Exhibit "A"

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER Joseph R. Davis and Jennifer Davis Individually and as representatives of all those similarly situated Plaintiffs, vs. River Oaks Homeowners Association, Inc., Halcyon Real Estate Services, LLC, and Dorchester Real Estate Services, Inc. Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE NO.: 2020-CP-08-1856 **ORDER GRANTING CLASS CERTIFICATION**

This matter came before the Court on July 7, 2022 for the continuation and conclusion of the hearings held on March 24, 2021, and June 4, 2021[1] on Plaintiffs, Joseph R. Davis and Jennifer Davis's (hereinafter "Plaintiffs") Motion for Class Certification ("Motion for Class") filed on December 14, 2018.[2] Present at the hearings were: Mary Leigh Arnold and David Conor Keys,

[1] On March 24, 2021 and June 4, 2021, hearings were held on the motions pending in this matter which included Plaintiffs' and Defendants' cross motions for Partial Summary Judgment, and Plaintiffs' Motion for Class Certification. Following the June 4, 2021 hearing, the matter was held in abeyance to give the Parties the opportunity to either bring a live witness from the Register of Deeds ("ROD") for Dorchester County or agree upon a list of Exhibits for the numerous documents filed with the Dorchester ROD and referenced at the time of the hearings. Between the hearing on June 4, 2021 and July 7, 2022, Plaintiffs and River Oaks agreed upon a list of exhibits which consist of 1165 pages, which is referred to herein as "Agreed Exhibits." The Agreed Exhibits were specifically made a part of the record in the within matter. The cross motions for partial summary judgment are addressed independently in separate Orders.

[2] The Motion for Class was filed in Civil Action No. 2017-CP-10-1679, which case was stricken pursuant to a Consent Order to Strike Case from Docket Pursuant to Rule 40(J) and 40(K), SCRCP on November 6, 2019. The Consent Order provides "that all motions pending at the time the case is stricken from the active docket will be restored and maintain their present status quo." The case was restored after the filing of a Motion to Restore on November 2, 2020 and given the current civil action number.

attorneys for Plaintiffs; Neil Haldrup and Ford Thrift, attorneys for River Oaks Homeowners Association, Inc., (hereinafter "River Oaks"); and Chase McNair, attorney for Halcyon Real Estate Services, LLC. (hereinafter "Halcyon").[3]

Plaintiffs filed a Memorandum in Support of Class Certification on March 22, 2021. Defendants filed a joint Memorandum in Opposition to Plaintiffs' Motion for Class Certification on March 22, 2021.[4]

Having reviewed the materials filed and submitted to the Court and having heard oral arguments, this Court is of the opinion that Plaintiffs' Motion for Class Certification should be granted in part and denied in part. The basis for this decision is as follows.

BACKGROUND

This matter was initiated by the filing of a Complaint[5] by Joseph Davis and Jennifer Davis, husband and wife, on October 11, 2017, involving real property located at 3213 Wynnefield Drive, North Charleston, South Carolina. ("Property"). The Property is located in a neighborhood known as Woodington, Phase I. ("Woodington I") Woodington I, which consists of 52 lots which are identified and set forth on a plat recorded in the Dorchester ROD, Book E, Page 212 ("Woodington I Plat")[6]. Woodington I was encumbered by the developer College Properties, Inc., ("College Properties") with covenants and restrictions filed on June 24, 1985 and recorded in the Dorchester

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[3] Andrew Sheppard, attorney for Dorchester Real Estate Services, LLC., (hereinafter "DRES") was present at the time of the March 24, 2021 and June 4, 2021 hearings but had a scheduling conflict on July 7, 2022.

[4] The Memorandum in Opposition to Class Certification was combined with Defendants' Memorandum in Support of Defendants Motion for Partial Summary Judgment filed on March 22, 2021.

[5] The Complaint set forth the following causes of action: (1) Violation of the Unfair Trade Practices Act; (2) Unjust Enrichment; (3) Money Had and Received; (4) Negligent Misrepresentation; (5) Constructive Fraud; (6) Slander of title; (7) Declaratory and Injunctive Relief; (8) Abuse of Process; (9) Aiding and Abetting; and (10) Conversion.

[6] Ex. J, Plaintiffs' Reply Memo in Opp. to Sum. Judgment filed on March 23, 2021.

