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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Bentley D. Price, Circuit Court Judge

Case No. 2024-000322

Thomas H. Morgan ……..Respondent,

v.

John L. Gilbert, Stuart L. Fred, Bella Vista Partnership, A Texas General Partnership, Bomasada Group, Inc., A Texas Corporation, Bomasada Investment Group II, LLC, A Texas Limited Liability Company, Lauralis Management, Inc., A Texas Corporation, and 150 Bee Street, LLC, A South Carolina Limited Liability Company ……Defendants,

Of which John L. Gilbert, Stuart L. Fred, Bella Vista Partnership, A Texas General Partnership, Bomasada Group, Inc., A Texas Corporation, Bomasada Investment Group II, LLC, A Texas Limited Liability Company, and Lauralis Management, Inc., A Texas Corporation are the ……Appellants.

RECORD ON APPEAL
VOLUME II

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Attorneys for Appellants
[Except 150 Bee Street, LLC]

INDEX OF RECORD ON APPEAL

ORDERS

Order of Judge Hughston 2/27/12 ……. 1
Order of Judge Hughston 7/9/12 …… 6
Order of Arbitration Chair Cooke 1/7/19 ……. 10
Order Granting Plaintiff's Motion to Amend 4/4/22 …….. 12
Order of Panel Denying Defendants' Motion 7/11/22 …….. 13
Plaintiff's Proposed Order 12/23/22 ……. 18
Order of Judge Bentley Price 2/26/24 …… 64

JUDGMENTS

Panel Initial Award 4/10/23 …….. 75
Panel Final Award 6/19/23 …… 100

PLEADINGS

Plaintiff Morgan's Miami Complaint 12/16/09 ……. 110
Plaintiff's Original Summons & Complaint 1/26/12 …… 139
Defendants' Answer and Counterclaim 3/13/2012 …… 164
Plaintiff's Draft First Amended Complaint 5/18/18 …….. 179
Plaintiff's Filed First Amended Complaint 1/22/19 …….. 216
Defendants' Answer to Second (sec. First) Amended Complaint and Counterclaims 4/26/22 ……. 320
Plaintiff's Reply to the Counterclaims of Defendants 5/17/22 …… 344
Defendants' Notice of Appeal 3/4/24 ……. 349

MOTIONS & MEMORANDA

Defendants' Motion to Dissolve 2/1/12 …….. 372
Plaintiff's Motion to Amend Complaint 2/26/18 ……. 381
Defendants' Memorandum Opposing Motion to Amend Complaint 6/5/18 ……. 418
Defendants' Motion to Dismiss – Subject Matter Jurisdiction 2/19/19 …… 436
Defendants' Motion to Dismiss – Statute of Limitations 4/3/19 …… 662
Plaintiff's Memorandum in Opposition to Defendants' Rule 12(b)(1) Motion to Dismiss 5/31/22 …….. 704

Plaintiff's Memorandum in Opposition to Def. Motion for Summary Judgment 5/31/22 718
Plaintiff's Prehearing Brief 10/24/22 ……..…….. 747
Defendants' Motion for Reconsideration of Award 4/18/23…….. 768
Plaintiff's Memorandum in Opposition to Defendants' Motion for Reconsideration of Arbitration Award 5/3/23 …… 777
Defendants' Motion to Vacate or Modify Panel Final Award 6/30/23 ……. 782
Plaintiff's Memorandum in Opposition to Defendants' Motion to Vacate and Motion to Confirm 7/17/23 ……..… 801
Plaintiff's Supplemental Response to Motion to Vacate 11/9/23 …… 813

TRANSCRIPTS

Excerpts of Arbitration Hearing Transcript Vol. 2 - Cross-Examination of Tom Morgan by Henry Grimball (Tr. pp. 374; 520-22) ……..…… 829

Excerpts of Arbitration Hearing Transcript Vol. 3 - Cross-Examination of Tom Morgan by Henry Grimball (Tr. pp. 561-71; 574; 578-79; 584-87; 591-95; 657-58; 701; 722-23) 837

Excerpts from Arbitration Hearing Transcript Vol. 6 - Cross-Examination of William M. Shields by Andy Gowder (Tr. pp. 1427-28; 1433; 1444-45; 1487-90) …… 869

EXHIBITS

150 Bee St. LLC Second Amended Operating Agreement March, 2005……. 882
Morgan Email 4/25/07 …… 914
Baker Email 4/25/07 …… 915
Gilbert Email 4/25/07 ……. 916
Fred Email 4/25/07 ……. 917
Morgan email 4/26/07 …… 918
Fred email 4/26/07 ……. 920
Morgan email No. 2 4/26/07 ……. 922
Morgan email 4/27/07 …….. 923
Hagerty letter 4/30/07 …….. 925
Goldman letter 5/15/07 …… 927
DuMars Email 9/20/07 …… 929
DuMars Email 12/17/07 …… 936
Gilbert email 5/2/08 …… 942
Morgan email 5/4/08 …….. 946
Merg email 5/12/08 ……. 947
Gilbert email 7/3/08 …… 948

Morgan email 7/6/08 …….. 950
Morgan email No. 2 7/6/08 …… 951
Baker email 7/7/08 …… 952
Morgan email 7/8/08 …… 953
Merg letter 7/17/08 ……..…….. 954
Shields email 7/28/08 …… 955
Merg email 8/8/08 ……. 956
Shields email 8/8/08 ……. 957
Baker email 8/22/08 ……. 958
Morgan email 8/23/08 ……..... 959
Gardenswartz letter 9/17/08 …… 961
Berry email 4/9/10 …….. 963
Consent Tolling Agreement 12/7/11 …… 964
Defs' emails 3/12/19 …….. 970
Morgan's Spreadsheet offered at trial …….. 984

maintaining the status quo and enjoining the Defendants from distributing or paying any amounts to Defendants or any entity in which Defendants are owners or affiliated with without prior approval by Morgan;

e) award an offset against the capital account and any undistributed amounts claimed by Defendants; and

f) for such other and further relief as this court deems just and proper.

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Barrett Brewer, Esquire
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Telephone: (843) 577-2026

Attorneys for Plaintiff

Charleston, South Carolina

January 26 2012

EXHIBIT D

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2012-CP-10-
	)	
THOMAS H. MORGAN,	)	
	)	
PLAINTIFF,	)	
v.	)	
	)	
JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY and LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION.	)	VERIFICATION
	)	
DEFENDANTS.	)	

Thomas H. Morgan, being duly sworn, deposes and says, that he the Plaintiff herein; that he has read the foregoing Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those he believes them to be true.

Thomas H. Morgan

Sworn to before me this

19 day of January, 2012.

Notary Public for _____

My Commission Expires: _____

JESUS CARVAJAL
MY COMMISSION # EE 134866
EXPIRES: January 30, 2016
Bonded Thru Notary Public Underwriters

EXHIBIT D

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Bee Street Lofts Homeowners Association, Inc. and Mark Laboccetta, individually and on behalf of all others similarly situated,)
Plaintiff(s))
)
vs.)
)
Bomasada Group, Inc., et al.)
)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP-10-5120

(Please Print)
Submitted By: Jesse A. Kirchner, Esquire
Address: THURMOND KIRCHNER
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E-mail: jkirchner@tktylawfirm.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*

***If Action is Judgment/Settlement do not complete*

☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION *(Check One Box Below)*

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☒ Other (399)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date: August 22, 2014**

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, York

Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Case are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Cases which are appellate in nature such as appeals or writs of certiorari;

    c. Post Conviction relief matters;

    d. Contempt of Court proceedings;

    e. Forfeiture proceedings brought by the State;

    f. Cases involving mortgage foreclosures; and

    g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.

4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE NO.: 2014-CP-10-5120
BEE STREET LOFTS HOMEOWNERS ASSOCIATION, INC. and MARK LABOCCETTA, individually and on behalf of all others similarly situated, Plaintiffs, vs. BOMASADA GROUP, INC., BOMASADA CHARLESTON, LTD., 150 BEE STREET, LLC, HIGHTOWER CONSTRUCTION CO., INC., STEINBERG DESIGN COLLABORATIVE, LLP, McVEIGH & MAGNUM ENGINEERING, INC., JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, ALL JOHN DOES BEING MEMBERS OF THE DECLARANT-CONTROLLED BOARD OF DIRECTORS OF THE BEE STREET LOFTS HOMEONWERS ASSOCIATION, INC. FROM INCEPTION THROUGH TURNOVER, DAVID L. AGEE, COASTAL EXTERIORS, INC., ASSURANCE WATERPROOFING CO., INC., NORMAN A. STEWART, NAS SERVICES, INC., WEATHERHOLTZ MASONRY, LLC, GENERAL HEATING & AIR CONDITIONING COMPANY OF GREENVILLE, INC. d/b/a GENERAL HEATING & AC CO, INC., WORSHAM SPRINKLER COMPANY, INC. n/k/a VSC FIRE & SECURITY, INC., and JONES GLASS,INC. Defendants.	SUMMONS (Jury Trial Demanded)

FILED
2014 AUG 22 PM 2:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: THE ABOVE-NAMED DEFENDANTS:

EXHIBIT E

YOU ARE HEREBY SUMMONED and required to answer the Plaintiffs' Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon the subscriber, Jesse A. Kirchner, at his office located at 15 Middle Atlantic Wharf, Suite 101, Charleston, South Carolina, 29401, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiffs will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you.

Respectfully submitted,

THURMOND KIRCHNER TIMBES & YELVERTON, PA

By: _____

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Attorneys for the Plaintiffs

Aug 22, 2014
Charleston, South Carolina.

EXHIBIT E

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE NO.: 2014-CP-10-5120
BEE STREET LOFTS HOMEOWNERS ASSOCIATION, INC. and MARK LABOCCETTA, individually and on behalf of all others similarly situated, Plaintiffs, vs. BOMASADA GROUP, INC., BOMASADA CHARLESTON, LTD., 150 BEE STREET, LLC, HIGHTOWER CONSTRUCTION CO., INC., STEINBERG DESIGN COLLABORATIVE, LLP, McVEIGH & MAGNUM ENGINEERING, INC., JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, ALL JOHN DOES BEING MEMBERS OF THE DECLARANT-CONTROLLED BOARD OF DIRECTORS OF THE BEE STREET LOFTS HOMEOWNERS ASSOCIATION, INC. FROM INCEPTION THROUGH TURNOVER, DAVID L. AGEE, COASTAL EXTERIORS, INC., ASSURANCE WATERPROOFING CO., INC., NORMAN A. STEWART, NAS SERVICES, INC., WEATHERHOLTZ MASONRY, LLC, GENERAL HEATING & AIR CONDITIONING COMPANY OF GREENVILLE, INC. d/b/a GENERAL HEATING & AC CO, INC., WORSHAM SPRINKLER COMPANY, INC. n/k/a VSC FIRE & SECURITY, INC., and JONES GLASS,INC. Defendants.	COMPLAINT (Class Action) (Jury Trial Demanded)

FILED
2014 AUG 22 PM 2:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COME NOW THE PLAINTIFFS, BEE STREET LOFTS HOMEOWNERS ASSOCIATION, INC., and MARK LABOCCETTA on behalf of himself and all others similarly situated, by and through their undersigned counsel, complaining of the Defendants herein, and allege unto this Honorable Court as follows:

EXHIBIT E

PARTIES, JURISDICTION and FACTUAL ALLEGATIONS

1. Plaintiff, Bee Street Lofts Homeowners Association, Inc. (hereinafter "HOA"), is an eleemosynary corporation and horizontal property regime organized and existing pursuant to the laws of South Carolina.

2. Plaintiff HOA is comprised of all persons or entities owning condominium units located at 150 Bee Street, Charleston, South Carolina, known as the Bee Street Lofts and is governed by a Board of Directors (the "Board").

3. The Bee Street Lofts is comprised of one building elevated over parking and a ground floor lounge and office space containing one hundred eight (108) condominium units.

4. The Board is composed of three (3) duly elected members of the Plaintiff HOA.

5. The Board is bringing this lawsuit on behalf of Plaintiff HOA, pursuant to its legal authority.

6. In addition to its legally defined obligations, the duties and responsibilities of the Plaintiff HOA and the Board are set forth in the Master Deed of the Bee Street Lofts Horizontal Property Regime dated May 31, 2006 and filed in Book F587, Page 760 et seq. of the office of the Register Mesne Conveyance ("RMC") for Charleston County, South Carolina (the "Master Deed"). The Master Deed, and duly recorded amendments thereto, are incorporated herein by reference.

7. Plaintiff HOA is charged with repairing the common elements and limited common elements and with enforcing all warranties relating to each.

8. Plaintiff Mark Laboccetta ("Laboccetta") is a citizen and resident of North Carolina and is the owner of condominium unit 816 in the Bee Street Lofts.

9. By virtue of his ownership of a condominium unit, Plaintiff Laboccetta owns an undivided interest in the common elements and limited common elements of Bee Street

Lofts as a tenant-in-common with all other owners.

10. The Bee Street Lofts is located in Charleston County and is the subject of this action.

11. Bomasada Group, Inc. is a corporation organized and existing pursuant to the laws of Texas and conducts business in Charleston County, South Carolina.

12. Defendant Bomasada Charleston, LTD is a limited partnership organized and existing pursuant to the laws of Texas. Bomasada Charleston, LTD is registered to do business in South Carolina and appointed an agent for service of process in Charleston County, South Carolina.

13. Bomasada Group and Bomasada Charleston, LTD may hereinafter be referred to collectively as "Bomasada."

14. Upon information and belief, 150 Bee Street, LLC, is a single purpose limited liability company organized and existing pursuant to the laws of South Carolina with its sole principal place of business in Charleston County.

15. Upon information and belief, 150 Bee Street, LLC was organized and incorporated by Bomasada Group and Bomasada Charleston, LTD, and their agents, directors, members, partners and/or shareholders for the sole and singular purpose of developing Bee Street Lofts.

16. Upon information and belief, 150 Bee Street, LLC functioned as Bomasada's alter ego in the development of the Bee Street Lofts, and Bomasada, its agents, officers, directors, partners and shareholders exerted complete control over 150 Bee Street, LLC in the development of the Bee Street Lofts.

17. Upon information and belief, the legal distinction between 150 Bee Street, LLC and Bomasada, its officers, directors and shareholders are blurred and they are, in effect, one and the same and their interests are so amalgamated such that the actions of one

should apply to the other.

18. Upon information and belief, Bomasada Group, Inc., Bomasada Charleston, LTD, and 150 Bee Street, LLC (hereinafter referred to collectively as "Developers") collectively developed the Bee Street Lofts and sold the individual condominium units contained within the Bee Street Lofts.

19. Bomasada identifies Bee Street Lofts Condominiums on its website as one of its "Recent Projects" – www.bomasada.com/projects.html and further claims that "Bee Street Lofts is a 108-unit loft mid-rise, ***luxury condominium project developed by Bomasada Group, Inc.***" www.bomasada.com/charleston1.html (emphasis added). Upon information and belief, a website, or other marketing to the public, does not exist for 150 Bee Street, LLC – only Bomasada relative to the Bee Street Lofts.

20. Upon information and belief, a search for "Bomasada Group, Charleston, SC" on www.yellowpages.com indicates that Bomasada Group's address in Charleston, South Carolina is 150 Bee Street, Charleston, South Carolina, 29401 with a telephone number of 843.720.5251.

21. Upon information and belief, Bomasada Group maintains a Facebook page, which indicates a physical address of 150 Bee Street, Charleston, South Carolina, 29401 and a telephone number of 843.720.5251. www.facebook.com/pages/Bomasada-Group/167570556591380.

22. Prior to, during, and after construction, the Developers marketed the Bee Street Lofts to the public as a luxury condominium development of the highest quality. Specifically, Developers' website and other marketing materials profess that Bee Street Lofts is a "luxury condominium project" and that the project "is constructed of the highest quality, energy-efficient materials."

23. The Developers marketed and sold the condominiums to the members of the Plaintiff HOA.

24. The Developers represented themselves to the Plaintiffs and to the public at large as developers "specializing in multi-family residential real estate development" as well as developers who "continually sets higher standards in design, development, and construction" with 50 years of experience and "over $1 billion in asset transactions."

25. The Developers also represented to the Plaintiffs and to the public at large that they "have an established reputation of creating quality projects" and that Bomasada "establishes a standard of excellence and achieves the highest degree of quality by providing analysis, and by maintaining a watchful eye on project costs."

26. Although not licensed contractors in the state of South Carolina, the Developers represented to the Plaintiffs and to the public at large that they have "extensive experience as a ***general contractor***" (emphasis added) and are "committed to excellence in craftsmanship" and that they have "supervised and/or constructed projects valued in excess of $700 million."

27. The Developers drafted and filed, or caused to be drafted and filed, the Master Deed.

28. The Developers incorporated, or caused to be incorporated, Bee Street Lofts Homeowners Association, Inc. Upon information and belief, the Developers turned over control of the HOA to the owners in approximately May 2013 (the "Turnover"). The Developers controlled the Board of Directors for the HOA – and hence controlled the actions of the Association – from the time the HOA was formed up until the Turnover.

29. Prior to the Turnover, the Developers were in control of the common elements and served as the de facto Board of Directors for the incorporated HOA.

30. Defendants John Doe 1, John Doe 2, and John Doe 3, were members of the Developer-controlled Board of Directors of the HOA appointed by the Developers prior to Turnover.

31. Defendant Hightower Construction Co., Inc. ("Hightower") is a corporation organized and existing pursuant to the laws of South Carolina with its principal place of business in Charleston County.

32. Upon information and belief, Hightower served as the general contractor for the construction of the Bee Street Lofts and agreed to construct the Bee Street Lofts in accordance with the applicable building code and contract documents, including, but not limited to, the plans and specifications prepared by Defendant Steinberg Design Collaborative, LLP ("Steinberg") and McVeigh & Mangum Engineering, Inc. ("McVeigh").

33. Upon information and belief, Steinberg is a limited liability partnership organized and existing pursuant to the laws of Texas and regularly conducts business in Charleston County, South Carolina. Upon information and belief, Steinberg is registered to do business in South Carolina and appointed an agent for service of process in South Carolina.

34. Upon information and belief, Steinberg, served as the architect of record for the design of the Bee Street Lofts and agreed to provide professional architectural services for the design of the Bee Street Lofts, specifically including, but not limited to, the issuance of the plans, details, and specifications for the construction of the Bee Street Lofts. These documents and/or instruments of service were required to be in compliance with all applicable ordinances, codes, regulations, statutes, and industry standards.

35. Upon information and belief, Steinberg agreed to make periodic visits to the Bee Street Lofts during construction, and otherwise performed contract administration

services during construction to observe whether the construction was being completed in accordance with the plans and specifications and all applicable building codes.

36. Upon information and belief, Defendant McVeigh is a limited liability company organized under the laws of Florida and regularly conducts business in Charleston County, South Carolina. Upon information and belief, McVeigh is registered to do business in South Carolina and appointed an agent for service of process in South Carolina.

37. Upon information and belief, McVeigh served as the structural engineer of record for the design of the Bee Street Lofts and agreed to provide professional engineering services for the design of the Bee Street Lofts, specifically including, but not limited to, the issuance of engineered plans and specifications for the construction of the Bee Street Lofts. These documents and/or instruments of service were required to be in compliance with all applicable ordinances, codes, regulations, statutes, and industry standards.

38. Upon information and belief, David L. Agee is a citizen and resident of Charleston County, South Carolina who did business in Charleston County as Coastal Exteriors, Inc.

39. Upon information and belief, Coastal Exteriors, Inc. is or was a corporation organized and existing pursuant to the laws of South Carolina with its principal place of business in Charleston County.

40. Upon information and belief, Coastal Exteriors, Inc. was dissolved with David L. Agee being its sole shareholder.

41. Coastal Exteriors, Inc. and David L. Agee (hereinafter collectively "Coastal Exteriors") installed the exterior hard coat stucco and related flashings and accessories on the Bee Street Lofts as a subcontractor to Hightower.

42. Assurance Waterproofing Co., Inc. ("Assurance Waterproofing") is a corporation organized and existing pursuant to the laws of South Carolina with its principal place of business in Richland County, South Carolina.

43. Upon information and belief, Assurance Waterproofing was duly licensed by the State of South Carolina for Interior Renovations, Glass and Glazing and Masonry, said license having lapsed in 2010.

44. Upon information and belief, Assurance Waterproofing installed the exterior caulk and sealants at the Bee Street Lofts as a subcontractor to Hightower.

45. Upon information and belief, Norman A. Stewart is a citizen and resident of Charleston County, South Carolina who conducted business in Charleston County as NAS Services.

46. Upon information and belief, NAS Services, Inc. is or was a corporation organized and existing pursuant to the laws of South Carolina with its principal place of business in Charleston County.

47. Upon information and belief, NAS Services, Inc. was dissolved with Norman A. Stewart being its sole shareholder.

48. NAS Services, Inc. and Norman A. Stewart (hereinafter collectively "NAS Services") served as an "Exterior Skin Consultant / Construction Monitor" for the construction of the Bee Street Lofts as a subcontractor to Hightower.

49. Weatherholtz Masonry, LLC ("Weatherholtz Masonry") is a limited liability company organized and existing pursuant to the laws of South Carolina with its principal place of business in Charleston County.

50. Upon information and belief, Weatherholtz Masonry installed the exterior brick cladding and related flashings on the Bee Street Lofts as a subcontractor to Hightower.

51. Upon information and belief, General Heating & Air Conditioning Company of Greenville, Inc. is a corporation organized and existing pursuant to the laws of South Carolina with its principal place of business in Greenville County and, at all times relevant herein, conducted business in Charleston County as General Heating & AC Co. (hereinafter "General HVAC").

52. Upon information and belief, General HVAC designed and installed the mechanical system and appurtenant parts at the Bee Street Lofts as a subcontractor to Hightower.

53. Upon information and belief, Worsham Sprinkler Company, Inc. n/k/a VSC Fire & Security, Inc. ("Worsham") is or was a corporation organized and existing pursuant to the laws of Virginia and conducted business in Charleston County. Upon information and belief, VSC Fire & Security purchased the assets of Worsham in February 2003. In 2009 Worsham transitioned to the name VSC Fire and Security, Inc.

54. Upon information and belief, Worsham installed the fire suppression sprinkler system and related components at the Bee Street Lofts as a subcontractor to Hightower.

55. Upon information and belief, Jones Glass, Inc. ("Jones Glass") is or was a corporation organized and existing pursuant to the laws of Georgia and conducted business in Charleston County.

56. Upon information and belief, Jones Glass installed the exterior windows and doors and related flashings at the Bee Street Lofts as a subcontractor to Hightower.

57. Defendants David L. Agee, Coastal Exteriors, Inc., Assurance Waterproofing Co., Inc., Norman A. Stewart, NAS Services, Inc., Weatherholtz Masonry, LLC, General Heating & Air Conditioning Company of Greenville, Inc. d/b/a General Heating & AC Co., Inc., Worsham Sprinkler Company, Inc. n/k/a VSC Fire & Security, Inc., and Jones Glass, Inc. may hereinafter be referred to collectively as "Defendant Subcontractors."

58. Plaintiffs have experienced numerous instances of water intrusion into the building, the common elements, the limited common elements, and the individual condominium units at the Bee Street Lofts.

59. Recently, an architect and professional engineers inspected Bee Street Lofts and discovered numerous design and construction deficiencies, building code violations and substantial resulting damage.

60. Plaintiff HOA made repeated demands upon the Defendants to investigate and cure the defects and repair the resulting damages.

61. The Developers represented to the Plaintiffs that they attempted to cure certain defects. It has recently been discovered that such attempts were temporary cosmetic "band aids" designed and intended to mask the symptoms of the defects with no real attempt to thoroughly investigate the source and/or cause of the water intrusion and make appropriate and permanent repairs.

62. The repair attempts by the Defendants were unsuccessful and/or deficient.

63. The Defendants failed to remedy the defects. Consequently, water intrusion through the building envelope and resulting damage to the building, common elements, limited common elements and the individual condominium units in addition to personal property of the members of the Plaintiff HOA and Plaintiff Class continued unabated.

64. Plaintiffs are informed and believe that the damage to the Bee Street Lofts, its common elements, limited common elements, and individual condominium units is a direct and proximate result of defects and deficiencies in the design, development, construction and attempted repairs of the Bee Street Lofts, specifically including, but not limited to, the following:

(a) In failing to reference the correct applicable building code on the plans used for construction of the project;

(b) In failing to use appropriate fasteners to attach the metal lath to the structure;

(c) In failing to install the lath fasteners into the stud framing of the structure;

(d) In installing lath fasteners in excess of the maximum spacing allowed by the lath manufacturer, ASTM standards, industry standards and the building code;

(e) In failing to design the stucco cladding with appropriate through-wall flashings or other drainage mechanisms;

(f) In failing to install the stucco cladding in accordance with ASTM C-926 and 1063 and other applicable industry standards;

(g) In failing to install the stucco cladding in accordance with the applicable building code;

(h) In failing to install the stucco cladding in accordance with the manufacturer's installation instructions;

(i) In failing to install the exterior cladding in a leak-proof manner;

(j) In failing to install appropriate flashings in the stucco cladding system;

(k) In failing to appropriately seal or caulk the stucco cladding;

(l) In failing to appropriately flash deck-to-wall intersections thereby promoting water intrusion into the framing assembly resulting in damage to the structure;

(m) In failing to install the secondary weather barrier in a weather-lapped fashion;

(n) In failing to install the brick cladding in accordance with industry standards and the applicable building code;

(o) In failing to properly support the brick veneer at each floor level in violation of industry standards and the building code;

(p) In designing and specifying the brick cladding installation in a defective manner;

(q) In failing to design the wall assembly with the appropriate number and spacing of brick ties;

(r) In failing to install the appropriate number of brick ties and at appropriate spacing;

(s) In failing to install horizontal joint reinforcing within the brick cladding assembly;

(t) In failing to install appropriate flashings or weep assemblies in the brick cladding;

(u) In failing to appropriately install through-wall flashing assemblies in the brick cladding;

(v) In failing to install the brick cladding in accordance with the then existing seismic lateral force resistance requirements;

(w) In failing to install steel lintels with appropriating coating so as to protect them from the elements resulting in rusting and corroded lintels;

(x) In failing to install appropriate flashing at the GFRC cladding components;

(y) In failing to install proper balcony waterproofing;

(z) In failing to install the courtyard terraces in a leak-proof manner;

(aa) In designing and installing a garage ramp in an unsafe manner;

(bb) In failing to install the sprinkler fire protection system in accordance with industry standards and the applicable building code;

(cc) In failing to undertake repairs commensurate with industry standards, manufacturer's installation instructions and the applicable building code;

(dd) In failing to undertake repairs to arrest water intrusion into the buildings;

(ee) In failing to properly and adequately investigate the nature of the defects;

(ff) In failing to act as a reasonably prudent developer would act under similar circumstances;

(gg) In failing to act as a reasonably prudent contractor and subcontractor would act under similar circumstances;

(hh) In failing to act as a reasonably prudent design professional would act under similar circumstances; and

(ii) In such other failures as will be shown through the discovery and trial of this matter.

65. Plaintiffs are informed and believe that various components of the Bee Street Lofts, including those listed above, are not in compliance with the building codes and standards which were applicable to this project at the time of design and construction and must be replaced or remedied to comply with current building codes and standards applicable to this project.

66. The Plaintiffs have been and will continue to be proximately damaged by the design and construction defects existing at the Bee Street Lofts.

67. The latent design and construction defects caused substantial consequential and resulting damage to various non-defective components of the Bee Street Lofts' common elements, limited common elements, and the individual condominium units, in the form of, inter alia, water intrusion, water damage, rusted/failing fasteners and framing members, damage to decks and balconies, damage to insulation, wood components, interior trim, interior drywall, and non-defective elements of the brick, siding, deck, balconies, windows, doors, roof, soffit, and water management systems.

68. Notwithstanding that Plaintiffs have properly maintained Bee Street Lofts, the construction defects set forth herein caused occurrences in the form of leaks, defects, and failures within the wall, which are not readily apparent to one examining the exterior surface thereof.

