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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2020-001500

Case No. 2020-CP-07-00768

Dana Advocaat, both individually and as Trustee of the
Advocaat Living Trust dated March 7, 2019, Respondent,

v.

Community Services Associates, Inc., Appellant.

RECORD ON APPEAL VOL 2 of 2

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FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

August 4, 2020

BY E-FILING

Beaufort County Clerk of Court
102 Ribaut Road
Beaufort, SC 29902

Re: *Dana Advocaat, both individually and as Trustee of the Advocaat Living Trust, dated March 7, 2019 v. Community Services Associates, Inc.*
Case No. 2020-CP-07-00768

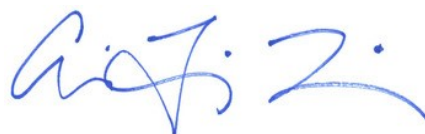
Dear Sir or Madam,

Last evening, the Defendant in the above-referenced action filed a Reply to Plaintiff's Reply to Defendant's Memorandum in Opposition to Application for Corporate Records. Attached for filing in this matter, please find the exhibits that will be presented by the Plaintiff at the hearing, in response to Defendant's reply.

Thank you for your assistance, and please let me know if you have any questions or concerns.

With kind regards, I am,

Very truly yours,



Ainsley Fisher Tillman
Ainsley.Tillman@FordWallace.com
Attorney for Plaintiff

cc: all counsel of record (by NEF)

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Covenant re: Gate Fees

1053

entry fee into Sea Pines Plantation for each passenger vehicle from the existing One Dollar (\$1.00) fee to Three Dollars (\$3.00); provided, however, that the amount of such gate entry fee shall be subject to annual review and modification by the Company. Provided further, that if the Company voluntarily reduces the daily gate entrance fee below One Dollar (\$1.00), then the Company agrees to pay into the community services fund each calendar year, for a period of four years commencing in the year of the reduction, an amount equal to the difference between the amount of all gate fees collected during calendar year 1974 (hereinafter referred to as the "base year") and the amount collected during the calendar year following such reduction. If reduction in the daily gate entry fee below One Dollar (\$1.00) results from or is caused by a court order, a law suit, or governmental or quasi-governmental action including elections or other similar actions or occurrences not within the reasonable control of the Company, then the Company shall not be required to pay the difference between the gate fees collected during the base year and the fees collected during the calendar year following such reduction. Notwithstanding any provision herein to the contrary, the Company shall not be required to pay said difference during any year in which the daily gate entry fee is One Dollar (\$1.00) or more for the entire calendar year.

All gate fees collected by the Company shall be contributed to and used for community services.

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MEMORANDUM OF AGREEMENT
TO THE EXISTING AGREEMENT
ON THE INCREASE OF THE GATE FEE FROM \$3.00 TO \$5.00

The latest agreement for the increase in the gate entry fee into Sea Pines Plantation was made on March 14, 2001 by all parties with the right to approve such increases as well as being acknowledged by Robert Gossett, owner of the controlling interests in South Beach Marina Village.

Whereas, The signatories to that agreement are the designated representatives of the various companies, partnerships and organizations that hold the approval rights to any increase or decrease in the Sea Pines Gate Fees. These approval rights were so granted by covenant, bankruptcy court orders or other ownership rights; and

Whereas, The signatories to that agreement now desire to implement an amendment to that agreement in accordance with the following terms and conditions.

Whereas Clauses: That the foregoing Whereas clauses shall be incorporated as if set verbatim.

Amend Existing Section 2 to read as follows:

Continue the increase from \$3.00 to \$5.00 the daily entrance fee beginning on January 1, 2004. This fee increase will be for a period of five (5) years with a review of the increase at the end of the fourth year. It is further agreed to increase the weekly pass fee to \$25.00.

Amend Existing Section 3 to read as follows:

During the period of this agreement funds resulting from the above increases in the daily and weekly gate fees will be applied to the schedule of expenses as set forth in this agreement. Any remaining excess funds shall be used to underwrite capital projects mutually beneficial to the residential and commercial interests of the plantation, such as but not limited to, beautification, roadway maintenance, bike path maintenance and construction. The expending of excess funds shall be by a vote of at least five of the seven members of the Commercial Committee and subject to final approval by the CSA Board of Directors. Remaining excess funds will remain in the Community Trust Fund and then be allocated to the CSA budget to maintain the plantation's infrastructure.

Amend Existing Section 4 to read as follows:

Business Landowners will pay 1% of their adjusted gross resort revenue, as defined in the 1974 Covenants, into the CSA Community Trust Fund. *The minimum annual amount payable from the Business Landowner will be the current residential improved property assessment.* Each Business Landowner who pays 1% of their adjusted gross resort revenue shall be entitled to receive from the funds resulting from the above increases in the daily and weekly gate fees, an amount not to exceed .5 of their payment to the Community Trust Fund for expenses that the Business Landowners incur on their common property that benefit residents and visitors. This reimbursement shall be made after funds to provide for all CSA credits, as currently in existence or modified by this agreement, have been satisfied. This reimbursement shall be an annual reimbursement and shall not be retroactive or cumulative.

Amend Section 7 as follows:

This section shall be deleted. In the March 13, 2001 agreement two Sections are numbered 6. The existing second number 6 section shall become Section 7 with no textual amendment.

Amend Section 9 to read as follows:

A Commercial Committee of the CSA Board will oversee implementation of the stipulations of this agreement. The Committee will consist of representatives from the following four (4) commercial organizations: Sea Pines Company, Prudential - Bache / Fogelman Harbour Town Properties, L.P., Sea Pines Center and South Beach Marina Village, or their successor. The Commercial Committee will be chaired by a commercial representative. The President of CSA will appoint three (3) CSA residential property owner Directors. Ex-Officio members will be appointed by the CSA President.

Continuing Sections of the existing Agreement:

Sections of the existing agreement dated March 14, 2001; namely, Sections 5, 6, 6 (renumbered as 7 with no text amendment), 8 and 10 are not amended and will remain in effect.

Add to the existing Agreement Section 11 to read as follows:

Any change or modification of the covenants, during the term of this agreement that may adversely affect any party to this agreement shall give cause for review of this agreement. In the event the parties cannot reach agreement from this review, the agreement on the increase of the gate fee from \$3.00 to \$5.00 shall be subject to termination. Termination of the agreement may not be exercised during the first thirty-six months of the agreement.

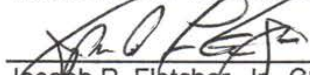
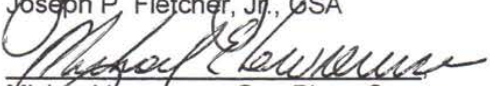
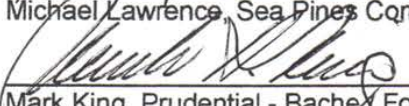
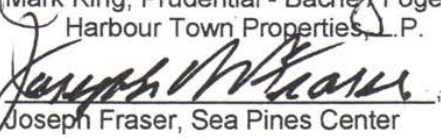
Add to the existing Gate Pass Policy to read as follows:

Appeals arising from the interpretation or execution of the Gate Pass and Decal Pass Policies shall be subject to appeal to the Gate Pass Policy Committee. In the event the Gate Pass Policy Committee cannot achieve resolution from this review, the agreement on the increase of the gate fee from \$3.00 to \$5.00 shall be subject to termination. Termination of the agreement may not be exercised during the first thirty-six months of the agreement.

Appendix A:

1. A trolley/shuttle service shall be operated on a schedule agreed to by the Committee that will offer transportation service from the Greenwood Parking Lot to the Sea Pines Center to Harbour Town Lighthouse, and from the Harbour Town Lighthouse to the Sea Pines Center to the Sea Pines Beach Club. All expenses associated with the operation of these services shall be paid in full from funds derived from the increase in the gate fee.
2. The charge for a Non-Resident decal shall be reduced from \$95.00 to \$50.00 for applicants having ownership of real property on Hilton Head Island.
3. The Commercial Committee shall have access to funds derived from the increase in the gate fee, after the expenses associated with this agreement have been satisfied, in the amount not to exceed \$65,000.00 annually for marketing and associated activities (welcome maps).
4. The closing time for the sale of gate passes shall be extended from 10:30 P.M. to 11:00 P.M.

The terms and conditions as set forth in this Memorandum of Agreement are approved by:

 _____ Joseph P. Fletcher, Jr., OSA	10/28, 2003
 _____ Michael Lawrence, Sea Pines Company	10/28, 2003
 _____ Mark King, Prudential - Bache & Fogelman Harbour Town Properties, L.P.	10/28, 2003
 _____ Joseph Fraser, Sea Pines Center	10/28, 2003

This Memorandum of Agreement is acknowledged by:

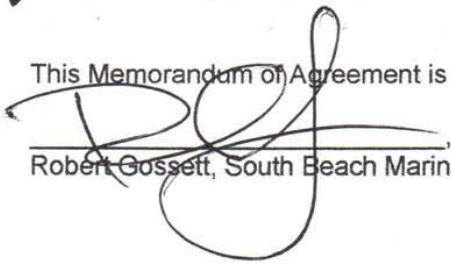
 _____ Robert Gossett, South Beach Marina Village	10/28, 2003
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EXHIBIT 1

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Dear Mr. Chairman,

After much consideration and consultation with legal counsel I have concluded that I shall recuse myself from matters coming before the CSA Board concerning the currently proposed changes to the Gate Fee Agreement.