ROD at Book 540, Page 460 ("Woodington Covenants")[7]. In 1986 College Properties sold real property located in Woodington I and adjacent to Woodington I to First Mark Development Corp. ("First Mark") College Properties assigned its rights as the declarant of the Woodington Covenants to First Mark. *Id.*, Fn. 7. First Mark, thereafter amended the Woodington Covenants on August 11, 1987, which amendment was recorded in the Dorchester ROD at Book 592, Page 371. *Id.*, Fn. 7. The amended Woodington Covenants, among other things, incorporated the lots identified on a plat entitled Woodington Phase II, which was recorded on February 26, 1987, in the Dorchester ROD in Plat Cabinet F, Slide 149. ("Woodington II Plat")[8] The Woodington II Plat identifies 79 lots. Woodington I and Woodington II were encumbered by the developer with the same Woodington Covenants, as amended. The Woodington Covenants did not create a homeowners' association. The Woodington Covenants did not create an architectural review committee or architectural review board. The Woodington Covenants do not provide for the right to assess, fine, or lien the lots specifically identified on the plats referenced in the Woodington Covenants.[9]

On June 29, 1990, First Mark as owner of the real property adjoining and adjacent to Woodington I and Woodington II, recorded in the Dorchester ROD in Book 767, Page 92, restrictive covenants for a neighborhood known as Woodington III ("Woodington III Covenants").[10] The Woodington III Covenants encumber the lots as identified on a plat entitled "Woodington – Phase III"[11] ("Woodington III Phase I Plat") recorded in the Dorchester ROD in Book H, Page 5 and the lots as identified on a plat entitled "Woodington – Phase III – Part II"

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[7] Ex. A, Plaintiffs' Motion for Sum. Judgement filed March 10, 2021.
[8] Agreed Exhibits, Bates No. 398.
[9] Ex. A, Plaintiffs' Motion for Sum. Judgement filed March 10, 2021.
[10] Agreed Exhibits, Bates No. 308.
[11] Agreed Exhibits, Bates No. 399.

recorded in the Dorchester ROD in Book H, Page 15[12] (Woodington III Phase II Plat"). Collectively, the Woodington Phase III Plats identify 49 lots which make up the neighborhood of Woodington III.

Near, adjacent to and/or continuous with Woodington I and II and III are a series of neighborhoods identified as: Ashley Point; Appian Landing I, II, III; Palmetto Plantation; and River Chase. (collectively the six (6) are referred to as the "Neighborhoods") [13] Like Woodington I, II and III the Neighborhoods have restrictive covenants imposed by the various developers of those neighborhoods which were recorded in the Dorchester ROD.[14] (hereinafter "Developer Covenants") The Developer Covenants are similar to the Woodington Covenants and the Woodington III Covenants in that they do not provide for a homeowners' association, or the right to assess, fine, or lien the properties within their respective boundaries.

In 1997, years after the development of the 9 Neighborhoods a few homeowners created a non-profit corporation under the name of River Oaks Homeowners Association, Inc.[15] (hereinafter "River Oaks"). The purpose of River Oaks was to attempt to merge the 9 Neighborhoods (and two neighboring Charleston County neighborhoods) under one umbrella in order to regulate them all. In an effort to achieve this purpose a document entitled the River Oaks Declaration was created. ("Declaration") The Declaration consists of thirty-three (33) signatures for lot owners of the one hundred and eighty (180) lots which jointly make up Woodington I, Woodington II, and Woodington III, as well as an additional fifty-seven (57) signatures for lot owners of the three hundred thirty-eight (338) lots which make up the Neighborhoods. Some signatures are dated and

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[12] Agreed Exhibits, Bates No. 400.
[13] There are a total of nine (9) neighborhoods which consist of the Neighborhoods and Woodington I, II and II and are referred to jointly herein as the "9 Neighborhoods".
[14] Exhibits C-H, Plaintiffs' Motion for Sum. Judgement filed March 10, 2021.
[15] Agreed Exhibits, Bates No. 862.

some are not. The signature dates found on the Declaration range from February 19, 1998 through August 22, 1999. The Declaration was not filed with the Dorchester ROD until May 26, 2000.[16] On September 25, 2001, River Oaks filed an amendment to the Declaration titled the Declaration Supplement ("Declaration Supplement") which added additional signature pages.[17] The Declaration Supplement states that pursuant to the vote of just the board of directors of River Oaks, the additional neighborhood of Marsh Hall would be added to the River Oaks community.[18] Approximately one year later on April 24, 2002, River Oaks filed a second supplement to the Declaration which added additional signatures.[19] ("Second Supplement")

Since 2002, after the Second Supplement was recorded, River Oaks has enforced the Woodington Covenants, Woodington III Covenants and Developer Covenants of the 9 Neighborhoods against lot owners, charged assessments, and imposed fees and fines pursuant to the Declaration. In some instances, River Oaks has filed liens against lot owners' homes. River Oaks has enforced the Declaration by employing the services of two property management companies, Halcyon and DRES.