69. The latent design and construction defects resulted in continual exposure to the same generally harmful conditions over time in the form of repeated injurious events that occurred each and every year since construction, and constitute "occurrences" and compensable damage. The latent construction defects resulted in repeated water intrusion into the Bee Street Lofts, failure of the components of the exterior envelope, failure of the structural systems, and other consequential damages. Further, the negligence of each Defendant herein resulted in damage to the work of the other contractors, subcontractors

and trades and in damage to the Bee Street Lofts, the Plaintiffs' property, and the Plaintiffs' use and enjoyment of the Bee Street Lofts.

70. Due to the design and construction defects and resulting property damage, Plaintiffs have, and in the future will be forced to expend significant sums of money to repair the damage, will have to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies, and to implement the remediation plan for the Bee Street Lofts.

71. Additionally, Plaintiffs have suffered, and will continue to suffer, loss of use and enjoyment of the Bee Street Lofts, its common areas, limited common areas, parking areas and individual condominium units. Such loss and interference with the use and enjoyment of the Bee Street Lofts, will continue through the time in which repairs are undertaken.

72. As a direct and proximate result of the Defendants' actions, Plaintiffs have spent and will continue to expend substantial sums of money in order to investigate, renovate and restore the Bee Street Lofts to make it safe and habitable and, in addition thereto, Bee Street Lofts has suffered a loss in value and depreciation by virtue of the defects and damages. In addition, Plaintiffs will be required to expend substantial sums which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.

73. As a result of the conduct referenced herein, Plaintiffs are entitled to punitive damages in an amount to be determined.

74. This matter arises out of the design, development, construction marketing and sale of the Bee Street Lofts, located in Charleston County.

75. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto, and venue is proper in this forum.

CLASS ACTION ALLEGATIONS

76. Plaintiff Laboccetta, and other similarly situated unit owners, own an undivided interest in the common elements and limited common elements of the Bee Street Lofts.

77. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Laboccetta brings this action both individually and as a proposed class action against Defendants on behalf of himself and all other similarly situated persons and entities, that own condominium units within the Bee Street Lofts (hereinafter referred to collectively as the "Class"). The Class is more particularly defined as follows:

> All persons and/or entities that own condominium units within the Bee Street Lofts.

Excluded from the Class are:

(a) Any Judge presiding over this action and members of their families;

(b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and Defendants' current or former employees, investors, members, or officers;

(c) Any former owner of a condominium unit; and

(d) All persons who properly execute and file a timely request for exclusion from the Class.

78. As representatives of the Class defined herein pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure, the Plaintiffs seek to recover monetary damages from the Defendants, for negligence, gross negligence, recklessness, wantonness, willfulness, breach of fiduciary duties, breach of express and implied warranties, with respect to their duties as a developer in the development, marketing, sale of, administration,

care, and maintenance and/or repair of the Bee Street Lofts, as well as their duties to design and construct the Bee Street Lofts free from defects and in accordance with all applicable building and dwelling codes.

79. *Numerosity*: The Class is composed of in excess of one hundred persons geographically dispersed throughout the State of South Carolina and other states, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of two hundred members.

80. *Commonality*: Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include, but are not limited to, the following:

(a) Whether the project was designed by the architect of record in accordance with the applicable building code;

(b) Whether the exterior cladding systems (brick and stucco) were installed in accordance with the applicable building code;

(c) Whether the Defendants negligently installed the windows;

(d) Whether the balconies were negligently installed;

(e) Whether the courtyard terraces were negligently installed;

(f) Whether Defendants knew or should have known of these defects;

(g) Whether repairs undertaken by the Defendants were performed in a negligent or grossly negligent manner;

(h) Whether Defendants have acted or refused to act on grounds generally applicable to the Class;

(i) Whether Defendants are financially responsible to pay the full costs and expenses of repair of defective windows, and window and alarm system installation;

(j) Whether Plaintiffs and the Class are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by other members of the Class for

repair/replacement of building components, as well as repair/replacement of other property damage; (ii) temporary repairs; and (iii) compensation for loss of use; and

(k) Whether the Plaintiffs are entitled to prejudgment interest, attorneys' fees and costs from Defendants.

81. *Typicality*: Plaintiff Laboccetta's claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in the design, construction, marketing, selling, management and repair of the Bee Street Lofts.

82. *Adequate Representation*: Plaintiff Laboccetta will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiffs have retained counsel experienced in the prosecution of construction defect claims and complex litigation, including condominium defect claims and class actions.

83. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since, among other things, individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

84. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice vis-à-vis each class member. All Class Members have the same legal right to, and interest in, redress for damages associated with the defective conditions existing within the Bee Street Lofts.

85. Plaintiffs and the Class, who are all members of the HOA, envision no unusual difficulty in the management of this action as a class action.

86. Each Class Member has an interest of more than $100.00.

87. The amount of money at stake for each Class Member is not sufficient for each member to hire their own counsel, forensic engineers and architects and bring their own action.

FOR A FIRST CAUSE OF ACTION
(Breach of Implied Warranty of Habitability as to the Developers)

88. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

89. In marketing and selling the Bee Street Lofts or otherwise placing the Bee Street Lofts into the stream of commerce, the Developers, by operation of law, impliedly warranted that the Bee Street Lofts would be habitable and free from all defects.

90. Developers breached the implied warranty of habitability by designing, constructing, marketing and selling a defective project as set forth above in Paragraph 64, including its subparts.

91. As a direct, foreseeable and proximate result of Developers' breach of the implied warranty of habitability, the Plaintiffs suffered significant physical damage to the Bee Street Lofts, including water intrusion, loss of use, as well as diminution in its value. The Plaintiffs have further been damaged in that they have spent, and will continue to expend,

large sums of money in order to determine the extent of the damage to the Bee Street Lofts and to repair it.

92. Any attempts by the Developers to disclaim the warranty of habitability are void and unenforceable under the law of South Carolina as interpreted by the South Carolina Supreme Court in that, inter alia, the purported disclaimer was not conspicuous and was not specifically bargained for with Plaintiffs or with the other individual condominium unit owners or purchasers.

93. Plaintiffs are entitled to a judgment against the Developers in an amount to be proven at trial for all direct, indirect, actual, resulting and consequential damages proximately caused by the Developers' breach of the warranty of habitability.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty as to the Developers and John Doe Board Members)

94. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

95. During the time that the Developers controlled the actions of the Board of Directors, the Developers and the John Doe Board Members on the Developer-controlled Board of Directors owed the Plaintiffs, and all other unit owners, a fiduciary duty to place the interests of the Plaintiffs and the HOA above the interests of the Developers. This fiduciary duty included a duty to conduct a good faith investigation of all possible design and construction deficiencies at Bee Street Lofts without regard to whether the Developers were ultimately liable for all damages arising from the deficiencies in design and construction.

96. The Developers also owed a non-delegable duty to the Plaintiffs to ensure that all of the common elements and limited common elements of the Bee Street Lofts were either in good repair and in compliance with all applicable building codes, or that

sufficient funds had been provided to the HOA by the Developers to make any necessary repairs at the time of transition of control of the Board from the Developers to the owners of the Bee Street Lofts condominium units.

97. The Developers and the John Doe Board Members on the Developer-controlled Board of Directors failed to make the needed repairs to the common elements, limited common elements, and other building components before transition of control of the Board from the Developers to the owners of the Bee Street Lofts condominium units and failed to mitigate continuing damage to the Bee Street Lofts and, instead, made repairs they knew, or should have known, were cosmetic in nature without addressing the root cause of the water intrusion and would not provide a permanent solution.

98. Further, the Developers failed to adequately fund the HOA so that it could make the necessary repairs.

99. By failing to repair the common elements, limited common elements, and other building components and by failing to properly fund the HOA for the purpose of making such repairs, the Developers and the John Doe Board Members on the Developer-controlled Board breached their fiduciary duties and other non-delegable duties owed to the Plaintiffs.

100. As a proximate and direct result of the breach of fiduciary duties on the part of the Developer and the Developer-controlled Board of Directors, Plaintiffs have spent and will continue to expend substantial sums of money in order to renovate and restore the Bee Street Lofts to make it safe and habitable, and in addition thereto, the Bee Street Lofts suffered a loss in value and depreciation by virtue of the defects and damages. In addition, Plaintiffs will be required to expend substantial sums which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to

be determined.

101. Additionally, Plaintiffs have suffered, and will continue to suffer, loss of use of their units as well as the common areas and the limited common areas of the building. Such loss will continue through the interference with the use and enjoyment of the common areas and limited common areas during the time in which construction repairs are undertaken to the Bee Street Lofts.

102. The Plaintiffs are entitled to a judgment against the Developers and the John Doe Board Members on the Developer-controlled Board of Directors for all actual, direct, indirect, resulting and consequential damages proximately caused by the breach of their fiduciary and other non-delegable duties in an amount to be proven at trial.

FOR A THIRD CAUSE OF ACTION
(Negligence / Gross Negligence as to the Developers)

103. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

104. As the developers of Bee Street Lofts, the Developers owed a duty of due care to the Plaintiffs in overseeing the construction, management, and operation of the Bee Street Lofts.

105. The Developers breached the duty of due care they owed to Plaintiffs by marketing, developing, constructing and selling a defective condominium building as set forth above in Paragraph 64, including its subparts, as well as through one or more of the following particulars:

(a) By failing to properly select the architect, general contractor, and materials used in the construction of Bee Street Lofts;

(b) By failing to properly oversee the design and construction, including the selection of contractors and subcontractors, of the Bee Street Lofts when they planned to sell the condominium units to members of the public for profit;

(c) By negligently making misrepresentations to the Plaintiffs concerning the quality of the construction of Bee Street Lofts;

(d) By failing to properly and prudently fund and effect repairs to the common elements, limited common elements, and individual units of the Bee Street Lofts when they controlled the HOA and its Board of Directors;

(e) By failing to properly and prudently fund the HOA before transition of control of the Board to the individual condominium unit owners;

(f) By engaging in self-dealing and self-interested transactions while allowing the defects and resulting damage at Bee Street Lofts to continue unabated; and

(g) In such other failures that will be shown during the discovery of this case and at trial.

106. The negligent acts and omissions of the Developers were the proximate causes of construction and design deficiencies set forth above, which resulted in property damage and financial damages to Plaintiffs.

107. Due to the design and construction defects and resulting property damage caused by the Developers' negligence, Plaintiffs have spent, and will continue to expend, substantial sums of money in order to renovate and restore the Bee Street Lofts to make it safe and habitable. In addition thereto, the Bee Street Lofts suffered a loss in value and depreciation by virtue of the defects and damages which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.

108. Additionally, Plaintiffs have, and will continue to, suffer loss of use of the common areas and the limited common areas of the Bee Street Lofts. Such loss will continue through the interference with the use and enjoyment of the common areas and limited common areas of the Bee Street Lofts during the time in which construction repairs are undertaken.

109. As a direct and proximate result of the negligence of the Developers, the Plaintiffs are entitled to a judgment against the developers for all actual, direct, indirect, resulting and consequential damages in an amount to be determined at the trial of this case.

FOR A FOURTH CAUSE OF ACTION
(Alter Ego/Amalgamation/Piercing the Corporate Veil as to the Developers)

110. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

111. Bomasada and 150 Bee Street, LLC collectively held themselves out to the Plaintiffs and the public as the developer of Bee Street Lofts.

112. Upon information and belief, Bomasada and its agents, officers, directors, and shareholders wholly own and/or completely dominate and control 150 Bee Street, LLC.

113. Upon information and belief, 150 Bee Street, LLC at all times relevant to this action:

(a) Failed to observe corporate formalities;

(b) Was grossly undercapitalized for the purposes of the corporate undertaking, to wit, the development of the Bee Street Lofts and the remediation of any and all defects in the design and construction of the Bee Street Lofts should they arise;

(c) Was controlled by Bomasada and its agents, officers, directors and shareholders to such an extent that it was merely a façade for the operations of Bomasada and its agents, officers, directors and shareholders;

(d) Does not have any functioning officers or directors that are independent of Bomasada; and

(e) Is functionally insolvent.

114. In addition, upon information and belief, any and all funds that were paid to 150 Bee Street, LLC, through the sale of the individual units contained within the Bee

Street Lofts, were siphoned from the company by Bomasada, and its agents, directors, officers, and/or shareholders.

115. Bomasada and its agents, directors, officers, and/or shareholders, dominated and controlled 150 Bee Street, LLC such that it was merely an alter ego of Bomasada set up to shield Bomasada and its agents, directors, officers and/or shareholders from liability resulting from their design, marketing, construction and sale of a residential condominium project in Charleston County, South Carolina.

116. Upon information and belief, Bomasada failed to follow the necessary corporate formalities, as required by law, and undercapitalized 150 Bee Street, LLC and siphoned corporate funds for personal use of its shareholders, used corporate facilities and employees for personal ends, and otherwise so intermingled the personal and financial affairs with the company's that they have become the alter ego of Bomasada, its agents, directors, officers and/or shareholders.

117. Further, upon information and belief the interests of Bomasada and its agents, directors, officers and/or shareholders, and 150 Bee Street, LLC are so amalgamated that the Plaintiffs are entitled to disregard the corporate forms and recover against Bomasada and its agents, directors, officers and/or shareholders.

118. Upon information and belief, 150 Bee Street, LLC is a shell and/or sham company dominated and controlled by Bomasada and its agents, directors, officers and/or shareholders such that they are not legally distinct.

119. Further, Bomasada's website and other marketing materials claims Bee Street Lofts to be one of its developments.

120. It would be inequitable to allow the true developers to hide behind a corporate shield that has no basis in fact for the express purpose of avoiding their obligations, responsibilities and liabilities to the Plaintiffs.

121. Plaintiffs are entitled to pierce the corporate veil of 150 Bee Street, LLC and thereby obtain a judgment against Bomasada and its agents, directors, officers and shareholders for the liability of 150 Bee Street, LLC in an amount to be determined by the trier of fact.

122. Further, because the interests of Bomasada and its agents, directors, officers and shareholders, and 150 Bee Street, LLC are so amalgamated, Plaintiffs are entitled to disregard the corporate forms and recover against Bomasada and its agents, directors, officers, and shareholders in an amount to be determined by the trier of fact.

FOR A FIFTH CAUSE OF ACTION
(Negligence / Gross Negligence as to Hightower and Subcontractors)

123. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

124. Hightower and Subcontractors, either by their own employees or through the use of subcontractors, constructed the Bee Street Lofts, its common elements and limited common elements.

125. At all times relevant hereto, Hightower and Subcontractors, their agents, servants, employees, and/or subcontractors undertook and owed a duty to the Plaintiffs and its members to perform their work at the Bee Street Lofts in accordance with the applicable building and dwelling codes, approved construction plans and specifications, and in a careful, diligent, and workmanlike manner, free from latent defects.

126. Hightower and Subcontractors, their agents, servants, employees, and/or subcontractors were negligent, careless, reckless, willful and wanton in failing to perform their work in accordance with the applicable building and dwelling codes, approved construction plans and specifications, and in failing to perform their work in a careful, diligent, and workmanlike manner, free from latent defects, thereby breaching the above-referenced

duties by, but not limited to, the particulars set forth above in Paragraph 64, including its subparts.

127. As a direct, foreseeable and proximate result of the negligence and gross negligence of Hightower and Subcontractors, Plaintiffs have spent and will continue to expend substantial sums of money in order to renovate and restore the Bee Street Lofts to make it safe and habitable, and in addition thereto, the Bee Street Lofts suffered a loss in value and depreciation by virtue of the defects and damages. In addition, Plaintiffs will be required to expend substantial sums which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.

128. Additionally, Plaintiffs have, and will continue to, suffer loss of use of the common areas and the limited common areas of the Bee Street Lofts. Such loss will continue through the interference with the use and enjoyment of the common areas and limited common areas of the Bee Street Lofts during the time in which construction repairs are undertaken.

129. The violation of applicable building codes constitutes negligence per se.

130. The breach of duty, code violations, and deviations from industry standards on the part of Hightower and Subcontractors, their agents, servants, employees and/or subcontractors constitute gross negligence, entitling Plaintiffs to an award of all actual, direct, indirect, resulting, consequential, and punitive damages.

131. As a result of the negligence and gross negligence of Hightower and Subcontractors, their agents, servants, employees and/or subcontractors, the Plaintiffs are entitled to a judgment against Hightower and Subcontractors for all actual, direct, indirect, resulting, consequential, and punitive damages in an amount to be determined at the trial

of this case.

FOR A SIXTH CAUSE OF ACTION
(Breach of Implied Warranty of Workmanlike Service as to Hightower and Subcontractors)

132. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

133. By undertaking and performing construction work at the Bee Street Lofts, Hightower and Subcontractors impliedly warranted that their work would be performed in a careful, diligent, and workmanlike manner and would be free from all defects.

134. Hightower and Subcontractors, their agents, servants, employees and subcontractors breached the implied warranty of workmanlike service by constructing a project with the defects and deficiencies set forth above in Paragraph 64, including its subparts.

135. Plaintiffs have been proximately damaged by Hightower and Subcontractors' breach of their implied warranty of workmanlike service in that Plaintiffs have spent, and will continue to expend, substantial sums of money in order to renovate and restore the Bee Street Lofts to make it safe and habitable. In addition thereto, the Bee Street Lofts suffered a loss in value and depreciation by virtue of the defects and damages which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.

136. Additionally, Plaintiffs have, and will continue to, suffer loss of use of the common areas and the limited common areas of the Bee Street Lofts. Such loss will continue through the interference with the use and enjoyment of the common areas and limited common areas of the Bee Street Lofts during the time in which construction repairs are undertaken.

137. As a direct and proximate result of Hightower and Subcontractors' breach of their implied warranties, Plaintiff is entitled to a judgment against Hightower and Subcontractors for all actual, direct, indirect, resulting and consequential damages in an amount to be proven at the trial of this case.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Warranty as to Steinberg and McVeigh)

138. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

139. Upon information and belief, Steinberg and McVeigh, pursuant to its contract with the Developers, expressly warranted that its plans, specifications, and other instruments of service would be in compliance with all applicable ordinances, codes, regulations, statutes, and industry standards.

140. Steinberg and McVeigh warranted the sufficiency of the design, plans, and specifications for the Bee Street Lofts.

141. Plaintiffs are a beneficiary of the express and implied warranties provided by Steinberg and McVeigh.

142. As indicated in the Affidavits of Theodore Padgett, P.E. and Forrest R. Lott, FAIA, LEED AP, which are attached hereto as Exhibit "A" and Exhibit "B" respectively, and which are incorporated herein by reference, Steinberg and McVeigh breached their express and implied warranties by failing to design the Bee Street Lofts free from defects and in compliance with the applicable building codes and industry standards.

143. Plaintiffs have been proximately damaged by Steinberg's and McVeigh's breach of their express and implied warranties in that Plaintiffs have spent, and will continue to expend, substantial sums of money in order to renovate and restore the Bee

Street Lofts to make it safe and habitable. In addition thereto, the Bee Street Lofts suffered a loss in value and depreciation by virtue of the defects and damages which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.

144. Additionally, Plaintiffs have, and will continue to, suffer loss of use of the common areas and the limited common areas of the Bee Street Lofts. Such loss will continue through the interference with the use and enjoyment of the common areas and limited common areas of the Bee Street Lofts during the time in which construction repairs are undertaken.

145. As a result of Steinberg's and McVeigh's breach of express and implied warranties, the Plaintiffs are entitled to a judgment against Steinberg and McVeigh for all actual, direct, indirect, resulting and consequential damages in an amount to be proven at trial.

FOR AN EIGHTH CAUSE OF ACTION
(Negligence / Gross Negligence as to Steinberg and McVeigh)

146. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

147. Steinberg and McVeigh agreed to provide professional architectural and engineering services for the design and engineering of the Bee Street Lofts, specifically including, but not limited to, the issuance of the plans and specifications for construction. These documents and/or instruments of service were required to be in compliance with all applicable ordinances, building codes, regulations, statutes, and industry standards.

148. Upon information and belief, Steinberg agreed to make periodic visits to the Bee Street Lofts during construction and perform other contract administration services to

observe, among other things, whether the construction was being completed in accordance with the plans and specifications and all applicable building codes.

149. It was foreseeable that Plaintiffs and its members, as the owners of the Bee Street Lofts' common elements and limited common elements, would be damaged if Steinberg and McVeigh breached the above-referenced duties. As such, Steinberg and McVeigh owed a duty of due care to the Plaintiffs and its members.

150. As indicated in the Affidavits of Theodore Padgett, P.E. and Forrest R. Lott, FAIA, LEED AP, which are attached hereto as Exhibit A and Exhibit B respectively, and which are incorporated herein by reference, Steinberg and McVeigh breached their duty of care in the following particulars, including but not limited to:

(a) Failing to properly design and prepare specifications for the Bee Street Lofts which were compliant with all applicable building codes and professional standards;

(b) Failing to specify products that were in compliance with applicable building codes;

(c) Failing to design and specify an exterior cladding system for the Bee Street Lofts with an adequate water management system to prevent water from intruding into the interior of the condominium units or the wall cavities of the building;

(d) Failing to design and specify an adequate water management system in and around building openings, including, but not limited to, the exterior windows at the Bee Street Lofts;

(e) Failing to design and specify deck-to-wall intersection waterproofing that complies with applicable building codes and design standards;

(f) Failing to properly administer, observe and inspect the construction of the Bee Street Lofts for compliance with the plans and specifications and applicable building codes;

(g) Failing to properly carry out inspections and contract administration duties;

(h) Failing to design and specify support for the brick veneer at each floor level in violation of industry standards and the building code;

(i) Failing to design the wall assembly with the appropriate number and spacing of brick ties;

(j) Failing to act as a reasonably prudent design professional would act under similar circumstances;

(k) Failing to detect deficient and non-code compliant work by Hightower and its subcontractors; and

(l) Such other breaches of the standard of care which are determined during the ongoing investigation of design deficiencies at the Bee Street Lofts.

151. As a direct, foreseeable and proximate result of the negligence, design defects and resulting property damage, Plaintiffs have spent, and will continue to expend, substantial sums of money in order to renovate and restore the Bee Street Lofts to make it safe and habitable. In addition thereto, the Bee Street Lofts suffered a loss in value and depreciation by virtue of the defects and damages which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.

152. Additionally, Plaintiffs have, and will continue to, suffer loss of use of the common areas and the limited common areas of the Bee Street Lofts. Such loss will continue through the interference with the use and enjoyment of the common areas and limited common areas of the Bee Street Lofts during the time in which construction repairs are undertaken.

153. As a direct and proximate result of Steinberg's and McVeigh's negligence, Plaintiffs are entitled to a judgment against Steinberg and McVeigh for all actual, direct, indirect, resulting and consequential damages in an amount to be proven at trial.

WHEREFORE, the Plaintiffs pray this Honorable Court inquire into the matters set forth herein and award judgment in favor of the Plaintiffs against the Defendants, jointly and severally, as follows:

(a) For all actual, direct, indirect, special and consequential damages against the Defendants, jointly and severally, in an amount to be shown at trial;

(b) For punitive damages in an amount to be determined by the trier of fact;

(c) For prejudgment and post judgment interest;

(d) For all attorneys' fees and costs associated with investigating and prosecuting this action; and

(e) For all other relief this Honorable Court deems just and proper.

Respectfully submitted,

THURMOND KIRCHNER TIMBES & YELVERTON, PA

By: _____

JESSE A. KIRCHNER
SC BAR NO.: 70479
CHRISTOPHER P. DETERS
SC BAR NO.: 74195
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-and-

YARBOROUGH APPLEGATE LAW FIRM
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Attorneys for the Plaintiffs

Aug 22, 2014

Charleston, South Carolina.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE NO.: 2014-CP-10-_____
BEE STREET LOFTS HOMEOWNERS ASSOCIATION, INC. and BRENDA PIASKOWSKI, individually and on behalf of all others similarly situated, Plaintiffs, vs. BOMASADA GROUP, INC., BOMASADA CHARLESTON, LTD., 150 BEE STREET, LLC, HIGHTOWER CONSTRUCTION CO., INC., STEINBERG DESIGN COLLABORATIVE, LLP, McVEIGH & MAGNUM ENGINEERING, INC., JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, ALL JOHN DOES BEING MEMBERS OF THE DECLARANT-CONTROLLED BOARD OF DIRECTORS OF THE BEE STREET LOFTS HOMEONWERS ASSOCIATION, INC. FROM INCEPTION THROUGH TURNOVER, DAVID L. AGEE, COASTAL EXTERIORS, INC., ASSURANCE WATERPROOFING CO., INC., NORMAN A. STEWART, NAS SERVICES, INC., WEATHERHOLTZ MASONRY, LLC, GENERAL HEATING & AIR CONDITIONING COMPANY OF GREENVILLE, INC. d/b/a GENERAL HEATING & AC CO, INC., WORSHAM SPRINKLER COMPANY, INC. n/k/a VSC FIRE & SECURITY, INC., and JONES GLASS,INC. Defendants.	)	**AFFIDAVIT OF THEODORE PADGETT, P.E.**

Personally appeared before me, the undersigned, who being duly sworn, states as follows:

1. I am over eighteen years of age and in all other respects am competent to execute this Affidavit.

EXHIBIT E

2. The matters set forth in this Affidavit are based on my personal knowledge and observations, as well as my professional education, training, and experience as a Professional Engineer.

3. I am a Professional Engineer and am registered in the State of South Carolina. I also hold inactive registrations as a Professional Engineer in North Carolina, Georgia, Virginia and Florida.

4. I have actual professional knowledge and experience in the area of structural engineering as a result of having been regularly engaged in the active practice of structural engineering and design for the past 38 years.

5. My education, examinations, and experience are set forth in the attached CV.

6. I have experience investigating and assessing the design and construction of condominium and apartment building facades in Charleston, South Carolina and my investigation of the Bee Street Lofts is ongoing.

7. I am familiar with the standard of care that should be exercised by a reasonably prudent structural engineer in the design and review of building applications from a life safety, as well as industry standard aspect, in both residential and commercial settings.

8. I reviewed the construction set of structural drawings for the Bee Street Lofts signed and sealed by the structural engineer of record, McVeigh & Magnum Engineering, Inc. Additionally, I have extensively examined the Bee Street Lofts and participated in non-destructive and destructive testing to the building to investigate the nature of the construction and the deficiencies and damage associated therewith. The documents and data I have reviewed are the type of documents and data which I would consider in rendering an expert opinion in this case. After my review of these documents and data, it is my opinion to a reasonable degree of engineering certainty that there was a breach of the standard of care

EXHIBIT E

provided by McVeigh & Magnum Engineering, Inc. in the design and detailing of the brick masonry and garage ramp slab at the Bee Street Lofts.

9. Based on the information that I have received and reviewed to date, it is my professional opinion, to a reasonable degree of engineering certainty, that the drawings prepared by McVeigh & Magnum Engineering, Inc. for the Bee Street Lofts project are defective in the following respects:

a. The construction set of structural drawings do not provide complete details for the brick masonry to be supported vertically at each floor level;

b. The garage ramp slab is insufficiently designed, structurally deficient, and could result in a complete failure in a code specified live load.

10. The issues listed above in which the standard of care was not met are not exhaustive. As further investigation is conducted, additional issues or conditions associated with the construction of the Bee Street Lofts may be discovered. I reserve the right to supplement or amend this Affidavit and/or my professional opinion after reviewing additional design calculations, construction drawings, correspondence, data, records, depositions, or other information relating to the construction and design of the Bee Street Lofts.

FURTHER AFFIANT SAYETH NOT.

Theodore Padgett, P.E.