I am not opposed to an increase in the gate fee - additional funds are certainly needed to maintain the Sea Pines community - provided that all property owners, including the residential property owners fairly participate. Reasonable increases in the gate fee, conditioned upon, at minimum, the residential owners' voting to increase their assessments and fees, strikes an appropriate balance, in my opinion. This much of the proposed amendment to the gate fee policy I could vote to approve.

Given that we are voting to increase the gate fee to provide extra income for CSA, I do not understand the provision whereby each business in Sea Pines is to receive 250 passes each year at no charge. Estimating 100 individual businesses in Sea Pines multiplied by 250 equates to 25,000 free \$8 passes, thereby potentially denying CSA of \$200,000 annually as well as placing an additional burden on CSA staff and revenues.

Further, there are other provisions in the proposed amendment I cannot support. For example, under the proposal currently on the table CSA provides indemnity and hold harmless protection to Sea Pines Center for matters, including losses, arising from the amendment. This imposition of a potentially unlimited financial burden upon CSA is unprecedented, unnecessary and not in the best interests of CSA.

Under the current proposal both Sea Pines Center and Sea Pines Resort would be granted control over spending significant portions of the gate fee revenues of CSA. Because these companies derive substantial benefit from this provision, and the indemnification provision for Sea Pines Center, these companies have a direct interest in the approval of the proposed amendment. I question whether individuals representing Sea Pine Center and Sea Pines Resort can lawfully vote on the issue in light of the conflict of interest provisions of the South Carolina Non-Profit Corporation Act. The gate fee approval rights of Sea Pines Center and Sea Pines Resort should simply be a yes or a no vote, not a contract negotiated with benefits apparently tempered to secure a yes vote. I feel that any monies which might be voted on and generated by a gate fee increase should be earmarked as an additional contribution to the current Trolley Marketing Fund, and then dispensed in the same manner as presently exercised.

At the time I acquired property in Sea Pines I received an Absolute Assignment of rights from Sea Pines Plantation Company. Discussions are ongoing between me and representatives of Sea Pines Resort concerning the existence and scope of the rights I acquired under the Absolute Assignment. Some of the provisions of the proposed amendment currently under consideration are inconsistent with my interests under the Absolute Assignment.

As a CSA board member, my first duty is to serve the board and I feel that I cannot lawfully or ethically take actions that appear to directly benefit mine or other commercial properties. For that reason, and on the advice of counsel, I shall recuse myself from board decisions concerning the proposed amendment to the gate fee policy in its current form, and I will not sign it.

Respectfully,
Robert Gossett

cc: CSA Board Members

Draft Gate Agreement

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) **AMENDMENT TO GATE PASS AGREEMENT**

(Final 7-2-18 4:00pm)

THIS AMENDMENT TO GATE PASS AGREEMENT (the “**Amendment**”) is made and entered into this ____ day July, 2018, between **Community Services Associates, Inc.**, a South Carolina nonprofit corporation (“**CSA**”), **Sea Pines Resort, LLC**, a Virginia limited liability company (the “**Resort**”) and the **Sea Pines Center Associates, LLC**, a South Carolina limited liability company (the “**Center**”) (CSA, the Resort and the Center are collectively referred to herein as the “**Parties**”).

WITNESSETH:

WHEREAS, pursuant to that certain Assignment of Rights, dated November 17, 1987, and recorded in the Beaufort County Register of Deeds (“**ROD**”) at Book 490 at Page 712 (“**November 1987 Assignment**”), that certain Easement for Access, dated November 17, 1987, recorded in Book 490 at Page 760 (“**Easement for Access**”), and the November 1987 Gate Policy attached as Exhibit C to said November 1987 Assignment (“**1987 Gate Policy**”), Sea Pines Plantation Company, Inc., a South Carolina corporation, obtained specific and extensive rights of access at no cost or fee into Sea Pines Plantation for its successors, assigns, agents, employees, contractors, subcontractors, invitees, or any other authorized personnel; and

WHEREAS, the Declaration of Covenants and Agreement of 1988 for the Transfer of Properties, Reserved Rights and Obligations of Hilton Head Liquidation Corp. to Community Services Associates, Inc., dated December 8, 1988, and recorded at the ROD in Book 519 at Page 1161 (the “**1988 Declaration**”) provides that the 1987 Sea Pines Gate Policy, which was attached to the 1988 Declaration as Exhibit “D”, shall be enforced by CSA; and

WHEREAS, the 1988 Declaration also provides that the 1987 Gate Policy shall not be amended without the consent of Sea Pines Plantation Company, Inc., which was assigned certain rights from Sea Pines Plantation Company under the November 1987 Assignment and Easement for Access; and

WHEREAS, the Resort is the successor to the November 1987 Assignment, the Easement for Access, and the 1987 Gate Policy, as amended, and the approval rights held by Sea Pines Plantation Company, Inc., and therefore the Resort's consent is required for any amendment to the 1987 Gate Policy, as amended; and

WHEREAS, the November 1987 Assignment, the Easement for Access and the 1987 Gate Policy, among other rights, provided free and unfettered access to the Resort and to those individuals, groups and companies as listed on Exhibit A hereto; and

WHEREAS, pursuant to that certain Agreement for Assignment and Assignment of Partnership Interest in Sea Pines Center, a South Carolina Limited Partnership, dated August 7, 1987 recorded in DB 11 P 2161 (the "**August 1987 Assignment**") from John F. Curry as court appointed Chapter 11 Trustee for Sea Pines Company and Hilton Head Company, Inc., Sea Pines Plantation Company and The Hilton Head Company, Inc., provides that any increases in gate access fees into Sea Pines Plantation above \$3.00 for a daily pass, \$10.00 for a weekly pass or \$20.00 for a monthly pass requires the consent of the Sea Pines Center, L.P., and its successors and assigns; and

WHEREAS, the Center is the successor to Sea Pines Center, L.P.; and

WHEREAS, the Parties, and others, entered into that certain "Memorandum", dated February 2, 1999, agreeing to an increase of the Sea Pines daily access gate fee (the "**Gate Fee**") under the existing Gate Policy from \$3.00 to \$5.00 (the "**1999 Agreement**"); and

WHEREAS, the Parties, and others, thereafter amended the 1999 Agreement by the execution of that certain "Agreement on the Increase of the Gate Fee from \$3.00 to \$5.00", dated March 14, 2001 ("**2001 Agreement**"); and

WHEREAS, the Parties, and others, thereafter amended the 2001 Agreement by the execution of that certain "Memorandum of Agreement to the Existing Agreement on the Increase of the Gate Fee from \$3.00 to \$5.00," dated October 28, 2003 (the "**2003 Agreement**"); and

WHEREAS, the Parties, and others, thereafter amended the 2003 Agreement by the execution of that certain “Memorandum of Agreement Amending the Existing Agreement on the increase of the Gate Fee from \$3.00 to \$5.00,” dated November 20, 2007 (the “**2007 Agreement**”); and

WHEREAS, the Parties and others, thereafter executed a new Sea Pines Gate Entry Policy, dated October 23, 2017 (the “**2015 Gate Policy**”) which provided that it supersedes the 1987 Gate Policy and the prior agreements (1999 Agreement, 2001 Agreement, 2003 Agreement, and 2007 Agreement) referenced above; and

WHEREAS, the Parties, and others, thereafter executed a new Sea Pines Gate Entry Policy, dated November 21, 2017 (the “**2017 Gate Policy**”) which provided that it supersedes the 2015 Gate Policy and the prior agreements (1999 Agreement, 2001 Agreement, 2003 Agreement, and 2007 Agreement) referenced above; and

WHEREAS, Appendix A to the 2017 Gate Policy describes the “Fee schedule for CSA Gate Entry Passes”, which includes a fee of \$6.00 for a daily visitor gate fee (herein a “**Daily Visitor Gate Fee**”); and

WHEREAS, in accordance with the 2017 Gate Policy, CSA currently contributes to the CSA Trolley Marketing Fund \$65,000.00 annually (the “**Base Contribution**”) and \$.20 per each Daily Visitor Gate Fee Pass and Daily Commercial Gate Fee Pass sold (the “**Supplemental Contribution**”); and

WHEREAS, the Parties now desire to amend the 2017 Gate Policy to provide for future increases in the Daily Visitor Gate Fee.

NOW THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, for themselves, their successors in title and assigns, do hereby agree as follows:

1. **Recitals.** The Parties agree that the aforesaid recitals are true and correct and are incorporated herein by this reference. That said recitals are important and relevant provisions of this Amendment.