Joseph Davis, was the sole owner of the Property from July 29, 2005 until July 14, 2020[20], although Jennifer Davis did reside at the Property with her husband Joseph Davis.

Joseph R. Davis and Jennifer Davis brought this case as a class action against Defendants for enforcing the covenants and imposing and collecting assessments, fines, charges and liens against homeowners in the 9 Neighborhoods. Plaintiffs claim River Oaks has no authority to do so because the Declaration fails for a number of reasons. Plaintiffs request that the practices of

[16] Ex. J, Plaintiffs' Motion for Sum. Judgement filed March 10, 2021.
[17] Agreed Exhibits, Bates No. 43-278.
[18] Agreed Exhibits, Bates No. 43.
[19] Agreed Exhibits, Bates No. 279.
[20] Agreed Exhibits, Bates No. 757.

Defendants be declared improper and that they be required to disgorge all improperly collected amounts and be further barred from improperly enforcing the covenants.

Plaintiffs' Motion for Class seeks certification of the proposed class defined as follows:

> For the time period commencing January 1, 2014 to present for any homeowner who has owned real property identified on the Woodington I Plat, Woodington II Plat, Woodington III Plat Phase I, Woodington III Phase II, Appian I Plat, Appian II Plat, Appian III Plats, Palmetto Plantation Plat, River Chase Plat Phase I, River Chase Plat Phase I Part II, River Chase Plat Phase II, and Ansley Point Plat, who did not execute the River Oaks Declaration (as defined in Complaint) and from whom River Oaks, Halcyon, and/or DRES have sought to collect or collected from said homeowners assessments, late fees, administrative fees, covenant fines, interest, filing fees, bad check fees, attorney fees, other fees or charges and/or filed a lien against the homeowners real property pursuant to the following covenants, restrictions, and/or declarations: Woodington I, II, and III Covenants, Appian I Covenants, Appian II Covenants, Appian III Covenants, Palmetto Plantation Covenants, River Chase Covenants, Ansley Pointe Covenants, River Oaks Declaration.

STANDARD FOR CLASS CERTIFICATION

Whether a class should be certified rests in the discretion of the trial court. *King v. Am. Gen. Fin., Inc.*, 386 S.C. 82, 88, 687 S.E.2d 321, 324 (2009). In considering a motion to certify a class, the Court may not look to the merits of the claims when determining whether to certify a class. *Tilley v. Pacesetter Corp.*, 333 S.C. 33, 508 S.E. 2d 16 (1998). The Supreme Court of South Carolina "has expressed the viewpoint that class actions are favored in this state[.]" *Grazia v. S.C. State Plastering,* LLC, 390 S.C. 562, 576, 703 S.E.2d 197, 204 (2011). Plaintiffs bear the burden of proving all five requirements for class certification. *Gardner v. South Carolina Dept. of Revenue*, 353 S.C. 1, 21, 577 S.E.2d 190, 200 (2003).

REQUIREMENTS OF RULE 23, SCRCP

Pursuant to Rule 23(a), SCRCP, a party seeking class certification must demonstrate:

> Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if the court finds (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, (4) the representative parties will fairly and adequately protect the interests of the class, and (5) in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

"The first four criteria are often referred to as the requirements for numerosity, commonality, typicality, and adequacy of representation." *Gardner v.* S.C. *Dept. of Revenue,* 353 S.C. 1, 20-21, 577 S.E.2d 190, 200 (2003).

1. Rule 23(a)(1) – Numerosity.

South Carolina has not set a definite standard as to what minimum size class satisfies the requirements of Rule 23(a)(1). However, other courts have provided guidance. Classes of forty (40) or more have been deemed sufficient. *Esler v. Northrop Corp.*, 86 F.R.D. 20, 34 (W.D. Mo. 1979). Classes have been upheld that have as few as thirteen (13) or twenty (20) class members. *See e.g. Dale Elecs. v. R.C.I. Elecs., Inc.*, 53 F.R.D. 531, 534-36 (D. N. H. 1971) (finding 13 class members sufficient; *Rosario v. Cook Cnty.*, 101 F.R.D. 659, 661-62, (N.D. Ill 1983) (finding 20 class members sufficient).