SWORN to before me this 21st day of August, 2014

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 4/26/20

EXHIBIT E

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE NO.: 2014-CP-10-_____
BEE STREET LOFTS HOMEOWNERS ASSOCIATION, INC. and MARK LABOCCETTA, individually and on behalf of all others similarly situated, Plaintiffs, vs. BOMASADA GROUP, INC., BOMASADA CHARLESTON, LTD., 150 BEE STREET, LLC, HIGHTOWER CONSTRUCTION CO., INC., STEINBERG DESIGN COLLABORATIVE, LLP, McVEIGH & MAGNUM ENGINEERING, INC., JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, ALL JOHN DOES BEING MEMBERS OF THE DECLARANT-CONTROLLED BOARD OF DIRECTORS OF THE BEE STREET LOFTS HOMEONWERS ASSOCIATION, INC. FROM INCEPTION THROUGH TURNOVER, DAVID L. AGEE, COASTAL EXTERIORS, INC., ASSURANCE WATERPROOFING CO., INC., NORMAN A. STEWART, NAS SERVICES, INC., WEATHERHOLTZ MASONRY, LLC, GENERAL HEATING & AIR CONDITIONING COMPANY OF GREENVILLE, INC. d/b/a GENERAL HEATING & AC CO, INC., WORSHAM SPRINKLER COMPANY, INC. n/k/a VSC FIRE & SECURITY, INC., and JONES GLASS,INC. Defendants.	**AFFIDAVIT OF FORREST R. LOTT, FAIA**

Personally appeared before me Forrest R. Lott, FAIA, who being duly sworn on oath deposes and says:

EXHIBIT E

1. That I am a licensed architect in the State of South Carolina and am also licensed to practice in the State of Georgia. My education, training, and experience are set forth in the attached CV.

2. I have actual professional knowledge and experience in the area of architecture as a result of having been regularly engaged in the active practice and design for the past 30 years.

3. I am familiar with the standard of care for a reasonably prudent architect in the design, and review of building applications from a life safety, as well as industry standard aspect, in both residential and commercial settings.

4. I have reviewed the Construction Documents prepared by Steinberg Design Collaborative, LLP titled Bella Vista, which were permitted by the City of Charleston, South Carolina for the project known as the Bee Street Lofts.

5. Sheet A106, Titled "Code Review" references the 1997 Standard Building Code. Portions of the 1997 edition of the Standard Building Code were replaced by the 2000 edition of the International Building Code on April 23, 2004 and subsequently by the 2003 edition of the International Building Code on July 22, 2005. The Construction Documents prepared by Steinberg Design Collaborative, LLP were not issued for permit until April of 2005. The project code review data on A106 was not revised to reflect the applicable code in effect at the time of permitting.

6. I have extensively examined the Bee Street Lofts and participated in non-destructive and destructive testing to this building on April 24, 2014, May 9, 2014, May 14, 2014, May 21, 2014, May 29, 2014, and August 6, 2014 to investigate the nature of the construction and the deficiencies and damage associated therewith.

7. I also reviewed the report of Theodore Padgett, P.E. published on July 11, 2014.

8. The documents and data I have reviewed are the type of documents and data which I would consider in rendering an expert opinion in this case.

9. Significant construction deficiencies are present at the Bee Street Lofts including, but not limited to, deficiencies in the installation of the exterior stucco and brick masonry.

10. Based on the information that I have received and reviewed to date, it is my professional opinion, to a reasonable degree of professional certainty, that Steinberg Design Collaborative, LLP breached the professional standard of care of an architect for the Bee Street Lofts project in the following respects:

a. By failing to update the project code review data in the drawings to reflect the applicable code in effect at the time of permitting;

b. By failing to include sufficient detailing for the vertical spacing of brick ties and failing to recognize discrepancies between the structural drawings and architectural drawings relative to brick tie requirements and spacing;

c. By failing to include sufficient detailing for flashings and water-intrusion prevention at the stucco wall assemblies

11. The lack of detailing as well as inconsistencies in the construction documents has led to severe water intrusion and structural damage to the Bee Street Lofts.

12. I reserve the right to supplement or amend this affidavit and/or my professional opinion after reviewing additional design drawings, records, data, depositions, or other information relating to the design of 150 Bee Street, Charleston, South Carolina.

FURTHER YOUR DEPONENT SAYETH NOT.

By: _____
Forrest R. Lott, FAIA

SWORN to before me this 21st
day of August, 2014.

_____(SEAL)
Notary Public for Georgia
My Commission Expires: September 19, 2017

ACTION OF THE MEMBERS
OF
150 BEE STREET, LLC
WITHOUT A MEETING

The undersigned, being all of the Members of 150 Bee Street, LLC (the "Company"), do hereby consent to the following action on behalf of the Company pursuant to S.C. Code Ann. §33-44-404, to the same effect as if said action were taken at a meeting of the Members duly called and held for such purpose and at which the following resolutions were unanimously adopted:

> **RESOLVED**, that the Company admit Bella Vista Partnership, a Texas general partnership, as a Member, with an initial Membership Interest of twenty-three and 34/100 percent (23.34%), which shall reduce the Membership Interests of Neal I. Baker and Thomas H. Morgan from twenty-five percent (25%) each to twenty-three and 33/100 percent (23.33%) each. Edwin S. Pearlstine, Jr. from twenty-five percent (25%) to twenty percent (20%), and the Membership Interest of Ernest L. Masters, Jr. from twenty-five percent (25%) to ten percent (10%).

No further action was taken on this date.

Dated this 28th day of February 2003.

Neal I. Baker, Member

Thomas Morgan, Member

Edwin S. Pearlstine, Jr., Member

Ernest L. Masters, Jr., Member

403716 000027 HOUSTON 238052.3

EXHIBIT F-1

ACTION OF THE MEMBERS
OF
150 BEE STREET, LLC
WITHOUT A MEETING

The undersigned, being all of the Members of 150 Bee Street, LLC (the "Company"), do hereby consent to the following action on behalf of the Company pursuant to S.C. Code Ann. §33-44-404, to the same effect as if said action were taken at a meeting of the Members duly called and held for such purpose and at which the following resolutions were unanimously adopted:

RESOLVED, that Ernest L. Masters, Jr. ("Masters") transfer his entire membership interest ("Membership Interest") consisting of a ten percent (10%) Membership Interest in the Company as follows: (i) three and 33/100 percent (3.33%) of Membership Interest to Bella Vista Partnership, a Texas general partnership (ii) three and 33/100 percent (3.33%) of Membership Interest to Neal I. Baker, and (iii) three and 33/100 percent (3.33%) of Membership Interest to Thomas H. Morgan pursuant to the terms of an Assignment of Membership Interest Agreement of even date herewith.

No further action was taken on this date.

Dated this 11th day of February, 2005.

BELLA VISTA PARTNERSHIP

By: _____
John L. Gilbert, its Managing Partner

_____
Neal I. Baker, Member

_____
Thomas H. Morgan, Member

_____
Edwin S. Pearlstine, Jr., Member

_____
Ernest L. Masters, Jr., Member

EXHIBIT F-2

ACTION OF THE MEMBERS
OF
150 BEE STREET, LLC
WITHOUT A MEETING

The undersigned, being all of the Members of 150 Bee Street, LLC (the "Company"), do hereby consent to the following action on behalf of the Company pursuant to S.C. Code Ann. §33-44-404, to the same effect as if said action were taken at a meeting of the Members duly called and held for such purpose and at which the following resolutions were unanimously adopted:

RESOLVED, that Ernest L. Masters, Jr. ("Masters") transfer his entire membership interest ("Membership Interest") consisting of a ten percent (10%) Membership Interest in the Company as follows: (i) three and 33/100 percent (3.33%) of Membership Interest to Bella Vista Partnership, a Texas general partnership (ii) three and 33/100 percent (3.33%) of Membership Interest to Neal I. Baker, and (iii) three and 33/100 percent (3.33%) of Membership Interest to Thomas H. Morgan pursuant to the terms of an Assignment of Membership Interest Agreement of even date herewith.

No further action was taken on this date.

Dated this 11 day of February, 2005.

BELLA VISTA PARTNERSHIP

By: _____
John L. Gilbert, its Managing Partner

_____
Neal I. Baker, Member

_____
Thomas H. Morgan, Member

_____
Edwin S. Pearlstine, Jr., Member

_____
Ernest L. Masters, Jr., Member

EXHIBIT F-2

UNANIMOUS WRITTEN CONSENT IN LIEU OF A SPECIAL MEETING OF THE MEMBERS OF 150 BEE STREET, LLC

Dated: August 1, 2007

The undersigned, being the Members of 150 Bee Street, LLC, a South Carolina limited liability company (the "Company"), upon unanimous written consent in lieu of a special meeting of the Members, adopt the following Resolutions without a meeting of the Members.

WHEREAS, the Members of the Company have determined it to be in the best interest of the Company to sell those certain units in the **Bee Street Lofts Horizontal Property Regime**, located in Charleston County, South Carolina (the "Condominium") to purchasers in accordance with the following.

NOW, THEREFORE, be it:

RESOLVED, that the Company sell the units in the Condominium to purchasers upon the terms and conditions as Bella Vista Partnership, Managing Member of the Company, deems appropriate.

FURTHER RESOLVED, that John L. Gilbert, managing partner of Bella Vista Partnership, a Managing Member of the Company, and any of his delegates, are hereby authorized, directed and empowered to execute, deliver and carry out on behalf of the Company unit purchase agreements, deeds, closing statements and any affidavits, agreements, certificates or documents necessary or desirable to effect the foregoing resolutions.

RESOLVED FURTHER, that all of the acts of any person authorized to act as set forth above, which acts would have been authorized by these resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted in all respects.

There being no further business the meeting was adjourned.

Respectfully submitted,

Neal I. Baker, Member

Bella Vista Partnership, a Texas General Partnership

By: _____
John L. Gilbert its managing partner

Edwin S. Pearlstine, Jr., Member

Thomas H. Morgan, Member

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EXHIBIT F-3

UNANIMOUS WRITTEN CONSENT IN
LIEU OF A SPECIAL MEETING OF THE MEMBERS
OF
150 BEE STREET, LLC

Dated: August 1, 2007

The undersigned, being the Members of 150 Bee Street, LLC, a South Carolina limited liability company (the "Company"), upon unanimous written consent in lieu of a special meeting of the Members, adopt the following Resolutions without a meeting of the Members.

WHEREAS, the Members of the Company have determined it to be in the best interest of the Company to sell those certain units in the **Bee Street Lofts Horizontal Property Regime**, located in Charleston County, South Carolina (the "Condominium") to purchasers in accordance with the following.

NOW, THEREFORE, be it:

RESOLVED, that the Company sell the units in the Condominium to purchasers upon the terms and conditions as Bella Vista Partnership, Managing Member of the Company, deems appropriate.

FURTHER RESOLVED, that John L. Gilbert, managing partner of Bella Vista Partnership, a Managing Member of the Company, and any of his delegates, are hereby authorized, directed and empowered to execute, deliver and carry out on behalf of the Company unit purchase agreements, deeds, closing statements and any affidavits, agreements, certificates or documents necessary or desirable to effect the foregoing resolutions.

RESOLVED FURTHER, that all of the acts of any person authorized to act as set forth above, which acts would have been authorized by these resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted in all respects.

There being no further business the meeting was adjourned.

Respectfully submitted,

Bella Vista Partnership, a Texas General Partnership

By: _____
John L. Gilbert its managing partner

_____
Neal I. Baker, Member

_____
Edwin S. Pearlstine, Jr., Member

_____
Thomas H. Morgan, Member

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EXHIBIT F-3

UNANIMOUS WRITTEN CONSENT IN LIEU OF A SPECIAL MEETING OF THE MEMBERS OF 150 BEE STREET, LLC

Dated: August 1, 2007

The undersigned, being the Members of 150 Bee Street, LLC, a South Carolina limited liability company (the "Company"), upon unanimous written consent in lieu of a special meeting of the Members, adopt the following Resolutions without a meeting of the Members.

WHEREAS, the Members of the Company have determined it to be in the best interest of the Company to sell those certain units in the **Bee Street Lofts Horizontal Property Regime**, located in Charleston County, South Carolina (the "Condominium") to purchasers in accordance with the following.

NOW, THEREFORE, be it:

RESOLVED, that the Company sell the units in the Condominium to purchasers upon the terms and conditions as Bella Vista Partnership, Managing Member of the Company, deems appropriate.

FURTHER RESOLVED, that John L. Gilbert, managing partner of Bella Vista Partnership, a Managing Member of the Company, and any of his delegates, are hereby authorized, directed and empowered to execute, deliver and carry out on behalf of the Company unit purchase agreements, deeds, closing statements and any affidavits, agreements, certificates or documents necessary or desirable to effect the foregoing resolutions.

RESOLVED FURTHER, that all of the acts of any person authorized to act as set forth above, which acts would have been authorized by these resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted in all respects.

There being no further business the meeting was adjourned.

Respectfully submitted,

Bella Vista Partnership, a Texas General Partnership

By: _____
John L. Gilbert its managing partner

_____
Neal I. Baker, Member

Thomas H. Morgan

_____
Edwin S. Pearlstine, Jr., Member

_____
Thomas H. Morgan, Member

EXHIBIT F-3

UNANIMOUS WRITTEN CONSENT IN LIEU OF A SPECIAL MEETING OF THE MEMBERS OF 150 BEE STREET, LLC

Dated: August 1, 2007

The undersigned, being the Members of 150 Bee Street, LLC, a South Carolina limited liability company (the "Company"), upon unanimous written consent in lieu of a special meeting of the Members, adopt the following Resolutions without a meeting of the Members.

WHEREAS, the Members of the Company have determined it to be in the best interest of the Company to sell those certain units in the **Bee Street Lofts Horizontal Property Regime,** located in Charleston County, South Carolina (the "Condominium") to purchasers in accordance with the following.

NOW, THEREFORE, be it:

RESOLVED, that the Company sell the units in the Condominium to purchasers upon the terms and conditions as Bella Vista Partnership, Managing Member of the Company, deems appropriate.

FURTHER RESOLVED, that John L. Gilbert, managing partner of Bella Vista Partnership, a Managing Member of the Company, and any of his delegates, are hereby authorized, directed and empowered to execute, deliver and carry out on behalf of the Company unit purchase agreements, deeds, closing statements and any affidavits, agreements, certificates or documents necessary or desirable to effect the foregoing resolutions.

RESOLVED FURTHER, that all of the acts of any person authorized to act as set forth above, which acts would have been authorized by these resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted in all respects.

There being no further business the meeting was adjourned.

Respectfully submitted,

Bella Vista Partnership, a Texas General Partnership

By: _____
John L. Gilbert its managing partner

_____
Neal I. Baker, Member

_____
Edwin S. Pearlstine, Jr., Member

_____
Thomas H. Morgan, Member

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Aug 29 2007 1:04PM HP LASERJET FAX P.2

UNANIMOUS CONSENT OF
THE INITIAL MANAGING MEMBERS AND MAJORITY CONSENT OF THE MEMBERS OF
150 BEE STREET, LLC

January 31, 2011

The undersigned, being the initial Managing Members and Members representing a Majority Consent of 150 Bee Street, LLC, a South Carolina limited liability company (the "Company"), do hereby consent to and adopt the following resolutions as of the date hereof:

WHEREAS, pursuant to Section 6.01 of the Second Amended and Restated Limited Liability Company Agreement of the Company ("Operating Agreement"), the affairs of the Company are to be managed by one or more Managing Members as determined by Majority Consent of the Members; and

WHEREAS, the Company has matured to the point where the property representing the sole asset of the Company has now sold 76% of the units that were built and put up for sale and the Company debt has been reduced from $ 38,601,062.00 to a present balance of approximately $2,086,638.83; and

WHEREAS, the Managing Members consider the intent of section 6.01 is to allow a single Managing Member to conduct the wind-up of its affairs and Neal I. Baker has indicated that he does hereby resign as a Managing Member.

BE IT RESOLVED, by the undersigned being the initial Managing Members and Members representing a Majority Consent of the Company, that Neal I. Baker's resignation as Managing member is hereby accepted and that Stuart L. Fred remains as Managing Member of the Company; and

FURTHER RESOLVED, that any resolution of the Company which is necessary or appropriate in connection with the actions contemplated hereby shall be deemed to have been adopted by the Company as of the date hereof.

[Signatures are on the following page.]

IN WITNESS WHEREOF, the undersigned being the initial Managing Members and Members representing a Majority Consent of the Company have executed this Consent as of January 31, 2011.

WITNESSES:

Jyotsna N. Ved

MANAGING MEMBERS:

Neal I. Baker

Stuart L. Fred

Jyotsna N. Ved

MEMBERS:

Neal I. Baker

BELLA VISTA PARTNERSHIP,
a Texas general partnership

By: _____
John L. Gilbert
Managing Partner

EXHIBIT F-4

Member	Company Interest
Neal I. Baker P.O. Box 1870 Charleston, SC 29402	26.67%
Bella Vista Partnership 8980 Lakes at 610 Drive Suite 200 Houston, Texas 77054	26.67%

EXHIBIT F-4

UNANIMOUS CONSENT OF
THE INITIAL MANAGING MEMBERS AND MAJORITY CONSENT OF THE MEMBERS OF
150 BEE STREET, LLC
July ___, 2011

The undersigned, being the initial Managing Members and Members representing a Majority Consent of 150 Bee Street, LLC, a South Carolina limited liability company (the "Company"), do hereby consent to and adopt the following resolutions as of the date hereof:

WHEREAS, the undersigned entered into a resolution dated January 31, 2011 indicating the resignation of Neal I. Baker as a Managing Member due to health reasons leaving Stuart L. Fred as sole Managing Member (Resolution of January 31, 2011") ; and

WHEREAS, Neal I. Baker has recovered to the extent that he wishes to remain as Managing Member along with Stuart L. Fred and the undersigned wish to rescind their actions and the Resolution of January 31, 2011.

BE IT RESOLVED, by the undersigned being the initial Managing Members and Members representing a Majority Consent of the Company, that their actions of January 31, 2011 and the Resolution of January 31, 2011 are herby rescinded and Neal I. Baker and Stuart L. Fred remain as Managing Members of the Company; and

FURTHER RESOLVED, that any resolution of the Company which is necessary or appropriate in connection with the actions contemplated hereby shall be deemed to have been adopted by the Company as of the date hereof.

[Signatures are on the following page.]

EXHIBIT F-5

IN WITNESS WHEREOF, the undersigned being the initial Managing Members and Members representing a Majority Consent of the Company have executed this Consent as of July___, 2011.

WITNESSES:

MANAGING MEMBERS:

Neal I. Baker

Stuart L. Fred

Jyotsna Ved

MEMBERS:

Neal I. Baker

BELLA VISTA PARTNERSHIP,
a Texas general partnership

By:
John L. Gilbert
Managing Partner

Jyotsna Ved

EXHIBIT F-5

Member	Company Interest
Neal I. Baker P.O. Box 1870 Charleston, SC 29402	26.67%
Bella Vista Partnership 8980 Lakes at 610 Drive Suite 200 Houston, Texas 77054	26.67%

EXHIBIT F-5

UNANIMOUS WRITTEN CONSENT IN
LIEU OF A SPECIAL MEETING OF THE MEMBERS
OF
150 BEE STREET, LLC

Dated: January 19, 2012

The undersigned, being all of the Members of 150 Bee Street, LLC, a South Carolina limited liability company (the "Company"), upon unanimous written consent in lieu of a special meeting of the Members, adopt the following resolutions without a meeting of the Members.

WHEREAS, the Members of the Company have determined it to be in the best interest of the Company to sell those certain condominium units in the **Bee Street Lofts Horizontal Property Regime**, located in Charleston County, South Carolina (the "Project") to purchasers in accordance with the following.

NOW, THEREFORE, be it:

RESOLVED, that the Company sell the condominium units in the Project to purchasers upon the terms and conditions as Bella Vista Partnership, Managing Member of the Company, deems appropriate; provided that Thomas H. Morgan must review and approve the final closing statement for the sale of each unit, as evidenced by an email from Thomas H. Morgan or his delegate to the attorney for the Company representing the Company in the sale of such unit.

FURTHER RESOLVED, that each of John L. Gilbert and Stuart L. Fred, managing partners of Bella Vista Partnership, a Managing Member of the Company, and any of each of their delegates, are hereby authorized, directed and empowered to execute, deliver and carry out on behalf of the Company unit purchase agreements, deeds, closing statements and any affidavits, agreements, certificates or documents necessary or desirable to effect the foregoing resolutions.

RESOLVED FURTHER, that all of the acts of any person authorized to act as set forth above, which acts would have been authorized by these resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted in all respects.

EXHIBIT F-6

Elizabeth M. Baker, as Personal Representative of the Estate of Neal I. Baker,

Bella Vista Partnership, a Texas General Partnership

By: _____
John L. Gilbert its managing partner

_____
Edwin S. Pearlstine, Jr.

_____
Thomas H. Morgan

EXHIBIT F-6

Elizabeth M. Baker, as Personal Representative of the Estate of Neal I. Baker,

Edwin S. Pearlstine, Jr.

Bella Vista Partnership, a Texas General Partnership

By: _____
John L. Gilbert its managing partner

Thomas H. Morgan

EXHIBIT F-6

Elizabeth M. Baker, as Personal Representative of the Estate of Neal I. Baker,

Elizabeth M. Baker PR

Edwin S. Pearlstine, Jr.

Bella Vista Partnership, a Texas General Partnership

By: _____
John L. Gilbert its managing partner

Thomas H. Morgan

EXHIBIT F-6

Elizabeth M. Baker, as Personal Representative of the Estate of Neal I. Baker,

Bella Vista Partnership, a Texas General Partnership

By: _____
John L. Gilbert its managing partner

Edwin S. Pearlstine, Jr.

Thomas H. Morgan

EXHIBIT F-6

UNANIMOUS WRITTEN CONSENT IN LIEU OF A SPECIAL MEETING OF THE MEMBERS OF 150 BEE STREET, LLC

Dated: April 3, 2012

The undersigned, being all of the Members of 150 Bee Street, LLC, a South Carolina limited liability company (the "Company"), upon unanimous written consent in lieu of a special meeting of the Members, adopt the following resolutions without a meeting of the Members.

WHEREAS, the Members of the Company understand that even though there is a dispute among Members and Managers, the Members wish to allow the sale of the remaining unsold condominium units in the Bee Street Lofts Horizontal Property Regime, located in Charleston County, South Carolina (the "Project") to proceed while protecting, safeguarding, and preserving the issues in the dispute between the Members and Managers which shall be resolved as a separate matter.

NOW, THEREFORE, be it:

RESOLVEDthat the Company sell the condominium units in the Project to purchasers upon the terms and conditions as Stuart L. Fred, ("Fred") and Thomas H. Morgan, ("Morgan"), the Co-Managing Members of the Company, deem appropriate by Majority Consent as provided for in Section 6.01 of the Company's Operating Agreement with the specific requirement that both Morgan and Fred are required to approve in writing (initials on page) the contract for sale of any unit;and

FURTHER RESOLVED, both (i)Morganand (ii) either or John L. Gilbert ("Gilbert"), or Fred must review and approve the final closing statement for the sale of each unit, as evidenced by an email from Morgan or his delegate to the attorney for the Company representing the Company in the sale of each unit; and

FURTHER RESOLVED, that Gilbert or Fred carry out on behalf of the Company unit purchase agreements, deeds, closing statements and any affidavits, agreements, certificates or documents necessary or desirable to effect the foregoing resolutions; and

FURTHER RESOLVED, that all net proceeds from the sale of the condominium units shall be placed into escrow, with the firm of Nelson, Mullins Riley & Scarborough, LLP as Escrow Agent. Net proceeds shall mean proceeds as indicated on the approved final closing statement; and

FURTHER RESOLVED, That any funds placed into such escrow shall be used to pay bills as approved in writing (by initials on page) of both (i) Morgan and (ii) Fred or Gilbert, and accumulated funds may only be released according to the terms of the Second Amended and Restated Limited Liability Company Agreement of 150 Bee Street, LLC.

This action is effective on the day and year first set forth hereinabove. The adoption of these resolutions by unanimous written consent in lieu of a special meeting of the members has the effect of adoption of these resolutions at a special meeting of the members, and may be so described in any document.

This Written Consent may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

Elizabeth M. Baker, as Personal Representative of the Estate of Neal I. Baker,

Elizabeth Baker PR Estate of Neal Baker

Edwin S. Pearlstine, Jr.

Bella Vista Partnership, a Texas General Partnership

By: _____
John L. Gilbert its managing partner

_____
Thomas H. Morgan

This action is effective on the day and year first set forth hereinabove. The adoption of these resolutions by unanimous written consent in lieu of a special meeting of the members has the effect of adoption of these resolutions at a special meeting of the members, and may be so described in any document.

This Written Consent may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

Elizabeth M. Baker, as Personal Representative of the Estate of Neal I. Baker,

Edwin S. Pearlstine, Jr.

Bella Vista Partnership, a Texas General Partnership

By: _____
John L. Gilbert its managing partner

Thomas H. Morgan

This action is effective on the day and year first set forth hereinabove. The adoption of these resolutions by unanimous written consent in lieu of a special meeting of the members has the effect of adoption of these resolutions at a special meeting of the members, and may be so described in any document.

This Written Consent may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

Elizabeth M. Baker, as Personal Representative of the Estate of Neal I. Baker,

_____

Edwin S. Pearlstine, Jr.

Bella Vista Partnership, a Texas General Partnership

By: _____
John L. Gilbert its managing partner

Thomas H. Morgan

MINUTES OF A SPECIAL MEETING
OF THE MANAGING MEMBERS OF

150 BEE STREET, LLC

On October 30, 2012, the Managing Members of 150 Bee Street, LLC, a South Carolina limited liability company ("the Company"), held a Special Meeting by conference call. Attendance for the meeting was as follows:

Managers attending by conference call

John L. Gilbert on behalf of Stuart Fred
Edwin S. Pearlstine, Jr.
Thomas H. Morgan

Guests/Attorneys attending by conference call

Douglas Pratt Thomas for Thomas H. Morgan
Chris Staubes for Thomas H. Morgan
Henry Grimball for Bella Vista Partnership
John B. Hagerty for the Company
Paul Lynch representing the Estate of Neal I. Baker

The meeting was called to order at approximately 12:30 pm. John Hagerty served as Chair for the meeting. John Hagerty also served as Secretary for the meeting and recorded the minutes. John Hagerty confirmed that a quorum was present and that the Mangers could conduct business at the meeting.

The Chair indicated that the meeting would follow that agenda of the meeting sent by a managing member with Sections 1 through 4 and dated October 17, 2012.

The first item on the agenda was as follows:

1. Discuss the current marketing plan and decide if lowering prices on any of the units would be advisable.

EXHIBIT F-8

2. Instruct William Shields, CPA that on or before October 29, 2012 he must complete and provide to the Members the requested capital account reconciliation and backup documentation.

3. If Shields does not provide the proper reconciliation then we should discuss whether to move the books to a CPA in Charleston and discuss which CPA might be appropriate.

4. Make an official request of the Managers to make available to the Members all of the construction, management and development records related to the 150 Bee Street project.

As to Item #1:

A motion was made by Thomas H. Morgan with a second by Edwin S. Pearlstine, Jr. Following a discussion there was there was a majority vote to approve and adopt the following resolution:

RESOLVED, to continue the current marketing plan with the current marketing team for the next sixty (60) days while the team continued to market the last three (3) units not under contract. The matter can be revisited after sixty days.

As to Item #2:

A motion was made by Thomas H. Morgan with a second by Edwin S. Pearlstine, Jr. Following a discussion there was there was a majority vote to approve and adopt the following resolution:

RESOLVED, to instruct William Shields, CPA that on or before October 29, 2012 he must complete and provide to the Members the requested capital account reconciliation and backup documentation.

As to Items #3 and #4:

A motion was made by Thomas H. Morgan with a second by Edwin S. Pearlstine, Jr. Following a general discussion of both items there was there was a majority vote to approve and adopt the following resolution:

RESOLVED, the Company (i) hire a new CPA in Charleston, S.C.; (ii) have all records made available to the new accountants for a review of past, present and future Company reconciliation and accounting including all records related to construction; and (iii) obtain records from third parties where necessary; and

FURTHER RESOLVED, that Douglas Pratt-Thomas shall inform the Arbitration Panel that he has withdrawn his Motion for a Stay and that John Hagerty as counsel for the Company is to distribute available cash per the instruction of the panel with no further order required from the Arbitration Panel other than the correspondence from Douglas Pratt-Thomas to the Arbitration Panel.

There being no further business to come before the meeting, it was upon motion duly made and recorded, adjourned.

