibits 40, 41, 42 thereto. See Deposition of Marilyn Berry (attached as **Exhibit 21**), p. 31, ln. 11. To p. 32, ln. 9 (noting that CSC Developers, LLC was in control of the content posted on the website Chandelleesc.com); p. 135, ln. 8 to p. 136, ln.; p. 137, ln. 13 to p. 138, ln. 15.

¹³⁰ See e.g., Stewart Deposition Vol. 2 (attached as **Exhibit 2**), p. 61 lns. 2-22, and Exhibit 44 thereto.

¹³¹ See Exhibits C and D to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**). See also, Stewart Deposition Vol. 2 (attached as **Exhibit 2**), p. 16, ln. 13 to p. 17, ln. 13; p. 34 ln. 12 to p. 35, ln. 25; p. 49, ln. 24 to p. 51, ln. 23; and Exhibits 40, 41, 42 thereto.

¹³² *Id.*

ensure control of maintenance issues, noise, fences, signs, lighting, etc.”¹³³ The marketing materials also contained “Highlights of the Covenants” which stated in part:

The Owners/Developers of Chandelle have written a set of Covenants, Conditions, and Restrictions that will ensure the harmony and appearance of the development. Specifically, the CCR’s, which apply to Chandelle, include the following...¹³⁴

Further, the website for Chandelle maintained by CSC Developers, LLC contained information concerning the restrictive covenants applicable to Chandelle.¹³⁵ Additionally, maps showing the lots sold/available were created and posted to the Chandelle website maintained by the developer.¹³⁶ These maps included the Subject Defendants’ lots as being part of Chandelle, and thus part of the master-planned, covenant-restricted community described in the other marketing materials.¹³⁷

LAW/ANALYSIS

1. Summary Judgment Standard

Pursuant to Rule 56, SCRCP, a moving party is entitled to summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” “In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial.” Skywaves I Corp. v. Branch Banking & Tr. Co., 423 S.C. 432, 453, 814 S.E.2d 643, 654 (Ct. App. 2018) (quoting NationsBank v. Scott Farm, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995)). “Once a party moving for summary judgment carries the initial burden of

¹³³ See Exhibit C to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

¹³⁴ *Id.*

¹³⁵ See Exhibit D to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

¹³⁶ *Id.*

¹³⁷ *Id.*

showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings.” *Id.*

2. The Subject Defendants’ Properties Are Subject to The Declaration

There is no dispute that the Subject Defendants own their respective properties described in Plaintiff’s motion and in this memorandum (the properties described in Plaintiff’s motion and this memorandum are Lots 1, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 55, 56, and 57, and for ease of reference, these lots will be hereinafter referred to as the “**Subject Lots**”). In fact, the Subject Defendants have admitted to their ownership of their respective properties in response to Plaintiff’s Requests to Admit in 2018.¹³⁸ Plaintiff asserts that the Subject Lots are subject to the Declaration.

Restrictive covenants are contractual in nature and are construed like contracts, and may give rise to actions for breach of contract. *Kinard v. Richardson*, 407 S.C. 247, 257, 754 S.E.2d 888, 893 (Ct. App. 2014).

There are several ways in which restrictive covenants may be created. The most common means are: (1) by deed; (2) by declaration; and (3) by implication from a general plan or scheme of development.”

Id.

“Words of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution.” *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). “[T]he paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document.” *Id.* at 4, 498 S.E.2d at 863–64 (quotation marks omitted). When “the language imposing restrictions upon the use of property is unambiguous, the restrictions will be enforced according to their obvious meaning.” *Shipyard Prop. Owners’ Ass’n v. Mangiaracina*, 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct.App.1992). “A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property.” *Taylor*, 332 S.C. at 5, 498 S.E.2d at 864 (citation and quotation marks

¹³⁸ A copy of Plaintiff’s Requests to Admit are attached as **Exhibit 34** and a copy of Subject Defendants’ responses to Plaintiff’s Requests to Admit are attached as **Exhibit 35**.

omitted). However, this rule of strict construction “ ‘should not be applied so as to defeat the plain and obvious purpose of the instrument.’ ” *McClellanville*, 345 S.C. at 622, 550 S.E.2d at 302 (quoting *Taylor*, 332 S.C. at 4–5, 498 S.E.2d at 863–64).

Id. at 257–58, 754 S.E.2d at 893–94.

“Restrictive covenants on the use of property may be created in express terms or by implication.” *Bomar v. Echols*, 270 S.C. 676, 679, 244 S.E.2d 308, 310 (1978).

Where they arise by implication and subdivided land is involved, the restrictions are said to create a reciprocal negative easement. *Bomar*, 244 S.E.2d at 310. Ordinarily, four elements must be established to show a reciprocal negative easement. There must be: (1) a common grantor, (2) a designation of land subject to restrictions, (3) a general plan or scheme of restrictions, and (4) covenants running with the land in accordance with such plan or scheme. *Id.*; see also *Shipyard Property Owners Ass’n v. Mangiaracina*, 307 S.C. 299, 414 S.E.2d 795 (Ct.App.1992).

In the various grants of the lots, there must have been included some restriction for the benefit of the land retained, evidencing a scheme or intent that the entire tract shall be similarly treated, so that once the plan has been effectively put into operation, the burden placed upon the land conveyed is by operation of law reciprocally placed upon the land retained. 20 Am.Jur.2d *Covenants, Conditions, Etc.* § 173 (1965). In determining whether a reciprocal negative easement has been created, the court should consider not only the language of the deeds, but also the circumstances surrounding the origin of the covenants. *Nance v. Waldrop*, 258 S.C. 69, 187 S.E.2d 226 (1972). Generally, the developer must establish the general scheme of development before any lots are sold. To establish a general scheme, it is not necessary for every lot to be restricted in exactly the same manner, but extensive omissions or variations tend to show no scheme existed and the restrictions are only personal contracts. *Shipyard Property Owners Ass’n*, 414 S.E.2d at 802. All doubts regarding the creation of an implied reciprocal negative easement must be resolved in favor of the freedom of land from restriction. *Bomar*, 244 S.E.2d at 310.

Gambrell v. Schriver, 312 S.C. 354, 358, 440 S.E.2d 393, 395 (Ct. App. 1994). Further, in the case of *Easterly v. Hall*, the South Carolina Supreme Court noted:

This court has held that restrictive covenants imposed upon some lots, but not upon others, in the same subdivision were enforceable among all where it was clear from the inception of the subdivision that there had been a general plan for its residential

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development and such plan had been adhered to without material departure therefrom, and if it has been understood and relied upon by those concerned, it is binding and enforceable. *Inter sese. Pitts v. Brown*, 215 S.C. 122, 54 S.E.2d 538. We also held in the Pitts case that neither the restricting of every lot within the area covered nor absolute identity of restrictions upon different lots is essential to the existence of a neighborhood scheme.

Easterly v. Hall, 256 S.C. 336, 343, 182 S.E.2d 671, 674 (1971).

Further, where a deed describes land as is shown on a certain plat, such plat becomes part of the deed.” Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 118, 145 S.E.2d 922, 924 (1965). “The law imputes to a purchaser who proposes to acquire title to real estate notice of the recitals contained in any properly recorded instrument of writing which forms a link in a chain of title to the property proposed to be acquired.” Carolina Land Co. v. Bland, 265 S.C., 98, 107, 217 S.E.2d 16, 20 (1975). A plat constitutes a link in the chain of title for property. See, id.

As an initial matter, as set forth more specifically above, John K. Payne expressly admitted in his deposition that Lot 1 is subject to the Declaration. Therefore, the Paynes are bound by this admission and the Plaintiff requests that the Court enter an Order finding that Lot 1 is subject to the Declaration based on this admission.

Further, based on all of the foregoing, the Subject Lots are expressly bound by the Declaration. Lot 1 was specifically listed as part of the property bound in the Original Declaration. Further, the deeds in the chain of title for Lot 1 specifically state that Lot 1 is subject to the Declaration. Again, John K. Payne also specifically admitted in his deposition that Lot 1 is subject to the Declaration. All of the rest of the lots that are the subject of Plaintiff’s motion and this memorandum (i.e., Lots 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 55, 56, and 57) were all identified in recorded instruments supplementing or amending the Declaration to annex such lots and to subject them to the Declaration. In addition, the chains of title for Lots 33, 55, and 56 each contain

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a deed or deeds specifically stating that such lots are subject to the Declaration. As set forth above, Lot 33 has now been combined with Lots 32, 36, and 37.

As set forth above, although Section 16.2 of the Declaration recorded with the Register of Deeds contained a purported annexation deadline of December 31, 2001, this purported deadline was not contained in the copy of the restrictive covenants distributed by the developer to purchasers and prospective purchasers, and the developer continued to develop Chandelle Subdivision after that time. Likewise, as set forth above, John Stewart, Jr., on behalf of CSC Developers, LLC, testified in his deposition that CSC Developers, LLC intended all of the annexations to be binding and proper. To the extent any technical defect of flaw may potentially exist on the basis of a purported annexation deadline, the Declaration should be reformed to remove the purported annexation deadline and/or to specify that all of the all of foregoing lots are included in the property bound by the Declaration. “Where a written contract does not conform to the intentions of the parties, a court may reform the contract.” Crewe v. Blackmon, 289 S.C. 229, 234, 345 S.E.2d 754, 757 (Ct. App. 1986). Reformation is generally available on the grounds of (1) mutual mistake, or (2) unilateral mistake, where the unilateral mistake is induced or occasioned by fraud, deceit, concealment, or other inequitable conduct on the part of the other party. See id.; Aiken Petroleum Co. v. Nat'l Petroleum Underwriters of W. Millers Mut. Fire Ins. Co. of Kansas City, Mo., 207 S.C. 236, 253, 36 S.E.2d 380, 387 (1945); George v. Empire Fire & Marine Ins. Co., 336 S.C. 206, 221, 519 S.E.2d 107, 115 (Ct. App. 1999), rev'd, 344 S.C. 582, 545 S.E.2d 500 (2001); Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 51, 747 S.E.2d 178, 186 (2013); Forrester v. Moon, 100 S.C. 157, 84 S.E. 532 (1915). “A mistake is mutual where both parties intended a certain thing and by mistake in the drafting did not obtain what was intended.” Progressive Max. Ins. Co., 405 S.C. at 51, 747 S.E.2d at 186. Further, a “plaintiff's

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negligence does not bar reformation when the plaintiff's unilateral mistake was induced by the defendants' fraud, inequitable conduct, deceit or concealment.” Crewe, 289 S.C. at 234, 345 S.E.2d at 757. Based on all of the foregoing, there either has been a mutual mistake, or a unilateral mistake accompanied by fraud, deceit, concealment, or inequitable conduct. Based on the foregoing, it seems clear that the developer did not intend the Declaration to bar the annexation attempts and intended for the annexations to be binding and proper. Likewise, based on all of the foregoing, it is evident that the parties operated under the belief that the Subject Lots were subject to the Declaration and that the parties acted in conformity with the Subject Lots being subject to the Declaration. Likewise, the developer either engaged in fraud, deceit, concealment, or inequitable conduct by distributing an unofficial copy of the restrictive covenants to purchasers or prospective purchasers that didn’t contain the annexation deadline. Therefore, the evidence in the record establishes either a mutual mistake, or a unilateral mistake accompanied by fraud, deceit, concealment, or inequitable conduct. Consequently, Declaration should be reformed accordingly, and the Court should declare that the foregoing lots are subject to the Declaration.

Further, as set forth above, although the instrument annexing Lots 31, 32, 35, 36, 55, 56, and 57 (recorded November 2, 2011 in Deed Book 99-L, Pg. 999) was signed by two Board members for Plaintiff rather than CSC Developers, LLC, John Stewart, Jr.’s deposition testimony on behalf of CSC Developers, LLC indicated that (1) everyone involved thought that this was the proper way to perform the annexation once homeowners had been appointed to serve on the Board of Directors for Plaintiff; (2) CSC Developers, LLC was aware of the annexation and knew it was being done; and (3) CSC Developers, LLC intended these lots to be bound by the Declaration and intended such instrument to subject them to the Declaration. Further, as set forth above, the affidavit of Billy J. Israel, Jr. indicates that: (1) this instrument was drafted by CSC Developers,

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LLC; (2) it was presented by CSC Developers, LLC to the Board of Directors of Chandelle Property Owners Association for execution; and (3) the Board members thought they were simply certifying the instrument as being proper pursuant to CSC Developers, LLC's authority. Therefore, to the extent that any technical defect or flaw may potentially exist with this annexation instrument based on who executed it, the evidence in the record clearly establishes that any such potential technical defect or flaw was the product of a mutual mistake. Thus, to the extent that any such technical defect or flaw may potentially exist, the Declaration should be reformed accordingly and the Court should declare that the lots described in this annexation instrument are bound by the Declaration.

Further, to the extent that the Subject Lots may be determined not to be expressly bound by the Declaration, they are nonetheless bound by plain and unmistakable implication. As set forth above, CSC Developers, LLC, was the primary developer of Chandelle Subdivision, and acted in concert with and as part of a joint venture with James Brockman, Sr. and/or others to develop Chandelle Subdivision and to convey lots to purchasers. Further, as set forth above, there was a designation of land subject to the restrictions and a general plan or scheme of restrictions and development. In particular, as set forth more fully above:

- CSC Developers, LLC recorded the Declaration at the outset of development.
- Numerous phases/sections of Chandelle Subdivision have been platted as part of a common scheme of development. Per these plats, there is a common scheme of lot numbering. See Kinard, 407 S.C. at 260, 754 S.E.2d at 996 (noting that consecutive lettering/numbering of parcels is evidence of a single scheme of development).
- All of the Subject Lots have been platted as Lots in Chandelle Subdivision.

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- All of the above-referenced Lots were either identified as being bound by the Declaration in the Declaration as originally recorded, or in subsequently recorded instruments supplementing or amending the Declaration.
- The deeds in the chain of title for some of the Subject Lots specifically reference the property being subject to the Declaration. Further, all of the lots conveyed by James Brockman, Sr. specifically referenced such lots as being subject to the Declaration.
- The legal descriptions in the deeds refer to the Subject Lots as lots in Chandelle Subdivision.
- John Stewart, Jr. testified in his deposition on behalf of CSC Developers, LLC that CSC Developers, LLC intended that all of the Subject Lots to be part of Chandelle Subdivision and subject to and bound by the Declaration.
- Some of the Subject Defendants have executed mortgages with Planned Unit Development riders, acknowledging that the property is part of a planned unit development, and specifying that that they must comply with all of the community's "constituent documents".
- Some of the Subject Defendants have executed other documents expressly or implicitly acknowledging that their respective properties are part of Chandelle Subdivision and subject to the Declaration.
- Chandelle Subdivision was marketed as a covenant restricted, master planned community, and all of the Subject Lots were marketed as being part of Chandelle Subdivision.
- Further, the Subject Defendants have taken actions and have engaged in a course of conduct in conformity with being part of Chandelle Subdivision, and have consequently either expressly or implicitly admitted to, accepted, and/or acquiesced to being part of Chandelle

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Subdivision, including being subject to the Declaration and being members of Plaintiff. As set forth more fully above, such conduct and actions include, without limitation: (1) attending membership meetings of Plaintiff; (2) payment of assessments to Plaintiff under the Declaration, including some of the Subject Defendants paying a special assessment to Plaintiff in 2021 during the pendency of this lawsuit; (3) seeking architectural approval under the Declaration; (4) seeking Declarant approval to combine Lots under the Declaration; and (5) other correspondence and/or conduct in conformity with being part of Chandelle Subdivision, subject to the Declaration, and a member of Plaintiff.

Further, the Declaration runs with the land. Specifically, the recitals to the Declaration provide that the provisions of the Declaration “shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.”¹³⁹ Further, Section 12.1 of the Declaration provides that the terms of the Declaration “shall run with and bind the Property....”¹⁴⁰

Based on all of the foregoing, to the extent that the Lots may be determined not to be expressly bound by the Declaration, they are nonetheless bound by plain and unmistakable implication. Further, by their course of conduct as set forth above, which has been relied upon by Plaintiff and others in the community, the Subject Defendants have either expressly or implicitly admitted to, accepted, and/or acquiesced to being part of Chandelle Subdivision, including being subject to the Declaration and being members of Plaintiff, and have either waived any objection to or are otherwise estopped from denying the same now.

¹³⁹ A copy of the Original Declaration and amendments/supplements thereto are included in Exhibit A to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

¹⁴⁰ A copy of the Original Declaration and amendments/supplements thereto are included in Exhibit A to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**)

In addition to all of the foregoing, it should be further noted that “[c]ourts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.” Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 252, 715 S.E.2d 348, 354 (Ct. App. 2011). Additionally, equity looks at substance over form and the principle applies by dispensing with pure formalities which would otherwise defeat the equity. Id. at 253, 715 S.E.2d at 354. When applying such principle, the courts “look to the substance and intent of the parties, and give a construction consistent with such intent.” Id. at 253, 715 S.E.2d at 355. Such equitable maxims can allow a court to relieve a party from the consequences of accident, mistake, and fraud. See id. at 254, 715 S.E.2d at 355. Therefore, in addition to all of the foregoing grounds, to the extent necessary, the Court should exercise its inherent equitable powers to give effect to the substance and intent of the developer and the parties, and declare that the Subject Lots are subject to the Declaration.

3. *The Subject Defendants Are Members of Plaintiff, Chandelle Property Owners Association*

Article II, Section 2.3 of the Declaration provides that all Lot Owners shall be members of Plaintiff, Chandelle Property Owners Association.¹⁴¹ Likewise, Section 4.1 of the Bylaws of Chandelle Property Owners Association also establishes mandatory membership for Lot Owners.¹⁴² Therefore, Subject Defendants, by virtue of their ownership of Lots subject to the Declaration, are mandatory members of Plaintiff.

4. *The Subject Defendants Owe Plaintiff Assessments and Associated Charges*

¹⁴¹ A copy of the Original Declaration and amendments/supplements thereto are included in Exhibit A to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

¹⁴² A copy of the Bylaws and amendments thereto are included in Exhibit A to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

Section 11.1 of the Declaration provides that the Owner of each Lot is deemed to covenant and agreed to pay Plaintiff assessments, including annual, special, and default assessments.¹⁴³ Further, Section 7.5 of the Declaration authorizes Plaintiff to suspend rights to use the runway and to charge individual assessments for use of the runway with respect to an Owner who is in default in the payment of assessments.¹⁴⁴ Additionally, monetary fines are considered default assessments under the Declaration.¹⁴⁵ Further, the Declaration provides that assessments, together with interest, costs, and reasonable attorney's fees are the personal obligation of the Owner of the Lot.¹⁴⁶ Further, Section 11.7 of the Declaration provides:

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Laws or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.¹⁴⁷

Further, Sections 11.9, 13.3, and 13.4 of the Declaration and Section 8.2(h) of Plaintiff's Bylaws collectively authorize Plaintiff to charge interest and late charges on delinquent assessments, and to bring legal action to collect amounts owed.¹⁴⁸ In addition to Sections 11.1 and 11.9 of the

¹⁴³ A copy of the Original Declaration and amendments/supplements thereto are included in Exhibit A to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

¹⁴⁴ Id.