Whether a class consisting of the 9 Neighborhoods which has in excess of five hundred (500) lots or Woodington I and II which comprise 131 lots, joinder is impracticable and numerosity is established.

2. Rule 23(a)(2) – Commonality.

A party requesting certification is not required to prove every issue in the case is common to each class member. *Gardner,* 353 S.C. at 21, 577 S.E.2d at 200. "The Court should first determine the existence of common questions, and then whether they are sufficient[ly] central

to justify the class action." *Hensley ex rel. BLH v S.C. Dep't of Soc. Servs.*, 429 S.C. 144, 153, 838 S.E. 2d 510 (2020) "Though our Rule 23 does not specifically require the common issues 'predominate,' there must be a proper balance between common and individualized issues in order to achieve the efficiencies the class procedure was designed to promote." *Id* at 152. "[C]ommonality is a judgment that the issues are sufficiently similar so that the class action will be a more efficient means of resolving the problem, even though some individual issues may be litigated in any event". *Id* at. 153.

The claims of Plaintiffs and the proposed class present a number of common questions of law and fact. The cross motions for summary judgment filed by the Parties, illustrate the commonality element is met. Common to all is whether the Declaration runs with and encumbers the real properties of the homeowners and whether River Oaks through the Declaration can act as a homeowners' association for the properties. The critical issue relating to every proposed class member is simply who, if anyone, can impose assessments, fines, charges or liens against them or their property and who can enforce covenants against their property. Thus, the factual and legal bases of Plaintiffs claims are common to all proposed class members and represent a common injury to Plaintiff and the putative class as required by Rule 23(a)(2).

3. Rule 23(a)(3) – Typicality.

"To establish the typicality requirement, the 'claims or defenses of the representative parties [must be] typical of the claims or defenses of the class.'" *Pope v. Heritage Cmtys., Inc.*, 395 S.C. 404,422, 717 S.E.2d 765, 774 (Ct. App. 2011). Few cases have addressed the typically requirement. However, in the *Pope* decision the Court of Appeals affirmed the

lower court's denial of decertification finding typicality to existed as to 228 property owners because they would all be excluded from their property for a period of four months while construction defects were corrected. Likewise, the Supreme Court in the *King v. American General Finance, Inc.*, 386 S.C. 82, 687 S.E. 2d 321 (2009), reversed the trial court's order decertifying an attorney preference class action "finding the common feature satisfying typicality was the lender's failure to timely provide the form." *Id.* at 775.

Plaintiffs claim all the proposed class members' claims arise from the same practice of Defendants. Like the members of the putative class, Plaintiffs were charged assessments by the Defendants, and through the Declaration River Oaks claimed the authority to enforce neighborhood developer covenants against Plaintiffs and are therefore typical of all. Defendants, on the other hand claim at best, the claims are only typical as to the Woodington owners that are subject to the same Woodington Covenants as the Property.

At this time this Court is not persuaded that typically exists as to all the owners within the 9 Neighborhoods but is persuaded that typicality does exist as to the owners within the Woodington I and II because those neighborhoods are subject the Woodington Covenants filed on June 24, 1985 and recorded in the Dorchester **recorded at** ROD at Book 540, Page 460, and as amended which amendment was record on August 11, 1987, in the Dorchester ROD at Book 592, page 371. **Thus, Plaintiffs' claims are typical of the claims of the lot owners in Woodington I and II subject to the Woodington Covenants.**

4. Rule 23(a)(4) – Adequacy.

Rule 23(a)(4), SCRCP requires that the named plaintiff fairly and adequately protect the interests of the class. The South Carolina Supreme Court in *Hospitality Management v.*

Shell Oil Co., 356 S.C. 644, 591 S.E.2d 611 (2004) noted that "the adequacy inquiry 'serves to uncover conflicts of interest between named parties and the class they seek to represent.'" Id. at 625, quoting, *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 117 S. Ct. 2231, 138 L.Ed.2d 689 (1997). "Significantly, a class representative 'must be part of the class and possess the same interest and suffer the same injury as the class members.'" *Id.* at 664.

Here, Joseph R. Davis will fairly and adequately protect the interests of the class.[21] There is no antagonism or adverse interests between Joseph R. Davis and the putative class members. All members of the class sustained damages arising out of Defendants imposition of assessments and enforcement of covenants through the Declaration. Furthermore, Joseph R. Davis understands and is committed to pursuing this action. He has made himself available for deposition. He has continued to pursue the matter through its lengthy history and his claims, if established, will benefit all class members.