John B. Hagerty
Recording Secretary of the Meeting

EXHIBIT F-8

ACTION TAKEN BY WRITTEN CONSENT
OF THE MEMBERS
AT A SPECIAL MEETING OF

150 BEE STREET, LLC

A Special Meeting of 150 Bee Street, LLC ("the Company") was held on October 30, 2012 at 12:00 noon by conference call. Attendance for the meeting was as follows:

Members attending by conference call

John L. Gilbert for Bella Vista Partnership
Edwin S. Pearlstine, Jr.
Thomas H. Morgan
Paul Lynch representing the Estate of Neal I. Baker

Guests/Attorneys attending by conference call

Douglas Pratt Thomas for Thomas H. Morgan
Chris Staubes for Thomas H. Morgan
Henry Grimball for Bella Vista Partnership
John B. Hagerty for the Company

The meeting was called to order at approximately 12:00 noon. John Hagerty served as Chair for the meeting. John Hagerty also served as Secretary for the meeting and recorded the minutes. John Hagerty confirmed that a quorum was present and that the members could conduct business at the meeting. As the first order of business, John Hagerty indicated the following:

Upon the death of Neal I. Baker who owned a 26.67% Company Interest, pursuant to Section 11.03 of the second amended and restated operating agreement of the Company ("Operating Agreement"), the Estate of Neal I. Baker became a permitted transferee and not a substituted member and is therefore not entitled to vote on any question regarding the Company. Thomas H. Morgan having a Company Interest of 26.66% and Edwin S. Pearlstine, Jr. having a

Company Interest of 20% thus represent more than 51% of the voting interests owned by all members of the Company.

Pursuant to 14.11 of the Operating Agreement the managing members can call a meeting of the members upon the written request of members owning at least 51% of the interest owned by all members and such a meeting was called as indicated by a document dated October 17, 2012. The attendance of a member at a meeting of the members constitutes a waiver of notice of such meeting and members may participate in such a meeting by means of conference telephone.

There was no objection to the above statement by the Chair.

There was only one order of business at the meeting.

Mr. Morgan made a motion to nominate Edwin S. Pearlstine, Jr. to be an additional managing member of the Company. There was a second by Mr. Pearlstine. Following a brief discussion there was a two to one vote of the voting members to approve and adopt the following resolution:

RESOLVED, that the Members representing more than 51% of the voting membership interests in the Company do hereby appoint Edwin S. Pearlstine, Jr. to be a managing member of the Company.

There being no further business to come before the meeting, it was upon motion duly made and recorded, adjourned.

John B. Hagerty
Recording Secretary of the Meeting

EXHIBIT F-9

RESOLUTION OF THE MAJORITY OF THE MEMBERS OF 150 BEE STREET LLC

In accordance with Paragraph10.02 of the Second Amended and Restated Limited Liability Company agreement of 150 Bee Street, LLC which states:

10.02 Books and Records. The Managing Members shall keep, or cause to be kept, at Company expense, full, complete and accurate books of account and other records showing the assets, liabilities, costs, expenditures, receipts and such other matters. Such books and records shall be the property of the Company, shall be kept in accordance with sound accounting principles and procedures consistently applied and shall be open to the reasonable inspection and examination by the Members and their duly authorized representatives. Such books of account shall be maintained at the principal office of the Company, ***or at such other place as the Members may determine by Majority Consent.***

Resolved, the Majority of the Members of 150 Bee Street LLC have determined that it is in the best interest of the LLC to move the books and records of the LLC to the offices of Elliot Davis, LLC at 100 Calhoun Street, Suite 300, Charleston, SC 29401.

Therefore we demand that Stuart Fred, John Gilbert, Belle Vista Partnership, Bill Shields, or any other party in possession of any of the books and records of 150 Bee Street LLC, immediately mail all those books and records in their entirety including cancelled checks, bank records and all other materials as described in 10.02 above, by UPS or Fed Ex to Elliot Davis at the above described address.

This action is hereby resolved on December 2, 2013.

Furthermore as stated in Paragraph 14.11:

EXHIBIT F-10

Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by the necessary Members entitled to vote and required to approve such action. If action is taken pursuant to the preceding sentence by less than all of the Members entitled to vote thereon, the Managing Members shall give all Members who did not participate in taking the action written notice of such action.

It is duly noted that a copy of this resolution shall be furnished to the Members who did not participate in taking the action, that Member being Belle Vista Partnership.

SIGNED BY MEMBERS:

EDWIN S. PEARLSTINE, JR

THOMAS H. MORGAN

EXHIBIT F-10

MINUTES OF THE MEETING OF THE MEMBERSOF 150 BEE STREET, LLC HELD AT NELSON MULLINS, 151 MEETING STREET, CHARLESTON, S.C. ON AUGUST 10, 2015

A meeting of the Members of 150 BEE STREET, LLC, hereinafter the "Company" was held at Nelson Mullins, 151 Meeting Street, Charleston, S.C. at 9:00 pm, August 10, 2015 pursuant to proper written notice and agenda provided to all members. Present at the meeting were:

Edwin S. Pearlstine, Jr. ("Pearlstine"), a Manager and Member.

Henry E. Grimball ("Grimball") and Morris A. Ellison representing John Gilbert as Proxy for Stuart L. Fred ("Fred"), a Manager and Bella Vista Partnership, a Member.

E. Douglas Pratt-Thomas ("Pratt-Thomas") and Thomas P. Gressette, Jr. representing Thomas H. Morgan ("Morgan"), a Manager and Member.

Amy F. Bower and John H. Tiller representing Mr. Pearlstine.

John A. Massalon ("Massalon") and I. Ryan Neville ("Neville") of Wills Massalon & Allen LLC representing the Company in a litigation matter.

John B. Hagerty ("Hagerty") as counsel for the Company.

Attending the meeting, via telephone were:

Mr. Morgan

John L. Gilbert as proxy for Mr. Fred, a Manager.

Paul M. Lynch representing the Estate of Neal I. Baker

The foregoing constitutes a majority of the Members and a quorum.

Mr. Morgan served as Chairman of the meeting and Mr. Hagerty acted as recording secretary.

Mr. Morgan called the meeting to order and the Company Members and attorneys present in person or by phone identified themselves and a quorum was confirmed.

Mr. Hagerty briefly discussed old business with the Members.

Motion was made by Mr. Grimball on behalf of Mr. Fred and seconded by Mr. Pratt-Thomas on behalf of Mr. Morgan for the members to go into executive session with attorney client privilege to hear a presentation on the pending litigation from Mr. Massalon and Mr. Neville and to discuss the same, and there was unanimous approval of said motion.

After discussion in executive session, a Motion was made by Mr. Grimball on behalf of Mr. Fred and seconded by Ms. Bower on behalf of Mr. Pearlstine to come out of executive session.

Motion was made by Mr. Grimball on behalf of Mr. Fred and seconded by Ms. Bower on behalf of Mr. Pearlstine, to approve that version of the Amended Answer and Crossclaims recommended to be filed by Wills Massalon & Allen LLC. There was unanimous approval of said motion.

There being no further business to come before the meeting, it was upon motion duly made and recorded, adjourned at approximately 10:15 P.M.

_____

John B. Hagerty
Recording Secretary of the Meeting

MINUTES OF THE MEETING OF THE MEMBERSOF 150 BEE STREET, LLC HELD AT NELSON MULLINS, 151 MEETING STREET, CHARLESTON, S.C. ON MARCH 21, 2017

A meeting of the Members of 150 BEE STREET, LLC, hereinafter the "Company" was held at Nelson Mullins, 151 Meeting Street, Charleston, S.C. at 10:00 pm, March 21, 2017 pursuant to proper written notice and agenda provided to all members. Present at the meeting were:

Edwin S. Pearlstine, Jr. ("Pearlstine"), a Manager and Member.

Henry E. Grimball ("Grimball") and Morris A. Ellison representing John Gilbert as Proxy for Stuart L. Fred ("Fred"), a Manager and Bella Vista Partnership, a Member.

W. Andrew Gowder, Jr. and Michael T. Rose representing Thomas H. Morgan ("Morgan"), a Manager and Member.

Amy F. Bower and John H. Tiller representing Mr. Pearlstine,

John A. Massalon ("Massalon") and I. Ryan Neville ("Neville") of Wills Massalon & Allen LLC representing the Company in a litigation matter.

John B. Hagerty ("Hagerty") as counsel for the Company.

Attending the meeting, via telephone were:

John L. Gilbert as proxy for Mr. Fred.

Paul M. Lynch representing the Estate of Neal I. Baker

The foregoing constitutes a majority of the members and a quorum.

Mr. Hagerty acted as Chairman and recording secretary.

Mr. Neville called the meeting to order and the Company Members and attorneys present in person or by phone identified themselves and a quorum was confirmed.

There was a brief presentation given by Thomas C. Hildebrand, Jr. regarding the ongoing construction litigation.

Motion was made by Mr. Pearlstine and seconded by Mr. Gowder on behalf of Mr. Morgan for the members to go into executive session with attorney client privilege to hear a presentation on the pending litigation from Mr. Massalon and Mr. Neville and to discuss the same, and there was unanimous approval of said motion.

After discussion in executive session, a Motion was made by Mr. Pearlstine and seconded by Mr. Gowder on behalf of Mr. Morgan to come out of executive session.

There being no further business to come before the meeting, it was upon motion duly made and recorded, adjourned at approximately 12:00 P.M.

_____

John B. Hagerty
Recording Secretary of the Meeting

ACTION TAKEN BY WRITTEN CONSENT
OF THE MEMBERS
AT A SPECIAL MEETING OF

150 BEE STREET, LLC

A Special Meeting of 150 Bee Street, LLC ("the Company") was held on July 21, 2017 at 3:00 p.m. by conference call. Attendance for the meeting was as follows:

Members attending by conference call

Thomas H. Morgan
Paul Lynch and Trudy Hartzog representing the Estate of Neal I. Baker

Attorneys attending in person

Henry Grimball and Morris Ellison for Bella Vista Partnership
Mike Rose and Andrew Gowder for Thomas H. Morgan
Amy Bower and Stafford "Mac" McQuillin for Edwin Pearlstine
John Hagerty for the Company
John Massalon for the Company in CA #2014-CP-10-5120

The meeting was called to order at approximately 3:00 p.m. John Hagerty served as Chair for the meeting and also served as Secretary for the meeting and recorded the minutes. The Chair indicated that the meeting would follow that agenda of the meeting sent by the Chair with Sections 1 through 11 and dated July 20, 2017.

1. The meeting was called to order.

2. Those members present either in person or by telephone identified themselves as well as confirmed that there was a quorum.

3. No old business was discussed.

4. A motion was made by Amy Bower with a second by Mike Rose. Following a brief discussion there was a vote of two to one to approve the following resolution:

EXHIBIT F-13

RESOLVED, to approve Thomas H. Morgan as Manager to approve all bills, for past as well as prospective LLC counsel bills.

5. A motion was made by Henry Grimball with a second by Amy Bower. Following a brief discussion there was a unanimous vote to approve the following resolution:

RESOLVED, to approve Wills Massalon & Allen, LLC to continue to represent the Company in the ongoing construction litigation matter.

6. There was a presentation by John Massalon and discussion of legal advice as to the construction lawsuit and other matters relating to the lawsuit.

7. A motion was made to authorize Massalon to accept service of the Summons and Complaint in the lawsuit file by Certain Underwriters at Lloyd's London 17-CP-10-2108. Motion was approved by all.

8. A motion was made by Mike Rose with a second by Amy Bower. Following a brief discussion there was a vote of two to one to approve the following resolution:

RESOLVED, to contest the various pending summary judgment motions pertaining to the cross-claims by the Company against the subcontractors for indemnity pending the outcome of settlement negotiations between the Company and the Plaintiffs in C.A.#2014-CP-10-5120.

9. A motion was made by Mike Rose with a second by Amy Bower. Following a brief discussion there was a vote of two to one to approve the following resolution:

RESOLVED, the Company approve the POA settlement terms substantially similar to Exhibit A attached to the Agenda and further that authority is granted to John Hagerty per Section 1 of Exhibit A to implement a capital call by the Company including funds necessary for the settlement as well as additional funds necessary for future bills of Nelson Mullins and Wills Massalon & Allen firms. Further authority was granted to John Massalon to implement Section

5 of Exhibit A by preparing a motion for filing in the Court of Common Pleas and the suggestion of a legal expert.

10. A motion was made by Andy Gowder to go into Executive Session and was seconded by Amy Bower.

11. No other business was discussed and on motion of Mike Rose and seconded by Amy Bower there was a unanimous vote to adjourn.

There being no further business to come before the meeting, this Written Consent is executed and recorded in the official records of the Company under the authorization of the member signatures affixed below.

Thomas H. Morgan

Thomas H. Morgan

Edwin S. Pearlstine

Edwin S. Pearlstine

Bella Vista Partnership

By: D G Cowell

Its: Counsel

2/2/18

EXHIBIT F-13

ACTION TAKEN BY WRITTEN CONSENT
OF THE MEMBERS
AT A SPECIAL MEETNIG OF

150 BEE STREET, LLC

A Special Meeting of 150 Bee Street, LLC ("the Company") was held on August 16, 2017 at 4:30 pm by conference call. Attendance for the meeting was as follows:

Members attending by conference call:

Mike Rose and Andy Gowder for Thomas H. Morgan
Thomas H. Morgan
Stafford "Mac" McQuillin for Edwin Pearlstine
Henry Grimball and Morris Ellison for Bella Vista Partnership
Paul Lynch representing the Estate of Neal I. Baker

Attorneys attending in person:

John Hagerty for the Company
John Massalon for the Company in CA #2014-CP-10-5120

The meeting was called to order at approximately 4:30 p.m. John Hagerty served as Chair for the meeting and also served as Secretary for the meeting and recorded the minutes. The Chair indicated that the meeting would follow that agenda of the meeting sent by the Chair with Sections 1 through 7 and dated August 16, 2017.

1. The meeting was called to order.

2. Those members present either in person or by telephone identified themselves as well as confirmed that there was a quorum.

3. No old business was discussed.

4. A motion was made by Andy Gowder with a second by Mac McQuillin. Following a brief discussion there was a vote of two to one to approve the following resolution:

EXHIBIT F-14

RESOLVED, to withdraw the present motion to ask Judge Jefferson to appoint an expert witness and to hire Kirkland Grant as an independent legal counsel pursuant to Section 8.01 of the Operating Agreement and for him to opine on the issues laid out in the original Motion. The issues Mr. Grant would opine on are as follows: 1)whether or not the settlement is fair and equitable to the LLC, the Members of the LLC and its creditors; 2.) whether or not the settlement is the result of an exercise of reasonable business judgment by the Members of the LLC; and 3.) whether or not the decision to enter into the settlement with the Plaintiffs would support an action by any Member of the LLC for breach of fiduciary duty against the LLC or any other Member or Members of the LLC.

Bella Vista took the position that the hiring of Kirkland Grant was not authorized under Section 8.1 of the Operating Agreement. There was further discussion of this position.

5. A motion was made by Andy Gowder and seconded by Mac McQuillin to go into Executive Session. There was a unanimous vote to go into executive session.

6. There was a discussion by John Massalon of the latest hearing in front of Judge Jefferson.

7. A motion was made by Andy Gowder with a second by Mac McQuillin. Following a brief discussion there was a vote of two to one to approve the following resolution:

RESOLVED, that after receiving a report from Kirkland Grant, the Members would re convene to discuss next steps.

EXHIBIT F-14

8. No other business was discussed and on motion of Andy Gowder and seconded by Mac McQuillin, there was a unanimous vote to adjourn.

There being no further business to come before the meeting, this Written Consent is executed and recorded in the official records of the Company under the authorization of the member signatures affixed below.

Thomas H. Morgan

Thomas H. Morgan

Edwin S. Pearlstine

Bella Vista Partnership

By Mac A Ellis

Its: Authorized Representative

ACTION TAKEN BY WRITTEN CONSENT
OF THE MEMBERS
AT A SPECIAL MEETING OF

150 BEE STREET, LLC

A Special Meeting of 150 Bee Street, LLC ("the Company") was held on November 5, 2017 at 3:00 p.m. by conference call. Attendance for the meeting was as follows:

Members attending by conference call:

Mike Rose and Andy Gowder for Thomas H. Morgan
Thomas H. Morgan
Stafford "Mac" McQuillin and Amy Bower for Edwin Pearlstine
Henry Grimball for Bella Vista Partnership
Paul Lynch representing the Estate of Neal I. Baker
John Hagerty for the Company
John Massalon for the Company in CA #2014-CP-10-5120 ("Litigation")

The meeting was called to order at approximately 3:00 p.m. John Hagerty served as Chair for the meeting and also served as Secretary for the meeting and recorded the minutes. The Chair indicated that the meeting was called on an emergency basis with all Members agreeing to a waiver of the notice requirement to address various correspondence from John Massalon regarding matters related to the Litigation.

1. The meeting was called to order.

2. Those Members present by telephone identified themselves as well as confirmed that there was a quorum.

3. No old business was discussed.

4. A motion was made by Thomas H. Morgan with a second by Amy Bower. Following a brief discussion there was a vote of Thomas H. Morgan and Edwin S. Pearlstine, Jr. in favor and an abstention by Bella Vista to approve the following resolution:

RESOLVED, to hear a presentation by John Massalon regarding among other matters the following: (i) Summary Opinion of J. Kirkland Grant in the matter of 150 Bee Street, LLC as revised on November 5, 2017 ("Grant Summary"), (ii) settlement agreement from Jesse Kirchner as indicated in an e-mail from John A. Massalon to counsel for the Members dated Saturday, November 4, 2017 ("Settlement Agreement"), and (iii) related matters.

5. John Massalon reviewed (i) Judge Jefferson's decision to have a hearing on Monday, November 6, 2017 at 10:00 AM,(ii) the Settlement Agreement which needed a response by 9:30 AM on November 6, 2017, (iii) the Grant Summary and the request for a clarification thereof by Henry Grimball.

6. There was a further discussion of (i) Rule 6 D and clarification of whether the requirement is a ten day notice of a motion or a hearing and case law related thereto, (ii) the steps to be taken from a possible settlement of the Litigation, (iii) the likely vulnerability of any funds earned in the Tommy Morgan derivative suit, (iv) a discussion of the capital call requirements and the appropriate sections of the Second Amended and Restated Operating Agreement, and (v) a discussion of the wording of the Settlement Agreement, appeal language therein.

7. Massalon also went into some discussion of the cross claims of various subcontractors, the Lloyds of London case and the Jones case and a possible filing by George Kefalos regarding additional insured insurance held by various subcontractors.

A motion was made by Thomas H. Morgan with a second by Amy Bower. Following a brief discussion there was a vote with Thomas H. Morgan and Edwin S. Pearlstine, Jr.in favor and Bella Vista opposed to approve the following resolution:

RESOLVED, for the Company to agree to the Settlement Agreement and that Tommy Morgan is authorized to executed the Settlement Agreement on behalf of the Company.

8. No other business was discussed and on motion of Tommy Morgan and seconded by Amy Bower, there was a unanimous vote to adjourn.

There being no further business to come before the meeting, this Written Consent is executed and recorded in the official records of the Company under the authorization of the member signatures affixed below.

_____
Thomas H. Morgan

_____
Edwin S. Pearlstine, Jr.

Bella Vista Partnership

By _____
Its: Counsel
12/19/17

ACTION TAKEN BY WRITTEN CONSENT
OF THE MEMBERS
AT A SPECIAL MEETING OF

150 BEE STREET, LLC

A Special Meeting of 150 Bee Street, LLC ("the Company") was held on December 5, 2017 at 3:30 p.m. by conference call. Attendance for the meeting was as follows:

Members attending by conference call:

Mike Rose for Thomas H. Morgan
Thomas H. Morgan
Stafford "Mac" McQuillin for Edwin Pearlstine
Scott Barnes for Edwin Pearlstine
Paul Lynch representing the Estate of Neal I. Baker
John Hagerty for the Company
Henry Grimball and Morris Ellison for Bella Vista Partnership

The meeting was called to order at approximately 3:30 p.m. John Hagerty served as Chair for the meeting and also served as Secretary for the meeting and recorded the minutes. The Chair indicated that the meeting was called on an emergency basis with all Members agreeing to a waiver of the notice requirement.

1. The meeting was called to order.

2. Those Members present by telephone identified themselves as well as confirmed that there was a quorum.

3. No old business was discussed.

4. A motion was made by Thomas H. Morgan with a second by Mac McQuillin. Following a brief discussion there was a vote of Thomas H. Morgan and Edwin S. Pearlstine, Jr. in favor and no vote by Bella Vista to approve the following resolution:

RESOLVED, that because Bella Vista did not participate in the additional Contribution of November 13, 2017, that a second Capital Call will be made to make up for the amount of

money that was not contributed by Bella Vista pursuant to Section 3.02. A motion was made by Thomas H. Morgan with a second by Mac McQuillin following a brief discussion there was a vote of Thomas H. Morgan and Edwin S. Pearlstine, Jr. in favor and a no vote by Bella Vista to oppose the following resolution:

RESOLVED, to instruct J. Kirkland Grant to complete his summary opinion for an anticipated additional costs of some $5,000.00.

RESOLVED, a motion was made by Thomas H. Morgan with a second by Mac McQuillin that Thomas H. Morgan is authorized to execute the Settlement Agreement on behalf of the Company.

5. No other business was discussed and on motion of Tommy Morgan and seconded by Mac McQuillin, with no vote by Bella Vista, the meeting was adjourned.

There being no further business to come before the meeting, this Written Consent is executed and recorded in the official records of the Company under the authorization of the member signatures affixed below.

_____

Thomas H. Morgan

_____

Edwin S. Pearlstine, Jr.

Bella Vista Partnership

By _____

Its: Counsel

2/2/18

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON THOMAS H. MORGAN, PLAINTIFF(S), v. JOHN L. GILBERT, STUART L. FRED, 150 BEE STREET, LLC, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY and LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION. DEFENDANT(S)	IN THE COURT OF COMMON PLEAS C/A NO.: 2011-CP-10- CONSENT AGREEMENT TO TOLL STATUTE OF LIMITATIONS

This Consent Tolling Agreement ("this Agreement") is made effective as of the ___ day of_____, 2011 (the "Effective Date") by and between Thomas Morgan (the "Claimant") and John Gilbert, Stuart Fred, Bella Vista Partnership, a Texas Partnership, Bomasada Group, Inc., a Texas Corporation, Bomasada Investment Group II, LLC, a Texas Limited Liability Company and Lauralis Management, Inc., a Texas Corporation (collectively referred to as "Respondents"). The Claimant and Respondents are collectively referred to as the "Parties."

WHEREAS, the Parties deem it to be in their mutual benefit and interest that Claimant's alleged Claims against Respondents not be asserted in litigation at the present time;

EXHIBIT G

WHEREAS, the Parties desire to encourage resolution and/or such further review of Claimant's Claims as may result in no lawsuit or claim being filed and, in any case, wish to avoid the expense and uncertainty of litigation of the Claims if at all possible, and are willing to make the stipulations, covenants, and agreements hereinafter set forth in order to defer and postpone the commencement of litigation;

WHEREAS, the Parties desire that for the period of this Agreement, they should be able to consider issues relating to the possibility of settling disputes without regard to the time constraints that exist because of any future expiration of any applicable statute of limitations;

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, including, but not limited to, the temporary forbearance of claims as described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

1. As used in this Agreement, the following terms shall have the following meanings:

   (a) "Claims" shall mean any and all claims and/or causes of action, if any, known or unknown, that any of the Parties may have against each other in connection with 150 Bee Street, LLC.

   (b) "Tolling Period" shall mean the period from and including the Effective Date of this Agreement until and including the Expiration Date (as defined below) of this Agreement.

   (c) "Expiration Date" shall mean the earlier of _____ ____, 2012, or

EXHIBIT G

30 days from the date that written notice of termination of this Agreement has been served by either of the Parties on the other in accordance with Paragraph 9 of this Agreement.

(d) "Timing Defenses" shall mean and include, and shall be limited to, any affirmative defenses to Claimant's claims that Respondents may have to the extent based upon (1) any statute of limitations, (2) laches, and/or (3) any failure of the Parties to institute or commence litigation or other legal proceedings within some specified period, before a specified date, or before the happening of a specified event.

2. The Claimant and Respondents stipulate, covenant, and agree that Timing Defenses applicable to the Claims shall be tolled during the Tolling Period.

3. The Claimant and Respondents stipulate, covenant, and agree that this Agreement shall have no effect on any Timing Defenses that may be available to the Parties prior to the Effective Date, and that all time periods prior to the Effective Date and after the Expiration Date (and prior to the filing of any lawsuit or other legal proceeding) shall be included in the calculation of and running of any applicable Timing Defenses. Nothing contained herein shall preclude the Parties from asserting any Timing Defenses to the extent that such defenses already exist as of the Effective Date, and nothing herein shall be deemed to revive any claims barred as of the Effective Date.

4. The Claimant and Respondents stipulate, covenant, and agree that the Parties, by executing and entering into this Agreement, are not waiving or otherwise impairing by estoppel or any other means the Parties' rights and

EXHIBIT G

abilities to raise any Timing Defenses available to them for the periods prior to the Effective Date and after the Expiration Date (and prior to the filing of any lawsuit or other legal proceeding).

5. The Parties agree to forebear filing a petition or complaint or otherwise initiating a lawsuit or other legal proceeding against one another until on or after the last day of the Tolling Period that is not a Saturday, Sunday, or legal holiday.

6. The provisions of this Agreement comprise all of the terms, conditions, and representations of the Parties regarding the tolling of the Timing Defenses. This Agreement may not be altered or amended except by written agreement executed by both the Claimant and Respondents.

7. It is understood that no provision of this Agreement shall be construed against any party hereto by reason of either party having drafted or prepared this Agreement.

8. This Agreement shall terminate on the Expiration Date as provided in paragraph 1(c) above, unless extended in writing by the parties to be bound.

9. Either the Claimant or the Respondents may terminate this Agreement, effective 30 days after the date of serving a written notice of termination, by serving notice of termination by letter to the other party. Such notice letter shall be served by certified mail, return receipt requested, to the attorney(s) representing the party(s) being served.

10. On or after the Expiration Date of this Agreement, the Parties shall have the right to file and pursue any and all Claims and to seek any and all legal

EXHIBIT G

remedies that may be available, and the Parties shall be entitled to assert any Timing Defenses or other defenses, if any, subject to the terms of this Agreement.

11. Nothing in this Agreement shall be construed as an admission or denial by any of the Parties as to the merits of any of the Claims or defenses.

12. Neither Claimant nor Respondents nor any of their agents, witnesses, or attorneys will mention or allude to this Agreement, its terms, its execution, or the existence of any Tolling Period in any way, directly or indirectly, before a jury or any factfinder in any proceeding for any purpose. The terms of this paragraph will survive termination of this Agreement.

13. Claimant represents and warrants that the attorney signing this Agreement on his behalf has the authority to sign on his behalf and to agree to the terms and conditions of this Agreement. Respondents represent and warrant that the attorney signing this Agreement on their behalf has the authority to sign on their behalf and to agree to the terms and conditions of this Agreement.