¹⁴⁵ Section 11.8 of the Declaration. A copy of the Original Declaration and amendments/supplements thereto are included in Exhibit A to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

¹⁴⁶ Section 11.1 of the Declaration. A copy of the Original Declaration and amendments/supplements thereto are included in Exhibit A to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

¹⁴⁷ A copy of the Original Declaration and amendments/supplements thereto are included in Exhibit A to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

¹⁴⁸ A copy of the Original Declaration and amendments/supplements thereto, as well as the Bylaws of Plaintiff and amendments thereto are included in Exhibit A to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

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Declaration authorizing the recovery of attorney's fees, Section 13.9 of the Declaration also provides that the prevailing party in any legal proceeding to enforce the governing documents for Chandelle Subdivision, including the Declaration and the Bylaws of Plaintiff, "shall be entitled to recover all costs incurred by it in such action, including reasonable attorney's fees as may be incurred, or if suit is brought, as may be determined by the Court."¹⁴⁹

Because the Subject Lots are subject to the Declaration as set forth above, the Subject Defendants and the Subject Lots are subject to assessments under the Declaration and Bylaws of Plaintiff. As set forth more fully in the Affidavit of Billy J. Israel, Jr. attached as **Exhibit 4**, the Subject Defendants have failed to pay assessments, and as of September 1, 2022, the Subject Defendants owe Plaintiff the following amounts, exclusive of attorney's fees and costs:

- Paynes: \$30,598.00
- Johnsons: \$36,466.00
- Van Wieren: \$83,603.50
- Armstrongs: \$63,196.00

A detailed breakdown and calculation of such amounts owed is included as Exhibit E to the Affidavit of Billy J. Israel, Jr. attached hereto as **Exhibit 4**. Further, Plaintiff seeks an award of attorney's fees and costs.

5. Plaintiff Is Also Entitled To An Award of Attorney's Fees and Costs From Subject Defendants Incurred In Connection With Having To Prove That Subject Defendants Are Subject to the Declaration and Are Members of Plaintiff

¹⁴⁹ A copy of the Original Declaration and amendments/supplements thereto are included in Exhibit A to the Affidavit of Billy J. Israel, Jr. (attached as **Exhibit 4**).

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In 2018, Plaintiff served Requests to Admit upon all of the Subject Defendants. A copy of these Requests to Admit are attached as **Exhibit 34**. These Requests to Admit simply requested that that the Subject Defendants admit (1) to ownership of their respective lots; (2) that each of their respective lots included in Plaintiff's motion for summary judgment and this memorandum are subject to the Declaration; and (3) that they are members of Plaintiff. While the Subject Defendants admitted to ownership of their respective lots, they declined to admit that their respective lots are subject to the Declaration. The Subject Defendants also declined to admit that they are members of Plaintiff. A copy of the Subject Defendants' responses to Plaintiff's Requests to Admit are attached as **Exhibit 35**. Rule 37(c), SCRCP provides:

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

Based on the foregoing, Plaintiff seeks an award of attorney's fees and costs incurred in proving that that Subject Lots are subject to the Declaration and that Subject Defendants are members of Plaintiff.

CONCLUSION

Based on all of the foregoing, there is no genuine issue of material fact as to the following matters: (1) that Subject Defendants are the owners of their respective Lots collectively constituting the Subject Lots as set forth above; (2) that the Subject Lots are subject to and bound

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by the Declaration; (3) that the Subject Defendants are members of Chandelle Property Owners Association; and (4) that the Subject Defendants owe to Plaintiff assessments, together with interest, and late fees as set forth above. Therefore, Plaintiff is entitled to judgment as a matter of law on the foregoing issues. Further, Plaintiff seeks an award of attorney's fees and costs, as authorized under the Declaration, incurred in enforcing the Declaration to collect the sums owed by the Subject Defendants under the Declaration and Bylaws of Plaintiff. Further, Plaintiff seeks and award of attorney's fees and costs under Rule 37(c), SCRPC for attorney's fees and costs incurred in proving those matters that the Subject Defendants refused to admit.

Respectfully submitted,

s/ Ely O. Grote

Ely O. Grote, SC Bar No. 75379

D. Ryan McCabe, SC Bar No. 16977

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**ATTORNEYS FOR CHANDELLE PROPERTY
OWNERS ASSOCIATION**

September 9, 2022
Columbia, South Carolina

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EXHIBIT 1

ELECTRONICALLY FILED - 2022 Sep 09 4:16 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201854

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF SPARTANBURG) C/A NO.: 2016-CP-42-01854
3
4 Chandelle Property Owners)
5 Association,)
6 Plaintiff,)
7 vs.)
8 CSC Developers, LLC, Chandelle)
9 Runway, LLC, 331 South, LLC, Charlie)
10 M. Allison, Janice H. Allison, James) 30(b)(6) DEPOSITION
11 Douglas Armstrong, Jane Armstrong,) OF
12 Marilyn N. Berry, Stephen Berry,) CSC DEVELOPERS, LLC
13 James P. Brockman, Sr., Douglas E.) (John Stewart, Jr.
14 Cobb, Nicole Cobb, Kenneth L.) As Designee)
15 Galloway, Molly C. Galloway, Warren)
16 Johnson, Rhonda Johnson, Lawrence E.)
17 Lewis, Barbara L. Lewis, John K.)
18 Payne Payne, Ruth G. Payne, John R.)
19 Stewart, Jr., Angela Tanner, Helmut)
20 Tuemmel, Silvia L. Tuemmel, Jane Van)
21 Wieren as trustee of the Greer R.G.)
22 Irrevocable Property Trust, dated)
23 October 25, 2006, Martin Tuemmel,)
24 Raymond M. Clark, Jr., and also all)
25 other persons unknown, claiming any)

1 right, title, estate, interest in)
2 or lien upon the real estate)
3 described in the complaint herein.)
4 Defendants.)
5 _____)

6
7 30(b)(6) deposition on oral examination of JOHN
8 STEWART, JR., as designee of CSC Developers, LLC, reported
9 by Patricia G. Bachand, Court Reporter and Notary Public in
10 and for the State of South Carolina; pursuant to Rule
11 30(b)(6) of the South Carolina Rules of Civil Procedure;
12 said deposition was taken at the law offices of Bannister,
13 Wyatt & Stalvey, LLC, 401 Pettigru Street, Greenville,
14 South Carolina, on Friday, the 12th day of January 2018,
15 scheduled for 9:30 a.m., and commencing at the hour of 9:29
16 a.m.

APPEARANCES:

REPRESENTING THE PLAINTIFF:

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D. RYAN MCCABE, JR., ESQ.

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AND

JOHN D. HARJEHAUSEN, ESQ.

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REPRESENTING THE DEFENDANTS JAMES DOUGLAS ARMSTRONG, JANE
ARMSTRONG, HONDA JOHNSON, WARREN JOHNSON, JOHN K. PAYNE,
RUTH G. PAYNE AND JAN VAN WIEREN, AS TRUSTEE OF GREER R.G.
IRREVOCABLE PROPERTY TRUST DATED OCTOBER 25, 2006:

WENDELL L. HAWKINS, ESQ.

103-C Regency Commons Drive

Greer, South Carolina 29650

(wlh@wlhawkinslawfirm.com)

APPEARANCES (CONTINUED):

REPRESENTING THE DEFENDANTS 331 SOUTH, LLC, MARILYN BERRY,
STEPHEN BERRY, CHANDELLE RUNWAY, LLC, DOUGLAS E. COBB,
NICOLE COBB, CSC DEVELOPERS, LLC, RL 240, LLC, JOHN R.
STEWART, JR., AND TYGERWAY, LLC:

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LUKE A. BURKE, ESQ.

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(lburke@bannisterwyatt.com)

REPRESENTING THE DEFENDANTS BILLY J. ISRAEL, BRUCE R.
GOLDBERG, DALE ELLIS, GEORGE LYNN FLEMING AND STUART R.
SWANSON:

M. STOKELY HOLDER, ESQ.

Holder, Padgett, Littlejohn & Prickett, LLC

1204 A East Washington Street

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(sholder@hplplaw.com)

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APPEARANCES (CONTINUED):

ALSO ATTENDING:

BILLY ISRAEL
DOUGLAS E. COBB
CINDY GOLDBERG
BRUCE GOLDBERG
GEORGE LYNN FLEMING

1 A. Yes.

2 Q. And what did you do? And I don't want to know
3 any conversations you had with your attorneys, but --

4 A. I just went over the paperwork that was given to
5 me by my attorney. And I tried to do a little brushing up
6 on some of the dates through the years, since it went so
7 far back.

8 Q. Okay. Do you recall when CSC Developers was
9 formed?

10 A. I was what?

11 Q. Do you recall when CSC Developers was formed?
12 That entity.

13 A. I believe in 1996.

14 Q. Who were the initial members of that, or the
15 owners of CSC?

16 A. It was Doug Cobb, Ray Clark, and myself.

17 Q. What were the ownership interests, initially?

18 A. Initially, I was 50 percent, Doug was 25 percent,
19 and Ray was 25 percent.

20 Q. And why was CSC formed? What was its purpose or
21 goal?

22 A. To build a residential subdivision around the
23 runway.

24 Q. And that was Chandelle?

25 A. Yes.

1 **Q. One of the ones across the road from Chandelle**
2 **Ridge Drive?**

3 A. Correct.

4 **Q. Who else was having ownership interest in CSC**
5 **since its inception?**

6 A. No one -- no one else had an ownership but in --
7 no one else had an ownership.

8 **Q. What is the current ownership percentage?**

9 A. We have a -- give me one moment. Thirty-five
10 percent for Doug and sixty-five for me.

11 **Q. I've seen some mention of -- is it Gordon Zuber?**

12 A. Gordon Zuber.

13 **Q. I guess he's passed away now, his estate --**

14 A. That's correct.

15 **Q. What was his role with CSC?**

16 A. In, I believe, 1997 we were spending a lot of
17 money on the interest meter for this big loan that we had
18 gotten. And Gordon got involved as putting in money to
19 continue our project, and help us finish building the
20 runway and completing the project. And for that, he was to
21 get 40 percent of any profits.

22 **Q. Is there an operating agreement, or some type of**
23 **agreement that governs the operations of CSC?**

24 A. We did have an agreement put together in the very
25 beginning.

1 Q. Well, who was the developer of Chandelle?

2 A. CSC.

3 Q. As an overview, what was Doug Cobb's role in the
4 development and marketing of Chandelle?

5 A. Much the same things.

6 Q. What about Raymond Clark?

7 A. When he was there, much the same things.

8 Q. Did Gordon Zuber or his estate have any, I guess,
9 involvement in the day-to-day operations of CSC, other
10 than, you know, providing the capital and getting profits
11 from it?

12 A. No.

13 Q. I mean, did Gordon Zuber or his estate get a vote
14 on things, or make, I guess, decisions on behalf of CSC?

15 A. No.

16 Q. So he was just financial only, basically.

17 A. Correct.

18 Q. Did Chandelle have a website at some point?

19 A. Yes.

20 Q. Do you recall what the web address was?

21 A. Chandellesc.com, I believe.

22 Q. And who was in charge of that website, as far as
23 the content of it?

24 A. We had different people who created the website.
25 And what was put on it came from the input from all of us

1 **what: thirty-six lots? Is that right?**

2 A. I believe that's what that is. It's hard for me
3 to see it.

4 **Q. Did CSC actually own all the land that was shown**
5 **on this drawing, Exhibit 3?**

6 A. Well, on this land -- let's see, that could --
7 that's the ninety acres that we were -- purchased.

8 **Q. And some of it owned by James Brockman?**

9 A. Well, I think as I said a while ago, that James
10 Brockman is the one that we bought it from.

11 **Q. All right. What about, you know, these -- it**
12 **looks like Lots 1 through 10 or so, you're saying that CSC**
13 **actually had title to that property when this --**

14 A. No.

15 **Q. -- was done?**

16 A. No, not those.

17 **Q. Well, that's what I'm asking you. So if CSC --**
18 **they didn't own all this property on the plat? Or did**
19 **they?**

20 A. Oh. Oh, all this --

21 **Q. Well, all these platted lots at least.**

22 A. No.

23 **Q. Why was CSC platting lots on property that it**
24 **didn't own?**

25 A. We -- we did that -- went to Mr. Brockman, and he

1 owned that parcel that's designated Lots 1 through 10. And
2 he said, "Why don't we just make that part of the -- part
3 of the subdivision?" So we were doing a plat of the
4 subdivision. And that's why.

5 Q. On this Exhibit 3 it also shows a -- it looks
6 like a fifty-foot plane drive easement that runs kind of
7 from Lot 1, then along the backside of Lots 9, 10, 11 to
8 the runway. Do you see that?

9 A. Yes.

10 Q. And there's -- I guess there's -- that ultimately
11 has become kind of a triangular parcel now. But was that
12 owned by James Brockman --

13 A. Yes.

14 Q. -- as well? "Yes"?

15 A. Yes.

16 Q. So y'all were platting -- did Mr. Brockman
17 consent to platting an easement across that -- that parcel
18 of the end too?

19 A. He owned thirteen acres of this, what we've got
20 in our hand, okay? And he agreed to put that thirteen
21 acres into this subdivision. And that thirteen acres
22 turned into his ten lots.

23 Q. What about this parcel, I guess, basically from
24 the end of the runway to the road intersection there where
25 that lane easement is?

1 A. Yeah.

2 Q. Was that part of the land that was agreed to be
3 put in by James Brockman too?

4 A. Yes.

5 Q. That's the parcel of land where the, I guess,
6 entrance monument is now, too, right?

7 A. Correct.

8 Q. Other than, I guess, hiring Huskey and Huskey to
9 do these drawings, did Huskey and Huskey have any other, I
10 guess -- or any other role in the development of Chandelle?

11 A. No, just surveying.

12 Q. So, I guess, going from September of '96, let me
13 show you some planning commission meeting minutes from
14 October of '96.

15 MR. GROTE: For those following along, it's
16 Plaintiff-1229, where that begins. I'm going to mark these
17 as Exhibit No. 4.

18 (PLAINTIFF'S EXHIBIT NO. 4 MARKED FOR
19 IDENTIFICATION - MINUTES SPARTANBURG COUNTY
20 PLANNING & DEVELOPMENT COMMISSION OCTOBER 1,
21 1996)

22 Q. And to save you time, you're certainly welcome to
23 review the entire thing. I'm primarily going to ask you
24 about the first page, Section 2.C, where it says,
25 "Chandelle Estates."

1 A. Okay.

2 Q. That's my question. Does this document refresh
3 your memory?

4 A. No, not really. I mean, I do know that we went
5 to several different meetings with them, and -- and several
6 things like this. But remembering this specific document?
7 No, I don't.

8 (PLAINTIFF'S EXHIBIT NO. 6 MARKED FOR
9 IDENTIFICATION - AGREEMENT DATED FEBRUARY 15,
10 1997)

11 Q. I'll going to show you a document marked as
12 Exhibit No. 6. This was actually something that came from
13 documents that CSC produced. It's Bates-labeled CSC
14 Developers Response 22. It's dated February 15, 1997.
15 Take a moment to review that for me, and let me know --

16 A. I'm familiar with it.

17 Q. Okay. What is this document that's been marked
18 as Exhibit 6?

19 A. This is the -- an agreement between James
20 Brockman and myself, concerning the thirteen acres that he
21 owns, that turned out to be the first ten lots.

22 Q. Take me through the discussions that took place
23 with Mr. Brockman, that led up to this agreement, and what
24 this agreement was intended to accomplish.

25 A. When -- when we were trying to buy the ninety

1 acres -- actually, Mr. Brockman and a Mr. Runyon were also
2 trying to buy it. In fact, we kind of haggled back and
3 forth with the owner -- which was, I believe, Granny Apple
4 -- and Brockman ended up buying it from Granny Apple. But
5 in later discussions that I had with him, he agreed to let
6 us buy it from him.

7 And once he understood what we were wanting to do
8 -- he owned a lot of property, other than just this
9 thirteen acres. It was just -- that's one little parcel --
10 part of it. And he was building homes for his children,
11 close by, and he was building his own home.

12 And he said, "Hey, look, we don't -- you know, it
13 sounds like what you're doing is a pretty good deal. How
14 about if I just put my property in, and that way it will go
15 all the way up to the road all the way around, and just let
16 that be part of Chandelle?"

17 So from that conversation, eventually came this
18 agreement.

19 **Q. Well, why didn't CSC just purchase that thirteen**
20 **acres from Mr. Brockman, rather than doing it the way -- I**
21 **guess, have him still continuing to own the property?**

22 A. We didn't have the money to purchase what we did
23 purchase, much less try to purchase more.

24 **Q. This agreement that's been marked as Exhibit No.**
25 **6, was this ever, I guess, a filed record in the --**

1 **this document says. What exactly is your understanding is**
2 **the cooperative arrangement for the development of Lots 1**
3 **through 10? What was intended?**

4 A. Well, what was intended in our agreement, would
5 be we would sell those lots just like we would any other
6 lot, and have a price on it; and if somebody was interested
7 in buying it, we informed them of the agreement between Mr.
8 Brockman and ourselves.

9 And the person that bought the lot actually
10 bought the lot from Mr. Brockman, he went to the closing.
11 And I think I went to most of them that had been sold so
12 far. But they bought their lot from Mr. Brockman, but on
13 the deeds, I believe, in every case, it pulled them into
14 the Chandelle covenants and restrictions.

15 **Q. Well, were Lots 1 through 10 intended to be part**
16 **of Chandelle and part of the restrictions, or encumbered by**
17 **the restrictions?**

18 A. Yes.

19 **Q. What about that, I guess, what I'll call the**
20 **triangular monument parcel, which I think is the remainder**
21 **of the thirteen acres, was that intended to be part of**
22 **Chandelle and subject to the restrictions?**

23 A. Yes.

24 **Q. You said Mr. Brockman would receive, I guess --**
25 **or how was the money distributed when these Brockman's lots**

1 **were sold?**

2 A. Well, in every case, he was not involved in the -
3 - what the sale price was; that was negotiated between me
4 and who bought the property. And once we went to closing,
5 he would get a certain amount of money, plus a partial
6 payment on the money he invested in building the street
7 Vista Pointe Drive. We split the cost of that street. So
8 every lot that would sell, he would get one-tenth of his
9 investment back of -- of building the street.

10 **Q. Did Mr. Brockman Sr. have any involvement with**
11 **the marketing of these lots? Or was that all done by CSC?**

12 A. No, he didn't have any.

13 **Q. Other than this agreement that we're looking at,**
14 **as Exhibit 6, was there any other agreement with Mr.**
15 **Brockman regarding Chandelle?**

16 A. No.

17 **Q. This agreement talks about the land consisting of**
18 **approximately thirteen areas that was owned by Mr.**
19 **Brockman. Can you describe for me what all that was?**

20 A. As far as where the exact property line on --
21 like, on a plat would be, or what?

22 **Q. Well, yeah, just generally where --**

23 A. It took in the first ten lots and the area
24 between the lots and 101, including where the main monument
25 is. And it goes down to about in line with the runway, if

1 you were looking at the north end of the runway, and pretty
2 much everything to the west of it.

3 **Q. Item number two says Mr. Brockman agrees to**
4 **furnish the development costs that pertain to Lots 1**
5 **through 10. What kind of development costs were those?**

6 A. Well, that would have been what it cost to survey
7 them. Really, that's about all they would have done, other
8 than we pushed apple trees off of them. There actually
9 might not have been apple trees on that little section
10 there. So pretty much just the -- what it cost to get it
11 surveyed.