2. **Daily Visitor Gate Fee Increases.**

a. **Daily Visitor Gate Fee Pricing for 2018.**

The Daily Visitor Gate Fee shall increase from its current \$6.00 to \$8.00 effective July 1, 2018. CSA shall make a \$75,000.00 contribution (the “Additional Contribution”) to the CSA Gate Entry Committee Marketing Fund (the “Fund”).

b. **Daily Visitor Gate Fee Pricing for 2019.**

The Daily Visitor Gate Fee shall remain \$8.00 in year 2019. CSA shall continue to make the Additional Contribution of \$75,000.00 to the Fund.

c. **Daily Visitor Gate Fee Pricing for 2020.**

i. In the event the number of \$8.00 Daily Visitor Gate Fee Passes sold from January 1, 2019 to December 31, 2019 decreases by 3% or more from the number of \$8.00 Daily Visitor Gate Fee Passes sold from June 1, 2018 to May 31, 2019, the Daily Visitor Gate Fee shall remain at \$8.00 for 2020. In such event, CSA shall make the Additional Contribution of \$75,000.00 to the Fund.

ii. Alternatively, if the number of \$8.00 Daily Visitor Gate Fee Passes sold from January 1, 2019 to December 31, 2019 either increases or decreases by less than 3% from the number of \$8.00 Daily Visitor Gate Fee Passes sold from June 1, 2018 to May 31, 2019, the Daily Visitor Gate Fee shall increase to \$9.00, effective June 1, 2020. In such event, the Additional Contribution to the Fund shall be increased to \$150,000.00.

d. **Daily Visitor Gate Fee Pricing for 2021 – After 2020 Price Increase to \$9.00.**

i. In the event the number of \$9.00 Daily Visitor Gate Fee Passes sold from January 1, 2020 to December 31, 2020 decreases by 3% or more from the number of \$9.00 Daily Visitor Gate Fee Passes sold from January 1, 2019 to

December 31, 2019 the Daily Visitor Gate Fee shall remain \$9.00 for 2021.

In such event, the Additional Contribution to the Fund shall remain at \$150,000.00.

- ii. Alternatively, if the number of \$9.00 Daily Visitor Gate Fee Passes sold from January 1, 2020 to December 31, 2020 either increases or decreases by less than 3% from the number of \$9.00 Daily Visitor Gate Fee Passes sold from January 1, 2019 to December 31, 2019, the Daily Visitor Gate Fee shall increase to \$10.00 effective June 1, 2021. In such event, the Additional Contribution to the Fund shall be increased to \$225,000.00.

e. **Daily Visitor Gate Fee Pricing for 2021 - After 2019 and 2020 Pricing Remains at \$8.00.**

- i. In the event the number of \$8.00 Daily Visitor Gate Fee Passes sold from January 1, 2020 to December 31, 2020 decreases by more than 3% from the number of \$8.00 Daily Visitor Gate Fee Passes sold from June 1, 2018 to May 31, 2019, the Daily Visitor Gate Fee shall be \$8.00 for 2021. In such event, the Additional Contribution to the Fund shall be \$75,000.00.

- ii. If the number of \$8.00 Daily Visitor Gate Fee Passes sold from January 1, 2020 to December 31, 2020 either increases or decreases by less than 3% from the number of \$8.00 Daily Visitor Gate Fee Passes sold from June 1, 2018 to May 31, 2019, the Daily Visitor Gate Fee shall increase to \$9.00 effective June 1, 2021. In such event, the Additional Contribution to the Fund shall be \$150,000.00.

f. **Daily Visitor Gate Fee Pricing 2022.**

The Daily Visitor Gate Fee for 2022 and beyond shall be set by the CSA Board of Directors and approved by the Resort and the Center. Until the Parties agree to

new rates and contributions, all rates and contributions shall remain at the 2021 level.

3. **Marketing Fund Program.** CSA shall continue to maintain the CSA Trolley Marketing Fund, to now be designated as the "Fund". In addition to the Additional Contribution described in Section 2 of this Amendment, beginning in 2018, CSA shall make the Base Contribution and the Supplemental Contribution to the Fund.

The purpose of the Fund is to promote marketing of commercial businesses operating within the Sea Pines community, provide event funding, pay potential merchant rebates, and provide for an infrastructure reserve fund for trolley related projects and for other uses with any and all uses of such funds approved by a marketing fund committee created in accordance with Section 4 of this Amendment.

4. **Marketing Fund Committee.** The Marketing Fund Committee (the "**Committee**"), will be comprised of three (3) Members: one Member representing the Resort, one Member representing the Center and one Member selected by the remaining commercial property owners identified and selected in accordance with **EXHIBIT "B"** hereto. The Committee will determine the joint marketing projects to be funded by the Base Contribution and any balance remaining from the Incremental Funding described below at year end. The Committee will provide CSA with an annual planned budget for Base Contribution it plans to spend jointly no later than November 1 of the preceding calendar year in anticipation of Fund contributions.

5. **Incremental Funding.** Notwithstanding anything herein to the contrary, each Committee Member shall have exclusive control of 1/3 of the total of the Additional Contribution and the Supplemental Contribution (the "**Incremental Funding**") each year in each Committee Member's sole discretion. Any remaining funds from the Incremental Funding at the end of each calendar year will be retained in the Fund for joint projects as determined by the Committee under Section 4 above. The Fund proceeds shall be rolled over into the following year if not used in any calendar year.

An example of estimated Incremental Funding available at current volume levels (392,168 Daily Visitor Gate Fee Passes for calendar year 2017) is shown at **EXHIBIT "C"** attached hereto. Notwithstanding anything to the contrary in this Amendment, the available Incremental Funding shall not be less than the designated "**Floor Amounts**" detailed in **EXHIBIT "C"**.

6. **Trolley System.** CSA shall continue operating the trolley on a schedule equal to or greater than the operating schedule in effect as of the date of this Amendment. In the event the annual trolley operating schedule is reduced from its level of operation as of the date of this Amendment without the written approval of the Center and the Resort, the Daily Visitor Gate Fee shall automatically revert to \$6.00 without any further action by the Center or the Resort.

7. **Dredge Permit Contribution.** CSA shall continue to make a contribution of \$0.20 per Daily Visitor Gate Fee Pass sold to be retained by CSA and distributed upon written request of the South Island Dredging Association ("**SIDA**") to pay permitting and other "soft" costs associated with dredging in Sea Pines, excluding the costs of the actual dredging work itself.

8. **Commercial Guest Passes.** All commercial businesses operating within Sea Pines shall be allowed to request a maximum of 250 Daily Visitor Gate Fee Passes during each calendar year, without charge to the entity or individual receiving such pass.

9. **Center Approval Right Challenge.** In the event CSA files a lawsuit against the Center challenging the Center's a right to approve increases to the Daily Visitor Gate Fee, A, any and all increases in the Daily Visitor Gate Fee contemplated by this Amendment shall be immediately void and the Daily Visitor Gate Fee shall revert to \$6.00. Thereafter all contributions by CSA to the Fund shall revert to the amounts contributed as of the date of this Amendment.

10. **Indemnification.**

- a. **Center** - CSA agrees to indemnify and hold the Center and its respective officers, directors, members, managers, agents, employees, and other representatives, successors and assigns, harmless from and against all claims,

causes of action, liability or losses arising from this Amendment. This provision includes reimbursement of attorney fees and costs.

b. **11. Payment Due Date for Contributions.** All annual contributions required to be made by CSA hereunder shall be paid in equal monthly installments not later than the first day of each month during the term hereof unless otherwise agreed in writing by the Parties.

12. **No Waiver.** The Parties, jointly and severally, agree, acknowledge and reaffirm the exclusive right of CSA, the Resort and the Center to jointly approve any Gate Fee Pass increase. Nothing herein set forth, including, but not limited to any distribution of funds or right to determine use of such funds as provided herein shall be interpreted in any manner whatsoever directly or indirectly to extend Gate Fee approval rights to additional entities other than CSA, the Resort and the Center.

13. **Attorney Fees/Interest.** In any litigation to enforce the terms and provisions of this Amendment, the prevailing party is entitled to recover reasonable attorney fees and costs.

14. **Miscellaneous.** Except as specifically modified herein, the Amendment is ratified and confirmed and shall remain in full force and effect as existing on the date of this Amendment. In the event of a conflict between the Amendment, any previous Amendments or agreements, or this Amendment, this Amendment shall control. This Amendment shall bind and inure to the benefit of the Parties and their successors and assigns. If any provision of this Amendment or its application to any party or circumstances are determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Amendment or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law. This Amendment may be executed in any number of counterparts, all of which shall constitute one and the same instrument. This Amendment shall be construed and enforced in accordance with the laws of the State of South Carolina. The Parties acknowledge and agree that

each was actively involved with the negotiation and drafting of this Amendment. Further, each Party's legal counsel reviewed, or had the opportunity to review the Amendment prior to its execution. The parties agree any Court, arbitrator or mediator which may hereinafter interpret this Amendment will not construe the Amendment against any particular party which may have originated, typed or prepared one or more terms, conditions or provisions of this Amendment.