I AGREE:

_____
Thomas Morgan

EXHIBIT G

WE AGREE TO THIS TOLLING AGREEMENT:

December 7, 2011

John Gilbert, as counsel

Stuart Fred, as counsel

BELLA VISTA PARTNERSHIP, A TEXAS PARTNERSHIP:

By:_____, Authorized Representative

BOMASADA GROUP, INC., A TEXAS CORPORATION:

By:_____, Authorized Representative

BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LLC:

By:_____, Authorized Representative

Lauralis Management, Inc., a Texas Corporation:

By:_____, Authorized Representative

EXHIBIT G

EXHIBIT H

REC 0615

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON THOMAS H. MORGAN, Plaintiff, v. JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION , and 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, Defendants.	IN ARBITRATION Previously: IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Civil Action No. 2012-CP-10-580 **FIRST AMENDED COMPLAINT**

The Plaintiff above named, complaining of the Defendants, above named, alleges and says as follows:

EXHIBIT H

1. Plaintiff Thomas H. Morgan ("Morgan" or "Plaintiff') is a citizen and a resident of the State of Florida. Morgan sues as a Plaintiff both on behalf of himself personally and derivatively on behalf of 150 Bee Street, LLC.
2. The Defendant John L. Gilbert ("Gilbert") is a citizen and a resident of the State of Texas; is neither an infant nor incompetent person; and is not in the military service.
3. The Defendant Stuart L. Fred ("Fred") is a citizen and a resident of the State of Texas; is neither an infant nor incompetent person; and is not in the military service.
4. The Defendant 150 Bee Street, LLC (sometimes "150 Bee Street," "LLC" or "Company") is a South Carolina Limited Liability Company, duly organized and existing pursuant to the laws of South Carolina; is subject to the jurisdiction of this Court; and is named as a nominal party Defendant because, on information and belief, it is an indispensable party to this derivative proceeding. Morgan, as a member, brings this case derivatively on the LLC's behalf.
5. The Defendant Bella Vista Partnership ("Bella Vista") is a Texas General Partnership doing business in South Carolina and is subject to the jurisdiction of this Court.
6. The Defendant Bomasada Group, Inc. ("Bomasada Group" or "Bomasada") is a Texas corporation doing business in South Carolina and is subject to the jurisdiction of this Court.
7. The Defendant Bomasada Investment Group II, LLC ("Bomasada Investment" or "BIG II") is a Texas Limited Liability Company doing business in South Carolina and is subject to the jurisdiction of this Court.
8. The Defendant Lauralis Management, Inc. ("Lauralis") is a Texas corporation doing business in South Carolina and is subject to the jurisdiction of this Court.
9. Upon information and belief, the legal distinction between Fred, Gilbert, Bella Vista, Bomasada, Lauralis, BIG II and the partners, officers, directors and/or shareholders of Bella Vista, Bomasada, Lauralis and BIG II (hereinafter the "Defendants") are blurred and they are, as such, one and the same and their interests are so amalgamated that the actions of one should apply to the other.

EXHIBIT H

10. On July 9, 2012, the Plaintiff and the defendants entered into a Consent Order whereby this matter was referred to arbitration pursuant to the terms of the Consent Order.
11. At the time of the actions complained of herein, Morgan was, and remains, a member of 150 Bee Street, LLC and is now a Managing Member with authority to arbitrate or litigate this dispute in a derivative capacity.
12. 150 Bee Street, LLC, acting through and under the direction and control of Defendants, has failed to take proper action to resolve the dispute after written demand by Morgan, to the serious detriment of 150 Bee Street, LLC and its members' interests.
13. Morgan can and will fairly and adequately represent the interests of any other similarly situated members of 150 Bee Street, LLC, in this derivative action.
14. On November 28, 2011, Plaintiff, through counsel, tendered a demand on Defendant to commence a derivative action pursuant to S.C. Code Ann. § 33-44-1101.
15. Defendants refused and continue to refuse to bring the derivative suit, and therefore Plaintiff brings this action under SCRCP Rule 23(b)(1) and applicable state law. Plaintiff affirmatively alleges that the requirements of SCRCP Rule 23 (b)(1) have been complied with.
16. This arbitration panel has jurisdiction over all subject matter alleged herein and over all parties hereto, and venue is proper in this forum.

FACTUAL BACKGROUND

17. Plaintiff Morgan is a member and 26.66% owner of 150 Bee Street, LLC.
18. Defendant Bella Vista is a member and 26.67% owner of 150 Bee Street, LLC.
19. The Estate of Neal I. Baker is a member and 26.67% owner of 150 Bee Street, LLC.
20. Edwin S. Pearlstine, Jr. is a member and 20% owner of 150 Bee Street, LLC.
21. Upon information and belief, Defendants Gilbert and Fred, either directly or through an entity or entities that they control, own and are the controlling partners of Defendant Bella Vista. Operating directly or indirectly with others, they were at all times the controlling persons of Defendant 150 Bee Street, LLC.

22. Upon information and belief, Defendants Gilbert and Fred, either directly or through an entity or entities that they control, own and are the controlling owners of Defendant Bomasada Group.
23. Upon information and belief, Defendant Bomasada Group was organized by Defendants Gilbert and Fred and acted as Developer of 150 Bee Street, LLC.
24. Upon information and belief, Defendants Gilbert and Fred, either directly or through an entity or entities that they control, are the controlling owners of Defendant BIG II.
25. Upon information and belief, Defendant BIG II was organized by Defendants Gilbert and Fred and acted as the general contractor regarding the construction of a condominium complex located at 150 Bee Street, Charleston, South Carolina (the "project" or "Bee Street Lofts") for 150 Bee Street, LLC.
26. Upon information and belief, Defendants Gilbert and/or Fred, either directly or through an entity or entities that they control, are the controlling owners of Defendant Lauralis.
27. Upon information and belief, Defendant Lauralis is a holding company for a private jet aircraft.
28. Defendants entered into various contracts whereby the Defendants were to perform certain matters for the benefit of 150 Bee Street, LLC and its owners, including but not limited to acting as general contractor and as developer for the project.
29. Defendants individually, or as manager or owner, and as part of their contract with 150 Bee Street, represented that they would act as developer of 150 Bee Street, for the benefit of the owners of 150 Bee Street, LLC (including Morgan) for a fee of $750,000.
30. Upon information and belief, the Defendants have wrongfully paid themselves more than $750,000.00 with Company funds.
31. Upon information and belief, Defendants continued to improperly pay themselves a monthly amount from Company funds, even though a paid Property Manager was on location at 150 Bee Street.
32. Upon information and belief, Defendants while acting as Developer improperly

EXHIBIT H

took money for their own benefit to the detriment of 150 Bee Street, LLC and its members.

33. Upon information and belief, Defendants while acting as Developer, Manager, Fiduciary, Contractor and/or in another capacity, improperly coded charges to the Company, including but not limited to:

    a. Personal home remodeling in the amount of $1,325.00 charged to the Company, which was charged to the Company as "Make Ready Units-Paint Work;"
    b. Airplane equipment purchased from Blue Mountain Avionics, which was charged the Company as "Repairs and Maintenance;
    c. A fishing tournament in Cabo San Lucas called Cabo Magic Sportfishing coded as "Constn. Soft Costs;"
    d. $3,000.00 to James Craig Bird for pilot examination services for Stuart Fred and Jim Baldwin, which were charged the Company as "Training-Education;"
    e. Fuel, Nextel and Cabela's bag charged to the Company as "CHS Mental Health job;"
    f. African Safari with Swanepoel & Scandrol Safaris charged in the amount of $12,509.00 to the Company as "Travel;"
    g. Personal home automation and audio system purchased in the amount of $46,139.64 installed at the private residence of Stuart Fred in Scottsdale, Arizona, coded as "AV Media, Club House, Bee Street; and
    h. Other charges to be learned through the discovery process and determined by the trier of fact.

34. Upon information and belief, Defendants while acting as Developer, Manager, Fiduciary, Contractor and/or another capacity, have improperly made the following credit card or other charges to the Company, including but not limited to:

    a. Expenses related to a trip to Cancun, Mexico;
    b. Expenses related to lasvegas.com;
    c. Expenses related to a trip to Scottsdale, AZ;

EXHIBIT H

d. Expenses related to a trip to Pebble Beach, CA;
e. Expenses related to airplane equipment purchased from Blue Mountain Avionics;
f. Expenses related to a trip to Pacific Grove, Monterey and Carmel, California;
g. Expenses related to private aircraft; and
h. Other charges to be learned through the discovery process and determined by the trier of fact.

CONSTRUCTION

35. Defendants individually, and/or as manager or owner, and as part of their contract with 150 Bee Street or Bomasada as Developer for 150 Bee Street, LLC, represented that they would act as General Contractor on the 150 Bee Street project, for the benefit of the owners of 150 Bee Street, LLC including Morgan, for a fee of 1% of the construction costs.
36. Upon information and belief, Defendants collected well over 1% of the construction costs.
37. Upon information and belief, Defendants intentionally failed to adequately lower the unit pricing in order to artificially maintain their position as Developer, so they could continue to pay themselves monthly and so they could pay for their jet airplane.
38. Defendants, while acting as General Contractor, promised and represented they would do certain work at a significant savings from what the subcontractors would charge and pass that savings on to 150 Bee Street, LLC and the members. Despite this representation, the work went millions of dollars over budget.
39. Upon information and belief, Defendants while acting as General Contractor, wrongfully diverted funds and assets for their own benefit to the detriment of 150 Bee Street, LLC and the members.

PRIVATE JET BILLINGS TO THE COMPANY FOR PERSONAL ITEMS

40. Defendants improperly billed the Company and paid themselves from Company

funds for travel expenses, including billing rates up to $2,100.00 an hour for a private jet, not associated with the 150 Bee Street property or its business.

41. Upon information and belief, through 2010, Defendants authorized payments to Lauralis of $454,155,00 and $39,059.77 for airplane fuel expense from 150 Bee Street, LLC. Upon information and belief, a majority of these payments were unrelated to the 150 Bee Street property or its business.

42. Upon information and belief, from 2005 through 2010, Defendants systematically and improperly increased the rate they charged 150 Bee Street, LLC for their private jet as follows:

    a. From $850.00 an hour to $1,050.00 an hour in 2005;
    b. From $1,050.00 an hour to $1,200.00 an hour in 2005;
    c. From $1,200.00 an hour to $1,750.00 an hour in 2006; and
    d. From $1,750.00 an hour to $2,100.00 an hour in 2008;

43. Upon information and belief, Defendants authorized payments from 150 Bee Street, LLC for "Construction Travel Expenses" of $481,250.00 to BIG II. Upon information and belief, a majority of these payments were unrelated to the 150 Bee Street property or its business.

44. Upon information and belief, Defendants authorized payments from 150 Bee Street, LLC for "Corporate Overhead" of $360,000.00 to BIG II. Upon information and belief, a majority of these payments were unrelated to the 150 Bee Street property or its business.

45. Plaintiff has requested to see backup documentation for these charges, but Defendants have refused and continue to refuse to permit Plaintiff to see BIG II'S financial records related to the project.

46. Defendants knew or should have known that the other members of 150 Bee Street did not approve of the charging of their Private jet usage to the Company.

47. Defendants knew or should have known that the other members of 150 Bee Street did not approve of the charging of their personal vacations to the Company.

48. Defendants knew or should have known that the other members of 150 Bee Street did not approve of the charging of their home remodeling to the Company, which was charged to the Company as "Make Ready Units-Paint Work."

EXHIBIT H

49. Defendants knew or should have known that the other members of 150 Bee Street did not approve of the charging of their personal golf outings to the Company.
50. Defendants knew or should have known that the other members of 150 Bee Street did not approve of the charging of their expensive dinners to the Company.
51. Defendants knew or should have known that the other members of 150 Bee Street did not approve of the charging of $12,509.00 to 150 Bee Street for an African Safari.
52. Defendants knew or should have known that the other members of 150 Bee Street did not approve of the charging of gift cards from golf shops to 150 Bee Street.
53. Defendants knew or should have known that the other members of 150 Bee Street did not approve of the charging for airplane equipment purchased from Blue Mountain Avionics, which was charged the Company as "Repairs and Maintenance."
54. Defendants knew or should have known that the other members of 150 Bee Street did not approve of the charging of a payment for a fishing tournament in Cabo San Lucas called Cabo Magic Sportfishing coded as "Constn. Soft Costs."
55. Defendants knew or should have known that the other members of 150 Bee Street did not approve of the charging of $3,000.00 for pilot examination services for Stuart Fred and Jim Baldwin, which were charged the Company as "Training-Education."
56. Defendants knew or should have known that the other members of 150 Bee Street did not approve of the charging of a payment of repairs and renovation of a personal aircraft hangar in Houston, TX.
57. Defendants knew or should have known that the other members of 150 Bee Street did not approve of the charging of a Personal home automation and audio system purchased in the amount of $46,139.64 installed at the private residence of Stuart Fred in Scottsdale, Arizona, coded as "AV Media, Club House, Bee Street.
58. Plaintiff instructed Defendants in writing that they are no longer to bill the Company for their private jet.
59. In direct disregard of law and the duties they owe to 150 Bee Street and its members, Defendants have withdrawn for themselves, directly or through their

EXHIBIT H

entities, hundreds of thousands of dollars or more from 150 Bee Street funds.

60. On September 9, 2011, Defendants wrote themselves a check from Company funds for $28,350.00, claiming it was for their private jet usage, even after Plaintiff had instructed Defendants in writing that they were no longer to bill the Company for their private jet.

61. Upon information and belief, Defendants continued to make hundreds of thousands of dollars in capital calls from the members even after the project had finished in order to fund their personal jet and other personal items and threatened to dilute Plaintiff out of his interest in the Company at a 35% interest rate and to foreclose his interest if Plaintiff did not fund the capital calls.

62. The Second Amended and Restated Operating Agreement of 150 Bee Street provides in Article 6.03 that the following actions shall not be taken on behalf of the Company without the Majority Consent of the members:

    a. The purchase, sale, assignment, transfer, exchange or other disposition of any real property owned by the Company [and]

    b. Deviating from the Budget in a net amount greater than fifty thousand and no/100 dollars ($50,000)."

63. Defendants did not seek or obtain the Majority Consent of the members in accordance with Article 6.03 of the Second Amended and Restated Operating Agreement of 150 Bee Street.

FRAUDULENT CONCEALMENT OF WRONGDOING; EQUITABLE ESTOPPEL

64. Defendants have used efforts to hide, conceal and cover up the extent of their improperly charging of items to the Company.

65. Defendants have taken steps to hide their misconduct from Plaintiff and others in several ways, including but not limited to:

    a. Hiding and concealing Construction Records;

    b. Requiring the Company CPA to protect company records from disclosure;

    c. Concealing or misrepresenting Company expenses;

    d. Mispresenting sales figures;

e. Concealing information about contract renewals;

f. Secreting relevant company records in the name of other entities owned by or controlled by Defendants for the purpose and with the effect of blocking Plaintiff's access to those records;

g. Concealing the issuance of large checks to other entities owned by or controlled by Defendants;

h. Extracting funds under false pretenses to deter detection; and

i. In other manners to be shown the panel.

66. The Defendants, by reason of their controlling power over Defendant 150 Bee Street, LLC and relationship with the Plaintiff and 150 Bee Street, were at all times in the position of a fiduciary and of trust and confidence such that they owed a duty to disclose timely material facts to the Plaintiff and to 150 Bee Street. The Defendants knew they were stealing from and misappropriating the assets of 150 Bee Street, and that the construction for which they were responsible was defective, but they purposely and fraudulently concealed material facts about their wrongful activities from 150 Bee Street to prevent the discovery of their wrongdoing.

67. As a result of this fraudulent concealment, the statutes of limitation regarding the causes of action of the Plaintiff have been tolled and the Defendants are equitably estopped to use a statute of limitations as a defense to this lawsuit.

REAL ESTATE SALES

68. Defendants hired a Nashville Real Estate Company to act as the Real Estate agency for this Charleston South Carolina condominium project.

69. Upon information and belief, Defendants had a relationship with this Nashville Real Estate Company that either benefitted Defendants personally, or benefitted an entity or entities owned by Defendants.

70. Upon information and belief, the Nashville Real Estate company was paid a commission on many of the closings.

71. Defendants disregarded their fiduciary duties to Morgan and 150 Bee Street when they selected a Nashville real estate company, rather than considering a local

Charleston South Carolina Real Estate agency which knew the market, and which might have reacted to the local market faster. Further, hiring and using the Nashville real estate company was illegal because the Nashville real estate company was not licensed to sell real estate in South Carolina but nevertheless was paid commissions by the Defendants. Defendants have a duty to account to Defendant 150 Bee Street LLC and/or Plaintiff for all the illegal commissions paid out.

72. Defendants eventually cut ties between the Nashville Real Estate company and 150 Bee Street, but not until after a downturn in the real estate market.

MANAGEMENT SINCE NEAL BAKER PASSED AWAY

73. The Second Amended and Restated Operating Agreement of 150 Bee Street provides in Article 6.01, entitled Managing Members, that the two initial Managers of 150 Bee Street were Neal I. Baker and Defendant Fred.

74. The Second Amended and Restated Operating Agreement of 150 Bee Street provides in Article 6.01, entitled Managing Members, that in the event of Neal Baker's death or disability, Plaintiff Tom Morgan shall serve as Manager.

75. Neal I. Baker passed away in 2011, and Plaintiff Morgan attempted to serve as co-manager with Defendant Fred.

76. Defendants thwarted Plaintiff Morgan's attempts to serve as co-manager in several ways, including but not limited to:

    a. Refusing to allow Plaintiff Morgan to see the Construction Records;
    b. Refusing to allow the Company CPA to let Plaintiff copy company records;
    c. Refusing to allow Plaintiff to be a joint signer on Company checks;
    d. Refusing to notify Plaintiff in advance about Company expenses;
    e. Refusing to keep Plaintiff informed about upcoming sales;
    f. Refusing to allow Plaintiff a say in the pricing of the condo units;
    g. Refusing to allow Plaintiff a say in who was selected to act as the real estate agent for the company;
    h. Refusing to allow Plaintiff to sign off on the unit closings;
    i. Refusing to communicate contract renewals in advance of their signing;

j. Systematically retaining relevant company records in the name of other entities owned by or controlled by Defendants in an effort to block Plaintiff's access to those records;

k. Refusing to tell Plaintiff before writing large checks to other entities owned by or controlled by Defendants;

l. Writing large checks to other entities owned by or controlled by Defendants; and

m. Ignoring Plaintiff's written instructions; and in other manners to be shown the panel.

All of the foregoing actions and inactions were wrongful as to Plaintiff Morgan.

LAWSUIT FOR CONSTRUCTION DEFECTS

77. On August 22, 2014, Bee Street Lofts Homeowners Association, Inc. and Mark Laboccetta filed a lawsuit (Case No. 2014-CP-10-5120) ("construction lawsuit") against Fred, Gilbert, Bomasada Group, BIG II, 150 Bee Street and others alleging that numerous construction defects in the condominium project owned by 150 Bee Street were caused by various fraudulent, negligent and other illegal acts by Fred, Gilbert, Bomasada Group, BIG II, 150 Bee Street and others. The pleadings and evidence in that lawsuit are hereby restated as if stated verbatim herein and are incorporated herein by reference.

78. As a result of these illegal acts by the Defendants as alleged in this construction lawsuit, 150 Bee Street, LLC, the Plaintiff and other members of the Company suffered substantial financial losses, including attorney fees and costs, in an amount to be determined by the trier of fact. Defendants owe Defendant 150 Bee Street, LLC and/or Plaintiff for all of the losses suffered by reason of Defendants' wrongful conduct in the construction lawsuit.

FAILURE TO OBTAIN INSURANCE FOR COMPANY

79. 150 Bee Street, LLC paid premiums for insurance policies but was denied

insurance coverage because 150 Bee Street was not named as an insured by the Defendants, all of whom were responsible for obtaining insurance for 150 Bee Street. As a result, 150 Bee Street had to pay attorney fees instead of insurance policies for which the LLC had paid doing so. Defendants owe for the failure to properly insure Defendant 150 Bee Street, LLC.

CONDUCTING BUSINESS WITHOUT REQUIRED LICENSES

80. BIG II signed an AIA Contract with 150 Bee Street, LLC to act as the General Contractor for the project. Upon information and belief, BIG II's signing that contract obligating itself to serve as the General Contractor for the project when BIG II was not licensed as a General Contractor in South Carolina is a misdemeanor.
81. Upon information and belief, Bomasada paid fines in Arkansas for using unlicensed contractors, and Bomasada used a contractor named Hightower Construction Co., Inc. ("Hightower") to pull the permit for the project because Hightower was licensed but Bomasada was not licensed in South Carolina. Bomasada performed all the interior finish and other work on the project; signed subcontractor agreements with subcontractors for the project; and directed the work of those subcontractors. Upon information and belief, Bomasada committed a crime by doing this work while not being a licensed contractor in South Carolina.
82. Upon information and belief, Fred and Gilbert hired a Nashville real estate company, not licensed to sell real estate in South Carolina, to handle and control the sales of the units of the project, for which the unlicensed Nashville real estate company unlawfully received commissions. Those illegal commissions paid by Defendant 150 Beet Street, LLC are owed by Defendants to 150 Bee Street, LLC.

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

83. Plaintiff re-alleges and reincorporates the allegations set forth above as if

repeated herein verbatim.

84. At all times relevant, Defendants owed fiduciary duties to Morgan, to other members of the LLC and to 150 Bee Street.

85. Defendants breached their fiduciary duties to Morgan and to 150 Bee Street in various respects, including in the manners described herein. Defendants wrongful breaches of fiduciary duty were fraudulently concealed until within three years of the date this lawsuit was brought.

86. Upon information and belief, Defendants presently continue to breach their fiduciary duties owed to Morgan and to 150 Bee Street, LLC.

87. Morgan, other members of the LLC and 150 Bee Street have been harmed and damaged as a direct and proximate result of said breaches of fiduciary duties by the Defendants.

88. Such breaches of fiduciary duties were intentional, willful, wanton, reckless, malicious and done with the conscious disregard of the rights of Morgan, other members of 150 Bee Street and the LLC.

FOR A SECOND CAUSE OF ACTION

(Breach of Duties of Good Faith and Fair Dealing)

89. Plaintiff re-alleges and reincorporates the allegations set forth above as if repeated herein verbatim.

90. At all times relevant, Defendants owed duties of good faith and fair dealing to Morgan, 150 Bee Street and other members of 150 Bee Street.

91. Defendants breached these duties of good faith and fair dealing in various respects, including but not limited to the manners described herein.

92. Upon information and belief, Defendants presently continue to breach their duties of good faith and fair dealing.

93. 150 Bee Street, Morgan and other members of 150 Bee Street have been harmed and damaged as a direct and proximate result of said breaches of duties of good faith and fair dealing by the Defendants.

94. Said breaches of duties of good faith and fair dealing were intentional, willful,

wanton, malicious, reckless and done with the conscious disregard of the rights of Morgan, other members of 150 Bee Street and the LLC.

FOR A THIRD CAUSE OF ACTION

(Member Oppression – SC Code § 33-44-801(e))

95. Plaintiff Morgan re-alleges and reincorporates the allegations set forth above as if repeated herein verbatim.

96. The Defendants owed duties to Morgan not to engage in conduct unlawful, oppressive, fraudulent, or unfairly prejudicial to Morgan.

97. Defendants breached their duties not to oppress Morgan. As alleged they also wrongfully acted in ways that were fraudulent, unlawful and unfairly prejudicial. At all times relevant, the Defendants, functioning as a group that was in control of 150 Bee Street, acted and will continue to act in a manner that is unlawful, oppressive, fraudulent and unfairly prejudicial to the Plaintiff by engaging in various self-dealing, self-serving and improper acts to the exclusion and detriment of the Plaintiff and others.

98. Upon information and belief, Defendants presently continue to breach their duties not to oppress Morgan in the manners described herein and, in such ways as will be learned through the discovery process. The Defendants have acted and will continue to act in a manner that is unlawful, oppressive, fraudulent and unfairly prejudicial to the Plaintiff, in violation of SC Code § 33-44-801(e).

99. Morgan has been harmed and damaged as a direct and proximate result of said breaches of duties not to oppress by the Defendants. Such breaches of duties not to oppress have been and will continue to be intentional, willful, wanton, malicious, reckless and done with conscious disregard of the rights of Morgan, other members of 150 Bee Street and the LLC.

100. As a result of the wrongful oppressive conduct of the Defendants referenced herein, the LLC must be dissolved, and the Plaintiff is entitled to a decree winding up 150 Bee Street and to an award to the Plaintiff of damages in an amount to be determined by the trier of fact.

EXHIBIT H

FOR A FOURTH CAUSE OF ACTION

(Civil Conspiracy)

101. Plaintiff re-alleges and reincorporates the allegations set forth above as if repeated herein verbatim.

102. Defendants acting individually or through their agents have conspired for the purpose of benefitting certain members of 150 Bee Street and injuring Plaintiff Morgan and 150 Bee Street, and causing special damages, to include:

a. Loss to 150 Bee Street, Morgan and its other members of the past, present and future revenues in an amount to be determined by the trier of fact from improper billing of travel expenses, including the billing at rates up to $2,100.00 an hour for a private jet, not associated with the 150 Bee Street property;

b. Loss to 150 Bee Street, Morgan and its other members in an amount to be determined by the trier of fact of profits from returns on their investment from improper management or gross mismanagement;

c. Diminished value of the 150 Bee Street property arising from failure to react to market conditions which impacted adversely the marketability of the 150 Bee Street property to prospective buyers;

d. Loss to 150 Bee Street, Morgan and other members, and diminished value of the 150 Bee Street property, due to intentional, grossly negligent and negligent acts causing construction defects, and concealing those acts; and

e. Other special and consequential damages as may be proven at trial.

103. Defendants acting individually or through their agents have acted in concert for the common purpose of injuring Morgan, other LLC members and 150 Bee Street and have thereby visited upon Morgan, other LLC members and 150 Bee Street one indivisible wrong, and accordingly each is vicariously liable for the actions of the others and their liability to Morgan, other LLC members and 150 Bee Street in all respects is joint and several.

104. Upon information and belief, this conspiracy is on-going, as Defendants presently continue to conspire with one another for the common purpose of

injuring Morgan, other LLC members and 150 Bee Street.

105. As a result of the aforementioned actions, which are more fully explained above, of Defendants acting individually or through their agents, Morgan, other LLC members and 150 Bee Street have been and are being damaged.

106. The actions of Defendants acting individually or through their agents were and are intentional, willful, wanton and reckless and in conscious disregard of the rights of Morgan, of other LLC members and of 150 Bee Street, warranting an award of punitive damages.

107. As a result of the aforementioned actions, Morgan and 150 Bee Street are entitled to damages in an amount to be determined by the trier of fact.

FOR A FIFTH CAUSE OF ACTION

(Conversion)

108. Plaintiff re-alleges and reincorporates the allegations set forth above as if repeated herein verbatim.

109. By virtue of the conduct summarized above, Defendants came to exercise unauthorized dominion and control over the property, assets, and/or funds belonging to the entity and joint venture known as 150 Bee Street, and of the Plaintiff.

110. Defendants' dominion and control over said property, assets and/or funds has been to the exclusion of, and in defiance of, the rights of the Plaintiff and the LLC; has interfered with the rights of the Plaintiff and the LLC in and to such property, assets, and/or funds; and was without the Plaintiff's and the LLC's permission.

111. Upon information and belief, Defendants wrongfully assessed and/or charged Plaintiff and the LLC, either individually or through his interest in 150 Bee Street, purported commissions, pass through costs, travel and entertainment expenses, personal expenses, real estate fees, management fees and/or other management or construction compensation in excess of the written agreements, without Plaintiff's or the LLC's written or otherwise proper authorization or

approval.

112. Upon information and belief, as a direct and proximate result of Defendants' conversion of the property, assets, and/or funds belonging to the joint venture, the LLC, and the Plaintiff, the Plaintiff, either individually or through his interest in 150 Bee Street, other members of the LLC and the LLC have been damaged in an amount to be determined by the trier of fact.

113. Upon information and belief, in doing the acts alleged above, Defendants acted willfully, maliciously, recklessly, carelessly, and/or wantonly for the purpose of causing injury to the Plaintiff and the LLC. As a result, the Plaintiff and the LLC are entitled to an award of actual and punitive damages in an amount to be determined by the trier of fact.

FOR A SIXTH CAUSE OF ACTION

(Breach of Contract)

114. Plaintiff re-alleges and reincorporates the allegations set forth above as if repeated herein verbatim.

115. Plaintiff, either individually or through 150 Bee Street and the Defendants entered into various contracts, including but not limited to an Operating Agreement, a Development Agreement and an AIA Contractor Agreement, whereby the Defendants were to carefully, faithfully, honestly and loyally perform certain duties for the benefit of the Plaintiff, including but not limited to acting as general contractor and as developer for the project.

116. Defendants breached their duties and obligations under, *inter alia*, the Operating Agreement, the Development Agreement, and the AIA Contractor Agreement, by failing to act carefully, honestly, faithfully and loyally, including but not limited to failing to supervise the construction of the project as required by those agreements.

117. Defendants individually, and/or as manager and/or owner, and as part of their contract with150 Bee Street, represented that they would act as developer of 150 Bee Street, for the benefit of the owners of 150 Bee Street (including Morgan), for a fee of $750,000.00.