12 **Q. And do you have any idea what was spent on that**
13 **by Mr. Brockman?**

14 A. No.

15 **Q. Item 3 says Mr. Brockman further agrees to**
16 **furnish fifty percent of the cost of building the street,**
17 **which provides access to Lots 6 through 16. You said that**
18 **was Vista Pointe Drive?**

19 A. Yes.

20 **Q. Did CSC pay the remaining fifty percent for that?**

21 A. Yes.

22 **Q. Do you have a recollection of what Mr. Brockman**
23 **contributed for that?**

24 A. I believe that he paid -- that we took out like
25 25- or 2700 hundred dollars a lot for -- that was his cost.

1 Q. Well, is CSC willing to buy those properties from
2 the Brockmans?

3 A. I can't answer that at this time.

4 Q. I'm going to show you another document. We'll
5 mark it as Exhibit 7.

6 (PLAINTIFF'S EXHIBIT NO. 7 MARKED FOR
7 IDENTIFICATION - PLAT OF CHANDELLE SECTION I)

8 Q. The Bates label's hard to read, but it's
9 Plaintiff-1317. I'm also going to show you another
10 document. We'll mark it as Exhibit 8.

11 (PLAINTIFF'S EXHIBIT NO. 8 MARKED FOR
12 IDENTIFICATION - PLAT OF CHANDELLE SECTION I)

13 Q. And it's Plaintiff-697. I believe these are just
14 two different, I guess, images of the same thing. Exhibit
15 8 just has more zoomed in portions, I think. Have you seen
16 Exhibit 7 and Exhibit 8 before?

17 A. Yes.

18 Q. What is that? What are they?

19 A. That is actually what was Section 1 of Chandelle,
20 that right there.

21 Q. How did we get from the thirty-six lots that were
22 shown on the preliminary plan to, it looks like, twenty-six
23 lots on this -- I guess this is a final plat.

24 A. I don't know.

25 Q. Does it look like this was a approved for a

1 A. Well, this -- this Section 1, it's really -- it's
2 never even been recorded yet, so...

3 **Q. Right. Was Mr. Brockman provided a copy of this**
4 **Section 1 plat that we're referencing?**

5 A. I'm sure he was, yes.

6 **Q. Was he aware that his lanes were being included**
7 **in the plat, to your knowledge?**

8 A. I'm sure he did. I mean, you know, he had to
9 sign every time he sold a lot, that he was selling one.

10 **Q. Was the property owners association actually born**
11 **before the plat was approved?**

12 A. No.

13 **Q. But that was something the county required,**
14 **right?**

15 A. Well, it was put on that -- on what you showed
16 me, yes.

17 **Q. So you got a planning commission directive,**
18 **saying you've got to include the statement, the POA has got**
19 **to be formed before plat approval, but it wasn't done?**

20 A. Correct.

21 **Q. How did the plat end up getting approved then?**

22 A. That's a good question.

23 **Q. I mean, did it --**

24 A. That I can't answer.

25 **Q. I mean, did CSC tell the planning department that**

1 I believe this is just another copy of that
2 Section 1 plat, but it has some additional notes on it.
3 Which I presume are from the planning department, but I'm
4 not sure.

5 A. It looks like it.

6 Q. Specifically, looking at the second to last --
7 well, actually, the second to last and the last page,
8 there's a block that has some writing on it: "This copy is
9 from planning. Surveys approved. Not recorded." Do you
10 see what I'm looking at?

11 A. I do.

12 Q. There's several notes there. Do you know where
13 those notes came from?

14 A. Sure.

15 Q. Where did they come from?

16 A. They came from -- these are -- these are notes
17 made by the planning commission.

18 Q. Do you have any knowledge about any of those
19 notes?

20 A. Well, not per se notes that wasn't -- but it's
21 notes that they made. And I know the -- pretty much, the
22 reason for them.

23 Q. And what is the reason for those?

24 A. Well, when we wanted to do Section 1, we were
25 told to give them a copy of Exhibit 8 -- or something -- or

1 something like Exhibit 8. And they would put that in their
2 folder. And but as -- and all we had to do to start with,
3 was we had to show a plat of both streets and one lot on
4 each street. And that became Section 1 -- 1A that I -- you
5 may have brought -- I know you got it, but I know you
6 haven't shown it to me yet.

7 Q. Well, we'll get --

8 A. And anyhow --

9 Q. -- to it.

10 A. That -- that's what we were supposed to record.
11 And then one by one, as we sold lots, we would come down
12 and give them the plat of that one lot, and they would
13 check it off on their little master list that -- that they
14 had.

15 And the purpose of doing that was, at that time
16 that was a tax savings for a developer. Which now they
17 don't do that anymore, but back then that's the way it was
18 done. That's one -- you know, even this -- what you're
19 asking me about, it says, "Individual lot surveys coming
20 in."

21 And my -- and, you know, when we'd go down, they
22 had this big folder on us. And when I said Marilyn Berry
23 was the one that took care of that, mostly, everytime we'd
24 sell a lot, she would go down. She would go see --
25 primarily, at that time, there was a lady named Sherry Dull

1 in planning. And she -- she knew the most about Chandelle.

2 She would take that one lot, compare it to the
3 Section 1 that's in their folder, and she would make notes
4 of that. And then we would go ahead and record it.

5 Now, after these twenty-six lots, all that had
6 changed. So we no longer did that. But because this
7 section was started that way, they continued it that way.

8 **Q. Well, the Section 1 plat has something on it that**
9 **says it was approved for recording. Why didn't y'all go**
10 **ahead and record it?**

11 A. Because we were told, "Don't do that. You'll pay
12 a lot of taxes. It's not necessary."

13 **Q. Who are you talking --**

14 A. Because right now it's in farmland, and it can
15 still remain in farmland. But once you plat it in that
16 subdivision, it will be, you know, a lot higher with taxes.
17 Hey, believe me, we didn't know. We did what they -- you
18 know, what they told us to do.

19 **Q. You keep saying "they." Who is the --**

20 A. The planning commission.

21 **Q. -- "they" that told -- hold on a second. Who is**
22 **"they" that told you not to record the plat?**

23 A. Well, I say the planning commission. I can't
24 tell you a specific person. And maybe it wasn't a planning
25 commission. Maybe it was the engineer guy, Nutt, possibly.

1 I don't know. It was the way a developer was treated. And
2 of course we weren't a developer, so we didn't know.

3 And they said, "Hey, look, you -- you are a
4 developer, too, so you need to do your lots this way or
5 you'll -- they'll eat you up with taxes."

6 And, obviously, the planning commission that's --
7 that's -- that's the way they were used to doing things.
8 And I think our paperwork reflects that. We did what they
9 told us to do.

10 **Q. So is it your -- just so I understand. Is it**
11 **your position that the planning commission basically**
12 **advised you not to record the plat, and it was okay to do -**
13 **- record one lot at a time as they're sold?**

14 A. It was either the planning commission or Nutt,
15 the engineering company. You know, I can't say which for
16 sure. But we sure didn't know that. We didn't know
17 anything. We just did what -- what we thought we had to
18 do.

19 **Q. Do you have any idea how much tax savings there**
20 **was?**

21 A. No. No.

22 **Q. No idea at all.**

23 A. No.

24 (PLAINTIFF'S EXHIBIT NO. 10 MARKED FOR
25 IDENTIFICATION - DECLARATION OF COVENANTS,

1 A. Again, at that time, when we did Section 1 we
2 were told not to do it. Because of being a developer we
3 were required to record the two streets and one lot on each
4 street, and that's all they wanted. And then -- and that
5 would keep the property in its present tax amount, being
6 agriculture.

7 And once it got recorded, that took it out of it
8 and put it in a different classification. So at that time,
9 that was a -- we were told that's normally the way that the
10 developers do subdivisions.

11 **Q. I'm going to show you what's marked as Exhibit**
12 **No. 11.**

13 **(PLAINTIFF'S EXHIBIT NO. 11 MARKED FOR**
14 **IDENTIFICATION - PLAT OF CHANDELLE SECTION 1-A)**

15 **Q. Have you seen Exhibit No. 11?**

16 MR. HOLDER: Ely, what's the Bates-stamp?
17 Sorry.

18 MR. GROTE: I'm sorry. I forgot the Bates-
19 stamp. Plaintiff-246.

20 BY MR. GROTE:

21 **Q. And what is Exhibit No. 11?**

22 A. Section 1-A.

23 **Q. Was that plat actually recorded?**

24 A. That plat was actually recorded.

25 **Q. Why was this Section 1-A plat recorded since it -**

1 - it overlaps, in part, with Section 1. Right?

2 A. Well, it's -- it is two of the lots that's in
3 Section 1.

4 Q. Which two lots is --

5 A. It's Section 1-A.

6 Q. -- this supposed to encompass?

7 A. I believe Lot 13 and 22.

8 Q. I guess what I'm trying to get at is: Why was it
9 done that way?

10 A. We were told, first came Section 1. And we were
11 told, "Don't record that. Just give it" -- this is
12 planning, "Let us have a copy of that."

13 And this is what you have recorded, so we got
14 Huskey to record this. They were familiar with how to do
15 it. It had to have the two streets, Vista Pointe Drive and
16 Landmark -- Landmark Drive. It had to have two streets and
17 one lot on each street for recording purposes.

18 So we record that. And then each lot after that,
19 that was in Section 1, as they were sold, we would get a
20 plat of that one lot. It would be a plat of one lot that
21 was on Section 1, and we would record it.

22 Q. All right. So was the main purpose of this
23 Section 1-A plat just to get the streets platted?

24 A. Well, I don't know. Maybe. But it wasn't just
25 the streets. We had to have one lot on each street. That

1 **anticipated?**

2 A. Well, there were several things talked about, but
3 nothing specific at that time.

4 **Q. That same paragraph makes a reference about**
5 **providing for maintenance of common areas. What common**
6 **areas were envisioned in Chandelle?**

7 A. Where the monuments are, that would -- we thought
8 would -- would be the common areas. The parcel we talked
9 about north of the runway that Mr. Brockman owned, that
10 would be a common area.

11 We've got a couple of -- going down Chandelle
12 Ridge Drive, as soon as you turn in, we kept a little
13 section on the right. Just a little -- like a tenth of an
14 acre that a monument could be put, and if -- if so that
15 would become a common area.

16 And there was a turnaround area on -- and still
17 is -- on Chandelle Ridge Drive. And we could -- we didn't
18 know what, but there was kind of an odd-shaped little piece
19 of property, we thought that could be a common area of
20 maybe some benefit to people living there.

21 **Q. And do you agree that all of the properties shown**
22 **on the Section 1 plat, as well as that -- all the land that**
23 **Mr. Brockman, in that thirteen acres, was intended to be**
24 **part of Chandelle and was intended to be bound by the**
25 **declaration?**

1 A. Yes.

2 Q. Going down to the fourth paragraph on the first
3 page of Exhibit 10, it makes reference to, "The declarant
4 has caused to be incorporated into the laws of South
5 Carolina, a nonprofit corporation, Chandelle Property
6 Owners Association, Inc." Do you see that?

7 A. Yes.

8 Q. Had that been done when this declaration was
9 signed by you and filed?

10 A. I don't know.

11 Q. Would it surprise you if the property owners
12 association wasn't actually incorporated until 2010?

13 A. No, I don't -- yeah, I do know that. That's when
14 it was.

15 Q. Well, why are you signing a document back in
16 1997, saying that the POA had already been incorporated?

17 A. I just didn't -- I just didn't know that. I see
18 it, but I didn't know it.

19 Q. You didn't know what?

20 A. I didn't know that, that was written like that
21 and implied that.

22 Q. Based on what we know now, that statement was
23 incorrect, right, or untrue?

24 MR. BANNISTER: Object to the form.

25 A. I just can't answer that. I don't know.

1 **Q. How do you read it, then?**

2 A. Well, I read it as if -- the intent was for the
3 people living there to own this runway. Now, once they
4 owned it, it would be the common area.

5 **Q. Well, if y'all had control of drafting this, why**
6 **didn't you just say that rather than saying it is the**
7 **common area?**

8 A. Well, believe me there's a lot of things that are
9 not put the way we put it down.

10 **Q. Would you agree that CSC was the one that was in**
11 **control of drafting this document --**

12 A. I am.

13 **Q. -- for the homeowners, right?**

14 A. Correct.

15 **Q. I'm going to show you another document. You**
16 **might as well keep that one out, please. This is going to**
17 **be Exhibit 13 -- or 12. I'm sorry.**

18 **(PLAINTIFF'S EXHIBIT NO. 12 MARKED FOR**
19 **IDENTIFICATION - CHANDELLE COVENANTS, CONDITIONS**
20 **& RESTRICTIONS)**

21 BY MR. GROTE:

22 **Q. This begins at Plaintiff-1912. Have you seen**
23 **this document --**

24 A. Yes.

25 **Q. -- before? What is it?**

1 A. It is a copy of the covenants. And I believe
2 this one is a -- referred to as revision 3.

3 (Off-the-record discussion.)

4 (PLAINTIFF'S EXHIBIT NO. 13 MARKED FOR
5 IDENTIFICATION - CHANDELLE WEBSITE COVENANTS)
6 BY MR. GROTE:

7 **Q. This is Exhibit No. 13. Take a look at that and**
8 **let me know if you've ever seen this before. And for the**
9 **record, this is Plaintiff-1910.**

10 (The witness pauses to review documents.)

11 A. Yes.

12 **Q. Have you seen this document before?**

13 A. Yes.

14 **Q. Is this a true and accurate copy of what was**
15 **posted on the Chandelle website, it looks like back in, at**
16 **least according to this, 1998?**

17 A. I don't know. It looks familiar. Whether it's
18 accurate, I don't know.

19 **Q. Who might know the history of the website and**
20 **what was on it?**

21 A. I don't know of anybody would know it that long
22 ago.

23 **Q. And you said you don't remember the web hosting**
24 **companies, or anything like that?**

25 A. No.

1 A. Not to my knowledge.

2 Q. Who was given a copy of a document like Exhibit
3 12, whether it be revision 1 or whatever revision?

4 A. Potential buyers, they might be given this. Or
5 if they ask for something smaller, it might be a --
6 something smaller. It kind of varied. Some people didn't
7 ask for anything. Some people just wanted to know where
8 the covenants was recorded so they could look for
9 themselves to read it.

10 Q. Are you aware that an issue has been raised that
11 the terms, in something like Exhibit 12, don't necessarily
12 mirror the declaration that was actually filed with the
13 county?

14 A. Yes.

15 Q. Do you have any knowledge or understanding of why
16 what you were handing to, you know, prospective purchasers
17 wasn't actually what was filed, that there were
18 differences?

19 A. Well, because we added words that made it maybe
20 clearer from -- maybe somebody would ask us a question.
21 And so we finally just said, "Well, we can add this."

22 Now, we also know that the covenants are recorded
23 with the county. And that's a public document. That's
24 where you go for the Real McCoy, so to speak. But just to
25 give someone this, that's sure giving them a lot of the

1 **Have you seen Exhibit 24 before?**

2 A. Or something real similar.

3 **Q. Do you have an opinion what Exhibit 24 is?**

4 A. Yeah, it looks like it's the -- the very early
5 drawings of, at one time, we thought Chandelle Runway -- I
6 mean, Chandelle Ridge Drive would be.

7 **Q. It says Chandelle Estates Section 2? I can't**
8 **tell if there's supposed to be something after that, or**
9 **not.**

10 A. Yeah, there's something in there. But, yeah.

11 (PLAINTIFF'S EXHIBIT NO. 25 MARKED FOR
12 IDENTIFICATION - PLAT OF CHANDELLE SECTION 2A)

13 **Q. Let me show you the next one, Exhibit 25. Is**
14 **this the recorded plat for Chandelle Section 2A.**

15 A. It appears to be, yes.

16 **Q. Which lots does that encompass?**

17 A. Lots 50 through 54.

18 **Q. This looks like it was recorded on November 8,**
19 **2000.**

20 A. Well, I haven't found that page yet.

21 **Q. It's on the first page. The top left corner,**
22 **there's a little stamp.**

23 A. This right here?

24 **Q. Yeah. It's small.**

25 A. Okay. I'll take your word for it.

1 cull-de-sac is.

2 Q. Do you know why that wasn't recorded?

3 A. Well, I think it was recorded, but it was
4 recorded together with what was recorded. I mean, it's the
5 same thing.

6 Q. So the Chandelle Section 2A plat includes what
7 was shown on this Section 2B unrecorded plat?

8 A. I think so.

9 Q. I mean, I'm not arguing with you. I'm just --

10 A. Yeah.

11 Q. -- trying to clarify.

12 A. Yeah, I think so.

13 Q. Okay.

14 A. For some reason, I don't know why, we had to do
15 it the way we did it. You know, they've got that listed as
16 Section 2B, but I think it was all put together.

17 Q. Did you have to get -- I mean, you being CSC have
18 to get approval of the planning commission to plat a
19 section of Chandelle?

20 A. For sure.

21 Q. Let me show you another one.

22 (PLAINTIFF'S EXHIBIT NO. 28 MARKED FOR
23 IDENTIFICATION - PLAT OF CHANDELLE SECTION 3A)

24 Q. This is Exhibit No. 28. And this is Plaintiff-
25 252. Is this a plat of Chandelle Section 3A?

1 A. I believe so.

2 **Q. What lots are included in Section 3A?**

3 A. I believe just -- it's either just 39 or -- or
4 39A. The same person bought a lot and then they wanted to
5 buy a little sliver to -- beside it, and the county had a
6 specific way to do it. And then they bought the lot next
7 to it, so there was, I don't know, 39A, 39B maybe. But it
8 was all related to this lot 39.

9 **Q. All right. What was the date on that?**

10 A. Nine twenty -- two?

11 **Q. September 16, '02?**

12 A. I don't know. I looked down at the bottom under
13 Huskey, that's something-'02.

14 (PLAINTIFF'S EXHIBIT NO. 29 MARKED FOR
15 IDENTIFICATION - PLAT OF CHANDELLE SECTION 3)

16 **Q. I'm showing you what's been marked as Exhibit 29.**
17 **The Bates label is hard to read 'cause it's reduced in**
18 **size, but it's Plaintiff-1348. It looks like a unrecorded**
19 **version of the Section 3 plat. Does that document look**
20 **familiar to you?**

21 A. Yes.

22 **Q. There's some handwritten notes on there. It**
23 **says, "7/29/04, I spoke with Marilyn and let her know Rick**
24 **said they'll need a FH." What is FH?**

25 A. No telling. They always needed something. As I

1 mentioned earlier, if it's not needing it from the survey,
2 it was something that we needed to provide them with.

3 Yeah, I don't know what that FH --

4 **Q. I was just curious what that meant.**

5 A. In fact, I see on this one that it's a -- on this
6 Lot 39, that's where they added that little first pie.
7 It's not Exhibit 28, but 29 has that little piece on it.

8 (PLAINTIFF'S EXHIBIT NO. 30 MARKED FOR
9 IDENTIFICATION - PLAT OF CHANDELLE SECTION 3)

10 **Q. Let me show you Exhibit 30. Is this the recorded**
11 **plat for Section 3?**

12 A. Yeah, it appears. You know, it's listed as final
13 plat, where I think the one before, probably, was a summary
14 plat.