This Amendment is the entire agreement between the Parties with respect to the subject matter hereof and no alteration, modification or interpretation hereof shall be binding unless in writing and signed by the Parties hereto. This Amendment shall be enforceable by and against any successor owner of the real property of the Center and the Resort.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed in their name on the date first above written.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

Community Services Associates, Inc.
a South Carolina nonprofit corporation

By:
Its:

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

Sea Pines Resort, LLC
a Virginia limited liability company

By:
Its:

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

Sea Pines Center Associates, LLC
a South Carolina limited liability company

By:
Its:

EXHIBIT "A"**RIGHTS OF RESORT GUESTS AND RELATED PARTIES**

Attached as an exhibit to the November 1987 Assignment, and the Easement for Access, is the 1987 Gate Policy. Pursuant to said three (3) documents, the **following individuals associated with the Resort are allowed unrestricted, free access.** Nothing in this Amendment, or any prior amendment or agreement, has or will limit or restrict these rights originally granted to the Resort (Specific reference to the paragraphs in the 1987 Gate Policy are in parentheses.)

- a) Employees of Sea Pines (4.01.1.6)
- b) Sea Pines officers, directors (4.01.1.6)
- c) Sea Pines consultants (4.01.1.6)
- d) Sea Pines Real Estate Company sales agents (4.01.1.6)
- e) Contractors of Sea Pines (full-time) (4.01.1.6)
- f) A limited number of public officials designated by Sea Pines (4.01.1.6)
- g) Sea Pines Real Estate Company clients – day passes (4.01.1.7; 4.01.1.6(c))
- h) Construction workers doing work for the company (4.03.1)
- i) Ticket holders, authorized guests, participants, sponsors, volunteers and equipment and service suppliers for major and annual sports events (i.e. MCI golf, Family Circle, Seniors Golf) and to a limited number of sports events sponsored by the Company (4.06)
- j) Contractors working on a temporary basis (4.01.1.6) *
- k) Sea Pines lodging guests (4.01.1.6(a)) *
- l) Business clients of Company (4.01.1.6(b)) *
- m) VIPs and social guests at Company-sponsored events (4.01.1.6(d))*

* Temporary passes

In addition to those persons specifically described above, the following groups of individuals are specifically allowed entry at no charge under the provisions of said 1987 Gate Policy:

- n) Sea Pines Resort guests;
- o) Sea Pines golf, tennis, real estates and eco-tour customers;
- p) Sea Pines Food & Beverage Operations personnel;
- q) Sea Pines Golf Course maintenance personnel;

- r) Sea Pines Academy of Golf and Junior Master program participants and personnel;
- s) Sea Pines Tennis Academy program participants and personnel;
- t) All contractors providing services to Sea Pines or its customers on a daily or continuous basis, including but not limited to, housekeeping, janitorial, food and beverage, golf clinics, tennis clinics, landscaping, maintenance, golf cart maintenance, etc.;
- u) All individuals providing services of any kind to Sea Pines, including, but not limited to architects, engineers, attorneys, construction managers, building contractors, villa maintenance subcontractors, etc.;
- v) All residents of TidePointe;
- w) Any and all Sea Pines real estate development partners;
- x) Any and all commercial deliveries to any Sea Pines operation, including, but not limited to, golf course facility, tennis facility, beach club, musical event, special event or any other similar operation or event. **As the companies and individuals who provide services to Sea Pines continually change, no specific listing is required.**

EXHIBIT "B"

The commercial property owners in Sea Pines designated to select a Marketing Fund Committee member under § 4, are as follows:

1. Bailey's, LTD - 147-D Lighthouse Road
2. CQ's Restaurant - 140 Lighthouse Road
3. Fashion Court - 147-E Lighthouse Road
4. Harbour Town General Store - 147-C Lighthouse Road
5. Harbour Town Surf Shop - 147-A Lighthouse Road
6. Harbour Town Surf Shop - 147-B Lighthouse Road
7. Kidz for Life Toys - 147-G Lighthouse Road
8. South Beach Racquet Club - South Sea Pines Drive
9. South Beach Village - South Sea Pines Drive

A representative selected by these owners by a majority (ie., >50%) will serve as a Member of the Marketing Fund Committee.

The expenditure from Incremental Funding by the above listed commercial property owners requires approval by a majority vote of said commercial property owners and the approval of CSA, the Resort and the Center, said approval not to be unreasonably withheld.

EXHIBIT "C"

EXAMPLES OF ESTIMATED INCREMENTAL FUNDS AVAILABLE FOR CONTRIBUTION

Daily Visitor Gate Fee Pass	Additional Contribution	\$.20 per pass Supplemental Contribution (Est.)	Total	Incremental Funds Avail. Per Member	
At \$8.00	\$ 75,000	\$78,433.60	\$153,433	\$ 51,144	*
At \$9.00	\$150,000	\$78,433.60	\$228,433	\$ 76,144	*
At \$10.00	\$225,000	\$78,433.60	\$303,433	\$101,144	*

* subject to the provisions of subparagraphs 2c(ii), 2d(ii) and 2e(ii), the Incremental Funding at \$8.00 shall not be less than \$50,000.00 at \$8.00, \$75,000.00 at \$9.00 and \$100,000.00 at \$10.00 (the "Floor Amounts")

resorting to subtle or forced construction to limit or expand the statute's operation.” *Id.* at 310-11, 831 S.E.2d at 432 (citing *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 525-26, 642 S.E.2d 751, 754 (2007)).

The plain meaning of “bylaws,” as set forth in S.C. Code Ann. § 33-31-140(4), excludes the Gate Pass Agreement. As discussed in briefs and during the motion hearing, the Gate Pass Agreement is merely a contract between Defendant and third parties holding special Gate Policy rights for the disposition of gate entry fees, and to set gate entry prices. It is not captioned as a “Bylaw.” Further, it does not provide rules for the internal control or governance of Defendant, or for generally dealing with external parties. *See* “*bylaw*,” *Black’s Law Dictionary* (11th ed. 2019) (“a rule or administrative provision adopted by an organization for its internal governance and its external dealings”). For example, it does not provide rules for the election of directors, duties of directors, rules for voting by members, or any other rules for the operation or governance of Defendant.

As Defendant has argued—and Plaintiff’s Exhibit 8, filed August 2, 2020 makes clear¹—the Gate Pass Agreement is a necessarily negotiated contract between Defendant and two entities holding special rights regarding the Sea Pines Gate Policy. It is not a bylaw, and Defendant does not view it as such. Plaintiff’s argument relies on the theory that Defendant’s contractual obligations owed to the Sea Pines Resort, LLC and Sea Pines Center Associates, LLC under the Gate Pass Agreement constitute “affairs” of Defendant within the meaning of the South Carolina Nonprofit Corporation Act, and that the Gate Pass Agreement’s terms are a “code or code of rules” for the “regulation and management” of said affairs. *See* S.C. Code Ann. § 33-31-140(4).

Plaintiff argued—and the Court found—that the Gate Pass Agreement “binds and regulates [Defendant] and its resources—indeed, *millions of dollars* of resources...” Order Grant. Pltf.’s

¹ “The CSA Board has the authority to enter into a contract. This agreement is a contract.” Pltf.’s Ex. 8.

Mtn. Inspect., p. 5. This is incorrect, as the Gate Pass Agreement only directs the disposition of a small portion of total gate fees collected. It does not provide sweeping rules for the use of all, or even a substantial amount, of the gate fees, and as noted above, it is not an administrative provision adopted for Defendant's internal governance. As the Court found, "[t]he [Gate Pass Agreement] govern[s] the (*contractual*) relationship between CSA and several of its own members...pertaining to those members' special rights." Order Grant. Pltf.'s Mtn. Inspect., p. 5 (emphasis added). In this regard, the Court appears to agree with Defendant that the Gate Pass Agreement is a contract.

However, in concluding the Gate Pass Agreement is a "bylaw" of Defendant under a plain reading of the South Carolina Nonprofit Corporation Act, the Court's Order fails to address the South Carolina case law cited by Defendant, which requires courts to consider the Legislature's intent when construing a statute, even under a plain reading of the statute. "However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention." *Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000) (citing *Ray Bell Constr. Co. v. School Dist. of Greenville Co.*, 331 S.C. 19, 501 S.E.2d 725 (1998)).

As Defendant previously argued, had the Legislature intended to include contracts within the types of documents available for inspection by a corporate member, it could have so provided in the Nonprofit Corporation Act. As the Order currently stands, the Court's plain reading of "bylaw," as found in S.C. Code Ann. § 33-31-140(4) requires Defendant to produce to Plaintiff for inspection a contract. Such a result is directly contrary to the Legislature's intent underpinning S.C. Code Ann. § 33-31-1602. Therefore, the Court should alter or amend its Order to reject Plaintiff's overly-expansive and forced construction of "bylaw," find the Gate Pass Agreement is

not a bylaw of Defendant under the South Carolina Nonprofit Corporation Act, and deny Plaintiff's Motion to Inspect Corporate Records.