118. Upon information and belief, Defendants have paid themselves more than $750,000.00.

119. Defendants individually, and/or as manager and/or owner, and as part of their contract with 150 Bee Street or Bomasada Group as Developer for the LLC, entered into an agreement/contract to act as General Contractor on the 150 Bee Street project, for the benefit of the owners of the LLC including Morgan, for a fee of 1% of the construction costs.

120. Upon information and belief, Defendants have breached the agreement/contract and collected well over 1% of the construction costs.

121. Upon information and belief, Defendants intentionally failed to adequately lower the unit pricing in order to artificially maintain their position as Developer so that they could continue to improperly pay themselves monthly with Company funds and so that they could improperly pay for their jet airplane with Company funds.

122. Defendants while acting as General Contractor promised and contracted to do certain work at a significant savings from what the subcontractors would charge and pass that savings on to 150 Bee Street and the members but ended up going millions of dollars over budget anyway, in breach of the contract.

123. Upon information and belief, Bomasada and BIG II improperly charged the LLC for items one or both of them, and/or the subcontractors, did improperly causing construction defects. Those charges should have been paid by Bomasada, BIG II and/or the subcontractors, under warranties or otherwise, because they and not the LLC caused the defects. Further, construction on the project lasted years beyond the sixteen months scheduled, due to faulty workmanship, errors, cover ups and deceit by the Defendants and the subcontractors. The Defendants wrongfully charged the LLC to fix construction defects caused by the Defendants and/or the subcontractors, when the fixing of those construction defects could and should have been paid by the parties causing the defects and by warranties on construction. The Plaintiff should be repaid all monies it paid to correct errors and construction defects caused by the Defendants and/or the subcontractors.

124. Upon information and belief, Defendants while acting as General

Contractor improperly retained any savings for their own benefit to the detriment of the LLC and the members.

125. Defendants failed to obtain insurance for 150 Bee Street in violation of their obligations to do so, as provided, *inter alia*, by the Development Agreement, the AIA Contractor Agreement, the Operating Agreement and other agreements.

126. Upon information and belief, Defendants' actions or inactions in failing to perform the contracts as specified and agreed are material breaches of the contracts that resulted in the construction project costing millions of dollars over budget; the payment and loss of huge sums of Plaintiff's money as a result of the construction lawsuit; and other damages.

127. Upon information and belief, Defendants failed to perform their obligations as the developer and as the general contractor for the construction project, resulting in construction defects causing the LLC to be sued and significant monetary losses to the LLC, to Morgan and to other LLC members.

128. Defendants ignored and failed to comply with the City of Charleston's building code for the ground floor retail portion of the project, which caused delays in the construction and caused the City not to issue a Certificate of Occupancy or Completion. As a result, many buyers otherwise ready to purchase units of the project would not close on their units because their contract said they did not have to close until the project got its Certificate of Occupancy, and the project units had only a temporary certificate of occupancy ("TCO"). Defendants did not obtain a final Certificate of Occupancy until nearly a year after getting the TCO and after the Defendants should have obtained the Certificate of Occupancy. During that approximate one-year delay, real estate prices collapsed, and many purchasers backed out of their contract to purchase, thereby costing the Company millions of dollars, all due to the wrongful and grossly negligent failure of the Defendants to obtain the Certificate(s) of Occupancy timely, in violation of their contractual and other duties.

129. BIG II failed to supervise the contractors who worked on the project and thereby caused significant construction defects resulting in huge losses to the Plaintiff.

EXHIBIT H

130. As a result of Defendants' actions or inactions, the Plaintiff, other LLC members and the LLC have been directly and proximately damaged by the foregoing material breaches of contract in an amount to be determined by a trier of fact.

131. As a result of Bomasada's material breaches of the Development Agreement, the Defendants should return to the Plaintiff the entire Development fee of $750,000 or more and all Reimbursed Expenses, whether legitimate or not, to the LLC.

132. As a result of BIG II's material breaches of the Contract Agreement, the Defendants should return to the Plaintiff the entire Contractor Fee of 1% or more and all reimbursed expenses, whether legitimate or not, to the LLC.

133. The Plaintiff, other LLC members and the LLC are entitled to a money judgment against Defendants in an amount to be determined by a trier of fact, plus reasonable attorney's fees and costs, to the extent allowed by law.

FOR A SEVENTH CAUSE OF ACTION

(Accounting)

134. Plaintiff re-alleges and reincorporates the allegations set forth above as if repeated herein verbatim.

135. 150 Bee Street and its members are all in a fiduciary relationship with one another and fiduciary duties are owed to one another. In addition, the members of 150 Bee Street owe duties of good faith and fair dealing, and not to engage in oppression, to each other member and to 150 Bee Street.

136. Due to the actions of Defendants described above, Plaintiff has requested, and hereby again requests, from Defendants an accounting as to the operations of the joint venture, 150 Bee Street and any companies Gilbert, Fred, Bella Vista, Lauralis, Bomasada Investment and Bomasada Group own or owned that received money, goods, or services from or performed services for 150 Bee Street,, or whose business is or was or could be associated with 150 Bee Street, including but not limited to the following: Defendants Bella Vista, Lauralis,

Bomasada Investment and Bomasada Group.

137. Plaintiff is not presently aware of all of the money, funds, assets, and/or business opportunities belonging to the joint venture or 150 Bee Street that Defendants have misappropriated to themselves and their other companies and is not aware of all of the specific purposes for which Defendants have used said money, assets, and/or business opportunities. Upon information and belief, Defendants used said money, assets, and/or business opportunities to benefit themselves personally or their other companies, in breach of their fiduciary duties.

138. Defendants have failed or refused to render a proper accounting as to the operations, funds, assets, property, and business opportunities of the joint venture and the limited liability company.

139. Plaintiff is entitled to an Order requiring a complete accounting as to expenses, income, assets, and profits of the joint venture and the limited liability companies above-referenced and further requiring the Defendants to hold as trustee for the Plaintiff individually or for 150 Bee Street any property, profit, or benefit derived by the Defendants in the conduct of the business of the joint venture, and/or the limited liability company.

140. Plaintiff has no adequate remedy at law otherwise to get this information.

FOR A EIGHT CAUSE OF ACTION

(Unfair Trade Practices Act)

141. Plaintiff re-alleges and reincorporates the allegations set forth above as if repeated herein verbatim.

142. The aforementioned acts, practices, and conduct of the Defendants were and are unfair and deceptive.

143. The aforementioned acts, practices, and conduct of the Defendants were and are against the public interest and these acts and practices are capable of repetition.

144. The Defendants actions were and are willful and wanton in that

Defendants knew or should have known that their conduct was unfair and deceptive, and therefore a violation of this State's statutes concerning unfair and deceptive acts and practices.

145. As a result of Defendants' Unfair Trade Practices Act violations, the Plaintiff has been damaged through his loss of his investment and anticipated profits, and he has been subjected to aggravation and harassment as a result of Defendants' conduct.

146. As a result of Defendants' unfair and deceptive acts or practices in violation of the State's statutes, the Plaintiff prays for his actual damages, together with treble damages of three times his actual damages, punitive damages, plus Plaintiff's reasonable attorney's fees, costs and disbursements of this action.

FOR A NINTHCAUSE OF ACTION

(Unjust Enrichment)

147. Plaintiff re-alleges and reincorporates the allegations set forth above as if repeated herein verbatim.

148. Plaintiff and Defendants entered into the joint venture summarized above whereby Defendants promised and agreed to act in good faith.

149. In accordance with the agreement, Plaintiff advanced and contributed a large sum of cash and/or funding needed for the project.

150. Plaintiff contributed these funds and invested his time and resources to the project, but due to the conduct of the Defendants, Morgan, other LLC members and the LLC have sustained losses while the Defendants have profited enormously.

151. Plaintiff conferred a valuable benefit upon the Defendants which they have realized in full.

152. Defendant prolonged the sale process on purpose so that they could personally benefit through fees and charges they passed on to and through the Company. Defendants also caused significant construction defects by their

intentional, grossly negligent and negligent acts, which caused huge losses to Morgan, other LLC members and the LLC.

153. Allowing Defendants to retain the amounts they have taken out of the Company would be unjust.

154. There is now justly due and owing to Plaintiff from Defendants the amount of Morgan's investment in the project and the reasonable present value of all amounts improperly billed to the Company by the Defendants beyond what Defendants were contractually permitted.

155. The amount to be returned by Defendants should be determined by the trier of fact.

FOR A TENTH CAUSE OF ACTION

(Fraud)

156. Plaintiff re-alleges and reincorporates the allegations set forth above as if repeated herein verbatim.

157. Defendants represented to Plaintiff that they would be acting as Developer, Manager, Fiduciary, Contractor, or other capacity for the benefit of Plaintiff and 150 Bee Street, LLC.

158. Defendants while acting as Developer, Manager, Fiduciary, Contractor or other capacity, have improperly coded charges to the Company, including but not limited to:

a. Personal home remodeling to the company, which were charged to the Company as "Make Ready Units-Paint Work;"

b. Airplane equipment purchased from Blue Mountain Avionics, which were charged the Company as "Repairs and Maintenance;"

c. A fishing tournament in Cabo San Lucas called Cabo Magic Sportfishing coded as "Constn. Soft Costs;"

d. $3,000.00 to James Craig Bird for pilot examination services for Stuart Fred and Jim Baldwin, which were charged the Company as "Training-Education;"

e. Fuel, Nextel and Cabala's bag charged to the Company as "CHS Mental

Health job;"

f. African Safari with Swanepoel & Scandrol Safaris charged to the Company as "Travel;" and

g. Other charges to be determined by the trier of fact.

159. Upon information and belief, Defendants while acting as Developer, Manager, Fiduciary, Contractor or other capacity, have improperly made credit card or other charges to the Company, including but not limited to:

a. Expenses related to trip to Cancun, Mexico;

b. Expenses related to trip to lasvegas.com;

c. Expenses related to trip to Scottsdale, AZ;

d. Expenses related to trip to Pebble Beach, CA;

e. Expenses related to airplane equipment purchased from Blue Mountain Avionics;

f. Expenses related to private aircraft;

g. Expenses related to installing a home automations system in Fred's Scottsdale, Arizona home; and

h. Other charges to be determined by the trier of fact.

160. Defendants prolonged the sale process on purpose so that they could personally benefit through fees and charges they passed on to and through the Company.

161. Defendants knew that these charges were not Company charges or otherwise related to the business of 150 Bee Street, LLC.

162. On or about February 27, 2005, Defendants represented to Plaintiff as follows:

BOMASADA IS ACTING AS THE GENERAL CONTRACTOR ON A COST BASIS CHARGING A 1% FEE....PLAINLY ALL COST ARE PASSED THROUGH TO THE OWNERSHIP AT COST....BOMASADA DOES NOT AND WILL NOT PROFIT OTHER THAN THE 1% FEE....

163. Upon information and belief, Defendants did not pass through costs to the Company at actual cost.

EXHIBIT H

164. Upon information and belief, Defendants improperly profited more than the 1% fee.

165. Upon information and belief, Defendants knowingly and intentionally positioned themselves as General Contractor at the outset with the intent of profiting more than the 1% fee.

166. Upon information and belief, Defendants knew that they would be able to hide the invoices and bills from Plaintiff and did, in fact, hide the invoices and bills from Plaintiff. To this date, Defendants have intentionally withheld BIG II's financial records related to the project.

167. Defendants knew that they could reduce the unit prices and sell the units faster.

168. Defendants intentionally miscoded these improper charges with the intent that they would not be discovered by the Plaintiff or otherwise mislead Plaintiff.

169. Defendants intentionally failed to reduce the unit prices with the intent to mislead Plaintiff and/or that they would not be discovered by the Plaintiff.

170. Defendants intentionally caused construction defects by their fraudulent acts, and intentionally and fraudulently misrepresented and concealed those acts and defects. All of Defendants' misrepresentations and concealments were material.

171. The issues of Plaintiff's ability to trust Defendants and of Defendants' honest treatment of Plaintiff and the Company were material to Plaintiff's decision to enter into the agreement with Defendants.

172. Defendants were aware and had knowledge at the time that they made the aforesaid representations that the representations were false. Alternatively, Defendants acted recklessly in making their material false representations and concealments.

173. Defendants intended that the Plaintiff act upon the false representations of Defendants by allowing Defendants to continue running and billing the Company as they saw fit and with disregard for their fiduciary duties to Plaintiff and 150 Bee Street.

174. Plaintiff was ignorant of the falsity of the representations.

175. Plaintiff relied on the false representations.

176. Plaintiff had the right to rely on the false representations.

177. Plaintiff has been consequently and proximately injured by relying on the false representations made by the Defendants.

178. As a direct and proximate result of the fraud and false representations by the Defendants, Plaintiff, other LLC members and 150 Bee Street have been damaged by, among other things, the loss of income, revenue, capital calls, interest, and/or profits; the loss of the property, assets, and business opportunities; and any additional damages due to the acts of the Defendants. Plaintiff is further entitled to recover punitive damages from said Defendants in an amount to be determined by the trier of fact.

FOR AN ELEVENTH CAUSE OF ACTION

(Misrepresentation)

179. Plaintiff re-alleges and reincorporates the allegations set forth above as if repeated herein verbatim.

180. Defendants represented to Plaintiff that they would be acting as Developer, Manager, Fiduciary, Contractor or other capacity for the benefit of Plaintiff and 150 Bee Street.

181. Defendants, while acting as Developer, Manager, Fiduciary, Contractor or other capacity, have improperly coded charges to the Company, including but not limited to:

a. Personal home remodeling to the company, which were charged to the Company as "Make Ready Units-Paint Work;"

b. Airplane equipment purchased from Blue Mountain Avionics, which were charged the Company as "Repairs and Maintenance;"

c. A fishing tournament in Cabo San Lucas called Cabo Magic Sportfishing coded as "Constn. Soft Costs;"

d. $3,000.00 to James Craig Bird for pilot examination services for Stuart Fred and Jim Baldwin, which were charged the Company as "Training-

EXHIBIT H

Education;"

e. Fuel, Nextel and Cabala's bag charged to the Company as "CHS Mental Health job;"

f. African Safari with Swanepoel & Scandrol Safaris charged to the Company as "Travel;"

g. Expenses related to installing a home automations system in Fred's Scottsdale, Arizona home; and

h. Other charges to be determined by the trier of fact.

182. Upon information and belief, Defendants while acting as Developer, Manager, Fiduciary, Contractor or other capacity, have improperly made credit card or other charges to the Company, including but not limited to:

a. Expenses related to trip to Cancun, Mexico;

b. Expenses related to trip to lasvegas.com;

c. Expenses related to trip to Scottsdale, AZ;

d. Expenses related to trip to Pebble Beach, CA;

e. Expenses related to airplane equipment purchased from Blue Mountain Avionics;

f. Expenses related to private aircraft; and

g. Other charges to be determined by the trier of fact.

183. Defendants prolonged the sale process on purpose so that they could personally benefit through fees and charges they could pass on to the Company.

184. Defendants knew that these charges were not Company charges.

185. On or about February 27, 2005, Defendants represented to Plaintiff that BOMASADA IS ACTING AS THE GENERAL CONTRACTOR ON A COST BASIS CHARGING A 1% FEE....PLAINLY ALL COST ARE PASSED THROUGH TO THE OWNERSHIP AT COST....BOMASADA DOES NOT AND WILL NOT PROFIT OTHER THAN THE 1% FEE.

186. Upon information and belief, Defendants did not pass through costs to the Company at actual cost.

187. Upon information and belief, Defendants profited more than the 1%

fee.

188. Upon information and belief, Defendants knowingly and intentionally positioned themselves as General Contractor at the outset with the intent of profiting more than the 1% fee.

189. Upon information and belief, Defendants knew that they would be able to hide the invoices and bills from Plaintiff. To this date, Defendants have intentionally withheld BIG II's financial records related to the project.

190. Defendants intentionally miscoded these improper charges with the intent that they would not be discovered by the Plaintiff.

191. Defendants knew that they could reduce the unit prices and sell the units faster.

192. Defendants intentionally failed to reduce the unit prices with the intent that they would not be discovered by the Plaintiff.

193. Defendants intentionally misrepresented that they had properly constructed the condominium project and the nature and extent of the construction defects associated with the project.

194. The issues of Plaintiff's ability to trust Defendants and of Defendants' honest treatment of Plaintiff and the Company were material to Plaintiff's decision to enter into the agreement with Defendants.

195. Defendants were aware and had knowledge at the time that they made the representations that the representations were false.

196. Defendants intended that the Plaintiff act upon the false representations by allowing Defendants to continue running and billing the Company as they saw fit.

197. Plaintiff was ignorant of the falsity of the representations.

198. Plaintiff relied on the false representations.

199. Plaintiff had the right to rely on the false representations.

200. Plaintiff has been consequently and proximately injured by relying on the false representations made by the Defendants.

201. As a direct and proximate result of the false representations by the

Defendants, Plaintiff has been damaged by, among other things, the loss of income, revenue, capital calls, interest, and/or profits; the loss of the Property, assets, and business opportunities; and any additional damages due to the acts of the Defendants. Plaintiff is further entitled to recover punitive damages from said Defendants in an amount to be determined by the trier of fact.

FOR A TWELFTH CAUSE OF ACTION
(Indemnification of 150 Bee Street)

202. Plaintiff re-alleges and reincorporates the allegations set forth above as if repeated herein verbatim.

203. At all times relevant the Defendants were agents of 150 Bee Street, which was their principal. As such, the Defendants must indemnify 150 Bee Street and its members, excluding Fred and Gilbert, for all losses suffered by 150 Bee Street due to the negligent, grossly negligent and intentional illegal acts of the Defendants, alleged herein, including but not limited to losses incurred by the LLC due to construction defects and the lawsuit project owners brought against the LLC due to construction defects.

204. Bella Vista, as a member of the LLC, and Fred and Gilbert, as the general partners of Bella Vista, are liable to indemnify the LLC and its members other than Fred and Gilbert, for all acts or omissions involving intentional misconduct or knowing violation of the law by any of them, and all transactions in which any of them received a personal benefit in violation or breach of the LLC's Operating Agreement and other agreements, all of which occurred as alleged herein. Upon information and belief, any wrongful action taken by any of the Defendants pursuant to advice by any LLC counsel was induced by intentional misconduct or knowing violation of the law by Bella Vista, Fred, Gilbert and/or one or more of the other Defendants.

205. Bomasada, as the Developer, agreed in Section 1.4 of the Development Agreement between 150 Bee Street LLC and Bomasada:

EXHIBIT H

[T]o indemnify, defend and hold harmless the [150 Bee Street, LLC] and its partners, employees and agents, from any and all loss, damage, cost, expenses and liability sustained by such parties which arise out of the Developer's gross negligence or willful misconduct or acts outside the scope of the Developer's authority under this Agreement.

206. The Defendants committed numerous negligent, grossly negligent and intentional acts regarding the project for which they must indemnify 150 Bee Street, LLC, including but not limited to each of the following:

a. Bomasada's failing to supervise the construction work during all phases of construction and to otherwise assist in all aspects of the project, as required by the development agreement between Bomasada and the LLC;

b. Bomasada's failing to provide qualified field personnel for observing and reviewing work progress and construction of the project, as required by paragraph 1.1 of the development agreement;

c. Bomasada's failing to supervise (i) the preparation of appropriate instructions to bidders, (ii) the preparation of contracts for the construction of the Project, and (iii) the administration of change orders, as required by paragraph 1.1 of the development agreement;

d. Bomasada's failing to provide administrative services required to be made relating to the construction of the Project, as required by paragraph 1.1 of the development agreement; and

e. Bomasada's failing to assist in securing authorizations, permits and licenses as necessary for the development and construction of the Project, as required by paragraph 1.1 of the development agreement.

207. As a direct and proximate result of negligent, grossly negligent and intentional acts by the Defendants, the Company has been damaged by, among other things, the loss of income, revenue, capital calls, interest, and/or profits; the loss of the property, assets, and business opportunities; and any additional damages due to the acts of the Defendants. Plaintiff is further entitled to recover punitive damages from said Defendants in an amount to be determined by the

trier of fact.

FOR A THIRTEENTH CAUSE OF ACTION

(Intentional Interference with Prospective Business Advantage)

208. Plaintiff re-alleges and reincorporates the allegations set forth above as if repeated herein verbatim.

209. Defendants intentionally failed to adequately lower the unit pricing in order to artificially maintain their position as Developer and so they could continue to improperly pay themselves monthly with Company funds. Defendants' purpose was improper, in that they took this action in order to continue to improperly pay themselves.

210. By intentionally and improperly failing and refusing to adequately lower the unit pricing as stated above, the Defendants intentionally and improperly interfered with the LLC's potential contractual relations for an improper purpose and by improper methods, causing injury to the LLC.

211. As a direct and proximate result of Defendants failing and refusing to adequately lower the unit pricing as stated herein, the LLC has suffered damages in an amount to be determined by the trier of fact.

FOR A FOURTEENTH CAUSE OF ACTION

(Misappropriation of LLC assets)

212. Plaintiff re-alleges and reincorporates the allegations set forth above as if repeated herein verbatim.

213. The Defendants' intentional, illegal use of the funds and other property of 150 Bee Street for their own personal and unauthorized uses constitutes misappropriation of the assets of 150 Bee Street. The Defendants' have fiduciary duties to protect the assets of 150 Bee Street.

214. As a direct and proximate result of Defendants' misappropriation of 150 Bee Street's assets, 150 Bee Street has suffered damages in an amount to be

EXHIBIT H

determined by the trier of fact.

FOR A FIFTEENTH CAUSE OF ACTION

(Alter Ego/Amalgamation/Piercing the Corporate Veil as to the Developers and Contractors)

215. Plaintiff re-alleges and reincorporates the allegations set forth above as if repeated verbatim herein.

216. Bomasada held itself out to the Plaintiff and the public as the developer of Bee Street Lofts and signed the Development Agreement with the Company naming Bomasada as Developer.

217. BIG II held itself out to the Plaintiff and the public as the general contractor of Bee Street Lofts and signed an AIA Stipulated Sum Contractor with the Company naming BIG II as the General Contractor for the Project.

218. Upon information and belief, Bomasada, BIG II and Lauralis at all times relevant to this action:

a. Failed to observe corporate formalities;

b. Were grossly undercapitalized for the purposes of the corporate undertaking, to wit, the development and construction of the Bee Street Lofts and the remediation of any and all defects in the design and construction of the Bee Street Lofts should they arise;

c. Were controlled by Bella Vista, Fred and Gilbert to such an extent that they were merely a facade for the operations of Bella Vista, Fred and Gilbert;

d. Do not have any functioning officers, managers or directors that are independent of Bella Vista, Fred and Gilbert; and

e. Were functionally insolvent and were run as mere shells for the benefit of Defendants.

219. Upon information and belief, Bomasada, BIG II and Lauralis failed to follow the necessary corporate formalities as required by law; undercapitalized 150 Bee Street; siphoned corporate funds for personal use of its shareholders; used

corporate facilities and employees for personal ends; and otherwise so intermingled their personal and financial affairs with the company's that they have become the alter ego of Bella Vista, Fred and Gilbert.

220. Further, upon information and belief the interests of Bomasada, BIG II and Lauralis and their agents, directors, officers and/or shareholders, and of Bella Vista, Fred and Gilbert are so amalgamated that the Plaintiff is entitled to disregard the corporate forms and recover against Bomasada, BIG II and Lauralis and their agents, directors, officers and/or shareholders.

221. Upon information and belief, Bomasada, BIG II and Lauralis are shell and/or sham companies dominated and controlled by Bella Vista, Fred and Gilbert such that they are not legally distinct.

222. It would be inequitable to allow Fred and Gilbert to hide behind a corporate shield that has no basis in fact for the express purpose of avoiding their obligations, responsibilities and liabilities to the Plaintiff.

223. Plaintiff are entitled to pierce the corporate veil of Bomasada, BIG II and Lauralis and thereby obtain a judgment against Bomasada, BIG II and Lauralis, and their agents, directors, officers and shareholders for the liability of Fred, Gilbert and Bella Vista in an amount to be determined by the trier of fact.

224. Further, because the interests of Bomasada, BIG II and Lauralis and their agents, directors, officers and shareholders, and of Bella Vista, Fred and Gilbert are so amalgamated, Plaintiff are entitled to disregard the corporate forms and recover against Bomasada, BIG II and Lauralis and their agents, directors, officers, and shareholders in an amount to be determined by the trier of fact.

FOR A SIXTEENTH CAUSE OF ACTION

(Breach of Contract Accompanied by a Fraudulent Act)

225. Plaintiff re-alleges and reincorporates the allegations set forth above as if repeated verbatim herein.

226. The actions by the Defendants described herein breached their contracts with 150 Bee Street, LLC.

EXHIBIT H

227. Through the fraudulent acts and misrepresentations described herein, the Defendants sought to conceal their breaches of contract and otherwise committed fraudulent acts with fraudulent intent related to the breaches of contract.

228. The fraudulent acts accompanied the breaches.

229. As a direct and proximate result of Defendants' breaches of contract accompanied by a fraudulent act and intent, 150 Bee Street has suffered damages in an amount to be determined by the trier of fact and is entitled to an award of punitive damages in an amount to be determined by the trier of fact.

WHEREFORE, Morgan, individually and in a representative capacity of 150 Bee Street in a derivative action, respectfully prays that Plaintiff and the LLC be awarded:

a. Actual, consequential, and punitive damages in an amount to be determined by the trier of fact;
b. Reasonable attorney's fees and costs to the extent allowed by law;
c. Treble damages;
d. An offset against the capital account and any undistributed amounts claimed by Defendants;
e. The return of all capital contribution paid by the members of the LLC due to the wrongdoing of any of the Defendants;
f. An accounting and winding up of the business of 150 Bee Street;
g. Indemnification of all losses incurred by the Plaintiff or the LLC due to the unlawful actions of the Defendants, including but not limited to construction defects as alleged in the construction lawsuit;
h. All of the Development fee of $750,000 or more and all reimbursed expenses paid to Bomasada by the Plaintiff;
i. All of the Contractor fees of 1% or more paid to BIG II and all reimbursed expenses paid to BIG II by the Plaintiff;
j. Prejudgment and post judgment interest; and
k. Such other and further relief as this court deems just and proper.

Respectfully submitted,

_____

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October 27, 2011

Via Electronic Mail
Christopher B. Staubes, III, Esquire
Clawson & Staubes, L.L.C.
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-7595

RE: Thomas H. Morgan v. Bomasada Group, Inc.
WCSR File No. 66696.0001.0

Dear Chris:

I understand from your letter of September 28, 2011 that John Gilbert sent to my attention, that Mr. Morgan wishes for his representative to review "the construction records, sales documents, vendor contracts, pricing lists, the company's legal file, and other relevant information."

As with John Hagerty's legal files in Charleston, my client has no objection to Mr. Morgan's representative looking at these documents, provided Mr. Morgan agrees to pay for any reasonable copying charges and staff time. He must also agree that if anything is copied, there will be a duplicate for my file records at my client's expense.

Because Mr. Morgan has threatened litigation and I assume is conducting this investigation at least in part with that in mind, I wish to bring several things to your attention.

First, as I have already mentioned to you, the Second Amended and Restated Limited Liability Company Agreement of 150 Bee Street, LLC, dated February 12, 2003, contains Section 14.14 which requires mediation and then arbitration rather than a lawsuit.

Second, and perhaps much more importantly, Mr. Morgan is wasting his time and money as the claims he may have had against my clients, the validity of which they categorically deny, are time barred by the 3-year statute of limitations. Let me explain why. As far back as July 6, 2008, Mr. Morgan wrote to John Gilbert, Edwin Pearlstein, Neal Baker, and Stuart Fred: "I am turning all my correspondence on this project over to my lawyers and accountants. Stewart [sic] you have stolen too much money from us. There is no way we have spent $450,000 on travel expenses. I am tired of all your theft and bullshit. Don't ever contact me again. I am going sue

EXHIBIT I

your ass and get our money back." A copy of this email is attached and paranthetically, this would make great theater in a courtroom.

Mr. Morgan's claims, even if valid, sound in contract and fraud, and those causes of action are obviously time barred under South Carolina's 3-year statute of limitations and the discovery rule.

In South Carolina, an action upon a contract or fraud must be commenced within three (3) years after a person "knew or by the exercise of reasonable diligence, should have known that he had a cause of action." *See* S.C. Code Ann. §§ 15-3-530 and 15-3-534 (1976, as amended).