15 **Q. I know it's a little bit hard to read because**
16 **this plat's reduced in size, but this seems to show Section**
17 **3 as a parcel next to Highway 101, plus that little**
18 **triangle. Is that fair?**

19 A. Yeah. I believe the 3A is just a little small
20 segment there, I think. I can't read it.

21 **Q. There's a little --**

22 A. Maybe it's 39A, maybe that's what this is. Not
23 3A, 39A.

24 **Q. Right. But I think there's some notations that**
25 **talk about Section 3 --**

1 A. What's part of Section 3?

2 Q. Yes.

3 A. It looks like Lots 40 through 47.

4 Q. What's the date on that plat?

5 A. I don't know. I can't read it.

6 Q. It's a little hard to read on that copy. I
7 think, according to my records, it was --

8 A. 2004, it looks like.

9 Q. Yeah. November of '04.

10 A. That's when Emery Price stamped it.

11 Q. All right. Well, let's take a look at Exhibit
12 31, then. This is -- begins at Plaintiff-137.

13 A. All right.

14 Q. It says, "Amendments to Covenants, Conditions and
15 Restrictions of Chandelle Subdivision." Correct?

16 A. Yes.

17 Q. It says it was recorded December 28th, 2004. Do
18 you agree with that?

19 A. Recorded November the 5th?

20 Q. Mine says December 28, 2004 on the side.

21 A. Oh, on the side. Yes.

22 Q. And who signed this amendment?

23 A. I did. And Doug.

24 Q. So this was an amendment done by CSC Developers?

25 A. Yes.

1 **Q. Did CSC Developers believe that it had, I guess,**
2 **authority to amend the declaration at that time?**

3 A. Yes.

4 **Q. What was, I guess, the purpose of this amendment?**
5 **What was trying to be accomplished?**

6 A. Well, we were trying to -- the primary thing was
7 we were trying to bring into the subdivision, more property
8 to sell. And then we got into where we had changed a -- it
9 looks like some of the easement -- setback easements, etc.,
10 about building homes and a -- and lots of that nature.

11 **Q. All right. So this amendment attempts to include**
12 **Chandelle Section 1A, that Lot 39, as Section 3A that we**
13 **just looked at? Lots 39A and Lots 40 through 47 as shown**
14 **on that Section 3 plat.**

15 A. Yeah, it appears to be that.

16 **Q. And as we, I guess, established earlier, it's**
17 **CSC's position that those lots were intended to be part of**
18 **the CSC Subdivision and bound by the declaration, right?**

19 A. Yes.

20 **Q. Is that what y'all --**

21 A. Yes.

22 **Q. -- thought you were doing by this amendment?**

23 A. Yes.

24 **Q. Had CSC sold any of those platted lots referenced**
25 **in this amendment before the amendment was done?**

1 A. Well, more or less.

2 Q. And then there's marketing materials listing them
3 as Chandelle lots as we looked at, right?

4 A. That's right.

5 Q. Let's take a look at the next plat. And I'm
6 intending to go in chronological order, if my math skills
7 were right when I put this together.

8 (PLAINTIFF'S EXHIBIT NO. 32 MARKED FOR
9 IDENTIFICATION - PLAT OF CHANDELLE SECTION 4)

10 Q. Do you agree that this is the recorded plat for
11 Chandelle Section 4?

12 A. Yes.

13 Q. It looks like it has a date on it of October 13,
14 2005, down at the bottom right corner.

15 A. Yes.

16 Q. Which lots were part of Section 4?

17 A. Lots 33 and 37.

18 Q. Okay. Let's take a look at the next one.

19 (PLAINTIFF'S EXHIBIT NO. 33 MARKED FOR
20 IDENTIFICATION - PLAT OF CHANDELLE SECTION 7)

21 Q. This is Exhibit 33. Is this the recorded plat
22 for Chandelle Section 7?

23 A. It is.

24 Q. Does it have a date of November 28, 2005 at the -

25 -

1 A. Yes.

2 Q. -- bottom right?

3 A. Correct.

4 Q. What lots are part of Chandelle Section 7?

5 A. Twenty-seven and 28.

6 Q. Why did we skip from Section 4 to Section 7?

7 What was the rationale in the --

8 A. Those lots in that group, people came along and
9 decided they wanted to buy a lot, not necessarily the lot
10 next to them or -- and by then we had -- we were told that
11 -- to record a section, we could do it with only recording
12 two lots. Not six or eight like we did in Section 3.

13 And the advantage for us by then, they -- the
14 county had changed the way they worked tax purposes for
15 developers, and once you actually put these into a section
16 your tax rates were changed. So they said that they would
17 let us do it by only -- we had to at least do two lots at a
18 time.

19 So somebody comes along, "Hey, I like this little
20 hill right here," well, that's down here. So the county
21 says we're going to call this, this section, this section,
22 that section. And so we sold them based on what section
23 they told us it was.

24 Q. Was there some master plan where the sections had
25 already been, you know, laid out, that, you know, if I went

1 out to Chandelle and said, "Okay, I like this hill over
2 here," that you already knew that was Section 7 or Section
3 8 or 9, or whatever it might be?

4 A. I don't think you'd know what section it was. I
5 mean, I think you could see a plat that showed pretty much
6 the layout of the lots. Although, the lots themselves
7 changed somewhat over time.

8 Q. Well, I'm not -- what I'm saying, was there some
9 master layout that was done, that y'all kind of knew where
10 the sections were going to be over time?

11 A. I don't think so. We knew where the -- we knew
12 where the lots were going to be. We didn't know if it was
13 going to be Section 4, Section 7, or what.

14 (Mr. Hawkins leaves the proceedings at this time.)

15 BY MR. GROTE:

16 Q. Okay.

17 A. And when we request that, that's what the county,
18 you know, decided they were.

19 Q. Let's go to the next one.

20 (PLAINTIFF'S EXHIBIT NO. 34 MARKED FOR
21 IDENTIFICATION - PLAT OF CHANDELLE SECTION 6)

22 Q. We've marked as Exhibit 34, it looks like
23 Plaintiff-261. Is this a recorded plat for Chandelle
24 Section 6?

25 A. Yes.

1 **Q. Does it have a date of August 1, 2006?**

2 A. Yes.

3 **Q. Which lots were platted at Chandelle Section 6?**

4 A. Twenty-nine, 30, and 34.

5 (PLAINTIFF'S EXHIBIT NO. 35 MARKED FOR
6 IDENTIFICATION - AMENDMENTS TO COVENANTS,
7 CONDITIONS AND RESTRICTIONS OF CHANDELLE
8 SUBDIVISION)

9 **Q. Let me show you Exhibit 35, which is Plaintiff-14**
10 **-- or begins with Plaintiff-140. It says, "Amendment to**
11 **Covenants, Conditions and Restrictions of Chandelle**
12 **Subdivision." Right?**

13 A. Correct.

14 **Q. It looks like it was filed on April 17, 2007. Do**
15 **you agree?**

16 A. Yes.

17 **Q. Who signed this document?**

18 A. Doug and I.

19 **Q. Did y'all sign them on behalf of CSC?**

20 A. Yes.

21 **Q. Where it says, "Declaration of Covenants,**
22 **Conditions and Restrictions, the following words are**
23 **added." What was the intent of that provision there, or**
24 **that amendment?**

25 A. To again encumber more lots into the subdivision.

1 Q. All right. Was the intent to encumber the lots
2 that we just looked at in those plats, the Section 4, Lot
3 33 and 37, Lot 29, 30, and 34 of Section 6, and Lot 27 and
4 28 of Section 7?

5 A. Correct.

6 Q. Did CSC believe that it had the right and
7 authority to amend the declaration to add additional
8 property at the time of this amendment?

9 A. Yes.

10 Q. Was it the intent of CSC to encumber those
11 previously-referenced lots with the declaration, and make
12 them a part of Chandelle and subject to the declaration?

13 A. So those lots would be bound by the covenants.

14 Q. Right. I mean, is that what y'all were intending
15 to do and trying to do?

16 A. Yes.

17 Q. So is it your belief that those lots are part of
18 Chandelle and subject to the declaration?

19 A. Yes.

20 Q. Or at least should be.

21 A. Yes.

22 (PLAINTIFF'S EXHIBIT NO. 36 MARKED FOR
23 IDENTIFICATION - PLAT OF CHANDELLE SECTION 4A)

24 Q. Let me show you Exhibit 36. Is this is a
25 recorded plat for Chandelle Section 4A?

1 A. Yes.

2 Q. Does it have a date of July 16, 2008?

3 A. Yes.

4 Q. Which lots were platted as Chandelle Section 4A?

5 A. It looks like 32 and 36, I believe.

6 (PLAINTIFF'S EXHIBIT NO. 37 MARKED FOR
7 IDENTIFICATION - PLAT OF CHANDELLE SECTION 5)

8 Q. Let me show you what's marked as Exhibit 37. Is
9 that a recorded plat for Chandelle Section 5?

10 A. It is.

11 Q. Is the date on that July 16, 2008?

12 A. It is.

13 Q. What lots are platted as Chandelle Section 5?

14 A. Thirty-one and 35, I believe.

15 (PLAINTIFF'S EXHIBIT NO. 38 MARKED FOR
16 IDENTIFICATION - PLAT OF CHANDELLE SECTION 8)

17 Q. Let me show you what's marked as Exhibit 38. Is
18 that a recorded plat for Chandelle Section 8?

19 A. Yes.

20 Q. What's the date on that one?

21 A. That one is -- is that October 21st, 2011?
22 September the 20th, 2011.

23 Q. Okay. Yeah, I think that's the date on the plat.
24 The recording dates are different. Which lots were platted
25 as Section 8?

1 A. Fifty-five, 56, and 57.

2 (PLAINTIFF'S EXHIBIT NO. 39 MARKED FOR
3 IDENTIFICATION - AMENDMENTS TO COVENANTS,
4 CONDITIONS AND RESTRICTIONS OF CHANDELLE
5 SUBDIVISION)

6 **Q. Let me show you Exhibit 39. This is Plaintiff-**
7 **144. Have you seen this document before?**

8 A. Yes.

9 **Q. It says, "Amendments to Covenants, Conditions and**
10 **Restrictions of Chandelle Subdivision"?**

11 A. Yes.

12 **Q. It looks like it was recorded November 2nd, 2011.**

13 A. Yes.

14 **Q. Who drafted this document?**

15 A. You mean who typed it up and put those lot
16 numbers on it?

17 **Q. Yes, sir. Who was responsible for the content in**
18 **it?**

19 A. I wouldn't -- I believe that Marilyn did this.
20 She did most of this, putting this stuff together.

21 **Q. Did Marilyn do that on behalf of CSC?**

22 A. Correct.

23 **Q. Why did you and Doug Cobb not sign this one? Why**
24 **is it signed by Bruce Goldberg and Billy Israel?**

25 A. Because they were now the homeowners association.

1 **Q. Right. Explain that to me, why the declarant**
2 **didn't sign it as opposed to, I guess, the board of**
3 **directors of the HOA signing it.**

4 A. Yeah. I don't know that answer. But at that
5 time, that's what we all thought. So we did what we
6 thought.

7 **Q. Were you in agreement -- I mean, was CSC in**
8 **agreement with the board signing this document?**

9 A. Yes.

10 **Q. Did CSC ask the board to sign this document?**

11 A. I don't remember.

12 **Q. I mean, was it CSC's belief that this was the**
13 **proper way to do it at that time, because the board was in**
14 **--**

15 A. Yes.

16 **Q. -- place now? And this is after the -- I guess,**
17 **CSC had appointed some initial directors; is that fair?**

18 A. That's right. Maybe a year after or something.

19 **Q. So CSC isn't contending that the board of**
20 **directors, I guess, did this without the knowledge and**
21 **consent of CSC, is it?**

22 A. No, we all knew that, you know, it was being
23 done.

24 **Q. This was a collaborative effort that CSC**
25 **endorsed; is that fair?**

1 A. We all were in agreement, that this was the
2 proper way to do it.

3 **Q. Okay. And this talks about adding in some**
4 **additional lots, right?**

5 A. Yes. The ones I believe that you just gave me.

6 **Q. Just the plats we just went through since the**
7 **last amendment?**

8 A. I believe so.

9 **Q. So it looks like Lot 32 and Lot 36 of Section 4A;**
10 **Lot 31 and 35, Section 5; and Lot 55, 56, and 57 of Section**
11 **8, right?**

12 A. Correct.

13 **Q. Was it CSC's intent that those lots be part of**
14 **Chandelle and bound by the covenants?**

15 A. Yes.

16 **Q. Is that what CSC intended to do by this document?**

17 A. Yes.

18 **Q. And that being -- is that Exhibit 39?**

19 A. Thirty-nine, yes.

20 **Q. To your knowledge, are there any other platted**
21 **sections of Chandelle at this time?**

22 A. I can't answer that right now. I'd have to go
23 back through them all and kind of -- there's too many of
24 them for me to -- you know, it appears. But I don't know
25 for sure.

1 **Q. Are you aware of any other, I guess, filed**
2 **documents, attempting to subject any additional lots or**
3 **properties to the covenants?**

4 **A. I believe the last was Lot 57. So we've got it**
5 **covered right here.**

6 **Q. Now, I'm sure you're aware of this issue being**
7 **raised, but do you agree that the official recorded copy of**
8 **the declarations, specifically Section 16.2, contained a**
9 **deadline of December 31, '01 to annex additional lots; yet**
10 **that deadline's not in this -- what we've called the blue**
11 **book version that's been sent out?**

12 **A. Yes.**

13 **Q. Do you have any explanation or understanding as**
14 **to how that got omitted on what was distributed to people?**

15 **A. None whatsoever.**

16 **Q. For purposes of CSC, did y'all, I guess, for all**
17 **intents and purposes, intend to -- all these annexations be**
18 **binding and proper?**

19 **A. Yeah. And we -- and we thought we were doing it**
20 **the way we were supposed to.**

21 **Q. If you'll go back to the declaration itself,**
22 **Exhibit No. 10. I just have a couple of questions for you**
23 **about Section 16.2 of the declaration.**

24 **A. Okay. Ten what?**

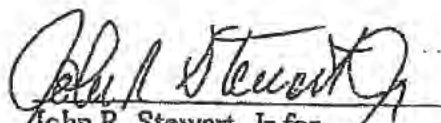
25 **Q. If you'll go to Plaintiff-116, it's Article 16.**

February 15, 1997

AGREEMENT

CSC Developers, LLC is developing a parcel of land in Spartanburg County, SC at the intersection of Hwy. 101 and Brockman Road and more fully shown in the plat for Chandelle Estates. A portion of the land shown on the Chandelle Estates plat is owned by James R. Brockman while the remainder is owned by CSC Developers, LLC. This agreement is being made to address the cooperative arrangement for the development of lots 1 - 10, owned by Mr. Brockman, and the remainder of Phase 1, including lots 11-38, owned by CSC Developers.

- 1) Mr. Brockman agrees to include his land (consisting of approximately 13 acres) in Chandelle, the residential aviation community being developed by CSC Developers.
- 2) Mr Brockman agrees to furnish the development costs that pertain to lots 1-10.
- 3) Mr Brockman further agrees to furnish 50% of the cost of the building the street which provides access to lots 6 - 16.
- 4) CSC Developers agree to provide the land for the street described in 3 above.
- 5) CSC Developers agree to pay the remaining costs of Phase 1 including: the other 50% of the cost of the street described in 3 above, both the land and developmental costs of building the runway, taxiways and additional street, and the other usual costs of a development of this type such as marketing.
- 6) As each lot owned by Mr. Brockman is sold, he will receive _____ plus 1/10th of the total cost of developing his lots. CSC Developers will receive the balance of the sale price of each lot.
- 7) Both Mr. Brockman and CSC Developers must agree on the selling price of each lot before it is sold.

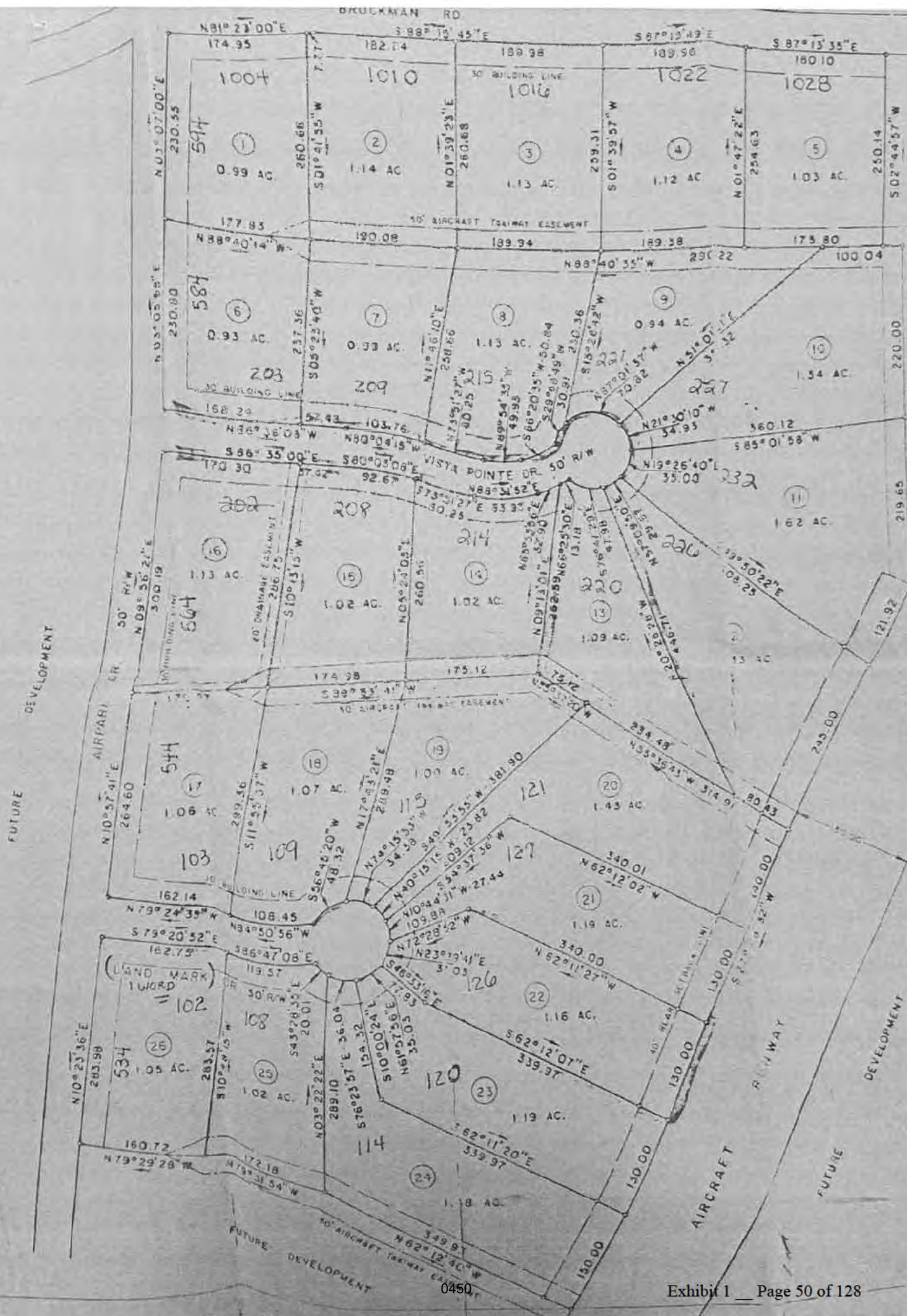

John R. Stewart, Jr for
CSC Developers, LLC


James P. Brockman





81-21-1
PLAINTIFFS
EXHIBIT
7
Stewart
PENGAD 800-631-8989



CERTIFICATE OF ACCURATE SURVEY

I HEREBY CERTIFY THAT THE RATIO OF PRECISION OF THE FIELD SURVEY IS
 1/ 7500 AS SHOWN HEREON AND THE AREA WAS DETERMINED BY THE
 D. M. D. METHOD OF AREA CALCULATION.
 REFERENCE: DEED BOOK _____, PAGE _____
 PLAT BOOK _____, PAGE _____
 BLOCK MAP _____, 4-00-20-00-11-33-00
 THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH THE SPARTANBURG
 COUNTY SUBDIVISION REGULATIONS.

AUG. 21, 1997
 DATE

1744

A. C. REGISTRATION NO.

NOTES

IRON PIN SET, 1/2" REBAR, ON ALL CORNERS.
 IRON PIN SET, 1/2" REBAR, ALONG 40' REAR SETBACK
 LINE ON LOTS 11, 12, 20, 21, 22, 23 AND 24.