II. The Court's Order does not address Defendant's arguments regarding accounting records under the South Carolina Nonprofit Corporation Act.

In concluding the Gate Pass Agreement is an "accounting record" of Defendant, the Court's Order fails to address Defendant's arguments. The Order relies on a non-binding Attorney General opinion—which is overly expansive and contrary to express legislative intent—in reaching its conclusion, while ignoring the primary authority proffered by Defendant. *See* Order Grant. Pltf.'s Mtn. Inspect., pp. 6-8 ("The Requested Records are accounting records, in that they underly the finances of CSA and/or they are materials used to prepare CSA's financial and accounting statements...Although not binding, this Court finds the opinion of the South Carolina Attorney General to be persuasive on the topic...("Legislative intent was for any and all underlying documents and materials used to prepare the nonprofit corporation's accounting statements to be inspected by a member...")).

In support of its position, Defendant cited the Official Comment to S.C. Code Ann. § 33-31-1601, which provides guidance from the South Carolina Legislature regarding the proper scope of documents included in the Nonprofit Corporation Act's definition of "accounting records." The comment states, "[t]he required records are the current accounting records of the corporation," and "[a]ppropriate' records should allow the financial statements to be prepared in a fashion that fairly presents the financial condition and results of operations of the corporation." *Off. Cmt. 2*, § 33-31-1601.

As Defendant argued, the Gate Pass Agreement is a contract between Defendant and third parties holding Gate Policy rights. It is not a cash flow statement, balance sheet, ledger, journal, canceled check, loan information, check register, bank statement, or any other underlying material used to prepare a corporation's financial statements. Further, the plain meaning of "accounting

records,” as set forth in the Non Profit Corporation Act, excludes the Gate Pass Agreement. In interpreting a statute, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation.” *Odom* at 310-11, 831 S.E.2d at 432. Black’s Law Dictionary defines “accounting” as “...the process of recording transactions in the financial records of a business and periodically extracting, sorting, and summarizing the recorded transactions to produce a set of financial records.” “Accounting,” *Black’s Law Dictionary* (11th ed. 2019).

The Gate Pass Agreement does not provide evidence of, or track, gate entry fees collected and/or spent by Defendant. It is not a record capable, either individually or as part of a records compilation, of fairly presenting the financial condition and operational results of Defendant. Accordingly, through a plain reading of S.C. Code Ann. § 33-31-1601 and its Official Comment 2, it is clear the Gate Pass Agreement is not an “accounting record” of Defendant. The Court did not address the above arguments and issues in its Order. Therefore, the Court should alter or amend its Order to address Defendant’s arguments, accord them their proper weight vis-à-vis the Attorney General Opinion cited, find the Gate Pass Agreement is not an “accounting record” of Defendant, and deny Plaintiff’s Motion for Inspection of Corporate Records.

III. The Court’s Order fails to provide legal support for its conclusion that Plaintiff has a common law right to inspect the Gate Pass Agreement.

In concluding the Plaintiff possesses a common law right to inspect the Gate Pass Agreement, the Court’s Order states: “In addition to the statutory rights that it delineates, the Nonprofit Corporation Act expressly references and does not exclude a member’s common law right to inspect corporate records, and the power of the Court to order production of corporate records for inspection.” Order Grant. Pltf.’s Mtn. Inspect., p. 9 (*citing* S.C. Code Ann. § 33-31-1602(d)(2)). However, Official Comment 4 to Section 33-31-1602 states, “Section [16.02(d)] simply preserves whatever independent right of inspection exists under these sources and does not

create or recognize any rights, either expressly or by implication.” Thus, the court must expressly find the existence of a common law inspection right. Here, beyond conclusory statements, Plaintiff did not present any evidence from which the Court could find that the Gate Pass Agreement “directly affects Plaintiff’s property value,” or that it “binds her property and vests it with rights and obligations.” Order Grant. Pltf.’s Mtn. Inspect., p. 10.

More importantly, Plaintiff did not provide—and the Court’s Order did not cite—any legal authority for its conclusion that members of a South Carolina homeowners association have separate and expanded inspection rights than those found in the Nonprofit Corporation Act. *See* Order Grant. Pltf.’s Mtn. Inspect., pp. 9-10. Pursuant to Rule 52(a), SCRCP, “the court shall find the facts specially and state separately its conclusions of law thereon.” The trial court must “substantially [comply] with Rule 52(a) and *adequately [state] the basis for the result it reaches.*” *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 131, 568 S.E.2d 338, 342 (2002) (emphasis added). Because Plaintiff did not raise any legal authority on this issue to the Court, and the Court did not identify any such authority supporting its conclusions of law, the Court’s Order does not adequately state the basis for its conclusion that Plaintiff has a common law right to inspect the Gate Pass Agreement by virtue of her membership in a homeowners association.

Indeed, the South Carolina Homeowners Association Act specifically incorporates the Non Profit Corporation Act’s access to documents provisions and extends them to homeowners associations not already subject to the Nonprofit Corporation Act. *See* S.C. Code Ann. § 27-30-150 (“The access to documents provisions of Sections 33-31-1602, 33-31-1603, 33-31-1604, and 33-31-1605 apply to all homeowners associations not subject to the South Carolina Nonprofit Corporation Act...”). Clearly, in the context of homeowners associations in South Carolina, there is no common law right of document inspection separate and apart from the rights created in the South Carolina Nonprofit Corporation Act. Therefore, the Court should alter or amend its Order

to find that Plaintiff does not have a common law right to inspect the Gate Pass Agreement, and the Court should deny Plaintiff's Motion for Inspection of Corporate Records.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this Court: (1) alter or amend its Order to deny Plaintiff's Motion to Inspect Corporate Records, pursuant to Rule 59(e), SCRCP; (2) award Defendant the costs incurred in defending this action, including the costs associated with this Motion; and (3) for such further relief as the Court deems just and proper.

This 14th day of September, 2020.

Respectfully submitted,

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2020-CP-07-00768

Dana Advocaat, both individually and as
Trustee of the Advocaat Living Trust,
dated March 7, 2019,

Plaintiff,

v.

Community Services Associates, Inc.,

Defendant.

**OPPOSITION TO DEFENDANT'S
MOTION TO ALTER OR AMEND
ORDER GRANTING PLAINTIFF'S
MOTION TO INSPECT
CORPORATE RECORDS**

Plaintiff respectfully opposes Defendant's Motion to Alter or Amend this Court's Order Granting Plaintiff's Motion to Inspect Corporate Records. As set forth below, Defendant does not raise any mistake of fact or error of law that would necessitate reconsideration by this Court of its well-reasoned Order, in which this Court ordered Defendant to produce to Plaintiff that certain Gate Agreement and its 2018 Amendment, among other Requested Records. This Court properly found that Plaintiff—as a member of the Defendant corporation—was entitled to inspect the records, pursuant to the Nonprofit Corporation Act, the common law of real property, and as a litigant.

I. This Court properly rejected Defendant's statutory construction argument.

Defendant first contends that this Court did not address Defendant's statutory construction argument, in which it argues that words of a statute must be given their plain and ordinary meaning. Plaintiff agrees that this is indeed the manner in which

statutes should be interpreted. In fact, this Court correctly construed the clear language of the South Carolina Nonprofit Corporation Act to give Plaintiff the right to inspect the Requested Records.

Defendant's argument on this point seems to be that if the Legislature intended members of nonprofit corporations to be able to inspect *contracts*, it would have specifically used the term "contract" in the statute. Further, Defendant argues, that since the Legislature failed to use the specific term "*contract*," then contracts are entirely excluded from the scope of the inspection rights given to members under the statute.

This Court properly rejected Defendant's narrow and restrictive reading of the Legislature's intent. The Nonprofit Corporation Act gives a corporation's members the right to inspect "its bylaws or restated bylaws and all amendments to them currently in effect." S.C. Code 33-31-1601 *et seq.* As this Court correctly found, the term "bylaws" is given a deliberately broad definition within the statute. The statutory definition unquestionably encompasses contracts when such documents are masquerading as rules for the management of the affairs of the corporation:

(4) "Bylaws" means the code or codes of rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation **irrespective of the name or names by which the rules are designated.**

S.C. Code § 33-31-140(b)(4) (emphasis added).