Defendants assert Joseph R. Davis lacks standing because he sold the Property located in Woodington on July 14, 2020. However, at the time Joseph R. Davis filed this action on October 11, 2017, asserting class allegations he owned the Property.

The South Carolina Supreme Court has held: "The rights and liabilities of the parties, that is, their rights to an action for judgment or relief, depend upon the facts as they existed at the time of the commencement of the action, and not at the time of trial. *American Agricultural Chemical Co. v. Thomas*, 206 S.C. 355, 360, 34 S.E.2d 592, 594 (1945). Likewise, the Court of

[21] Plaintiffs acknowledge that Plaintiff Jennifer Davis cannot act a class representative because she was not a record title owner of the Property, however Jennifer Davis has asserted individual claims in this matter and may continue to pursue those claims.

Appeals, in *Brock v. Bennett*, 313 S.C. 513, 518, 519, 443 S.E.2d 409, 412 (Ct. App. 1994) analyzing whether a plaintiff had standing "at the time this action was commenced," determined a lack of standing since Brock was not a member of the church when he brought action to gain control of the church. Because Joseph R. Davis owned the Property at the time suit was commenced, he has standing to bring the action.

In addition to the standing argument, Defendants also argue that Joseph R. Davis' claims for declaratory and injunctive relief are moot because he no longer owns the Property. "A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court. If there is no actual controversy, this Court will not decide moot or academic questions.... Two exceptions in which the court may address an issue despite mootness are 1) when the issue raised is capable of repetition, yet evading review, and 2) when the question considers matters of important public interest." *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26-27, 630 S.E.2d 474 (2006). In *Sloan* the Court determined that the case was moot because the Friends of the Hunley had already complied with the FOIA request, and that an exception to mootness did not apply. Here the controversy continues to exist; whether Defendants had and have the authority to enforce covenants and impose assessments and fines against homeowners. No party has alleged that River Oaks or its property management agents have ceased undertaking such activities. No intervening event has occurred rendering the grant of the relief sought impossible. A determination upon the merits of Plaintiffs claim for declaratory and injunctive relief is not moot.

As to proposed class counsel there has been no objection. Both Mary Leigh Arnold and David Conor Keys have experience in consumer cases and cases specifically dealing with

homeowner associations. Mary Leigh Arnold has been involved in consumer class actions since 1999. Proposed class counsel and Plaintiff share the same interest as the putative class members in maximizing relief for the class. The adequacy element with Joseph R. Davis as the named class representative and proposed class counsel being named as class counsel is appropriate under Rule 23(a)(4), SCRCP.

5. Rule 23(a)(5) – Amount.

The final requirement of Rule 23, SCRCP requires that each class member have a claim in excess of $100.00. Here, the proposed putative class is comprised of homeowners that have been charged for a period of years annual assessments slightly over $100.00 thus, exceeding the $100 threshold. As a result, this element is satisfied.

CONCLUSION

As set forth herein, this Court finds that Plaintiff, Joseph R. Davis, has met his burden of demonstrating that each requirement for class certification is satisfied. According, I find and conclude that class certification promotes the interests of judicial economy, efficiency, and fairness to all parties.

NOW THEREFORE, IT IS,

ORDERED, that

1. A class is certified as to all causes of action except the claim for violation of the South Carolina Unfair Trade Practices Act;

2. The Class shall be and is defined as follows:

For the time period commencing January 1, 2014 to present for any homeowner who owns or has owned real property identified on the Woodington I Plat and Woodington II Plat who did not execute the Declaration and from whom River Oaks, Halcyon, and/or DRES have sought to collect or collected from said homeowners assessments, late fees, administrative fees, covenant fines, interest, filing fees, bad check fees, attorney fees, other

fees or charges and/or filed a lien against the homeowners' real property pursuant to the Woodington Covenants.

3. Joseph R. Davis is appointed Class Representative; and

4. Mary Leigh Arnold and David Conor Keys are appointed Class Counsel.

AND IT IS SO ORDERED.

Signature page to follow

Dorchester Common Pleas

Case Caption: Joseph R Davis , plaintiff, et al VS River Oaks Homeowners Association Inc , defendant, et al

Case Number: 2020CP1801856

Type: Order/Class Certification

It is so Ordered!

s/Diane S. Goodstein