BEARINGS AND DISTANCES ALONG CURVES AND CUL-
 DE SACS ARE GROUND.

A 5' EASEMENT IS RESERVED ALONG ALL REAR AND SIDE
 LOT LINES FOR DRAINAGE AND UTILITIES UNLESS OTHER
 WISE SHOWN.

ALL AIRCRAFT/TAXI EASEMENTS SHOWN HEREON ARE FOR THE
 PRIVATE USE OF THE PROPERTY OWNERS AND THEIR GUESTS OF
 CHANDELLE SUBDIVISION. SPARTANBURG COUNTY BEARS NO
 OWNERSHIP, MAINTENANCE RESPONSIBILITY OR LEGAL
 LIABILITY FOR SAID EASEMENTS. FURTHER, A HOMEOWNERS
 ASSOCIATION SHALL BE FORMED AND BEAR THE RESPONSIBILITY
 FOR PERPETUAL EASEMENTS AND SAID RUNWAYS PRIOR TO THE
 ISSUANCE OF FINAL PLAT APPROVAL.

LOT	ADDRESS	LOT	ADDRESS
1		14	
2		15	
3		16	
4		17	
5		18	
6		19	
7		20	
8		21	
9		22	
10		23	
11		24	
12		25	
13		26	

TO MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN
 ACCORDANCE WITH THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN
 SOUTH CAROLINA. IT DOES NOT EXCEED THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED IN THE BUILDING(S)
 FIELD SURVEY IS 1/7500 AS SHOWN HEREON AND THE AREAS WERE DETERMINED BY THE
 METHOD OF AREA CALCULATION. (THIS PROPERTY) A PORTION OF THIS PROPERTY IS NOT IN A FLOOD
 ZONE AS SHOWN ON THE FLOOD INSURANCE MAP AUGUST 1984.

CERTIFICATE OF APPROVAL FOR RECORDING

I, THE UNDERSIGNED, CERTIFY THAT THE SUBDIVISION PLAT HEREON CON-
 FORMS TO THE DESIGN STANDARD AND REQUIREMENTS IN SPARTANBURG
 COUNTY SUBDIVISION REGULATIONS, WITH THE EXCEPTION OF SUCH VARIAN-
 CES, IF ANY, AS RECORDED IN THE MINUTES OF THE SPARTANBURG COUNT-
 Y PLANNING AND DEVELOPMENT COMMISSION AND THAT IT HAS BEEN AP-
 PROVED FOR RECORDING IN THE OFFICE OF THE COUNTY OF REGISTER OF
 MESSE CONVEYANCE.

2 / 16 / 1998

Ernest J. Price

CHAIRMAN, BOARD OF PLANNING DIRECTOR
 SPARTANBURG COUNTY PLANNING AND DEVELOPMENT COMMISSION

NAME OF SUBDIVISION

CHANDELLE

SECTION OR SUB-SECTION

SECTION 1

OWNER(S)/DEVELOPER(S)

C.S.C. DEVELOPERS
 400 AIRPARK DR.
 GREEN, S. C. 29651

SURVEYOR

HUSKEY & HUSKEY, INC.
 2939 CHESNEE HWY.
 SPTBG., S. C. 29307

ENGINEER

THE NUTT CORP.
 4 WINDMILL DR.
 WELLFORD, S. C. 29385

NUMBER OF ACRES 29.80 MILES OF NEW ROAD 0.2

NUMBER OF LOTS 26 DATE SEPT. 29, 1997 REVISED

SCALE

1" = 100'

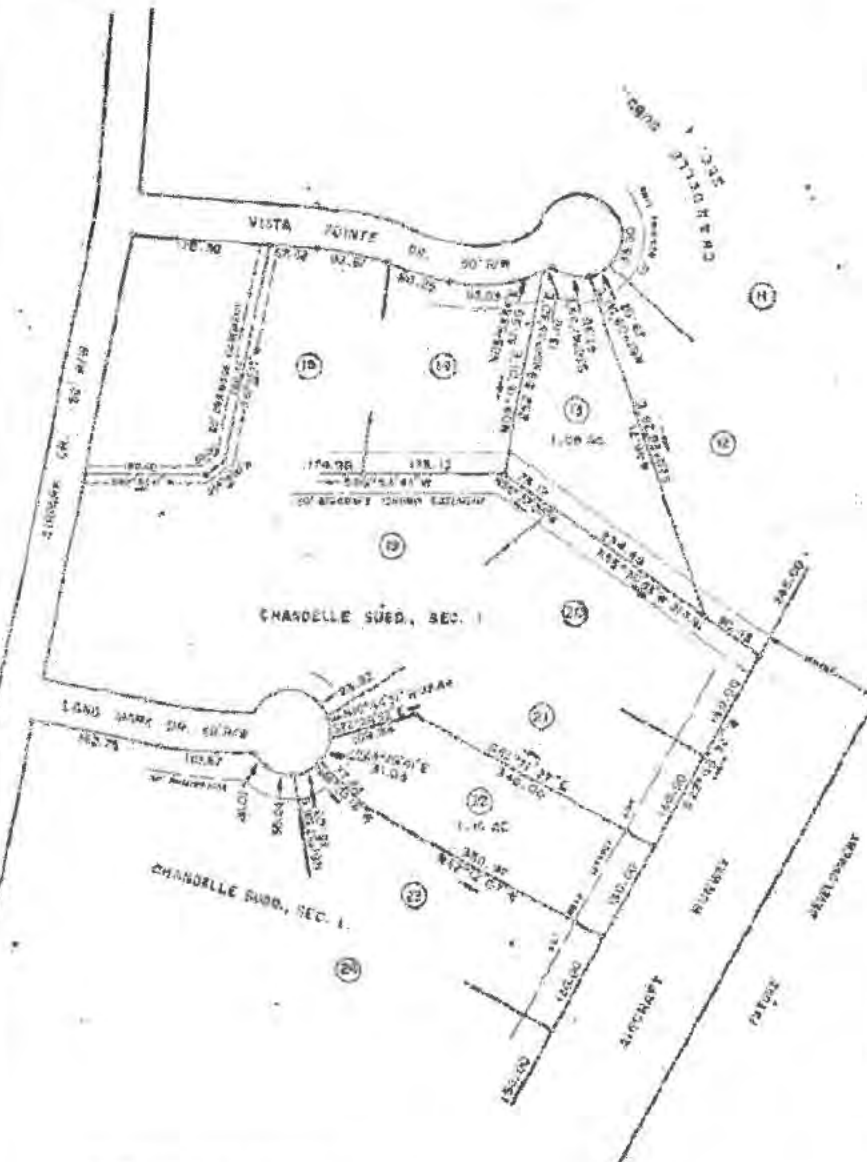


APP 108cc

RECORD TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF THE SURVEY HEREON MADE HAS BEEN MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE REVENUE STATUTES FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA. I HEREBY CERTIFY THAT THE SURVEY HEREON MADE IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY AS CONDUCTED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT THE SURVEY HEREON MADE IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY AS CONDUCTED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT THE SURVEY HEREON MADE IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY AS CONDUCTED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION.

RECORDED
1993-1-13 AM
SPARTANBURG, SC

PLAT-1993-18261



NOTE

1/2" BEAR SET ON 1/2" CORNERS.
1/2" BEAR SET ALONG 40' BEAR
SETBACK LINE ON LOT 20.

BOUNDARY AND CORNER MARKS
SHOWN AND DUL. DE. BACK ARE
CHURCH

A 5' EASEMENT IS RESERVED ON
ALL BEAR AND DUL. DE. BACK ARE
FOR DRAINAGE AND UTILITIES, UN-
LESS OTHERWISE SHOWN.

ALL SURVEYED LANDS HEREON
SHOWN ARE FOR THE
PRIVATE USE OF PROPERTY OWNERS
AND THEIR HEIRS OF CHANDELLE
SUBD. SPARTANBURG COUNTY, SOUTH
CAROLINA. NO LIABILITY OR
RESPONSIBILITY FOR THE
SURVEY OR FOR THE
CORRECTION THEREOF SHALL
BE FORMED AND BEAR THE
RESPONSIBILITY FOR THE
SURVEY AND FOR THE
CORRECTION THEREOF SHALL
BE THE RESPONSIBILITY OF THE
OWNER OF THE LAND.

CERTIFICATE OF APPROVAL FOR RECORDING

I, THE UNDERSIGNED, CERTIFY THAT THE SURVEY HEREON MADE HAS BEEN MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE REVENUE STATUTES FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA. I HEREBY CERTIFY THAT THE SURVEY HEREON MADE IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY AS CONDUCTED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT THE SURVEY HEREON MADE IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY AS CONDUCTED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION.

AUG 27 1993
[Signature]
[Notary Seal]

CERTIFICATE OF ACCURATE SURVEY

I, THE UNDERSIGNED, CERTIFY THAT THE SURVEY HEREON MADE HAS BEEN MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE REVENUE STATUTES FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA. I HEREBY CERTIFY THAT THE SURVEY HEREON MADE IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY AS CONDUCTED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT THE SURVEY HEREON MADE IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY AS CONDUCTED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION.

AUG 27 1993
[Signature]
[Notary Seal]

NAME OF SURVEYOR
CHANDELLE
SECTION OR 1/2 SECTION
SECTION 1-A

DATE SURVEYED
2000 NOVEMBER 08
BY
[Signature]

NUMBER OF ACRES
1.25
NUMBER OF LOTS
100

PLAT
PLAINTIFF 00246

Exhibit 1 Page 52 of 128

CERTIFICATE OF OWNERSHIP
DEDICATION & GRANT

I, THE UNDERSIGNED, AS OWNER OF THE PROPERTY HEREON SHOWN, DO HEREBY CERTIFY THAT THE SURVEY HEREON MADE IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY AS CONDUCTED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT THE SURVEY HEREON MADE IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY AS CONDUCTED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION.

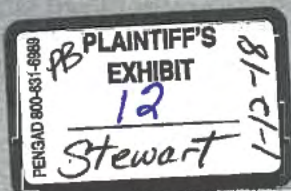
AUG 27 1993
[Signature]

PLAINTIFF'S
EXHIBIT
11
Stewart
8-21-1



PRIVATE AVIATION ESTATES

COVENANTS
Conditions & Restrictions



PLAINTIFF01912

Covenants Updates:

Original Covenants recorded Deed Book 67-A at page 583, December 15, 1997.

✓ 1st Revision recorded Deed Book 72-G at page 843, July 10, 2000.

✓ 2nd Revision recorded Deed Book 81-Y at page 823, December 28, 2004.

3rd Revision recorded Deed Book 85 -P at page 96, April 18, 2006.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions is made this 15th day of December, 1997, by CSC Developers, LLC, a South Carolina Limited Liability Company, hereinafter referred to as the "Declarant".

WHEREAS, the Declarant is the owner of certain real property located in Greer, South Carolina, and fully described as Section 1 of the Chandelle Plat of a survey prepared by Huskey & Huskey, Inc. dated September 24, 1997 and to be recorded herewith in the office of the RMC for Spartanburg County, Spartanburg, South Carolina, and desires to create thereon a residential planned development so improved as to afford each landowner the natural and structural beauty for the accommodation of a gracious living and at the same time provide convenience of facilities for the furtherance of their common interest in aviation.

WHEREAS, the Declarant desires to insure the values and amenities in said planned development, to prevent any future impairment thereof, and to provide for the maintenance of all common areas, by subjecting the real property, together with any additions to said property, to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each of which is and are for the benefit of each property and each owner thereof.

WHEREAS, the Declarant has deemed it desirable for the efficient preservation of the values and amenities in said planned development to create an agency to which will be delegated and assigned the powers of maintaining and administering the planned development properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created. For this purpose the Declarant has caused to be incorporated under the laws of South Carolina as a non-profit corporation, Chandelle Property Owners Association, Inc.

NOW, THEREFORE, Declarant, by this DECLARATION of Covenants, Conditions and Restrictions, does hereby declare that all the property described herein and shown as lots 1 through 26 on the Chandelle Subdivision Section 1 plat dated September 24, 1997 by Huskey & Huskey, Inc. for Spartanburg County, South Carolina as they are recorded, Chandelle Section 1-A plat recorded September 1, 1998 in Plat Book 142 page 376, Lot 39 Section 3a recorded September 26, 2002 in Plat Book 153 page 097, Lot 39a and Lots 40 through 47 on Chandelle Section 3 plat recorded November 5, 2004 in Plat Book 156 page 982, Lot 33 and Lot 37 Section 4 plat recorded November 1, 2005 in Plat Book 158 page 840, Lot 27 and Lot 28 Section 7 plat recorded December 6, 2005 in Plat Book 159 page 9 is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in the Declaration which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Revision #3

PLAINTIFF01914

Declaration of Covenants, Conditions, and Restrictions

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ARTICLE I

Definitions

Section 1.1 Adjoining Land shall mean and refer to land contiguous with the Property, whether or not owned by Declarant, which is or may be made subject to this Declaration.

Section 1.2 Annexation shall mean and refer to the process by which portions of the Expansion Property or Adjoining Land are made subject to this Declaration as provided in Article XVI below.

Section 1.3 Architectural Control Committee (ACC) shall mean and refer to a committee formed to maintain the quality and architectural harmony of improvements to the Development.

Section 1.4 Architectural Guidelines shall mean and refer to the guidelines and rules established and supplemented from time to time by the Architectural Control Committee.

Section 1.5 Articles or Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Association which will have been filed with the Secretary of State to create the Association.

Section 1.6 Assessments shall mean and refer to annual, special and default assessments levied pursuant to Article XI below to meet the estimated cash requirements of the Association.

Section 1.7 Association shall mean and refer to the Chandelle Property Owners Association, Inc., a non-profit South Carolina corporation its successors and assigns.

Section 1.8 Board of Directors shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.9 By-Laws shall refer to the bylaws of Chandelle Property Owners Association attached to the Declaration and incorporated herein by this reference.

Section 1.10 Chandelle shall mean and refer to the planned community created by this Declaration, consisting of the property and of all improvements located on the property.

Section 1.11 Chandelle Documents shall mean and refer to the basic documents creating and governing Chandelle, including but not limited to this Declaration, the Articles of Incorporation and Bylaws of the Association, the Architectural Guidelines and any Procedures, Rules, Regulations or Policies adopted under such documents by the Association of the Architectural Control Committee.

Section 1.12 Common Area shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now and hereafter owned by the Association for the common use and enjoyment of the Owners.

Section 1.13 Declarant shall mean and refer to CSC Developers, LLC a South Carolina Limited Liability Company, and its successors-in-title and assigns. It is expressly understood that there shall be only one person or legal entity entitled to exercise the right and power of the "Declarant".

Section 1.14 Declaration of Annexation shall mean and refer to a declaration prepared and recorded in accordance with Article XVI below to incorporate the Adjoining Land within the Property governed by this Declaration.

Section 1.15 Development/Properties shall mean and refer to certain real property and interest therein described as Phase I of Chandelle Estates Plat attached hereto, and such additions thereto as made by the Declarant.

Section 1.16 Improvements shall mean and refer to all buildings and structures, parking areas, fences, walls, hedges, plantings, pools, driveways, ponds, lakes, recreational facilities, signs, changes in any exterior color or shape, excavation and all other site work including without limitation grading, road construction, utility improvement, removal of trees or plantings, and any new exterior construction or exterior improvement which may be included in the foregoing. "Improvements" does not include turf, shrub or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearance. "Improvements" does include both original improvements and all later changes and improvements.

Section 1.17 Licenser shall mean and refer to Chandelle Airport Corporation, LLC, a South Carolina Limited Liability Company, which owns the runway and will issue licenses for the use of said runway.

Section 1.18 Lot shall mean and refer to any plot of land within the Chandelle properties whether or not improvements are constructed thereon, which constitutes or will constitute a single family dwelling. The ownership of each Lot shall include all the rights, title, and interest of an Owner in the Common Property, which shall include without limitation, membership in the Association.

Section 1.19 Maintenance Fund shall mean and refer to the fund created by assessments and fees levied pursuant to Article XI below to provide the Association with the funds required to carry out its duties under this Declaration.

Section 1.20 Member shall mean and refer to any person or entity holding membership in the Association.

Section 1.21 Mortgage shall mean and refer to any mortgage, deed to secure debt, deed of trust, and any and all similar instruments used for the purpose of encumbering real property in this Development as security for the payment or satisfaction of an obligation.

Section 1.22 Mortgagee shall mean and refer to a holder of a mortgage.

Section 1.23 Owner shall mean and refer to the record owner, whether one or more persons,

of the fee simple title to a Lot located within the Development, and entitled to one vote per Lot as a member of the Chandelle Property Owners Association, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.24 Plat shall mean and refer to any plat (or as-built survey) depicting the Property filed in the R.M.C. office for the County of Spartanburg, State of South Carolina, as such Plat may be amended from time to time.

Section 1.25 Property shall mean and refer to the Property initially subject to this Declaration and any additional Real Property from time to time subject to these Covenants pursuant to the provisions of this Declaration.

Section 1.26 Recreational Facilities shall mean and refer to the recreational facilities or amenities owned by Declarant and located within the Property from time to time.

Section 1.27 Runway shall mean that property located at the center of the subdivision used for the purpose of aircraft takeoffs and landings.

Section 1.28. Taxiway shall mean and refer to those right-of-ways radiating from the runway or otherwise as shown on the Plat for the purpose of providing access for aircraft to and from the runway.

ARTICLE II

The Association

Section 2.1 Dedication of Common Area. Declarant may hereafter convey to the Association certain parts of the property as Common Area intended for common use by the owners in Chandelle. Such designated areas shall, upon conveyance, be dedicated to the common use and enjoyment of owners, and their families, guests, tenants, and invitees.

Section 2.2 Responsibility for Common Area. Subject to the rights of the owners set forth in this Declaration, the Association shall be responsible for the management and control of the Common Area dedicated under Section 2.1 above and all improvements in the Common Area (including equipment related thereto), and shall keep it in good, clean and attractive condition and repair consistent with the requirements of a first class residential and recreational community, pursuant to the terms and conditions of this Declaration.

Section 2.3 Membership. Every Owner, by virtue of being an Owner and for as long as he is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. No Owner, whether one or more persons, shall have more than one membership per Lot owned, but all of the persons owning each Lot shall be entitled to rights of membership and of use and enjoyment appurtenant to such ownership. The combination of two or more original Lots will be considered a single Lot for membership and assessment purposes. The Articles of Incorporation and Bylaws of the Association may set forth additional classifications of membership, which Members may or may not be Owners.

Section 2.4 Classes of Membership and Voting Rights. Each Member shall be entitled to one vote for each Lot, according to the plat. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as the Owners among themselves determine, and the Secretary of the Association shall be notified of such designation prior to any meeting. In the absence of such notification, the vote allocated to the Lot shall be suspended in the event more than one person or entity seeks to exercise the right to vote. Any Owner of a Lot which is leased may assign his voting right to the tenant, provided that a copy of the Instrument of Assignment is furnished to the Secretary of the Association prior to any meeting at which the tenant exercises the voting right. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, the Bylaws, Architectural Guidelines, and the Restrictions and Covenants of the Chandelle Property. The lease shall also obligate the tenant to comply with the foregoing. Also fines may be levied against Owners or occupants, and if a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

Section 2.5 Compliance with the Document. Each Owner shall abide by and benefit from the Provisions, Covenants, Conditions, and Restrictions contained in the Chandelle Covenants and Restrictions and Bylaws. A copy of the Association Rules in effect shall be distributed to each Member of the Association, and any change in the Association rules shall be distributed to each Member within a reasonable time following the effective date of any change.