The Legislature's directive is that the *content* and *effect* of the document—not simply its title—determines whether it may be inspected. By Defendant's own description, the document that Plaintiff seeks to inspect is one that determines the rights of certain members of the corporation, as well as the corporation's relationship with those

outside of the corporation. The Gate Agreement, according to Defendant, is “a contract between Defendant and third parties [who happen to be members of the corporation] holding special Gate Policy rights[,] for the disposition of gate entry fees, and to set gate entry prices.” (*Defendant’s Motion to Alter or Amend*, p. 2). One of the affairs of Defendant corporation is to control the gates to Sea Pines Plantation, at which visitors are charged a fee, and to manage the funds that it collects from these visitors.¹ Fees charged to nonmembers generate millions of dollars in income for the corporation. As the Defendant describes, the Gate Agreement not only “set[s] gate entry prices,” but it also dictates “the disposition of gate entry fees.” (*Id.*) In other words, by the Defendant’s own description, the Gate Agreement regulates the collection and management of significant funds, the collection and management of which is undeniably an affair of the corporation.

Even though the term “bylaws” is expressly defined by the Nonprofit Corporation Act in § 33-31-140(b)(4), Defendant seeks to interject a different definition of the term, from *Black’s Law Dictionary*, which defines “bylaws” as provisions adopted by a corporation for the management of its **internal** governance and its **external** dealings. The irony that this dispute involves an agreement about the Defendant corporation’s **gates**—which are literally and metaphorically the passageway between the corporation’s internal governance and its external dealings—is sadly lost on the Defendant. Regardless, under

¹ The Gate Pass Agreement delineates the collection and spending of **millions of dollars** in funds that are collected by the corporation. The Declarations strictly restrict the use of gate fee funds to “community services.” (“**All** gate fees collected by the Company **shall be contributed to and used for community services.**”) (*See* Plaintiff’s Reply to Defendant’s Memorandum in Opposition to Application for Inspection of Corporate Records, Exhibit 5, Declaration of Covenants and Restrictions by Sea Pines Plantation Company, Inc., Sept. 7, 1974, recorded in Deed Book 224, Page 1036, at Art. II, § B(11)) (emphasis added).

either definition (*i.e.*, statutory or dictionary), this Court correctly found that the Gate Agreement, which is designed to regulate gate fees (external) and the manner in which they are spent (internal), constitutes a bylaw of the corporation that Plaintiff has a statutory right to inspect.

In sum, this Court should reject the Defendant's statutory construction argument, the thrust of which is that members of nonprofit corporations should not be allowed to inspect governing documents that the corporation cleverly chooses to call "contracts." The Legislature clearly anticipated this evasive maneuver, which is why it thought to include the modifying phrase "**irrespective of the name or names by which the rules are designated**" within its definition. The Legislature intended members' inspection rights to be determined by the content and effect of a document, not by the title printed at the top. Because the Gate Agreement regulates and manages the affairs of the Defendant corporation, the Plaintiff has the right to inspect it, irrespective of whether it is technically titled an agreement, a contract, a bylaw, a rule, or any other moniker. This Court should not alter or amend its judgment on this issue.

II. This Court properly rejected Defendant's arguments regarding accounting records under the South Carolina Nonprofit Act.

Defendant CSA next argues that this Court's Order ignores the Official Comment to the Nonprofit Corporation Act's provisions permitting members to inspect the accounting records of the corporation, and that the Order erroneously relies on a non-binding Attorney General Opinion. This is an inaccurate characterization of the Official Comment, as well as of this Court's Order.

First, this Court did not *rely* on the Attorney General Opinion; the Order specifically states that the Opinion is “not binding,” and it emphasizes that it is persuasive, only. (Order, p. 7). This is correct as a matter of law. In fact, the Attorney General Opinion interprets the same Official Comment that Defendant claims this Court failed to address. As such, there is nothing erroneous in this Court’s regard of the Opinion in the course of its own evaluation of the question of the Legislature’s intent.

As to the Official Comment itself, the Defendant persists in its argument that the Gate Agreement and its 2018 Amendment are not accounting records of the corporation because they are “not cash flow statements, balance sheets, ledgers, journals, canceled checks, loan information, check registers, bank statements, or any other underlying material used to prepare a corporation’s financial statements,” and because they “do not provide evidence of, or track, gate entry fees collected and/or spent by Defendant.” *Defendant’s Motion to Alter or Amend*, pp. 4–5. This Court properly analyzed the particular facts surrounding the Requested Records, including statements made by the corporation to its members regarding the history and purpose of the Gate Agreement—as well as its significant ramifications to the corporation’s finances—and it correctly decided that Plaintiff has a right to inspect them.

Tellingly, Defendant leaves out the portion of the Official Comment that makes it clear that the Legislature intended to leave it **to the courts** to discern, on a case-by-case basis, what corporate accounting records its members are entitled to inspect:

The question of what accounting records are “appropriate” depends on the nature, size and other characteristics of the corporation.

Off. Cmt. 2, § 33-31-1601. In addition to the Comment, the Legislature intentionally delegated this factual determination (*i.e.*, of what records a corporation must produce) to the courts, within the body of the Nonprofit Corporation Act itself. Section 33-31-1604, “Court Ordered Inspection,” gives recourse to a member like the Plaintiff, who has been denied by the corporation her right to review financial records:

If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with Section 33-31-1602(b) and (c) may apply to the circuit court in the county where the corporation’s principal office in this State, or if none in this State, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

S.C. Code § 33-31-1604(b).

This Court, as authorized by the Legislature, properly examined the particular circumstances of Plaintiff’s record request, in light of the Defendant’s size, nature, and the factual circumstances surrounding the particular document sought, and it correctly decided that Plaintiff has the right to inspect the Requested Records. This Court should therefore deny Defendant’s Motion to Alter or Amend its decision.

III. This Court correctly found that Plaintiff has a common law right to inspect the Gate Pass Agreement.

Defendant misunderstands this section of the Court’s Order, and it improperly conflates it with a decision under the South Carolina Homeowners Association Act. Instead, this Court correctly reasoned that the Gate Agreement and its amendments are in the nature of covenants that run with the land. Despite Defendant’s protestations to

the contrary,² this Court made its determination based on evidence in the form of exhibits containing the various Declarations of Covenants and Restrictions that bind property within Sea Pines Plantation, including that of the Plaintiff. This Court found as fact that “the [Gate Agreement] is referenced and incorporated into the 1988 Declaration for Sea Pines,” a finding which Defendant does not dispute. (Order, p. 2).

Upon considering the evidence and the instruments of record, this Court correctly found that Plaintiff has a common law right, pursuant to the law of real property, to inspect instruments that bind her property. This common law right is separate and distinct from (and in addition to) her statutory right under the Nonprofit Corporation Act and the Homeowners Association Act (which this Court did not analyze).

CONCLUSION

Boiled down, Defendant’s argument is that the Court is bound by the title printed on a document, and may not consider the content or effect of the document. That is simply incorrect, both under the language of the statute and under common sense. For the reasons set forth above, as well as those within Plaintiff’s Application for Inspection of Corporate Records and in her Reply to Defendant’s Memorandum in Opposition to Application for Inspection of Corporate Records, this Court should deny Defendant’s Motion to Alter or Amend Order Granting Plaintiff’s Motion to Inspect Corporate Records.

² Defendant strangely contends that “Plaintiff did not present any evidence from which this Court could find that the Gate Pass Agreement . . . [binds Plaintiff’s property]” (*Defendant’s Mtn*, p. 6).

Respectfully submitted,

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Attorneys for the Plaintiff

Charleston, South Carolina
September 22, 2020

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2020-CP-07-
00768

Dana Advocaat, both individually and as
Trustee of the Advocaat Living Trust,
dated March 7, 2019

Plaintiff,

v.

Community Services Associates, Inc.,

Defendant.

**AFFIDAVIT
OF DANA ADVOCAAT**

PERSONALLY APPEARED before me Plaintiff Dana Advocaat, who, being duly
sworn, deposes and says as follows:

1. I am over the age of eighteen and a resident of the state of South Carolina.
2. I am the plaintiff in this action, which I have filed individually and as trustee of the Advocaat Living Trust dated March 7, 2019.
3. The Advocaat Living Trust is the owner of property, further described in the Complaint, that is located within the development known as Sea Pines Plantation, on Hilton Head Island, South Carolina.
4. As a trustee of the Advocaat Living Trust, I have authority to make decisions for the trust.
5. Sea Pines Plantation is governed by the Defendant, Community Services Associates, Inc. ("CSA").
6. CSA is a nonprofit corporation, organized under the laws of the State of South Carolina.

7. I am a member of the Defendant nonprofit corporation.
8. I have requested corporate records, specifically the Gate Fee Agreement and/or the Gate Pass Agreement, as well as any amendments to that agreement (the "Requested Records"), on numerous occasions, including but not limited to:
 - a. By email, dated August 7, 2018, attached to this Affidavit as Exhibit 1.
 - b. By letter, dated January 13, 2020, attached to this Affidavit as Exhibit 2.
 - c. Within discovery requests, dated June 2, 2020, served on the Defendant in this lawsuit, including Requests for Production, attached to this Affidavit as Exhibit 3.
9. The Requested Records constitute bylaws of the Defendant nonprofit corporation, because they are used to determine the rights and obligations of its members, and to manage the affairs of the corporation.
 - a. As a member of CSA, I am entitled to inspect its bylaws with five days' notice to the corporation.
 - b. Despite my written requests, CSA has not permitted me to inspect the Requested Records.
10. The Requested Records constitute accounting records of the corporation (among other things), which directly pertain to and shape the finances of the Defendant nonprofit corporation.
 - a. As a member of CSA, I am entitled to inspect its accounting records upon written demand, made in good faith and for a proper purpose, if the Requested Records are directly connected to that proper purpose.