More than three years have elapsed between Mr. Morgan's above-referenced communications to Mr. Fred and others of July 6, 2008, and any claim Mr. Morgan can now present against the recipients of that email. The question arises as to the applicability of the statute of limitations and the "discovery rule" for any cause of action which could now be presented by Mr. Morgan against my clients.

Both South Carolina state courts as well as federal courts sitting in South Carolina interpreting South Carolina law have applied the discovery rule in fraud cases (*Liberty Mutural Ins. Co. v.Year Round Pool, Inc.*, 104 F.3d 359 (4th Cir.(S.C.)1996) and breach of contract actions (*Dilmar Oil Co. v. Federated Mut. Ins. Co.*, 129 F.3d 116 (4th Cir.(S.C.)1997)).

The discovery rule has been interpreted in *Bayle v. S.C. Depart. of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001) in which the Court stated:

> According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. . . . The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct . . . . The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. . . "In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist." . . .
>
> . . .
>
> ". . . [T]he statute of limitations begins to run when the plaintiff should know that he might have a potential claim against another, not when he develops a full-blown theory of recovery."

EXHIBIT I

. . .

> [T]he statute of limitation begins to run when a person of common knowledge and experience would be on notice a claim might exist, not when the plaintiff discovers a witness to support or prove the case.

Id., 542 S.E.2d at 739-41 (Citations omitted).

In *Smith v. Smith*, 291 S.C. 420, 354 S.E.2d 36 (S.C. 1987), the Supreme Court held that the statute of limitations begins to run not as late as when ". . . advice of counsel is sought or a full blown theory of recovery developed." *Id.*, 354 S.E. 2d at 40. Instead, "[t]he exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of the injury would put a person of common knowledge on notice that some right of his has been invaded or that some claim against another party might exist." *Id.* The court held that consultation with an attorney indicates that a claimant has discovered or reasonably ought to have discovered a potential claim. *Id.*

In South Carolina, constructive knowledge alone is sufficient to start the statute of limitations running. *See Burgess v. American Cancer Soc.*, 300 S.C. 182, 386 S.E.2d 798 (Ct. App. 1989), where the court stated:

> In applying the discovery rule, inquiry is focused upon whether the complaining party acquired knowledge of any existing facts "sufficient to put said party on inquiry which, if developed, will disclose the alleged [cause of action]" . . . A party cannot escape the application of this rule by claiming ignorance of existing facts and circumstances, because the law also provides that if such facts and circumstances *could have been known* to the party through the exercise of ordinary care and reasonable diligence, the same result follows. . . . Thus, either actual or constructive knowledge of facts or circumstances, indicative of . . . [an existing cause of action], trigger a duty on the part of the aggrieved party to exercise reasonable diligence in investigating and, ultimately, in pursuing a claim arising therefrom. . . .
>
> [T]he statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.

Id., 386 S.E.2d at 799-800 (citations omitted)(emphasis in original).

In applying the discovery rule, the Supreme Court of South Carolina has defined what is meant by "the exercise of reasonable diligence" as follows:

EXHIBIT I

> The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and *not when advice of counsel is sought or a full-blown theory of recovery developed.*
>
> . . .
>
> The important date under the discovery rule is the date that a plaintiff *discovers the injury*, not the date of the discovery of the identity *of another alleged wrongdoer*. If, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run *forall claims based on that injury.*

Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 at 170 (S.C. 1994)(emphasis added).

There is no dispute that Mr. Morgan believed he had been injured by my clients in July, 2008. Nothing prevented Mr. Morgan from full access to discovery, including all 150 Bee Street documents. He was clearly engaging his "lawyers and accountant," or at least threatening to do so.

In these circumstances, and in accordance with the law of South Carolina governing the discovery rule as it relates to the statute of limitations, it is immaterial that Mr. Morgan did not know the exact nature of the wrongs or extent of the damages allegedly caused him by John Gilbert and Stuart Fred back in July 2008. The statutory period of limitations of three years began to run because Mr. Morgan could or should have known, through the exercise of reasonable diligence, that causes of action "might exist" in his favor, rather than when a full-blown theory of recovery was developed by him. Because Morgan believed he had been injured as far back as July, 2008, the statute of limitations for claims arising therefrom begin to run at that time.

In the words of the Fourth Circuit in *Roe v. Doe,* 28 F.3rd 404 (4th Cir. (S.C.)1994): ". . . South Carolina's statute of limitations begins to run when the facts and circumstances would alert an injured person of common knowledge and experience that she might have a cause of action, not that she certainly has one . . . . Plainly, *it takes very little to start the clock." Id.,* 28 F. 3rd at 407 (emphasis added)(citation omitted).

All that being said, as I mentioned above, the documents you have requested to review will be available. Please be advised, however, that the "Second Amended and Restated Limited Liability Company Agreement of 150 Bee Street, LLC" gives Mr. Morgan access only to the

EXHIBIT I

documents of the LLC. It does not give him access to third party records, be they those of Hightower Construction or any of the other entities owned and/or operated by John Gilbert and Stewart Fred, including, but not limited to, Bomasada.

By a separate letter, I will be responding to some of your other communications to me, but thought I ought to get this response to you as quickly as possible.

Yours very truly,

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

Henry E. Grimball

HEG/srb
Enclosure

EXHIBIT I

John Gilbert

From: John Gilbert [johngilbert@bomasada.com]
Sent: Sunday, July 06, 2008 5:31 PM
To: john.hagerty@nelsonmullins.com
Cc: Stuart Fred; Kneeleye@aol.com
Subject: FW: Bee Street Lofts - Update

John:

I am forwarding you this email that I received from Tom Morgan this morning. I will be sending you another of Tom's emails after this one. As you can see, Tom has become somewhat irrational. From this point forward, neither Stuart nor I will communicate with him. Please call me Monday morning to discuss further. Thanks.

John

From: Tom Morgan [mailto:tom@morganenergy.net]
Sent: Sunday, July 06, 2008 12:10 AM
To: 'John Gilbert'; 'Edwin Pearlstine'; 'Neal Baker'; 'Stuart Fred'
Subject: RE: Bee Street Lofts - Update

John,

Please give us a spreadsheet of whether we are going to make money on this project or not. I have been asking you for over six months to give us a projection. I expect an answer within a week. I'm tired of fucking around with your bullshit reports. Please give us the straight shit not bullshit anymore.

Tom

From: John Gilbert [mailto:johngilbert@bomasada.com]
Sent: Thursday, July 03, 2008 5:05 PM
To: 'Edwin Pearlstine'; 'John Gilbert'; 'Neal Baker'; 'Stuart Fred'; 'Tom Morgan'
Subject: Bee Street Lofts - Update

Gentlemen:

It's been a while since my last update, but I wanted to inform you about the current status of Bee Street Lofts. We have sold 66 units to date and are scheduled to close Unit 416 within a week. The current loan balance is approximately $12 million dollars. Jeremy Newsom approved our request to keep the proceeds from a recent sale to cover interest payments and other operating costs. We will be using the proceeds from the Unit 416 closing which will be approximately $400,000.

EXHIBIT J

John Gilbert

From: John Gilbert [johngilbert@bomasada.com]
Sent: Sunday, July 06, 2008 5:33 PM
To: john.hagerty@nelsonmullins.com
Cc: Stuart Fred; Kneeleye@aol.com
Subject: FW: Bee Street Lofts - Update

John:

Here is the other email from Tom. As you can see, he is making some very ridiculous and derogatory remarks about us. We will not tolerate this crap from him. As mentioned in my other email, please call me Monday morning to discuss.

John

From: Tom Morgan [mailto:tom@morganenergy.net]
Sent: Sunday, July 06, 2008 12:35 AM
To: 'John Gilbert'; 'Edwin Pearlstine'; 'Neal Baker'; 'Stuart Fred'
Subject: RE: Bee Street Lofts - Update

I am turning all my correspondence on this project over to my lawyers and accountants.
Stewart you have stolen too much money from us. There is no way we have spent $450,000 on travel expenses. I am tired of all your theft and bullshit. Don't' ever contact me again. I am going to sue your ass and get our money back.

From: John Gilbert [mailto:johngilbert@bomasada.com]
Sent: Thursday, July 03, 2008 5:05 PM
To: 'Edwin Pearlstine'; 'John Gilbert'; 'Neal Baker'; 'Stuart Fred'; 'Tom Morgan'
Subject: Bee Street Lofts - Update

BOMASADA GROUP

Gentlemen:

It's been a while since my last update, but I wanted to inform you about the current status of Bee Street Lofts. We have sold 66 units to date and are scheduled to close Unit 416 within a week. The current loan balance is approximately $12 million dollars. Jeremy Newsom approved our request to keep the proceeds from a recent sale to cover interest payments and other operating costs. We will be using the proceeds from the Unit 416 closing which will be approximately $400,000.

The traffic at the property has been very good recently, probably due to the price reduction we just implemented. The staff has had several favorable tours lately and are expeecting a few contracts to be produced. We are gearing up our marketing for the second half of the year and will continue to concentrate on the MUSC market as that is where the bulk

EXHIBIT J

John Gilbert

From: Kneeleye@aol.com
`ent: Monday, July 07, 2008 4:10 PM
o: tom@morganenergy.net
Cc: Stuart Fred; John Gilbert; Pearlprop@aol.com
Subject: Re: Bee Street Lofts - Update

Tommy

I can't tell how disappointed I am in your last non professional e-mails. You have no idea the damage you've done to our relationship and this partnership.There is one thing I'm sure of is that John nor Stuart will not respond to you. You need to be very careful about calling someone a thief. You are opening your self up to a serious lawsuit. I suggest you call your accountant and attorney and they can go to Houston and check the books anyway they want.
I can't address all your issues but I will respond to a few. No one knows what the taxes are. I'm not calling the tax assessors office to find out. They may charge us like they did last year because the electicity is still in our name. Meaning it is not occupied.
If we don't have any sells in a particular week I see no reason to send out anything.
The city of Charleston thinks a TCO and a CO are the same. They said it during arbitration. Two building officials.
Every realtor in Charleston I think would agree 5% down is all you're going to get. People will walk on 5 or 10 pecent. You even told me in Miami they are walking on 20 percent down. You really need to understand Charleston and Miami are two different worlds.
As far as profit no one knows for sure. You know how much we owe. You know what we are asking for the units. Do the math. We've discussed this before. If we get out of debt soon we can raise prices--if we don't we may have to lower them. We don't have a crystal ball. This is very difficult times in real estate and we should be working together not calling the other people liars,thieves and whatever else you said.
Talking about the sign-did the agents happen to mention there is a sign ordiance. I bet they didn't.
Why--because they know everything. IN fact the city will not allow that sign back up for two reasons. The ordiance and it will cover some units where people live. I assumed by know that you knew real estate sells people are full of shit and will ll you anything you want to hear.
One other thing you can thank John and Stuart for Amergy not calling our loan and letting us use sells proceeds to fund the interest so we don't have to come out of pocket. You can be sure they WILL NEVER help us again in view of this last outbust.
I've been trying to get others lenders to come in with some interested but it is very DIFFICULT right now..

Neal

Gas prices getting you down? Search AOL Autos for fuel-efficient used cars.

EXHIBIT J

John Gilbert

From: Tom Morgan [tom@morganenergy.net]
`ent: Tuesday, July 08, 2008 12:03 AM
o: Kneeleye@aol.com
Subject: RE: Bee Street Lofts - Update

Neal,

I've been telling you for 3 years that Stuart and John have no intention doing good for us. They have insulted me beyond belief. I am feed up with their bullshit. They are total assholes as far as I am concerned and they have fucked up this entire project. We had a chance to make a lot of money if they had listened to me, but they thought they were so smart that they fucked up our entire profit. I will never deal with them again. I am tired of their arrogant attitude. They have never given us the information on the travel expenses, overhead, etc. Why not? We have asked them for a year for the information.

They are the ones that are non-professional. They never answer my questions with straight answers. The realtors actually tell the truth. I am finished with Stuart and John and don't give a shit if they respond to me or not. They warned me not to talk to the sales agents because they didn't want me to know the real story about what's going on. We had a chance to make $30 Million profit, and now we will be lucky to break even. If you want to believe their bullshit then go ahead. I've had it with them and am not going to stand for their arrogant attitude any more. I will not respond to them. My attorney's and accountants will handle it from here in the courtroom. I do plan to sue them if they don't respond with the entire construction expenses. Just get me away from these guys so I never have to deal with them again. I have never in my life been so insulted by such arrogant assholes.

Tommy

From: Kneeleye@aol.com [mailto:Kneeleye@aol.com]
Sent: Monday, July 07, 2008 5:10 PM
To: tom@morganenergy.net
Cc: stuartfred@bomasada.com; johngilbert@bomasada.com; Pearlprop@aol.com
Subject: Re: Bee Street Lofts - Update

Tommy

I can't tell how disappointed I am in your last non professional e-mails. You have no idea the damage you've done to our relationship and this partnership.There is one thing I'm sure of is that John nor Stuart will not respond to you. You need to be very careful about calling someone a thief. You are opening your self up to a serious lawsuit. I suggest you call your accountant and attorney and they can go to Houston and check the books anyway they want.
I can't address all your issues but I will respond to a few. No one knows what the taxes are. I'm not calling the tax assessors office to find out. They may charge us like they did last year because the electicity is still in our name. Meaning it is not occupied.
If we don't have any sells in a particular week I see no reason to send out anything.
The city of Charleston thinks a TCO and a CO are the same. They said it during arbitration. Two building officials.
Every realtor in Charleston I think would agree 5% down is all you're going to get. People will walk on 5 or 10 pecent. You even told me in Miami they are walking on 20 percent down. You really need to understand Charleston and Miami are two different worlds.
As far as profit no one knows for sure. You know how much we owe. You know what we are asking for the units. Do the math. We've discussed this before. If we get out of debt soon we can raise prices--if we don't we may have to lower them. We don't have a crystal ball. This is very difficult times in real estate and we should be working together not calling the other people liars,thieves and whatever else you said.
Talking about the sign-did the agents happen to mention there is a sign ordiance. I bet they didn't.
Why--because they know everything. IN fact the city will not allow that sign back up for two reasons. The ordiance and it will cover some units where people live. I assumed by know that you knew real estate sells people are full of shit and will tell you anything you want to hear.

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NewsRoom

2/18/14 Miami Herald (Pg. Unavail. Online)
2014 WLNR 4508724

Miami Herald (FL)
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February 18, 2014

Notorious South Florida 'bar girl' now accused of drugging, stealing jewelry from South Beach oil tycoon

David Ovalle

dovalle@MiamiHerald.com

Subhanna Beyah, the notorious "bar girl" accused of drugging and robbing men across South Florida, has been charged again, this time for allegedly pilfering $76,000 in jewelry from a South Beach oil tycoon.

Miami-Dade prosecutors last week charged Beyah, 25, with grand theft. Last year, she was accused of stealing nearly half-a-million dollars worth of jewelry from New York Giants defensive lineman Shaun Rogers, a case that was eventually dropped.

Beyah, known to law enforcement as "Crystal," is now in a Miami-Dade jail awaiting trial on the South Beach case, as well as probation violation hearing stemming from a 2012 grand-theft conviction.

She is facing a similar drug-and-steal case in Broward County.

In the Miami Beach case, the victim is Thomas Morgan , 61, listed by Forbes.com as the founder of **Morgan Energy**, a Colorado oil and gas exploration company. He also made the news in 2011, when he sold his Star Island mansion for $25.5 million.

He told Miami Beach detectives that in February 2013, the woman sidled up to him at the swank Zuma restaurant in downtown Miami.

The two, bound for his posh South Beach condo, hopped in his limo, where she made him a "special drink," according to a police report. He passed out a few minutes after they arrived to the home. When he awoke, he told police, Beyah was gone – as was the jewelry in his safe.

Morgan immediately reported the crime to Miami Beach police, and later identified her as the same thief who had appeared in media coverage of the other robberies. But detectives did not make an arrest until he called yet again – after seeing Beyah profiled in a Miami New Times article last month.

He could not be reached for comment.

EXHIBIT K

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

STATE OF SOUTH CAROLINA)	IN ARBITRATION
)	
COUNTY OF CHARLESTON)	Previously:
)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
)	C/A NO: 2012-CP-10-580
THOMAS H. MORGAN,)	
)	
Plaintiff,)	
)	
v.)	
)	**DEFENDANTS' RULE 12(B)(6) MOTION TO DISMISS**
JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP, II, LLC, A TEXAS LIMITED LIABILITY COMPANY and LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION,)	
)	
Defendants.)	
)	

Pursuant to S.C.R.C.P. 12(b) (6), Defendants herewith move this Panel for an Order of dismissing the instant case. Having attached exhibits to this motion, Defendants understand that the Rule 12(b)(6) motion will be treated as a Rule 56 motion for summary judgment and respectfully request that Summary Judgment be granted in their favor. This motion is supported by evidence submitted herewith.

STANDARD FOR GRANTING A MOTION FOR SUMMARY JUDGMENT

"Summary Judgment is appropriate when it is clear that there is no genuine issue of material fact and the moving parties entitled to judgment as a matter of law." *Toomer v. Norfolk So. Ry. Co.*, 344 S.C. 486, 489, 544 S.E.2d 634, 635 (Ct. App 2001).

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"Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact....Once the party moving for summary judgment meets the initial burden of showing an absence of evidence to support the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings... Rather, the nonmoving party must come forward with specific facts showing there is a genuine issuer for trial... The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Schmidt v. Courtney*, 357 S.C. 310, 592 S.E.2d, 326, 330 (Ct.App. 2003) (cert. den. April 7, 2005) (citations omitted).

FACTS

On March 4, 2005, Thomas H. Morgan (**"Morgan"**) signed the "Second Amended and Restated Limited Liability Company Agreement of 150 Bee Street, LLC."

The stated purpose of the "Project" was the development of "the for sale horizontal property regime ... on the real property located near the intersection of Lockwood Drive and Bee Street in Charleston, South Carolina."

Morgan was one of four members of 150 Bee Street, LLC (the **"Company"**), the other three being Neal I. Baker, Edwin S. Pearlstine, Jr., and Bella Vista Partnership.

By early 2007, construction of the 150 Bee Street building was well under way, and Morgan became dissatisfied with the Project. He therefore retained Attorney Joel K. Goldman of the Miami, Florida office of the Greenberg Traurig firm. In a letter dated April 30, 2007, to Mr. Goldman, the Company's attorney John B. Hagerty of Nelson Mullins, discussed Morgan's dissatisfaction with this "difficult" and "challenging" project. See **Exhibit "A"** attached hereto and incorporated herein by reference.

Mr. Goldman responded to Mr. Hagerty by letter dated May 15, 2007, and wrote in part:

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> "If we have any questions or concerns following our receipt of the [requested] reports, we will let you know. My client reserves all of **its [*sic*, "his"] rights under the Operating Agreement, and nothing set forth herein shall be deemed a waiver of the same.**"

See **Exhibit "B"** attached hereto and incorporated herein by reference (emphasis added).

Responding to an emailed status report from John Gilbert of Bella Vista dated July 3, 2008 to the Company's members, Morgan replied to all by email dated Sunday, July 6, 2008, 12:10 AM:

> John,
>
> Please give us a spreadsheet of whether we are going to make money on this project or not. I have been asking you for over six months to give us a projection. I expect an answer within a week. **I'm tired of fucking around with your bullshit reports. Please give us the straight shit not bullshit anymore.**

See **Exhibit "C"** attached hereto and incorporated herein by reference (emphasis added).

Without waiting for the "answer within a week," fifteen minutes later, at 12:35 AM, Sunday, July 6, 2008, Morgan sent the following email to the other Company members:

> I am turning all my correspondences on this project over to my lawyers and accountants. **Stewart** [*sic*. "Stuart"] **you have stolen too much money from us.** There is no way we have spent $450,000 on travel expenses. I am tired of all your theft and bullshit. Don't ever contact me again. **I am going to sue your ass and get our money back.**

See **Exhibit "D"** attached hereto and incorporated herein by reference (emphasis added).

By his email of July 7, 2008, Morgan's brother-in-law and Company member Neal Baker ("**Baker**"), whose private email address was Kneeleye@aol.com, tried to calm Morgan down, writing in part:

> Tommy
>
> I can't tell you how disappointed I am in your last non-professional e-mails. You have no idea the damage you've done to our relationship and this partnership. There is one thing I'm sure of is

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> that John nor Stuart will respond to you. You need to be very careful about calling someone a thief. You are opening yourself up to a serious lawsuit.

See **Exhibit "E"** attached hereto and incorporated herein by reference (emphasis added).

Baker's advice fell on deaf ears, and Morgan responded on July 8, 2008, at 12:03 AM in part:

> **I've been telling you for 3 years** that Stuart and John have no intention of doing good for us....
>
> I am feed [*sic*. "fed"] up with their [Stuart's and John's] bullshit. They are total assholes as far as I am concerned and **they have fucked up this entire project ...**
>
> They have never given us the information on the travel expenses, overhead, etc.
>
> ... If you want to believe their bullshit then go ahead. I've had it with them and am not going to stand for their arrogant attitude any more. I will not respond to them. **My attorney's and accountants will handle it from here in the courtroom. I do plan to sue them if they don't respond with the entire construction expenses.**

See **Exhibit "F"** attached hereto and incorporated herein by reference (emphasis added).

On August 22, 2008, Baker wrote his brother-in-law Morgan that Baker had

> "spent to [*sic*. "too"] many years of my life with this deal to end of in a major lawsuit because this deal is heading down that road. It needs to come to an end now."

See **Exhibit "G"** attached hereto and incorporated herein by reference (emphasis added).

Morgan declined to file his threatened lawsuit, not because he did not feel he had sufficient cause but because he did not want to involve his brother-in-law Baker, one of the Company's managers as well as a member. On August 23, 2008, Morgan replied

> My problem is with Stuart and John. My Mom reviewed all the e-mails that you sent her and highlighted in yellow the most important parts, and she is in complete agreement with me that both Stuart and John are not acting in our best interest. I don't

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

> want to be in business with Stuart or John, and I know they don't want to be in business with me. Also, I'm pretty sure that you and Edwin don't want to be in business with me either on this particular deal because I have been critical of John and Stuart and you both think that they have done a good job. I know my recent e-mails to John and Stuart were not very business-like and did contain foul language, but I have tried to be nice and complement them in the past they still wouldn't give me the information that was required in our partnership agreement.
>
> **The only reason I don't plan to sue John and Stuart is that I don't want to involve you in the middle of all this. So anyway you don't have to worry about ending this deal in a lawsuit in any case.**

See **Exhibit "H"** attached hereto and incorporated herein by reference (emphasis added).

In replying to Morgan on August 25, 2008, Baker noted:

[Y]ou were offered your money in Dec. of 2007 to get out and you declined. There is the same offer today and you have declined so obviously this deal is not terrible.

See **Exhibit "I"** attached hereto and incorporated herein by reference (emphasis added).

Baker died in September 2011, more than three years after these emails and approximately five months prior to Morgan filing the original complaint in January 2012.

Three years and five days before Morgan filed his initial suit on January 26, 2012, Baker addressed his frustration to Morgan and his behavior by Baker's email of January 21, 2009, quoting in part:

> Tommy I wish you had some idea of what is really going on. I don't understand you. Have you totally lost your mind. I don't know what you are thinking about but you are way off base. **Why don't you go ahead and sue everybody because you are so much smarter than the rest of us …** Why didn't you take the project over when Stuart gave you the opportunity to do so….

See **Exhibit "J"** attached hereto and incorporated herein by reference (emphasis added).

As late as July 21, 2015, the Defendants made it clear that they would not enter into any tolling agreement as to the arbitration claims. *See* the email of Tom Morgan's counsel, Douglas

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Pratt-Thomas of July 21, 2015 [**Exhibit "K"** hereto] in which he stated to defense counsel and others: "I realize Henry and his clients do not agree to a tolling agreement as to the arbitration claim…."

Mr. Morgan's individual as well as derivative claims, even if valid, are all subject to South Carolina's 3-year statute of limitations and the discovery rule and are therefore time-barred.

LAW

In South Carolina, an action upon a contract or fraud must be commenced within three (3) years after a person "knew or by exercise of reasonable diligence, should have known that he had a cause of action." *See* S.C. Code Ann. §§ 15-3-530 and 15-3-534 (1976, as amended).

More than three (3) years had elapsed from Morgan's filing of the original complaint in this action on January 26, 2012 and Morgan's above-referenced communications to Mr. Fred and others. This correspondence begins as far back as April, 2007, and any claim Mr. Morgan can now present against the defendants. Morgan was threatening to hire lawyers to file suit not later than July 2008. Further, Morgan referenced in his email of July 8, 2008, Exhibit "F" that he had been complaining for more than three (3) years about many of the items which were the subject of Morgan's original complaint. For example, the email chain cited in the attached exhibits reference alleged improper construction expenses (Exhibit E, July 8, 2008). The thrust of the factual allegations of Morgan's original complaint filed on January 26, 2012 is based on the same allegations. *See, e.g.,* ¶¶ 30, 33, 34, 36 – 60 and 64.

The question arises as to the applicability of the statute of limitations and the "discovery rule" for any cause of action which could now be presented by Morgan against the defendants.

Both South Carolina state courts as well as federal courts sitting in South Carolina interpreting South Carolina law have applied the discovery rule in fraud cases (*Liberty Mutual*

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

[*sic*] *Ins. Co. v. Year Round Pool, Inc.*, 104 F.3d 359 (4th Cir.) 1996) and breach of contract actions (*Dilmar Oil Co. v. Federated Mut. Ins. Co.*, 129 F.3d 116 (4th Cir. 1997)).

In *Bayle v. S.C. Depart. at. Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001), the South Carolina Court of Appeals interpreted the discovery rule as follows:

> According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered.... The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct.... The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. "In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist."...
>
> ...
>
> "... [T]he statute of limitations begins to run when the plaintiff should know that he might have a potential claim against another, not when he develops a full-blown theory of recovery."
>
> ...
>
> [T]he statute of limitation begins to run when a person of common knowledge and experience would be on notice a claim might exist, not when the plaintiff discovers a witness to support or pros he case

Id., 542 S.E.2d at 739-41 (citations omitted).

In *Smith v. Smith*, 291 S.C. 420, 354 S.E.2d 36 (S.C. 1987), the South Carolina Supreme Court held that the statute of limitations begins to run not as late as when "... advice of counsel is sought or a full blown theory of recovery developed. *Id.*, 354 S.E. 2d at 40.[1] Instead, "[t]he exercise of reasonable diligence means simply that an injured parts must act with some promptness where the facts and circumstances of the injury would put a person of common

[1] Interestingly, Morgan had retained counsel in April 2007, Exhibits A and B, and was specifically threatening litigation in July 2008, Exhibits D and F, all long before filing the original complaint in January 2012.

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

knowledge on notice that some right of his has been invaded or that some claim against another party might exist." *Id.* The court held that consultation with an attorney indicates that a claimant has discovered or reasonably ought to have discovered a potential claim. *Id.*

In South Carolina, constructive knowledge alone is sufficient to start the statute of limitations running. *See Burgess v. American Cancer Soc.*, 300 S.C. 182, 386 S.E.2d 798 (Ct. App. 1989), where the court stated:

> In applying the discovery rule, inquiry is focused upon whether the complaining party acquired knowledge of any existing facts "sufficient to put said party on inquiry which, if developed, will disclose the alleged [cause of action)". . . A party cannot escape the application of this rule by claiming ignorance of existing facts and circumstances, because the law also provides that if such facts and circumstances *could have been known* to the party through the exercise of ordinary care and reasonable diligence, the same result follows. … Thus, either actual or constructive knowledge of facts or circumstances, indicative of ... [an existing cause of action], trigger a duty on the part of the aggrieved party to exercise reasonable diligence in investigating and, ultimately, in pursuing a claim arising therefrom....
>
> [T]he statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.

Id., 386 S.E.2d at 799-800 (citations omitted) (emphasis in original).

In applying the discovery rule, the South Carolina Supreme Court has defined what is meant by "the exercise of reasonable diligence" as follows:

> The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and *not when advice of counsel is sought or a full-blown theory of recovery developed.*[2]
>
> ...