Section 2.6 Rules and Regulations. The Association from time to time and subject to the provisions of the Chandelle Documents, may adopt, amend and repeal rules and regulations, to be known as "Association Rules," governing, among other things and without limitations:

- a. The Use of Open Space,
- b. The Use of Private Roads,
- c. Collection and Disposal of Garbage and Trash,
- d. The Posting of Maximum Speeds for Vehicular Traffic and Other Traffic Rules,
- e. The Types of Vehicles and Times when any Vehicles (including Commercial Vehicles) may be permitted to use the roads within Chandelle or any other area of the Property.
- f. The Schedule of Fines for Infractions of the Association Rules or the Project Documents.

Section 2.7 Ownership of Personal and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, may accept any real or personal property, leasehold or other property interest within Chandelle conveyed to the Association by Declarant.

Section 2.8 Assistance to Architectural Control Committee. The Association shall in all respects cooperate with and assist the ACC in the complete attainment of the ACC's functions, and the enforcement of its architectural guidelines, rules, regulations and decisions.

Section 2.9 Implied Rights and Obligations. The Association may exercise any other right or privilege given to it expressly by the Chandelle Documents, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege. The Association shall perform all of the duties and obligations imposed upon it expressly by the Chandelle Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Chandelle documents where reasonably necessary to satisfy any such duty of obligation.

ARTICLE III

Architectural Control Committee

Chandelle is designed as a private residential community with strict architectural controls which allows aircraft owners and pilots convenient access to the runway. To insure that the property will be developed harmoniously and that consistency is maintained throughout the Development, an Architectural Control Committee will formulate, review and control a comprehensive landscape plan, street lighting, signs, fencing, parking and site improvements including structures of all types as set forth in the Architectural Guidelines and Rules. .

The initial Architectural Control Committee shall consist of (3) members: John Stewart, Jr., Marilyn Berry, Doug Cobb, or their designees. In the event of the failure or inability, for any reason, of a member to act, the vacancy created shall be filled temporarily or permanently, as necessary, by the remaining members of the ACC. At such a time as the Development is substantially completed (at least 75%) the above members or their designees, may relinquish the powers of the ACC to the Owner's Association. At that time, at least one of the members of the initial ACC may choose to continue their position on the new ACC, the other members shall be appointed by the Board of Directors of the Owner's Association. The new ACC will promulgate such guidelines as may be necessary to implement the architectural review process not inconsistent with established practice. Any expenses incurred by the ACC will be paid for by the Association.

The Architectural Control Committee shall:

- 3.1). regulate the external design, appearance, and location of the Properties and Lots and any improvements thereof.
- 3.2). adopt architectural guidelines and programs consistent with covenants and restrictions.
- 3.3). inspect for compliance with these guidelines.
- 3.4). adopt procedures for the exercise of its duties.
- 3.5). maintain complete and accurate records of all actions taken.

Notwithstanding anything to the contrary contained herein, the Architectural Control Committee or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application of enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the community.

ARTICLE IV

Architectural Guidelines and Rules

Section 4.1. Land Use. All Lots shall be used for residential purposes only and common recreational purposes auxiliary thereto and for no other purpose. No lot shall be used as a right-of-way, street or road, or access to any property not included within the Properties of this Development without the written consent of the Declarant. ~~Only one family may occupy a Lot as a principal residence at any one time.~~ No structure, except as herein provided shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling and such accessory buildings or hangar as shall be used in connection with the dwelling or residence. Such accessory buildings or hangar may not be constructed prior to the completion of the dwelling unless waived by the ACC and then limited to a one year completion deadline. Furthermore the accessory building or hangar shall comply with all other restrictions contained herein for the main dwelling, including, but not limited to, exterior requirements, setback lines and permanent foundations. Furthermore, no airplane hangar, or any portion thereof, shall be used as a primary residence in any manner whatsoever.

= ONLY FAMILY MEMBERS MAY OCCUPY A LOT AS A PRINCIPLE RESIDENCE AT ANY ONE TIME

Section 4.2. Partition or Combination of Lots. No Lot shall be subdivided or its boundary lines changed except with prior written approval of the Declarant. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots. Declarant's consent shall be conditioned upon payment by the Owner or Owners concerned of all expenses incident to giving the consent, including legal and accounting fees. Every agreement and recorded instrument for combination of Lots shall make adequate provisions for the adjustment of voting rights and liability for payment of assessments appurtenant to or imposed upon such Lots. Whether combined or unchanged, each Lot shall be conveyed, transferred, gifted, devised, bequeathed, encumbered or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or this Declaration, including the membership in any association and all the rights thereof.

Section 4.3. Commercial Businesses Prohibited. No commercial business of any type shall be permitted; however, nothing herein contained shall be construed as preventing the Declarant from erecting and maintaining facilities of a commercial, recreational or community nature or facilities incident to the use of the runway, taxiway and easements. This should exclude any home office; but you cannot have a home office that would increase air or street traffic. Also, this should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft conforms with all requirements as set forth in these covenants. No one, other than the Declarant, can allow the use of the airport or runway for commercial activity or for self-enterprise.

Section 4.4. Common Area. The Common Area shall be owned by the Declarant ~~or~~ the Association and no Owner shall bring any action for partition or division of the Common Area by acceptance of a deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other action designed to cause a division of the Common Area, and this section may be pleaded as a bar to any such action. Any owner who shall institute or maintain any such action shall be liable to the Declarant or the Association, and hereby agrees to reimburse the Declarant or the Association for its costs, expenses and reasonable attorney's fees in defending any such action.

Section 4.5. Architectural Control. No dwelling unit, hangar or other building shall be erected, placed or altered on any Lot until the plans for each showing locations of the units on the Lot and the landscaping plan for the Lot have been submitted to and approved by the Architectural Control Committee. Such plans shall be reviewed as to quality of workmanship and materials, harmony of external design with existing dwelling units and hangars, and as to location with respect to topography and finish grade elevation, and both house, hangar and other buildings shall be of similar architectural design, before being approved by Architectural Control Committee or its successor or assigns. No home, garage, hangar or other building may be constructed on any lot unless such work meets all County Codes then in existence. ~~A copy of the builder or contractor's license must be submitted with construction plans to the ACC.~~

Section 4.6. Dwelling Size. Each single family dwelling on a Lot shall have a minimum heated area of 2500 square feet. No dwelling unit shall be permitted on any Lot that has a ground floor area of the main structure, exclusive of porches, patios, hangars and garages of less than 1500 square feet on the first floor for one and one-half story, split-level, and two story dwellings. If a dwelling incorporates a basement, such basement shall not be considered a "level" or "story" and the level of the dwelling immediately above the basement shall be considered the "first level" or "first story" of such dwelling. Each dwelling shall include space for parking at least two automobiles within an enclosed garage in accordance with Section 5.15.

✓ **Section 4.7. Location.** In order to assure that all structures will be located with regard to the topography of each individual Lot, taking into consideration the elevation contours of the Lot, the location of adjoining dwellings, and similar considerations, the Declarant or the ACC reserves unto itself, its successors and assigns, the right to decide the site and location of any structure, improvements, and utilities upon all Lots and every Lot within the Development; provided, however, that such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site, and in any event all buildings (including eaves, decks, patios and steps) shall be constructed beyond the minimum setback lines. *NO BUILDINGS INCLUDING DECK, PATIO AND STEPS SHALL BE CONSTRUCTED WITHIN THE SETBACK DEETS, AS DETERMINED IN*

✓ **Section 4.8. Structure Material.** Unless specifically otherwise approved in writing by the ACC, all structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot. No dwelling shall have an exterior surface composed of asbestos siding, exposed concrete block, cinder block, aluminum siding, or other similar material. Vinyl siding products will be considered on a case-by-case basis.

Section 4.9. Kind of Home. No mobile or manufactured homes of any kind, or any home having the same general appearance, shall be permitted on any Lot. No building or structure of a temporary nature: trailer, tent, shack, garage or other out-building shall be erected or maintained on any Lot at any time. Furthermore, no building shall be permitted on any Lot unless it is erected on a solid foundation of brick or masonry from the ground level to the first floor level

Section 4.10. Driveways. Driveways and walkways shall be constructed of concrete, brick or other suitable hard-top surface with a minimum thickness of four inches or as approved by the ACC. If any driveway is to cross a drainage ditch, the Owner will be required to install, at his own expense,

4.11 - SECTION 4.11

all necessary culverts and coverings prior to the commencement of any other construction on the Lot. The installation of the culvert and any covering must be approved by the ACC.

Section 4.11. Drainage. No owner shall do or permit any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern of the Property, except to the extent such alteration and drainage pattern is approved in writing by the Declarant, and except for the rights reserved to Declarant to alter or change the drainage patterns.

✓ **Section 4.12. Continuity of Construction.** All structures approved by the ACC must be completed insofar as the exterior finish is concerned within 12 months from the date of issuance of a building permit for said structure. The ACC may waive this requirement if construction delays have been caused by strikes, war, fire, or acts of God which render the completion of construction within such time impossible. All improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within 12 months of commencement, unless an exception is granted in writing by the ACC. If an Improvement is commenced and construction is then abandoned for more than ninety (90) days or if construction is not completed within required 12 month period, then after notice and hearing as provided in the By-Laws, the ACC may impose a fine of not less than One Hundred (\$100.00) Dollars per day on the Owner of the Lot. Furthermore, prior to occupancy of the dwelling or within one year after the issuance of a Building permit, the lot owner shall have his property sown in grass and have planted foundation landscaping around the dwelling and other accessory buildings in accordance with the proposed landscaping plans previously submitted and approved.

Section 4.13. Reconstruction. Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must be rebuilt, or all debris from such building removed and the Lot restored to the condition it was in prior to commencement of construction of such building with reasonable promptness; provided, however, that any such reconstruction must be commenced within 3 months from the date of such destruction or if no reconstruction is to occur, then all such debris must be removed and the Lot restored to its prior condition within 2 months of such destruction.

Section 4.14. Construction Traffic. Construction traffic is prohibited on the common area runway, taxiway, and tiedown areas. The failure of a lot owner to prevent construction traffic associated with his lot from entering upon the common area runway, taxiway, and tiedown areas shall make that Lot owner liable for any necessary repairs caused by construction traffic upon these areas. Lot owners shall specifically include a clause in their construction contracts prohibiting contractor equipment from entering upon the common areas, runway, taxiway, and tiedown areas.

✓ **Section 4.15. Hangar Specifications.** Each Lot adjoining the taxiway right-of-way may have a hangar for the storage of private aircraft. Such hangar if constructed, must be compatible with the adjoining dwelling unit and will be subject to ACC approval and architectural controls. No hangar shall be erected within the front yard (closer to the street than the front of the dwelling) on any Lot, and only within the rear or side yards unless approved by the ACC. No hangar shall be erected nearer than 10 feet from side Lot lines nor nearer than 35 feet from Lot lines facing interior taxiways.

A ANY FREE STANDING HANGAR

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Hangars built facing the runway must be at least 100 feet from the lot line adjoining the runway and all hangars must conform with Section 8.1. All hangars erected, constructed or maintained upon any lot shall be fully enclosed permanent structures and shall not exceed 3600 interior square feet, which size shall include any space allocated for workshop, restroom facilities, storage area or any other purpose. A hangar may be built before the dwelling house only when permitted in writing by the Architectural Control Committee but ~~substantial completion of the dwelling house insofar as the exterior finish is concerned must be accomplished within~~ 12 months from date of issuance of building permits for hangar structure. Any change from the above specifications will require written permission of the ACC.

* THE FOUNDATION AND FRAMING OF THE DWELLING
MUST BE STARTED

ARTICLE V

Restrictions and Covenants

Section 5.1 Failing to Comply: In the event the owner of any lot shall fail to comply with any of the below mentioned criteria, or fails to maintain the premises and the exterior of the improvements situated thereon, or permits litter and debris to accumulate on his lot, or allows hedges or other plantings to obscure the view of the street traffic, or fails to comply with any other reasonable fire preventive requirements, the Declarant, through its agents and employees, shall have the right to enter upon such premises and to repair, maintain, rehabilitate and restore the exterior of any improvements situated thereon and/or clean or clear any lot of debris, or take any other steps necessary to remove litter and debris, or take any other steps necessary to meet reasonable fire preventive regulations, provided, however, that the Declarant, or its agents, shall first give written notice to the owner of said lot of its intention to make such repairs or of its intention to perform such clearing, maintenance or rehabilitation work, affording the owner of said lot 30 days in which to make said necessary repairs, maintenance, or clearing work. If at the end of this period the work to be performed has not been done by the owner, then the Declarant, or its agents, shall have the right, as set forth herein, to make such repairs, etc. Nothing herein contained shall be construed to grant to the Declarant or its agents, any right to enter into or inside of any building located on any lot without the consent of the owner thereof. Any costs incurred by the Declarant, or its agents, in enforcing and carrying out of the performance of this paragraph shall be charged against the owner of said lot, and a lien may be created on said lot until the Declarant, or its agents, has been paid in full for all costs incurred.

Section 5.2. Maintenance. All Owners shall keep their Lots, whether occupied or unoccupied, free of all tall grass, dead, diseased or decaying trees, weeds, trash, rubbish, and debris and keep all Lots in a neat and attractive condition. All improvements erected on Lots shall be maintained in a clean neat and orderly condition and in a good state of maintenance and repair.

Section 5.3. Sewage. No discharge, overflow, or accumulation of sewage effluent from any septic tank, drain field or other similar container shall be permitted to exist on any Lot.

Section 5.4 Toxic Disposal Prohibited. Disposal on the site of any substances which may be considered toxic or environmentally sensitive is expressly prohibited. Disposal of any substances which may contaminate the ground water of this subdivision or the surrounding area is prohibited. These substances include, for example, but are not limited to, paints, solvents, cleaning fluids, paint strippers, fuel and oil.

Section 5.5 Unightly Materials Prohibited. No rubbish, garbage, debris, junk, junk vehicles, or unsightly material shall be deposited on any of the lots at any time except building material during the course of construction on the site. All rubbish, waste, or garbage shall be kept in sanitary containers, and shall be removed from the premises at least once a week. Under no conditions shall the use of incinerators or burning be allowed on this property except during the construction phase. No dismembered aircraft parts nor nonoperative aircraft are to be left about the premises.

Section 5.6. Hazardous Activities. Nothing shall be done or kept on any Lot or in the Common

Area which will increase the rate of insurance on the Common Areas or any other Lot without the prior written consent of the Declarant or the Association. No Owner shall permit anything to be done or kept on his Lot or in the Common Areas which would result in the cancellation of insurance on any part of the Common Areas, or which would be in violation of any law.

Section 5.7. Nuisance. No noxious or offensive activity shall be conducted upon any Lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

Section 5.8. Outside Toilets. Outside toilets or privies are expressly prohibited, except where required for construction purposes.

Section 5.9. Wall Hangings. An Owner shall not cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of his Dwelling or exterior buildings which may adversely affect the appearance of Chandelle without the prior written approval of the Architectural Control Committee.

✓ **Section 5.10. Children.** Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Development and including full compliance by them with this rule and with all other rules and regulations of the Association. All children under twelve (12) years of age must be accompanied by a responsible adult when entering and/or utilizing any recreational facility. *IT IS THE POLICY OF THE COMMUNITY TO PROHIBIT THE USE OF ANY LOT OR AREA OF THE COMMUNITY FOR RECREATION IN A LEASED LOT.*

✓ **Section 5.11. Pets.** Pets and other animals shall neither be kept nor maintained in or about the properties except in accordance with the following. Commercial breeding or feeding of horses, cattle, goats, hogs, sheep or poultry; the operation of a commercial dairy; dog boarding kennel or veterinary hospital; and the operation of a commercial livery or boarding stable for horse; or a riding academy; and the keeping of any hog or milk cow or horse, are strictly prohibited. It is understood, however, that this restriction shall not be construed to prohibit the keeping of a limit of three (3) domestic animals (canine or feline) for family pleasure, provided that domestic animals must be restrained by fence or other appropriate protective restraint. This restraint should be from the farthest possible point from the adjoining property, and all appropriate measures must be taken by the lot owner to eliminate and prevent offensive odors and any unsightly accumulations from said animals. Noisy animals, such as incessantly barking dogs, must be controlled by their owners. No pet shall be permitted outside of its owners Lot unless attended by an adult or child of more than ten (10) years of age and said pet must be on a ~~lease~~ ^{LEASE} of reasonable length. At no time are any unattended domestic animals or pets allowed on the runway or taxi-way easements.

✓ **Section 5.12. Noise.** No Owner shall make or permit any disturbing noises on their Lot by himself or his family, servants, employees, agents, or visitors, nor permit any conduct by such persons that will interfere with the rights, comforts or convenience of other Owners. There shall be no discharging of firearms on the premises. *1 - 2nd floor, 3rd floor, 4th floor, 5th floor, 6th floor, 7th floor, 8th floor, 9th floor, 10th floor, 11th floor, 12th floor, 13th floor, 14th floor, 15th floor, 16th floor, 17th floor, 18th floor, 19th floor, 20th floor, 21st floor, 22nd floor, 23rd floor, 24th floor, 25th floor, 26th floor, 27th floor, 28th floor, 29th floor, 30th floor, 31st floor, 32nd floor, 33rd floor, 34th floor, 35th floor, 36th floor, 37th floor, 38th floor, 39th floor, 40th floor, 41st floor, 42nd floor, 43rd floor, 44th floor, 45th floor, 46th floor, 47th floor, 48th floor, 49th floor, 50th floor, 51st floor, 52nd floor, 53rd floor, 54th floor, 55th floor, 56th floor, 57th floor, 58th floor, 59th floor, 60th floor, 61st floor, 62nd floor, 63rd floor, 64th floor, 65th floor, 66th floor, 67th floor, 68th floor, 69th floor, 70th floor, 71st floor, 72nd floor, 73rd floor, 74th floor, 75th floor, 76th floor, 77th floor, 78th floor, 79th floor, 80th 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Section 5.14: Dwelling Attachments. No awning, canopy, shutter, enclosure, satellite dish or other projection shall be attached to or placed upon the outside wall or roof of any structure or on the Lot, except by the approval of the Architectural Control Committee.

✓ **Section 5.15. Vehicles and Parking.** Each home shall include an enclosed garage, either attached or freestanding, large enough to accept at least two standard automobiles. The garage must be completed prior to occupancy of the dwelling unless allowed by the ACC. Carports are prohibited. No owners vehicles shall be parked on any street. No boat, travel trailer, recreational vehicle (except motor home), or commercial ~~truck~~ ^{CLIPPING TRUCK}, may be stored overnight on any Lot unless the same be within an enclosed ~~garage~~ ^{CLIPPING TRUCK}. Furthermore, no wrecked or junked motor vehicles or non-functional vehicles shall be placed upon the premises, and no commercial vehicles shall be parked overnight in the subdivision without the prior written consent of the ACC. No motor vehicle or aircraft of any kind shall at any time be parked or tied down on any of the taxiways, overruns, roadways or rights-of-way, except as permitted by the ACC in writing.