- b. Despite my good-faith written demands, made for a proper purpose, as set forth in the attached Exhibits, CSA has not permitted me to inspect the Requested Records.

11. The Requested Records constitute governing documents of Sea Pines Plantation, in that they are incorporated by reference into the declarations and covenants that bind the community.

- a. As a homeowner, I am entitled to inspect any instrument that purports to bind my property.
- b. Despite my written requests, CSA has not permitted me to inspect the Requested Records.

12. As a litigant involved in litigation with the Defendant corporation, I am further entitled to inspect the Requested Records, pursuant to the South Carolina Rules of Civil Procedure and S.C. Code § 33-31-1602(d)(1) (“this section does not affect the right of a member to inspect records . . . if the member is in litigation with the corporation, to the same extent as any other litigant.”)

- a. Despite my request for the production of the Requested Records, Defendant corporation has objected to the production of the same on the claimed but questionable grounds that the Requested Records are:
 - i. not relevant to the subject matter of this litigation (see Exhibit 4, Defendant’s Responses to Requests for Production); or
 - ii. because they are protected by the unheard of, possibly fictional, and certainly inapplicable “Executive Privilege,” (see Exhibit 5, Defendant’s Privilege Log); or

iii. because the production of the Requested Records by CSA
“is the ultimate issue to be decided by the Court” (see Exhibit 4).

b. On information and belief, none of the above are legitimate reasons to
withhold documents in the course of discovery.

13. I am entitled to inspect the Requested Records **for any—and all—of the above
reasons** as well as the reasons permitted under applicable statutes, regulations,
case law, and governing documents.

14. I have expended significant attorney’s fees in my efforts to obtain the Requested
Records, which the Defendant Corporation had no reasonable basis to withhold
under any of the above demands.

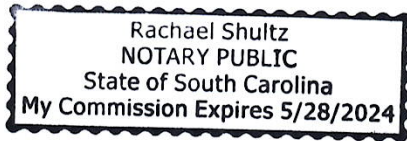
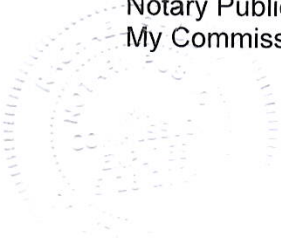
FURTHER AFFIANT SAYETH NOT.

Dana K. Advocaat

Dana K. Advocaat

SWORN before me this 31 day of July, 2020.

Rachael Shultz
Notary Public for South Carolina
My Commission expires: 05-28-2024



Tuesday, June 16, 2020 at 08:41:14 Eastern Daylight Time

ELECTRONICALLY FILED - 2020 Jul 31 4:57 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700768

Subject: Fwd: Gate Agreement Amendment
Date: Monday, June 15, 2020 at 11:54:36 AM Eastern Daylight Time
From: Dana
To: Ian Ford, Ainsley Tillman

Please find one exchange re: the Gate Agreement with former CSA President Bret Martin

Dana Kindel Advocaat
Realtor Keller Williams Realty
843.422.3988
dadvo@aol.com

-----Original Message-----
From: Dana <dadvo@aol.com>
To: ian.ford@fordwallace.com
Sent: Mon, 5 Nov 2018 14:51
Subject: Fwd: Gate Agreement Amendment

Dear Ian,

Here is the copy of my e-mail to Bret asking for the Gate agreement.

Best,

Dana

-----Original Message-----
From: Bret Martin <bretm@csaseapines.com>
To: Dana Advocaat <dadvo@aol.com>
CC: Mark Griffith <mag51256@gmail.com>; cbminer <cbminer@aol.com>; Victoria Shanahan <vshanahan@csaseapines.com>; Sandra Archer <sandra@csaseapines.com>; Amanda Jones <amandaj@csaseapines.com>; Nester, Walter <WNester@MCNAIR.NET>
Sent: Tue, 7 Aug 2018 17:14
Subject: Re: Gate Agreement Amendment

Hi Dana,

I am in receipt of your request. I am out on vacation. Victoria will get our response to you shortly. I forwarded your message to her earlier today.

Respectfully,
Bret

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----
From: Dana <dadvo@aol.com>
Date: 8/7/18 10:41 AM (GMT-06:00)
To: Bret Martin <bretm@csaseapines.com>
Cc: Mark Griffith <mag51256@gmail.com>, cbminer@aol.com
Subject: Gate Agreement Amendment

Dear Bret,

With this e-mail I request a copy of the recent gate agreement and that you make it public for all RPOs to review. As far as I know, as a Class A member of CSA, I have a right to see the document, as do all other RPOs. After all, the Class B members of CSA have seen the document and signed it. How is it that one group of CSA members are allowed to remain completely in the dark with regard to the terms of the agreement?

As you may know, Mark Griffith stated that it would be made public, and has not been to date. This was a damaging flip-flop.

The complete lack of transparency is tarnishing your reputation as an honest custodian of our community, and the CSA Board's as well. I appreciate the work you and everyone at CSA does for our community and would like to see the spirit of open communications continue. This recent chapter is not what I expect from CSA.

With best wishes,

Dana Advocaat

January 13, 2020

Via U.S. Mail and e-mail: wnester@burr.com

Walter J. Nester, III, Esq.
Burr Forman
23-B Shelter Cove Lane
Suite 400
Hilton Head Island, SC 29928

**Re: Sea Pines Community Services Associates, Inc.
Derivative Demand Letter to CSA Board of Directors**

Dear Mr. Nester,

We are conveying this letter to you due to your representation of Sea Pines Community Services Associates, Inc. ("CSA") in our previous discussions related to the gate agreement. Please advise if you are not the correct person to convey this to on behalf of CSA and its board of directors.

This law firm represents Dana Advocaat, a member of CSA. Ms. Advocaat and her husband own, via a trust, a home at 55 Dear Run Lane in Sea Pines. This letter is sent to the CSA board of directors in accordance with the requirements of South Carolina Rule of Civil Procedure 23, Federal Rule of Civil Procedure 23.1, S.C. Code § 33-7-400 *et seq.*, and S.C. Code § 33-31-304 *et seq.*

The purpose of this letter is to request that the board of directors address numerous actions and/or conditions that are improper, illegal, or unreasonable, including as follows.

The board of directors has entered into and is functioning under an Amendment to Gate Pass Agreement that violates, *inter alia*, the covenants of Sea Pines. The 1974 Covenants, Art. II § B(11), provide that "All gate fees collected by the Company shall be contributed to and used for community services." "Community Services" generally means "land used for education facilities, fire stations and/or community service maintenance facilities." *Id.* Art. II § A(3).

Despite this mandate, terms of the gate agreement and certain of the board's actions funnel many thousands of dollars in gate fees into non-community services activities and parties. For example, the board provides gate fee money to numerous

commercial entities, to a commercial marketing fund, to a trolley system that services commercial interests, among other improper items. The board has no control over those funds, and is effectively giving them away.

The board also, improperly, is granting commercial entities thousands of free gate passes, which forfeits huge amounts of gate fees for the sole benefit of commercial interests.

The gate agreement also contains an improper formula that links the gate fee amount to the interests of commercial entities, not to the interests of the residents or the CSA. For example, the formula relies on more gate passes being sold each year (and increased congestion to the detriment of property owners' quality of life) and is independent of the real escalating cost of providing community services. Moreover, the fees are not dedicated to any community services.

These improper actions, and numerous related actions by the board and under the gate agreement, also violate the South Carolina Nonprofit Corporation Act, including S.C. Code § 33-31-140 *et seq.* and § 33-31-610 *et seq.* This includes, but is not limited to, improperly favoring certain CSA members (*i.e.*, commercial interests or Class B members) over others (*i.e.*, residents or Class A members) in violation of that statute and other applicable law. In addition, the agreement improperly has been withheld from the disfavored members in violation of, *inter alia*, S.C. Code 33-31-1602, - 1603, -1604 *et seq.* and § 27-30-130 *et seq.*

Many of these problems not only violate South Carolina law and the Sea Pines governing documents, but also appear to be *ultra vires* actions by the board. It is our client's understanding, for example, that a previous board member expressed concern that the agreement and treatment of gate fees are illegal and violate the covenants and the board's fiduciary duties. As such, the board members have been on notice and have proceeded at their own risk.

Consequently, our client requests that the board:

1. Rescind all aspects of the gate agreement that violate the covenants, declarations, governing documents, S.C. Nonprofit Corporation Act, and other applicable law. This includes, but is not limited to, stopping conveying gate fee money to commercial interests and other non-community service areas.
2. Obtain the return of gate fee funds that improperly have been conveyed to commercial interests and other non-community services, to be put in the CSA

general fund and used for community services, with transparent verification to CSA members as to how the money is spent.