✓ **Section 5.16. Fuel Storage.** ~~No bulk storage of flammable, combustible or explosive fluids, chemicals or substances shall be allowed in any Dwelling, or on any Lot, or on the Common Areas, except that small quantities of fuels used for common activities such as lawn mowing, BBQ grills and other like activities may be kept when stored in a manner which minimizes the risk of fire or explosion. Lot Owners may not store bulk quantities of fuels used for aviation purposes on Lots or in buildings. Aviation fuels may be available in connection with the FBO type facility located adjacent to the runway.~~ ^{UTILITY TRAILER, **VEHICLE *** PARKED ON THE LOT}

✓ **Section 5.17. Fences and Hedges.** The erection or installation of fences and hedges may be undertaken only with the written approval of the ACC. All fencing shall be located behind the rear building line of the main dwelling; shall be composed of materials other than metal, except that vinyl coated chain link fence may be allowed by the ACC if the fence is built in such a way that it is not visible from any road in the Development, and in no event shall exceed five (5) feet in height. Decorative fences (meaning wooden fencing, split-rail fencing or wooden fencing which has holes in the posts with wood rails running from post to post) and hedges, no more than 36 inches in height, may be permitted in the front or side yards. No fencing of any kind is allowed on any easement, taxiway, or runway. Barbed wire is specifically prohibited.

Section 5.18. Signs. No signs of any character shall be erected, pasted, posted, or displayed upon or about any Lot or part of any Lot, or common Area, without the written permission of the ACC. The ACC shall have the right in its sole discretion to prohibit or to restrict and control the size, construction, material, wording, location and height of all signs and may summarily remove and destroy all unauthorized signs. Declarant and Lot owners, however, may post temporary "For Sale" or "For Rent" signs on the Properties and these signs must be approved before being put on any Lot. No sign shall be attached to any tree or shrubbery. All signs must be professionally lettered, and may not contain the price of the house or lot. Furthermore, signs used by a builder during construction or informational signs by the Declarant shall be allowed.

Section 5.19. Clothes Lines. No clothing, laundry, or wash shall be aired or dried on any portion of the Lots in an area with a substantial exposure to view from any other Lot or street.

~~At *** exceptions: Motor Homes, approved by the ACC, may be parked on the owners lot during the construction of the home, Motor Homes, Travel Trailer may be parked overnight during times of loading or unloading for trips, short term maint. etc.~~

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Drying areas will be permitted only in locations approved by the Architectural Control Committee and only when substantially protected from view by screening or fencing approved by the Architectural Control Committee.

✓ **Section 5.20. Flag Poles:** Flag Poles are permitted, provided the pole is not more than 25 feet in height, unless otherwise approved by the Architectural Control Committee.

Section 5.21. Antennas. No radio or television aerial or antenna or any other external electronic equipment or devices may be installed or maintained on any exterior of any structure erected on a Lot unless the location, size, and design has been approved by the ACC. Said antennae or equipment shall be subject to FAA and FCC regulations concerning obstructions placed in the vicinity of airports. Furthermore, all electrical, telephone, other other utility lines shall be run underground.

Section 5.22. Outdoor Lighting. One or more hospitality light standards, of a design approved by the ACC, may be located within the front yard of any Owner's property. Any outdoor lighting positioned and installed by a lot owner shall be of such a nature and type so as not to present a hazardous or confusing condition to night air operations which may be conducted from said airport and be shaded so as not to create a nuisance to any other lot owner.

✓ **Section 5.23. Window Units:** Window air-conditioning units are approved for outbuildings or hangars.

Section 5.24. Mail Boxes. Each dwelling shall have a standard house number, mail box, and paper box with a design and location approved by the ACC.

Section 5.25. Swimming Pools. No non-permanent or "above ground" pools may be placed, maintained or kept on any Lot.

✓ **Section 5.26. Artificial Vegetation, Exterior Sculpture, Exterior Statuary, Etc.** No artificial vegetation or plastic animal decorations, such as pink flamingos, etc., shall be permitted on the exterior of any property.

Section 5.27. Mining. No boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, or gases shall be conducted on the Property.

Section 5.28. Trees. Trees having a diameter of four inches or more (measured four feet from ground level) may not be removed without the prior approval of the Architectural Control Committee.

Section 5.29. Wells and Water Removal. No wells shall be drilled, dug or installed except with the approval of the ACC.

✓ **Section 5.30. Access.** There shall be no overland vehicular access to any Lot except from designated roads and taxi-ways lying within the Common Areas. The Declarant, its agents or

employees shall have access to each Lot from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Areas, or facilities situated upon such Lot which serve another Owner's Lot.

Section 5.31. Amendments to Regulations. Reasonable regulations governing the use of the Common Areas and external appearance of all structures erected on the Lots may be made and amended from time to time by the Declarant or the Architectural Control Committee; provided, however, that all such regulations and amendments thereto shall be approved by a majority vote of the Directors of the Owners Association before the same shall become effective.

Section 5.32. Waterfront Areas and Waterways. Any Lot which abuts any lake, stream and pond shall be subject to the following restriction;

(a) The use and access to the inland lakes and lake front areas shall be restricted to the water front lot owners only.

ARTICLE VI

Aircraft & Hangar Restrictions, and Parking

Section 6.1. Hangar & Tie-Down Space for Private Use Only. The airplane hangar or tie-down space on each lot shall be limited to strictly private use and only by the owner of the property on which the hangar or tie-down space is located except as permitted herein. No person who is not a member of the Owners Association shall be permitted to store, tie-down, or hangar any aircraft on Charidelle property without the express written permission of the Board of Directors. The Board of Directors will have the authority to specify the terms and conditions under which a non member's aircraft may be stored, hangared or tied down.

Section 6.2. Aircraft Hangars. All hangars are subject to the Architectural Control Committee approval, and must be architecturally compatible with the primary structure on the Lot. All aircraft hangars must be constructed in conjunction with or subsequent to the construction of a residence. Hangars may be detached from or attached to a primary structure in accordance with local building regulations. Specifically, hangars shall be detached from the living area with a minimum of five (5) feet between the buildings including overhanging construction, unless approved fire proofing of the hangar removes risk of house damage from a fire within the hangar lasting for one hour or less.

Section 6.3. Two or More Aircraft. If two or more aircraft are owned by lot owner, one aircraft, not stored in a hangar, may be secured with tie downs adequate for the size and weight of the aircraft. Until a dwelling and hangar are under construction or built, no aircraft shall be tied down overnight on the lot unless approved by the ACC. The one tied-down aircraft must be in airworthy condition as defined by current Federal Aviation Regulations (FAR's) except as permitted by the Board of Directors in writing.

✓ **Section 6.4. Unattended Aircraft.** No aircraft shall be parked on any part of the runway, taxiway or easements and all aircraft parked or left for any period of time unattended within Lots shall be securely tied down.

Section 6.5. Run-ups. "Run-ups" and testing of engines within residential areas should be limited to the hours of 8:00 am and 6:00 pm. But in any event the "run-up" shall not be done in such a manner as to cause inconvenience or damage to the property of others.

Section 6.6. Stunt Flying. No low-level flying stunts nor other hazardous activities will be permitted about the subdivision. Each Owner is required to strictly observe all Federal, State, and Local Statutes, Regulations or Ordinances relative to the operation of civil aircraft.

Section 6.7. Aircraft Size. No aircraft with gross weight exceeding 10,000 lbs., and no jet aircraft may operate on the taxiways, easements, or runways without written permission of the ACC. The aircraft owner's manual specifications will be the source of the aircraft weight, and if no copy of the owner's manual is available, "Jane's Encyclopedia of Aviation" or equivalent reference manual may be used.

Section 6.8. Speed Limits. Aircraft shall taxi at less than 15 miles per hour on all taxiways.

Pilots are cautioned to avoid increasing engine RPM to high levels as part of our noise abatement program and to avoid blowing sand and dirt on following aircraft and in residential areas.

Section 6.9. Taxi-Way Courtesy. Moving aircraft shall have the right of way at all times. Automotive traffic must yield at all taxiways crossings and on dual purpose streets. No taxiways other than those designated by Declarant as combination street/taxiways shall be used by any vehicle other than aircraft or aircraft service vehicles, unless pursuant to a valid access permit granted by the Association. No aircraft shall have a right of way on taxiways, and all aircraft on taxiways must anticipate use of passing areas for approaching aircraft.

Section 6.10. Commercial Business. No commercial aircraft business shall be permitted on a Lot. This should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft conforms with all requirements as set forth in these covenants.

Section 6.11. Storing Parts. There shall be no storage of dismantled or disabled aircraft on the Lots or the Common Areas. Aircraft being repaired and aircraft parts must be kept within an enclosed hangar building which has been approved by the Architectural Control Committee. Parts of aircraft, including but not limited to, fuselages, wings, engines, horizontal and vertical stabilizers, ailerons, rudders, landing gear and spare parts may not be stored in yards where visible from the street, taxiway, or adjoining lots, but must be stored inside the hangar or other building approved by the ACC.

ARTICLE VII

Runway Assurances and Operations

Section 7.1. Continued Operation. Inasmuch as Chandelle subdivision is developed for individuals involved in the sport and hobby of aviation, every purchaser, lessee or grantee of any property now or hereafter subject to this declaration, by acceptance of a deed, lease or other conveyance thereof, thereby agrees that, the runway and taxiway shall remain and be maintained as such until such time as 80% of the Lot owners and the Declarant consent to its dissolution or its operation is interrupted or terminated by local, state or federal authorities. The Declarant warrants that the runway in existence on the property as of this date will continue to be operated as such.

Section 7.2. Complaints. As this is an aviation community, owners understand, and agree, that lot owners, their heirs, or assigns relinquish any right to complain, object, or take any legal remedies to stop aviation related activities in the Development.

Section 7.3. Control of Runway. The Licensor shall have the right to control the use of the runway and taxiway and may prohibit the use of the runway or taxiway by any aircraft:

- a) deemed unsafe to either the life or health of individuals; or
- b) that would cause damage to the runway by virtue of its size, design or state of repair.

Section 7.4. Control of Airport Grounds and Operation. The Declarant or the Licensor shall have the right to make rules and regulations relative to the easements, taxiway, runway, air traffic patterns around the airport, grounds and related facilities, affecting the use of said premises, and all lot owners agree to comply with said rules and regulations.

Section 7.5. Withholding of Use. The Declarant or the Association shall have the right to withhold from, restrict, or charge an individual assessment for the use of the Common Area, including the runway, to any Owner:

- a) who is in default in the payment of any assessment fee; or
- b) who, in the judgement of the Declarant or the Owners Association, uses the Common Areas or his aircraft in a negligent manner or in a manner harmful to the rights of other users; or
- c) who, in general, violates the published rules and regulations of the Association.

Section 7.6. Limitation of Declarant's Obligations. It is expressly understood and agreed that the establishment of the Common Areas or the declaration of these restrictions does in no way place a burden of affirmative action on the Declarant to make any of the improvements noted herein, or extend to the grantee any service of any kind.

ARTICLE VIII

Easements and Setbacks

Section 8.1. Setback Requirements. No house or building may be constructed within 75 feet of the centerline of any designated street, within thirty-five feet of the centerline of all 50 foot wide taxi easements, and within 100 feet of the ^{LOT LINE} ~~runway boundary~~. In addition, the building set back for side and rear lot lines for homes is 15 feet and 10 feet for all other buildings. ~~A 75-foot clear zone~~ easement is established on all lot that touch the runway where no aircraft may be parked and no trees, plants or other obstacles are allowed above ground level. A 5-foot easement is reserved for underground utility and or/drainage purposes along all sides of any lot and along any side that adjoins any designated street. The established setbacks may be varied by the ACC following prescribed methods.

20'

Section 8.2. Access. Owners of lots # 1-38 shall be and are herewith granted and conveyed a right of ingress and egress by way of a permanent easement from their lots onto the runway and taxiway, said easement to be for the use of the aircraft operated by the lot owners and their authorized guests. This easement is solely limited to aircraft traffic, to the exclusion of all other vehicular traffic unless specifically authorized by permit. Some of the easements are established along the rear and side lot lines as shown on the plat.

Section 8.3. During Construction. During the development period, the Declarant or its agent reserves a blanket easement and right on, over and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary, following which the Declarant or its agent shall restore the affected property to its original condition as near as possible. The Declarant or its agent shall give reasonable notice of intent to take such action to all affected Owners, unless, in the opinion of the Declarant or its agent, any emergency exists which precludes such notice. The Declarant or its agent, however, in the exercise of such easement rights shall not disturb any living dwelling or other substantial improvement upon any property.

Section 8.4. Maintenance. In order to implement effective insect and woods fire control, the Declarant reserves for itself and its agents the right to enter upon any lot on which a residence has not been constructed and upon which no landscaping plan has been implemented (~~with prior written approval of the ACC for such plan~~), such entry to be made (at the expense of the Owner of the Lot) by personnel with tractors or other suitable devices for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, or other unsightly growth, which in the opinion of the Declarant detracts from the overall beauty, setting and safety of the Property. Such entrance shall not be deemed a trespass. The Declarant and its agents may likewise enter upon such land to remove any trash which has collected on such Lot without such entrance and removal being deemed a trespass. The provisions in this paragraph shall not be construed as an obligation on the part of the Declarant to mow, clear, cut or prune any lot nor to provide garbage or trash removal services.

ARTICLE IX

Insurance

Section 9.1. By the Declarant or Association. The Declarant or Association or its duly authorized agent shall have the right and power to obtain insurance to the extent reasonably available for all improvements on the Common Areas against loss or damage in an amount sufficient to cover 100 percent (100%) of the replacement cost of any repair or reconstruction work in the event of damage or destruction from any reasonable hazard. The Declarant may also obtain a broad form public liability policy covering all Common Areas. In the event of damage or destruction to property insured by the Declarant by fire or other casualty, the Declarant or its agent shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good a condition as formerly enjoyed. In the event the insurance proceeds are insufficient to pay all costs of repairing or rebuilding of such destroyed improvement, the Declarant or its agents shall levy a special assessment against all Owners to make up such deficiency. In the event the insurance proceeds exceed the cost of repair, the excess proceeds shall be distributed to the respective Owners and Mortgagees as their interests appear.

Section 9.2. Liability Insurance by Declarant or Association. The Declarant or Association shall have the right and power to obtain a comprehensive policy of public liability insurance insuring the Association and its Members for all liability for property damage, bodily injury or death in connection with the operation, maintenance and use of the Common Area within Chandelle Properties..

Section 9.3. By the Owner. It shall be the individual responsibility of each owner to provide, as he sees fit, insurance on the improvements on his Lot in the event of damage or destruction from all reasonable hazards. Each Owner shall provide as he sees fit homeowners liability insurance, theft and other insurance covering personal property damage or personal liability loss.

Section 9.4. Aircraft Liability Insurance. Every Owner or user of a certified aircraft, experimental aircraft or ultralight vehicle which is based on the Property shall provide the Licensor or the Association or their agent with a current Certificate of Insurance for aircraft liability before they can use the runway. Failure to provide the Certificate of Insurance and to maintain such insurance shall result in the automatic suspension of the Owner or user's right to use the Common Area including the runway.

ARTICLE X

Right of First Refusal

Section 10.1. Applicability. Except for sales and conveyances by the Declarant, no unimproved Lot may be sold by any Owner except in compliance with the provisions of this Article.

Section 10.2. Right of First Refusal. In the event any Owner receives a bona fide written offer from a third party to purchase his unimproved Lot, such Owner shall immediately notify the Declarant of such offer and shall forward a copy of said written offer, together with the name and address of the offeror, to the Declarant. Upon receipt of said notice, Declarant shall have fifteen (15) days to notify such Owner that it desires to purchase his Lot on the same terms and conditions as set forth in the offer. If Declarant notifies such Owner of its desire to purchase the Lot, then Owner shall convey the Lot to the Declarant according to the provisions of Section 10.3 below. In the event that the Declarant elects not to purchase the Lot or fails to notify the Owner of their decision within such fifteen (15) day period, then the Owner may sell the Lot to the third party offeror on terms and conditions no less favorable to the Owner than those set forth in the original offer; provided, however, that if such sale and conveyance does not take place to the original third party offeror within one hundred twenty (120) days after Declarant's failure to exercise its right of first refusal. Then the Lot shall again become subject to the terms and conditions of this Article X. Any conveyance by an Owner to third party offeror shall be subject to the terms and conditions of this Declaration.

Section 10.3. Transfer to Declarant. In the event that Declarant exercises its right of first refusal pursuant to Section 10.2 hereof, the closing of the conveyance of such Lot shall occur as provided in the third party offer. At the closing, Declarant shall make such payments in cash, by a promissory note, or otherwise to the Owner as described in the third party offer. Owner shall deliver to the Declarant a general warranty deed conveying the Lot free and clear of all exceptions except as may be set forth in the written offer and subject to this Declaration. In the event the closing occurs after the death of an Owner, Declarant may, in its discretion, require the personal representative of the Owner to post such bonds or other assurances as the Declarant may deem reasonable in order to protect the Declarant from any loss which might be caused by the failure to pay any federal or state inheritance tax or the failure to pay the claims of any creditors who may have a lien on the Lot superior to Declarant's rights as a purchaser of said Lot.

Section 10.4. Death of an Owner. The personal representative, heirs, successors and assigns of any Owner who dies while owning any Lot shall become an Owner subject to the terms and conditions of this Declaration and any subsequent sale, transfer, and conveyance of such Lot shall be governed by the provisions of this Article X.

ARTICLE XI

Maintenance Assessments

Section 11.1. Creation of the Lien and Personal Obligation for Assessments. Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges as provided in this Declaration for the purpose of funding the maintenance fund.

(b) Special assessment for capital improvements and other purposes as stated in this Declaration; such annual and special assessments to be fixed, established and collected from time to time as provided below.

(c) Default assessments which may be assessed against an Owner's Lot pursuant to the Chandelle Documents for failure to perform an obligation under the Chandelle Documents or because the Association has incurred an expense on behalf of the Owner under the Chandelle Documents. The annual, special and default assessments, together with interest, costs and reasonable attorney's fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made until paid. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due.

Section 11.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of Chandelle and for the improvement and maintenance of the Common Area, including but not limited:

(a) to keep the Common Areas clean and free from debris and to maintain any amenities located thereon in a clean and orderly condition, to maintain the landscaping thereon in accordance with the highest standards for private parks including any necessary removal and replacement of landscaping, and to repair, replace, and provide for additions to the improvements as stated in the Chandelle Documents.

(b) to pay all taxes, if any, levied against the Common Areas and any properties owned by the Association.

(c) to install and maintain any light fixtures along roads and streets in the Development to provide street lighting therefore, as may be approved by the Association.

(d) to erect and maintain entrance signs at the entrances to the Development and signs on the Common Areas, said signs to be of standard construction and quality.

(e) to pay the premiums on all hazard insurance carried by the Association on the Common Areas and all public liability insurance carried by the Association pursuant to the By-Laws.

(f) to provide such security services as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire and damage from animals.

~~(g)~~ (h) to provide such garbage removal services as may be approved by the Association for all Lots.

Section 11.3. Date of Commencement of Annual Assessment; Due Dates. The annual assessments shall commence as to all Lots on January 1, 1998. Upon the sale of a Lot by Declarant to a new Owner, the annual assessments shall commence as to that Lot on the first day of the month

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following the conveyance of the Lot to the new Owner. In that case, the first annual assessments shall be prorated according to the number of months remaining in the calendar year. The initial assessment shall be 400 Dollars per Lot. Upon the platting and recordation of a Lot by Declarant, the annual assessments shall commence as to that Lot on the first day of the month following platting and recordation.

Section 11.4. Calculation and Apportionment of Annual Assessments. Beginning January 1, 1999, the Board of Directors shall prepare a budget by April 15 of each year estimating its net cash flow requirements for the next year and an estimate of the assessments to be charged each Owner, and the Board shall distribute the proposed budget to the Owners. On or before April 30 of each year, the Board shall approve the budget in final form and shall determine, levy and assess the Association's annual assessments for the approaching year. Each budget shall include funds for establishing and maintaining reserves for periodic repairs, replacement and maintenance of any improvements on the open space and Common Area which must be replaced on a periodic basis, and for taxes, capital improvements, deficiencies for the prior years maintenance fund and other purposes, and shall include any expected income and surpluses from the prior year's fund.