3. Provide the CSA members with a complete, final, fully-executed version of the gate agreement and all other governing documents, including attachments.
4. With input from the CSA members and following the proper procedures required of CSA, enact (a) a revised agreement or terms that comply with the law and governing documents, and (b) a legal, transparent protocol for future gate amendments.

We encourage the board to disclose these concerns to the full membership, and to direct a complete review of these issues by an independent committee. We also request a full audit by an outside, independent auditor and counsel to evaluate the concerns summarized above.

If necessary, our client is willing to institute suit to accomplish the results sought, if the board of directors is unwilling to act promptly to make the changes demanded herein. Our client and other interested persons reserve the right to assert any further claims that may be or become colorable under applicable law. This letter is not an admission or acknowledgment that any of the issues summarized above necessarily must be brought as a derivative action, as opposed to other types of actions or redress permitted by law.

If you would like to have a meeting regarding this matter, please so advise. In any event, since this matter has been pending for some time, we would request substantive action and response to this letter within thirty (30) days.

Very truly yours,



Ian S. Ford

cc: Dana Advocaat

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2020-CP-07-00768

Dana Advocaat, both individually and as
Trustee of the Advocaat Living Trust,
dated March 7, 2019

Plaintiff,

v.

Community Services Associates, Inc.,

Defendant.

**PLAINTIFF'S FIRST REQUEST
FOR PRODUCTION
TO THE DEFENDANT**

**TO: DOUGLAS W. MACKELCAN, ESQUIRE, AND MICHAEL C. MASCIALE,
ESQUIRE, ATTORNEYS FOR THE DEFENDANT:**

Community Services Associates, Inc. ("Defendant") is hereby required, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, to produce the following documents for inspection and copying, said production and inspection to take place within 30 days of service of these requests at the office of Plaintiff's attorneys, Ian S. Ford and Ainsley F. Tillman, of Ford Wallace Thomson LLC, 715 King Street, Charleston, SC 29403.

All terms used in this request for production have the meanings and context as set forth in Plaintiff's Amended Complaint, filed on April 28, 2020. As used in this request for production, "documents" refers to any written, recorded or transcribed compilation of information, including, without limitation, electronic mail and other electronically stored information. As used in this request for production, the singular form of nouns

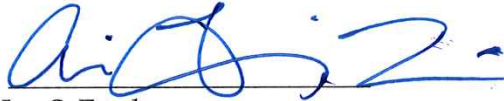
encompasses the plural, and vice versa. These requests shall be deemed continuing so as to require supplemental responses prior to trial.

REQUESTS FOR PRODUCTION

1. The full and complete Gate Policy for Sea Pines Plantation, including any attachments and amendments.
2. The complete, final, fully executed Gate Fee Agreement, and any amendments and attachments thereto.
3. The complete, final, fully executed Gate Pass Agreement, and any amendments and attachments thereto.

Respectfully submitted,

FORD WALLACE THOMSON LLC



Ian S. Ford

Ian.Ford@FordWallace.com

Ainsley F. Tillman

Ainsley.Tillman@FordWallace.com

715 King Street, Charleston, South Carolina 29403

(843) 277-2011

www.FordWallace.com


Attorneys for Plaintiff

June 2, 2020
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that on June 2, 2020, this document was served by electronic mail and/or first-class mail on all attorneys of record.

FORD WALLACE THOMSON LLC



LAW OFFICES

COPELAND, STAIR, KINGMA & LOVELL, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

DOUGLAS W. MACKELCAN

40 Calhoun Street, Suite 400
CHARLESTON, SC 29401

ATLANTA OFFICE

191 Peachtree Street, N.E.
Suite 3600
Atlanta, Georgia 30303-1740
(404) 522-8220

DIRECT DIAL NUMBER
(843) 266-8228

TELEPHONE (843) 727-0307

E-MAIL ADDRESS
dmackelcan@cskl.law

FAX (843) 727-2995

REPLY TO SC OFFICE

www.cskl.law

July 2, 2020

Ian S. Ford, Esq.
Ainsley F. Tillman, Esq.
Ford Wallace Thompson, LLC
715 King Street
Charleston, SC 29403

Re: Dana Advocaat v. Community Services Associates, Inc.
Case No.: 2020-CP-00768
CSKL File No.: 4610-60386

Dear Ian and Ainsley:

Please find enclosed, Defendant's Responses to Plaintiff's First Requests for Production, Defendant's Privilege Log, and Defendant's document production Bates labeled "CSA 0001-0056".

If you have any questions or concerns, please do not hesitate to give me a call.

Sincerely,

s/Michael C. Masciale

DOUGLAS W. MACKELCAN
MICHAEL C. MASCIALE

MCM:tjr
Enclosures

because it seeks the production of documents and information, the production or non-production of which is an ultimate issue to be decided in this action by the Court.

This 2nd day of July, 2020.

Respectfully submitted,

COPELAND, STAIR, KINGMA & LOVELL, LLP

By: s/Michael C. Masciale
DOUGLAS W. MACKELCAN
State Bar No.: 76332
MICHAEL C. MASCIALE
State Bar No.: 103819

Attorneys for Defendant

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
dmackelcan@cskl.law
mmasciale@cskl.law
Ph: 843-727-0307

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT) CASE NO.: 2020-CP-07-00768
)
Dana Kindel Advocaat, both individually and as)
Trustee of the Advocaat Living Trust Dated)
March 7, 2019,)
)
Plaintiff,)
)
vs.)
)
Community Services Associates, Inc.,)
)
Defendant.)

DEFENDANT’S PRIVILEGE LOG

Privileged Document	Date	Description	Privilege
7/6/18 Amendment to Gate Pass Agreement	July 6, 2018	Agreement between CSA and parties holding Gate Policy rights regarding Sea Pines gate fees and disposition thereof.	Executive Privilege

This 2nd day of July, 2020.

Respectfully submitted,

COPELAND, STAIR, KINGMA & LOVELL, LLP

By: s/ Michael C. Masciale
 DOUGLAS W. MACKELCAN
 State Bar No.: 76332
 MICHAEL C. MASCIALE
 State Bar No.: 103819

Attorneys for Defendant

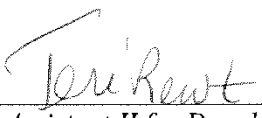
40 Calhoun Street, Suite 400
 Charleston, South Carolina 29401-3531
dmackelcan@cskl.law
mmasciale@cskl.law
 Ph: 843-727-0307

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	CASE NO.: 2020-CP-07-00768
)	
Dana Kindel Advocaat, both individually and as)	
Trustee of the Advocaat Living Trust Dated)	
March 7, 2019,)	CERTIFICATE OF SERVICE
)	
Plaintiff,)	
)	
vs.)	
)	
Community Services Associates, Inc.,)	
)	
Defendant.)	

I hereby certify that I have this day served a copy of the within and foregoing *Defendant's Privilege Log*, upon all parties to this matter via electronic mail and/or regular U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Ian S. Ford, Esq.
 Ainsley F. Tillman, Esq.
 Ford Wallace Thompson, LLC
 715 King Street
 Charleston, SC 29403
Ian.Ford@FordWallace.com
Ainsley.Tillman@FordWallace.com
Counsel for Plaintiff

This 2nd day of July, 2020.



 Legal Assistant II for Douglas W. MacKelcan and
 Michael C. Masciale

Copeland, Stair, Kingma & Lovell, LLP
 40 Calhoun Street, Suite 400
 Charleston, South Carolina 29401-3531
 Ph: (843) 329-8346

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge
Case No.: 2020-CP-07-00768

Appellate Case No. Pending

Dana Advocaat, both individually and as Trustee of the Advocaat
Living Trust dated March 7, 2019.....Respondent,

v.

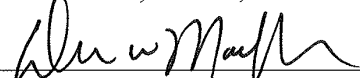
Community Services Associates, Inc.Appellant.

NOTICE OF APPEAL

Community Services Associates, Inc. appeals the judgment of the Honorable Brooks P. Goldsmith entered September 4, 2020 (“Judgment”). Appellant timely filed a Motion to Alter or Amend the Judgment on September 14, 2020 and received written notice of the denial thereof on October 6, 2020.

November 4, 2020.

COPELAND, STAIR, KINGMA & LOVELL, LLP



Douglas W. MacKelcan

S.C. Bar No.: 76332

Michael C. Masciale

S.C. Bar No.: 103819

40 Calhoun Street, Suite 400

Charleston, SC 29401

dmackelcan@cskl.law

masciale@cskl.law

Phone: (843) 727-0307

*Attorneys for Appellant Community Services
Associates, Inc.*

RECEIVED

May 26 2021

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other materials.

s/ Benjamin E. Nicholson, V
Benjamin E. Nicholson, V
BURR & FORMAN LLP
Post Office Box 11390
Columbia, SC 29211