Section 11.5. Special Assessments. In addition to the annual assessments authorized in Section 11.1 above, the Board of Directors may levy in any fiscal year one or more special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement on the open space or Common Area, including the necessary fixtures and personal property related thereto, or to make up any shortfall in the current year's budget. Notice of the amount and due dates for each special assessment must be sent to each Owner at least (30) days prior to the due date.

Section 11.6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, except that the Board may provide for a reduced assessment to be paid by those Lot Owners whose property is undeveloped; provided, however, that the Owners of undeveloped Lots are assessed on a uniform basis. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

Section 11.7. Owner Liability. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Laws or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

Section 11.8. Default Assessments. All monetary fines assessed against an Owner pursuant to the Association documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association documents, shall be a default assessment and shall become a lien against such Owner's Lot which may

be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such default assessment shall be sent to the Owner subject to such assessment at least thirty (30) days prior to the due date.

Section 11.9. Effect of Non-payment of Assessment: Lien: Remedies of Association. Any Association installment, whether pertaining to an annual, special or default assessment, which is not paid within thirty (30) days of its due date shall be delinquent. In the event that an assessment installment becomes delinquent, the Association, in its sole discretion may take any or all of the following actions:

- (a) Enforce a Late charge as provided in Section 8.2 (h) of the By-Laws.
- (b) Assess a late charge of at least 15% per delinquency.
- (c) Assess an interest charge from the date of delinquency at the rate per annum of 2 points above the prime rate charged by the Association's bank or such other rate as shall have been established by the Board of Directors.
- (d) Suspend the voting rights of the Owner during any period of delinquency.
- (e) Accelerate all remaining assessment installments for the fiscal year in question so that unpaid assessments for the remainder of the year shall be due and paid at once.
- (h) Bring legal action against any owner personally obligated to pay the delinquent installments.
- (i) File a statement of lien with respect to the Lot, and foreclose as set forth below:

The Association may file a statement of lien by recording with the Clerk of Court's office of Spartanburg County, South Carolina, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and amount of the delinquent assessments then owing, which statement shall be duly signed and acknowledged by the President or Vice-President of the Association or by the Manager, and which shall be served upon the Owner of the Lot by mail to the address of the Lot or at such other address as the Association may have in its records for the Owner. Thirty (30) days following the mailing of such Notice, the Association may proceed to foreclose the statement of lien in the same manner as provided for foreclosure of mortgages under the statutes of the State of South Carolina. Such lien shall be in favor of the Association and shall be for the benefit of all other Owners. In a foreclosure action, the Association shall be entitled to recover as a part of the action the interest, costs and reasonable attorney's fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The remedies herein provided shall not be exclusive and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

Section 11.10. Successor's Liability for Assessments. In addition to the personal obligation of each Owner to pay all assessments thereon and the Association's perpetual lien for such assessments, all successors to the fee simple title of a Lot, except as provided in Section 11.11 below, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid assessments, interest, late charges, cost, expenses and attorney's fees against such Lot without prejudice to any successor's right to recover from any prior Owner any amounts paid by such successor. The liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Lot. In addition, such successor shall be entitled to rely on

the statement of the status of the assessments issued by or on behalf of the Association under Section 11.14 below.

Section 11.11. Subordination of the Lien. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage. The lien of the assessments shall be superior to and prior to any homestead exemption provided now or in the future by laws of the State of South Carolina. No sale or transfer of any Lot pursuant to a decree of foreclosure or by a Public Trustee's foreclosure or any other proceeding or deed in lieu of foreclosure for the purpose of enforcing a first mortgage shall extinguish the lien of such assessments as to installments which become due prior to such sale or transfer, and the amount of such extinguished lien may be reallocated and assessed to all Lots as a common expense at the direction of the Board of Directors. No sale or transfer shall relieve the purchaser or transferee of a Lot from liability for, nor the Lot from the lien of any assessments made after the sale of transfer.

Section 11.12. Notice of Action. Any First Mortgagee which makes a prior written request to the Secretary of the Association and furnishes its name and address in the legal description of the Lot in which it has an interest to the Secretary shall be entitled to timely written notice of any delinquency in payment, special or default assessment levied against the Lot encumbered by its first mortgage. In addition, any such First Mortgage shall be entitled to cure such delinquency and obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 11.13. Exempt Property . The following portions of the property shall be exempt from the assessments, charges and liens created under this Declaration:

- (a) All properties and other interests therein dedicated and accepted by Spartanburg County and devoted to public use.
- (b) All utility easements, the open space and Common Area.

Section 11.14. Statement of Status of Assessments. Upon ten (10) days written notice to the Treasurer of the Association or the Manager and payment of a reasonable fee set by the Association from time to time, any Owner, prospective purchaser or mortgagee of a Lot shall be furnished a statement of the account for such Lot setting forth:

- (a) The amount of any unpaid assessments (whether annual, special or default assessments), interest, late charges, costs, expenses and attorney's fees then existing against a particular Lot,
- (b) The amount of the current periodic installments of the annual assessments and the date through which they are paid,
- (c) Any other information deemed proper by the Association. The information contained in such statement when signed by the Treasurer or Manager, shall be conclusive upon the Association as to the person or persons to whom such statement is issued and who rely upon it in good faith.

Section 11.15. Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification or release of any Owner from the obligation to pay assessments. In such event, the Owner shall continue to pay annual assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

ARTICLE XII

Duration and Amendments

Section 12.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date of this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change covenants and restrictions, in whole or in part, or to terminate the same.

Section 12.2 Amendments. So long as it has the right to appoint a majority of the Board of Directors, the Declarant shall have the right and authority to modify and amend these Covenants and Restrictions without liability or notice to or joinder of any other party provided such modification and amendments do not violate the community development plan, and provided that such amendments do not establish covenants and restrictions which are less restrictive than those contained in said plan. No house, hangar, garage, tie-down, or pool which is complete or substantially complete at the time of the adoption of an amendment and which conforms to the Covenants and Restrictions prior to such amendment shall be rendered nonconforming by the adoption of an amendment. Any amendment so adopted shall become effective when a certificate thereof executed with the formality of a deed is recorded in the Public Records of Spartanburg County, South Carolina. Amendments to this Declaration may also be adopted by the membership of Chandelle Property Owners Association in the same manner and upon the same vote as required for amendments to the Bylaws of Chandelle Property Owners Association.

After the termination of the Declarant's right to appoint a majority of the Board of Directors, this Declaration may be amended only by the affirmative vote or written consent of Voting Members representing seventy-five (75%) percent of the total votes of the Association. No amendment may remove, revoke or modify any right or privilege of Declarant as specifically provided for in this Declaration or Amendments hereto without the written consent of the Declarant or the assignee of such right or privilege. Any amendment must be recorded in the R.M.C. Office for Spartanburg County, South Carolina.

The consent of at least two-thirds (2/3) of the Class "A" votes and of Declarant, so long as it owns any lands described in the Declaration (as exercised through their Voting Members), shall be required to terminate the Association and to make a material amendment to any provisions of this Declaration or the Articles of Incorporation or to add any material provisions thereto.

The Declarant shall have the right at any time within five (5) years from the date hereof to amend this Declaration to correct scrivener's errors and to clarify any ambiguities determined to exist herein, or to change or add provisions of this Declaration for the purpose of meeting the requirements of governmental agencies, including but not limited to the Federal Housing Administration and the Veterans Administration. Such amendment needs to be executed and acknowledged by the Declarant only, and need not be approved by the Association, the Owners, lienors and mortgagees of Lots, whether or not elsewhere required for amendments. No amendment shall alter the subordination provisions of this Declaration without the prior approval of any mortgagee enjoying such protection.

Section 12.3 Effective on Recording Any modification or amendment shall be immediately effective upon recording in the R.M.C. Office for Spartanburg County, South Carolina, a copy of such amendment or modification, executed and acknowledged by the necessary number of Owners (and by Declarant, as required), together with a duly authenticated Certificate of the Secretary of the Board stating that the required number of consents of Owners were obtained and are on file in the office of the Association.

Section 12.4 Revocation This Declaration shall not be revoked except as provided in Article XIV regarding total condemnation without the consent of all of the Owners in a written instrument duly recorded.

ARTICLE XIII

Enforcement of Covenants

Section 13.1 Violations Deemed a Nuisance. Every violation of this Declaration or any of the other Chandelle Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or in equity against anyone in violation of these Covenants shall be available.

Section 13.2 Compliance. Each Owner or other occupant of any part of the Property shall comply with the provisions of the Chandelle Documents as the same may be amended from time to time.

Section 13.3 Failure to Comply. Failure to comply with the Chandelle Documents shall be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the By-Laws shall be given to the delinquent party prior to commencing any legal proceedings.

Section 13.4 Who May Enforce. Any action to enforce the Chandelle Documents may be brought by Declarant or the Board or the Manager in the name of the Association on behalf of the Owners. If, after a written request from an aggrieved Owner, none of the foregoing persons or entities commences an action to enforce the Chandelle Documents, then the aggrieved Owner may bring such action.

Section 13.5 Remedies. In addition to the remedies set forth in this Article XIII, any violation of the Chandelle Documents shall give the Board, the Manager or Declarant, on behalf of the Owners, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify or replace, at the expense of the offending Owner, any structure, thing or condition that may exist thereon contrary to the interest and meaning of the Chandelle Documents. If the offense occurs on any easement, walkway, Common Area or the like, the cure shall be at the expense of the Owner or other person responsible for the offending condition.

Section 13.6 Non-exclusive Remedies. All the remedies set forth herein are cumulative and not exclusive.

Section 13.7 No Waiver. The failure of the Board of Directors, Declarant, the Manager, the ACC or any aggrieved Owner to enforce the Chandelle Documents shall not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Chandelle Documents.

Section 13.8 No Liability. No member of the Board of Directors, Declarant, the Manager, the ACC or any Owner shall be liable to any other Owner for the failure to enforce any of the Chandelle Documents.

Section 13.9 Recovery of Costs. If legal assistance is obtained to enforce any of the provisions of the Chandelle Documents, or in any legal proceeding (whether or not suit is

brought) for damages or for the enforcement of the Chandelle Documents or the restraint of violations of the Chandelle Documents, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorney's fees as may be incurred, or if suit is brought, as may be determined by the Court.

ARTICLE XIV

Principles of Interpretation

Section 14.1 Severability. This Declaration, to the extent possible, shall be construed or reformed so as to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

Section 14.2 Construction. In interpreting words in this Declaration, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

Section 14.3 Headings. The headings are included for purposes of convenient reference, and they shall not affect the meaning or interpretation of this Declaration.

Section 14.4 Registration of Mailing Address. Each Member shall register his mailing address with the Secretary of the Association from time to time, and notices or demands intended to be served upon or given to a Member shall be personally delivered or sent by mail, postage prepaid, addressed in the name of the member at such registered mailing address.

Section 14.5 Notice. All notices or requests required shall be in writing. Notice to any Member shall be considered delivered and effective upon personal delivery or three (3) days after posting, when sent by certified mail, return receipt requested, to the address of such Member on file in the records of the Association at the time of such mailing. Notice to the Board, the Association, the ACC or Manager shall be considered delivered and effective upon personal delivery or three (3) days after posting, when sent by certified mail, return receipt requested, to the Association, the Board, the ACC or the Manager at such address as shall be established by the Association from time to time by notice to the Members. General notices to all Members or any classification thereof need not be certified, but may be sent regular first class mail.

Section 14.6 Waiver. No failure on the part of the Association, the Board or the ACC to give notice of default or to exercise delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above in the event the board or the ACC fails to respond to certain requests. No waiver shall be effective unless it is in writing, signed by the President or Vice-president of the Board on behalf of the Association, or by the Chairman of the ACC on behalf of the ACC.

Section 14.7 Limitation of Liability on Indemnification. The Association shall indemnify every officer, director and committee member against any and all expenses, including trial and appellate attorney's fees and costs reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that

such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association may, as a Common Expense, maintain adequate general liability insurance and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 14.8 Conflicts Between Documents. In case of conflict between this Declaration and the Articles of Incorporation or the By-Laws or the Covenants, this Declaration shall control. In case of conflict between the Articles of Incorporation or the Covenants and the Architectural Guidelines, the Architectural Guidelines shall control.

Section 14.9 Indemnity for Damages. Each and every Owner and future Owner, in accepting a deed or contract for any Lot subject to these restrictions, agrees to indemnify Declarant for any damage caused by such Owner, or the contractor, agent or employees of such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines, or sanitary sewer lines, or other utilities such as telephone, cable television, electricity or gas lines.

Section 14.10 Assignment. The Declarant may assign all or any part of its rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor shall be identified, the particular rights being assigned shall be specified, and, to the extent required, concomitant obligations shall be expressly assumed by such successor, all in written instrument duly recorded in the R.M.C. Office for Spartanburg County, South Carolina.

ARTICLE XV

Condemnation

Section 15.1 Rights of Owners. Whenever all or any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation by the Board of Directors acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking, but the Association shall act as attorney-in-fact for all Owners in the proceeds incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 15.2 Partial Condemnation: Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If taking involves a portion of the Common Area on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners representing at least sixty-six (66%) percent of the Class "A" votes in the Association shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with the plans approved by the Board of Directors and the ACC. If such Improvements are to be repaired or restored, the provisions in this Article IX above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after such restoration or replacement is completed, then such award or net fund shall be distributed in equal shares per Lot, first to the Mortgagees and then to the Owners as their interests appear.

Section 15.3 Complete Condemnation. If all of Chandelle is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the Association created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Area shall be distributed as provided in Section 15.2 above.

ARTICLE XVI

Expansion

Section 16.1 Reservation of Right to Expand. Declarant shall expand the effect of this Declaration to include all of the Expansion Property which comes into the possession and control of Declarant. Declarant shall have the unilateral right to transfer to any other person this right to expand by an instrument duly recorded. Declarant shall pay all taxes and other governmental assessments relating to the Expansion Property until expansion.

Section 16.2 Declaration of Annexation. Such expansion may be accomplished by recording a Declaration of Annexation in the R.M.C. Office for Spartanburg County, South Carolina, describing the real property to be annexed to the Property, submitting it to the covenants, conditions and restriction contained in this Declaration, designating it as a Project, if the Expansion Property parcel in that instance does in fact constitute a Project, and providing for voting rights and Assessment allocations as provided in this Declaration. Such Declaration of Annexation shall not require the consent of the Owners. Any such expansion shall be effective upon the filing for record of such Declaration of Annexation, unless otherwise provided therein. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Upon the recordation of any such Declaration of Annexation, the definitions used in this Declaration shall be expanded automatically to encompass and refer to Chandelle as expanded. Such Declaration of Annexation may add, delete or modify provisions of this Declaration as it applies to the Expansion Property already subject to this Declaration, except as provided in Article XII.

BY-LAWS
Chandelle Property Owners Association

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BY-LAWS
Chandelle Property Owners Association

ARTICLE I
Name and Location

Section 1.1 Name and Location. The name of the corporation is Chandelle Property Owners Association, Inc., a South Carolina non-profit corporation. The principal office of the corporation is located in the subdivision of Chandelle in Greer, Spartanburg County, South Carolina, but meetings of the Members and Directors may be held at such places within the State of South Carolina as may be designated by the Board of Directors.

ARTICLE II
Purpose

Section 2.1 Purpose. The specific purposes for which the Association is formed are: to provide for the maintenance, preservation and control of the Common Area which is part of the real property located in Spartanburg County, South Carolina (the "Property"), which has been submitted to the Declaration of Covenants, Conditions, Restrictions and Easements for Chandelle dated _____, and recorded on _____, in the R.M.C. Office for Spartanburg County, South Carolina in Deed Book _____ at Page _____ (the "Declaration"); and to promote the health, safety and welfare of the Owners within Chandelle.

Section 2.2 Assent. All present and future Owners, their families, present or future tenants, and their guests and invitees, and any other person using the facilities of Chandelle in any manner are subject to the Chandelle Documents, including these By-Laws. The mere acquisition or rental of any lots in Chandelle or the mere act of occupancy of one of the Lots shall constitute ratification and acceptance of these By-Laws.

ARTICLE III
Definitions

Section 3.1 Definitions. The defined terms used in these By-Laws shall have those meanings that the same terms have in the Declaration.

ARTICLE IV
Membership and Voting

Section 4.1 Membership and Voting Rights Every Owner of a Lot which is subject to assessment 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, except as set forth in Section 4.3 below.

Section 4.2 Voting Rights The Association shall have two classes of voting membership:

Class A. Class A members shall be all Lot Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member (s) shall be the Declarant, its assigns or successors, and shall be entitled to three votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership, when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B Membership.

Section 4.3 Associate Membership. In consideration for transfer and dedication to the Association of its interest in the real property which is the Runway, and for development services rendered in connection with the Property, the Owners of Flight World (the current business operating adjacent to Chandelle Property) are hereby granted an Associate Membership in the Association. The Owner of Flight World may transfer or assign the right to use the Common Area pursuant to the Associate Membership and may receive a fee for that transfer. The Associate Member shall be entitled to use the Runway for aircraft operations in accordance with the restrictions and regulations as are set forth in the Declaration, the Architectural Guidelines, the Bylaws of the Chandelle Property Owners Association, and in the Rules and Regulations adopted by the Association. The Association shall not be entitled to charge fees or collect assessments from the Associate Member. The Associate Member shall have no right to vote or participate in the operation of the Association. There shall be no rights in or to the real property which is the subject of this Declaration derived by the Associate Member.

Section 4.4 Proof of Membership. Any person or entity, on becoming an Owner of a Lot, shall furnish to the Manager or to the Secretary of the Association a photocopy or a certified copy of the recorded instrument vesting that person or entity with an ownership interest, which instrument shall remain in the files of the Association. An Owner shall not be deemed to be a Member of the Association in good standing and shall not be entitled to vote at any annual or special meeting of Members unless this requirement is first met.

ARTICLE V **Meetings**

Section 5.1 Association Meetings, Voting and Proxies. The Association shall have two (2) classes of membership. Class "A" and "B", as more fully set forth in Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

Section 5.2 Place of Meeting. Meetings of the Association shall be held at such 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 5.3 Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Meetings of the Association shall be of the Voting Members or their alternates, and the voting rights of all Members shall be exercised through the Voting Member. The next annual meeting shall be set by the

Board so as to occur within thirteen (13) months after the initial annual meeting. Subsequent regular annual meetings of the Voting Members 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 of the Association shall be held at a date and time as set by the Board of Directors.

Section 5.4 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 5.5 Notice of Meetings. Written or printed notice stating the place, day and hour of any meeting of the Association 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 meetings, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. If mailed, the notice of the meeting shall be deemed to be delivered when deposited in the United States Mail addressed to the Voting Member at his address as it last appeared on the records of the Association, with postage thereon pre-paid.

Section 5.6 Waiver of Notice. Waiver of notice of the meeting of the Association 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 meetings. Attendance at a meeting by a Voting Member shall be deemed waiver by such Voting Member of 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 at which proper notice was not given is raised before the business is put to a vote.

Section 5.7 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 his or her alternate, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Voting Members in the manner prescribed for regular meetings. The voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum, provided that at least twenty-five (25%) percent of the total votes of the Association remain present in person, and provided further that any action taken shall be approved by at least a majority of the Voting Members required to constitute a quorum.

Section 5.8 Voting. The voting and membership rights shall be set forth in the Declaration, and such voting and membership rights provisions specifically incorporated therein.