[2] *See* note 1 above.

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

> The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity *of another alleged wrongdoer*. If, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run *for all claims based on that injury*.

Wiggins v Edwards, 314 S.C. 126, 442 S.E.2d 169 at 170 (S.C. 1994) (emphasis added).

There is no dispute that Mr. Morgan believed he had been injured by the Defendants in July, 2008, and likely well before that, when he retained counsel in early 2007. Nothing prevented Mr. Morgan from full access to discovery, including all Company documents. He was clearly engaging his "lawyers and accountant." for that purpose.

In these circumstances, and in accordance with the law of South Carolina governing the discovery rule as it relates to the statute of limitations, it is immaterial whether Morgan claims he did not know the exact nature of the wrongs or extent of the damages allegedly caused him by the Defendants back in July, 2008. The statutory period of limitations of three (3) years began to run because Morgan could or should have known, through the exercise of reasonable diligence that causes of action "might exist" in his favor, rather than when a full-blown theory of recovery was developed by him. Because Morgan believed he had been injured no later than July, 2008, the statute of limitations for claims arising therefrom began to run at that time.

In the words of the Fourth Circuit in *Roe v. Doe*, 28 F.3d 404 (4th Cir. 1994): "... South Carolina's statute of limitations begins to run when the facts and circumstances would alert an injured person of common knowledge and experience that she might have a cause of action, not that she certainly has one.... Plainly, *it takes very little to start the clock*." *Id.*, 28 F. 3rd at 407 (emphasis added) (citation omitted).

CONCLUSION

For the reasons stated above, this Court should dismiss all of Mr. Morgan's individual as well as derivative claims against the Defendants.

Respectfully submitted,

s/Henry E. Grimball

Henry E. Grimball, S.C. Bar No. 2313
Morris A. Ellison, S.C. Bar No. 1881
5 Exchange Street (29401)
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

ATTORNEY FOR DEFENDANTS

April 3rd, 2019
Charleston, South Carolina

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

Nelson
Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
151 Meeting Street / Sixth Floor / Charleston, SC 29401-2239
Tel: 843.853.5300 Fax: 843.720.4356
www.nelsonmullins.com

John B. Hagerty
Tel: 843.720.4308
Fax: 843.720.4356
john.hagerty@nelsonmullins.com

April 30, 2007

Joel Goldman
1221 Brickell Avenue, 21st Floor
Miami, Florida 33131-3224

RE: 150 Bee Street, LLC/Real Estate
Our File No.: 16022/09000

Dear Mr. Goldman:

Please be advised that this firm represents 150 Bee Street, LLC ("Company").

I am in receipt of various email correspondence between Stuart Fred and Tommy Morgan regarding the suggestions and direction of the project by Mr. Morgan and his request to deal through you

As counsel for the Company, we have been very involved from the beginning in not only tougher than usual zoning and BAR approval issues, but also in working on the various contracts, the master deed and ongoing purchaser contract issues. Obviously, I am concerned when there are any issues that may affect the Project. The purpose of this letter is to try to be of help to all Members and the Project.

As I understand it, there are at least a couple of points being raised in Mr. Morgan's e-mails related to the Company's Second Amended and Restated Limited Liability Company Agreement ("Agreement"). Section 6.01 speaks primarily about the duties and responsibilities of the Managing Members. The Managing Members are Stuart L. Fred (as a representative of Bella Vista Partnership) and Neal I. Baker. Generally speaking, all of the responsibilities for running this project have been vested in these Managing Members as indicated by Section 6.02. Section 6.01 also requires the Managing Members to prepare a budget for the project and distribute to the Members monthly financial reports of the Project's performance in relation to the budget. This same paragraph also goes on to clearly indicate that the Managing Member shall be responsible for all sales and marketing efforts regarding the Project. (See attached language) I have been told that at present time there are no operating budgets as the project is still under construction. I understand that Mr. Morgan has always promptly been provided any and all information he has requested. Further, I am informed that Mr. Fred takes issue with Mr. Morgan's accusations that phone calls are not returned and complaints continue

EXHIBIT A

weeks go by after information has been requested and sent. I have confirmed this fact with Mr. Baker and Mr. John Gilbert to verify Mr. Fred's position.

I also saw some reference in the correspondence to a buy/sell offer according to the Agreement. There is not a buy/sell arrangement in the Agreement; however, Section 11 of the Agreement talks about the restrictions on transfers and assignments of interest. As you may know, this is a closely held investment and any transfer will require the consent of the Members. I am informed that based upon Mr. Morgan's position in his e mails and his stated abilities to complete this difficult project, Mr. Fred and Mr. Gilbert will agree to entertain Mr. Morgan s offer under Section 11 of the Agreement. However, any assignment of his interest by a Member must be acceptable to the other Members, in this case, Mr. Baker and Mr. Edwin Pearlstine. It is my understanding that Mr. Baker and Mr. Pearlstine will be unlikely to approve this action. Mr. Fred and Mr. Gilbert have been the driving forces in this project relating to everything from design and construction to marketing and financing.

I understand that Mr. Fred has requested that Mr. Morgan not contact his organization or any parties associated with the Project and that all communications filter through your office and then to me

Please let me know if I can provide any information or otherwise be of help to you in this matter. I have enjoyed working with all of the Members in this challenging project. Obviously, my hope is that we will not have an issue among the Members and that we can remain focused on a successful project.

Very truly yours,

John B. Hagerty

JBH:rdm

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

Greenberg Traurig

Joel K. Goldman
Tel (305) 579-0828
Fax (305) 579-0717
goldmanj@gtlaw.com

May 15, 2007

Via: Facsimile (843) 720-4308
John B. Hagerty, Esq.
Nelson Mullins Riley & Scarborough LLP
151 Meeting Street, Sixth Floor
Charleston, SC 29401-2239

Re: 150 Bee Street, LLC

Dear Mr. Hagerty:

I am in receipt of your letter dated April 30, 2007 and the Operating Agreement and Development Agreement which you were kind enough to forward to my attention. I have had the opportunity to discuss the matters set forth in your letter with my client, and we have determined that it would not be productive to respond to the specific issues raised in your letter at this time. Instead, we have the following requests:

1. Section 6.01 of the Operating Agreement includes the following language:

"The Managing Members shall track the Project's performance against the Budget and shall distribute to the **Members** monthly financial reports of the Project's performance in relation to the Budget."

My client has advised me that he has not been receiving these monthly financial reports. Please arrange for the prior reports to be provided as soon as possible, and we otherwise assume that the reports will be provided monthly on a going forward basis.

2. My client has advised me that he has been receiving weekly sales and marketing reports as promised by Mr. Gilbert. We trust that these reports will continue to be circulated to my client on a going forward basis.

If we have any questions or concerns following our receipt of the reports, we will let you know. My client reserves all of its rights under the Operating Agreement, and nothing set forth herein shall be deemed a waiver of the same.

EXHIBIT B

We appreciate your assistance and cooperation with respect to the delivery of the foregoing reports, and we look forward to the successful completion of this project.

Sincerely,

Joel K. Goldman

cc: Thomas H. Morgan

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

John Gilbert

From: John Gilbert [johngilbert@bomasada.com]
Sent: Sunday, July 06, 2008 5:31 PM
To: john.hagerty@nelsonmullins.com
Cc: Stuart Fred; Kneeleye@aol.com
Subject: FW: Bee Street Lofts - Update

John:

I am forwarding you this email that I received from Tom Morgan this morning. I will be sending you another of Tom's emails after this one. As you can see, Tom has become somewhat irrational. From this point forward, neither Stuart nor I will communicate with him. Please call me Monday morning to discuss further. Thanks.

John

From: Tom Morgan [mailto:tom@morganenergy.net]
Sent: Sunday, July 06, 2008 12:10 AM
To: 'John Gilbert'; 'Edwin Pearlstine'; 'Neal Baker'; 'Stuart Fred'
Subject: RE: Bee Street Lofts - Update

John,

Please give us a spreadsheet of whether we are going to make money on this project or not. I have been asking you for over six months to give us a projection. I expect an answer within a week. I'm tired of fucking around with your bullshit reports. Please give us the straight shit not bullshit anymore.

Tom

From: John Gilbert [mailto:johngilbert@bomasada.com]
Sent: Thursday, July 03, 2008 5:05 PM
To: 'Edwin Pearlstine'; 'John Gilbert'; 'Neal Baker'; 'Stuart Fred'; 'Tom Morgan'
Subject: Bee Street Lofts - Update

BOMASADA GROUP

Gentlemen:

It's been a while since my last update, but I wanted to inform you about the current status of Bee Street Lofts. We have sold 66 units to date and are scheduled to close Unit 416 within a week. The current loan balance is approximately $12 million dollars. Jeremy Newsom approved our request to keep the proceeds from a recent sale to cover interest payments and other operating costs. We will be using the proceeds from the Unit 416 closing which will be approximately $400,000.

EXHIBIT C

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

John Gilbert

From: Tom Morgan [tom@morganenergy.net]
Sent: Sunday, July 06, 2008 12:35 AM
To: John Gilbert; 'Edwin Pearlstine'; 'Neal Baker'; Stuart Fred
Subject: RE: Bee Street Lofts - Update

I am turning all my correspondence on this project over to my lawyers and accountants.
Stewart you have stolen too much money from us. There is no way we have spent $450,000 on travel expenses. I am tired of all your theft and bullshit. Don't' ever contact me again. I am going to sue your ass and get our money back.

From: John Gilbert [mailto:johngilbert@bomasada.com]
Sent: Thursday, July 03, 2008 5:05 PM
To: 'Edwin Pearlstine'; 'John Gilbert'; 'Neal Baker'; 'Stuart Fred'; 'Tom Morgan'
Subject: Bee Street Lofts - Update

BOMASADA GROUP

Gentlemen:

It's been a while since my last update, but I wanted to inform you about the current status of Bee Street Lofts. We have sold 66 units to date and are scheduled to close Unit 416 within a week. The current loan balance is approximately $12 million dollars. Jeremy Newsom approved our request to keep the proceeds from a recent sale to cover interest payments and other operating costs. We will be using the proceeds from the Unit 416 closing which will be approximately $400,000.

The traffic at the property has been very good recently, probably due to the price reduction we just implemented. The staff has had several favorable tours lately and are expeecting a few contracts to be produced. We are gearing up our marketing for the second half of the year and will continue to concentrate on the MUSC market as that is where the bulk of our sales has come from. We are also going to do some amrketing in Kiawah island as we have seen an increase in Kiawah owners looking for second homes on the peninsula.

In addition, we recently had our arbitration cases heard for Robert Swartz (Unit 502) and James Swartz (Unit 301). As incredible as it sounds, we lost the James Swartz case and won the Robert Swartz case. Both cases were almost identical (CO vs TCO issue) We actually came out a little ahead as we had to return James Swartz his earnest money plus about 9 months interest. Each party paid there respective legal fees; however, we get to keep Robert Swartz's earnest money plus two years of interest and he has to pay all legal costs and arbitration costs. Unfortunately, this is the state of our legal system as we had one good arbitrator who ruled by the law and another that ruled on emotion. These are prime units and have been placed back on the market. The arbitration with Kit Thrash's five unclosed units is scheduled for July 29th. I will be in Charleston and feel very good about our chances; however, you never know what may happen.

Should you have any questions, please do not hesitate to call. Best wishes for a wonderful 4th of July weekend.

EXHIBIT D

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Should you have any questions, please do not hesitate to call. Best wishes for a wonderful 4th of July weekend.

John

John L. Gilbert
Sr. Vice Preseint
BOMASADA GROUP, INC.
8980 Lakes at 610 Drive, Suite 200
Houston, Texas 77054
O: 713-668-6886
F: 713-668-6880
M: 713-927-8600
email: johngilbert@bomasada.com
www.bomasada.com

No virus found in this incoming message.
Checked by AVG.
Version: 8.0.134 / Virus Database: 270.4.4/1532 - Release Date: 7/3/2008 8:32 AM

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

John Gilbert

From: Kneeleye@aol.com
`ent: Monday, July 07, 2008 4:10 PM
o: tom@morganenergy.net
Cc: Stuart Fred; John Gilbert; Pearlprop@aol.com
Subject: Re: Bee Street Lofts - Update

Tommy

I can't tell how disappointed I am in your last non professional e-mails. You have no idea the damage you've done to our relationship and this partnership.There is one thing I'm sure of is that John nor Stuart will not respond to you. You need to be very careful about calling someone a thief. You are opening your self up to a serious lawsuit. I suggest you call your accountant and attorney and they can go to Houston and check the books anyway they want.
I can't address all your issues but I will respond to a few. No one knows what the taxes are. I'm not calling the tax assessors office to find out. They may charge us like they did last year because the electicity is still in our name. Meaning it is not occupied.
If we don't have any sells in a particular week I see no reason to send out anything.
The city of Charleston thinks a TCO and a CO are the same. They said it during arbitration. Two building officials.
Every realtor in Charleston I think would agree 5% down is all you're going to get. People will walk on 5 or 10 pecent. You even told me in Miami they are walking on 20 percent down. You really need to understand Charleston and Miami are two different worlds.
As far as profit no one knows for sure. You know how much we owe. You know what we are asking for the units. Do the math. We've discussed this before. If we get out of debt soon we can raise prices--if we don't we may have to lower them. We don't have a crystal ball. This is very difficult times in real estate and we should be working together not calling the other people liars,thieves and whatever else you said.
Talking about the sign-did the agents happen to mention there is a sign ordiance. I bet they didn't.
Why--because they know everything. IN fact the city will not allow that sign back up for two reasons. The ordiance and it will cover some units where people live. I assumed by know that you knew real estate sells people are full of shit and will ell you anything you want to hear.
One other thing you can thank John and Stuart for Amergy not calling our loan and letting us use sells proceeds to fund the interest so we don't have to come out of pocket. You can be sure they WILL NEVER help us again in view of this last outbust.
I've been trying to get others lenders to come in with some interested but it is very DIFFICULT right now..

Neal

Gas prices getting you down? Search AOL Autos for fuel-efficient used cars.

EXHIBIT E

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

John Gilbert

From: Tom Morgan [tom@morganenergy.net]
`ent: Tuesday, July 08, 2008 12:03 AM
.o: Kneeleye@aol.com
Subject: RE: Bee Street Lofts - Update

Neal,

I've been telling you for 3 years that Stuart and John have no intention doing good for us. They have insulted me beyond belief. I am feed up with their bullshit. They are total assholes as far as I am concerned and they have fucked up this entire project. We had a chance to make a lot of money if they had listened to me, but they thought they were so smart that they fucked up our entire profit. I will never deal with them again. I am tired of their arrogant attitude. They have never given us the information on the travel expenses, overhead, etc. Why not? We have asked them for a year for the information.

They are the ones that are non-professional. They never answer my questions with straight answers. The realtors actually tell the truth. I am finished with Stuart and John and don't give a shit if they respond to me or not. They warned me not to talk to the sales agents because they didn't want me to know the real story about what's going on. We had a chance to make $30 Million profit, and now we will be lucky to break even. If you want to believe their bullshit then go ahead. I've had it with them and am not going to stand for their arrogant attitude any more. I will not respond to them. My attorney's and accountants will handle it from here in the courtroom. I do plan to sue them if they don't respond with the entire construction expenses. Just get me away from these guys so I never have to deal with them again. I have never in my life been so insulted by such arrogant assholes.

Tommy

From: Kneeleye@aol.com [mailto:Kneeleye@aol.com]
Sent: Monday, July 07, 2008 5:10 PM
To: tom@morganenergy.net
Cc: stuartfred@bomasada.com; johngilbert@bomasada.com; Pearlprop@aol.com
Subject: Re: Bee Street Lofts - Update

Tommy

I can't tell how disappointed I am in your last non professional e-mails. You have no idea the damage you've done to our relationship and this partnership.There is one thing I'm sure of is that John nor Stuart will not respond to you. You need to be very careful about calling someone a thief. You are opening your self up to a serious lawsuit. I suggest you call your accountant and attorney and they can go to Houston and check the books anyway they want.
I can't address all your issues but I will respond to a few. No one knows what the taxes are. I'm not calling the tax assessors office to find out. They may charge us like they did last year because the electicity is still in our name. Meaning it is not occupied.
If we don't have any sells in a particular week I see no reason to send out anything.
The city of Charleston thinks a TCO and a CO are the same. They said it during arbitration. Two building officials.
Every realtor in Charleston I think would agree 5% down is all you're going to get. People will walk on 5 or 10 pecent. You even told me in Miami they are walking on 20 percent down. You really need to understand Charleston and Miami are two different worlds.
As far as profit no one knows for sure. You know how much we owe. You know what we are asking for the units. Do the math. We've discussed this before. If we get out of debt soon we can raise prices--if we don't we may have to lower them. We don't have a crystal ball. This is very difficult times in real estate and we should be working together not calling the other people liars,thieves and whatever else you said.
Talking about the sign-did the agents happen to mention there is a sign ordiance. I bet they didn't.
Why--because they know everything. IN fact the city will not allow that sign back up for two reasons. The ordiance and it will cover some units where people live. I assumed by know that you knew real estate sells people are full of shit and will tell you anything you want to hear.

EXHIBIT F

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

John Gilbert

From: Kneeleye@aol.com
Sent: Friday, August 22, 2008 2:51 PM
To: tom@morganenergy.net
Cc: John Gilbert; Stuart Fred; EPearlstin@aol.com
Subject: (no subject)

Tommy

I'm sending this e-mail because i'm not pissed off at you but i am worried about your mental health. Last week when you called and told me Rebecca was selling a project next to us and you were concerned that a broker told you that which is totally false and I asked you please don't talk about what our partnership is doing because Chas.is like Payton Place and rumors get started quickly here. I know in Miami they do things another way but not here. I got a very disturbing call today that you have been talking to a mortgage lender about buying several units. The brokers name is Matt Hensley and he's been calling the office at Bee St. asking about a questionnaire for his client by the name of Tom Morgan who is going to take several of these units. I asked you before PLEASE don't discuss this with anyone. This is partnership business and i don't want the agents to know anything until i know if it can be done. Now i have agents that are worried about what we are doing and they won't be able to sell because we are going to split the units up. I thought you understood this is going to hurt all the partners if the word got out. Well the word is out and i still don't know if we can do this or not. Why don't you get out of the deal and maybe Stuart can get the bank to release you from the liability and get your money back from them that is there. I have spent to many years of my life with this deal to end of in a major lawsuit because this deal is heading down that road. It needs to come to an end now.
If you want out I will ask Stuart to talk to the bank. I am shocked that you don't understand what is going on in the real estate market and if you were handling the deal we could make $30,000,000.00. This needs to be over with now and if the bank will release you and you get your money back i would hope you would do that.
I will be more than happy to discuss this with you but we are not on the same page on this deal.

Neal

It's only a deal if it's where *you* want to go. Find your travel deal **here**.

EXHIBIT G

-----Original Message-----
From: Tom Morgan <tom@morganenergy.net>
To: Kneeleye <Kneeleye@aol.com>
Sent: Sat, Aug 23, 2008 2:47 am
Subject: RE: (no subject)

Neal,

First of all let me say that you have been like a brother to me for over 20 years. You and I have done many deals together of which I have found and worked on some and you have found and worked on others. We have made a lot of money together and never had one dispute in all those years. We have lost money on some and you never complained. I remember how bad I felt about that dry hole in Louisiana that I got you into. I am glad that we are finally going to make a lot of money on Cat Creek that could be our retirement fund for us and our kids. Also within the last few weeks we are getting more information about the Morgan Marathon and Morgan United acreage. Anadarko and some other companies are discovering deeper zones that are producing in big quantities near our acreage. Rosewood is drilling their first well right now on our Rock House acreage and plans to use the new completion technique that has been so successful for Anadarko. So those partnerships could be very big. Also the Charleston shopping center has been such an amazing deal and I thank you so much for including me in that. I know it will continue to get better and better.

To address the issue at hand, I had to talk to that mortgage broker because I wanted to find out about current jumbo mortgage rates in Charleston, but I never mentioned anything about our partnership. I just told the mortgage broker that we had an incredible building and that I might be interested in buying about 6 units for my personal investment so that I could rent them out and hold on to them for a long period of time, and I asked him what rate he could get me on an investor mortgage with 30% down payment. No mention was made of any of the other partners' business. Furthermore when he called me back and quoted a rate of 8% for a 30 year mortgage, I told him I was not interested. If the sales staff thinks that something is going on, I can easily have the mortgage broker call the staff and he will tell them that he was mistaken and that no sale to Tom Morgan is going to happen.

Let me clear, I don't have any problem with anything that you have done on this project and I appreciate all of your hard work and you going up against the city and the BAR. You have worked extremely hard and had a lot of stress and deserve a medal dealing with the city of Charleston.

My problem is with Stuart and John. My Mom reviewed all of the e-mails that you sent her and highlighted in yellow the most important parts, and she is in complete agreement with me that both Stuart and John are not acting in our best interest. I don't want to be in business with Stuart or John, and I know they don't want to be in business with me. Also, I'm pretty sure that you and Edwin don't want to be in business with me either on this particular deal because I have been critical of John and Stuart and you both think that they have done a good job. I know my recent e-mails to John and Stuart were not very business-like and did contain foul language, but I have tried to be nice and complement them in the past and they still wouldn't give me the information that was required in our partnership agreement. You had to do the same thing with Beazer and are suing Beazer now on our Concrete Products parcel. You feel that you are right on that deal, and feel that I am

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

EXHIBIT H

right on this deal. The only reason I don't plan to sue John and Stuart is that I don't want to involve you in the middle of all of this. So anyway you don't have to worry about ending this deal in a lawsuit in any case.

I think your idea of distributing individual condos to each partner is a good one. I don't know why this won't work. But if that's not possible, then the fairest way to dissolve the partnership would be to put a standard buy-sell clause into our partnership agreement. We can then dissolve the partnership easily and go our own ways.

Also I was able to secure a line of credit today to pay off in cash my share of the $12 million construction loan when it comes due in March, so I really don't need to get my money back from Amegy; so if we can't come to a dissolution agreement I'll just stay in the deal until all the units are sold.

Please let me know as soon as possible if you and the other partners are willing to put the buy-sell clause in the partnership agreement and I truly believe this will solve all of our problems. In this manner you and the other partners can get me out of this partnership if you want to, and won't have to deal with my complaints and bitching.

By the way, don't worry about my mental health. I always get this pissed off and write nasty notes to people like John and Stuart if I feel like they are taking advantage of me. You should see my correspondence with the subcontractors at Star Island and you'll think the e-mails to Stuart were love letters.

Tommy

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

John Gilbert

From: Neal Baker <kneeleye@aol.com>
Sent: Friday, December 30, 2011 11:24 PM
To: Stuart Fred
Subject: Fwd: (no subject)

-----Original Message-----
From: Kneeleye <Kneeleye@aol.com>
To: tom <tom@morganenergy.net>
Sent: Mon, Aug 25, 2008 8:17 pm
Subject: (no subject)

Tommy

I'm going to try and make this short.
We are talking about two issues. One I consider you a brother and we have done ok over the last twenty something years, but i can separate family and business. As family i would do almost anything for you. I've had disagreements with partners before and i just speak my mind and that's it.
On the issue of the mortgage broker he absolutely made it clear that you were going to buy 8 units. So i have a hard time believing that you ask for just a rate.
Miss Betty told me that this deal(Bee Street) has put you in a financial bind. I told her you were offered your money in Dec. of 2007 to get out and you declined.
There is the same offer today and you have declined so obviously this deal is not terrible.
You talk about buyouts. I'm confused because i kept telling that we should sell the post office in Miami because of market conditions. The carry cost and the possibility of the tax laws changing we didn't need to be pigs. What was wrong with 10 million on a 4 million dollar deal. You blamed it on Scott--where is the buyout on that deal?
Tommy believe me you are not a DEVELOPER. you are in the oil and gas business and you buy finished real estate. There is a huge difference. I will do oil and gas with you and buy real estate but i would not develop with you because you would go flat as broke.
Anyway i'm working on the breakdown to separate the units. There are more on the8th floor so i'm trying to break them out where it's fair for all of us and get the balance from the bank so we will only need to borrow enough to get out of debt and when the other units sell that will be cash for us.

Neal

It's only a deal if it's where *you* want to go. Find your travel deal **here**.

EXHIBIT I

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

John Gilbert

From: Kneeleye@aol.com
Sent: Wednesday, January 21, 2009 4:07 PM
To: dumarsjulia@yahoo.com
Cc: tom@morganenergy.net; leslie@morganenergy.net; John Gilbert; Stuart Fred
Subject: Re: Fw: RE: Bee Street

Julia

I'm copying Tommy and Leslie.
Tommy I wish you had some idea of what is really going on. I don't understand you. Have you totally lost your mind. I don't know what you are thinking about but you are way off base. Why don't you go ahead and sue everybody because you are so much smarter than the rest of us. Why didn't you take the project over when Stuart gave you the opportunity to do so because the way you'll do it in Miami is so much better than anywhere else in the world. I am tired of all this bullshit. I will get this deal with Amergy and get the units sold if at all possible and we can go on our separate ways.
It's seems as though you have a history of suing so why don't you go ahead and sue us so you can prove your point. The amazing thing is that we hopefully will still make money even with all the shit you have caused. The agents consistently complained about you bothering them. There was always a structure and method to go thru so there won't be 10 chiefs and no indians.
I don't know what happened to you but you should go seek help.

Neal

In a message dated 1/21/2009 3:14:52 P.M. Eastern Standard Time, dumarsjulia@yahoo.com writes:

-- On **Wed, 1/21/09, Leslie Berry** <*leslie@morganenergy.net*> wrote:
From: Leslie Berry <leslie@morganenergy.net>
Subject: RE: Bee Street
To: dumarsjulia@yahoo.com
Cc: "'Tom Morgan'" <tom@morganenergy.net>
Date: Wednesday, January 21, 2009, 2:33 PM

Julia,

This is Tom's response:

Tom understands that Neal has put a lot of time in on this project without compensation and feels that Neal should be adequately compensated for his time. However, Neal's compensation should not come from Tom, but from Bomasada directly.

Bomasada was paid a very large construction management fee and also fees for its employees plus unusually large travel expense reimbursements. Bomasada was paid to do all of the work that Neal is now doing. Neal's "sweat equity" should be paid directly by Bomasada out of their construction management fees.

Tom and Neal had an agreement that Tom was to get half of whatever Neal got paid on the development fee.

Please send the check for $70,695 directly to Bomasada as part of Tom's capital call.

Thanks for your help.

EXHIBIT J

ELECTRONICALLY FILED - 2021 Mar 30 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

From: Douglas Pratt-Thomas <dpt@p-tw.com>
Sent: Tuesday, July 21, 2015 5:40 PM
To: Ryan Neville; Grimball, Henry; Tom Gressette; 'Tiller, John'; Ellison, Morris; abower@hsblawfirm.com
Cc: John A. Massalon
Subject: RE: 150 Bee Street's Amended Answer, Cross-Claims, and Third-Party Claims

Ryan,

I was under the impression proposal 3 in your 6/24/15 email addressed a recommended tolling agreement only in the construction case as to any potential indemnification claims which could be asserted by 150 Bee St. LLC against BIG and BIG II pertinent to the construction suit allegations. I realize Henry and his clients do not agree to a tolling agreement as to the arbitration claim, but I thought you wanted a consensus as to how to handle pleadings in the construction case. In any event, I previously responded on behalf of Tom Morgan his agreement to a tolling agreement in the construction lawsuit as to any potential indemnification claims against BIG and BIG II, and don't think such a tolling agreement as to potential indemnification claims would jeopardize the chance of settling 150 Bee Street out of the construction case.

With warmest regards,

Douglas

E. Douglas Pratt-Thomas
Pratt-Thomas Walker PA
16 Charlotte St.
Charleston, S.C. 29407
PO Drawer 22247
Charleston, S.C. 29413-2247
Direct Dial: 843-727-2212
Fax: 843-727-2239
Email: dpt@p-tw.com

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EXHIBIT K

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

that hearing about what we want to do with the amendment so it would be helpful to have direction before then

Based on certificates of occupancy we have, looks like the statute of response expires on 8-27.

John A. Massalon, Esquire
Wills Massalon & Allen, LLC
97 Broad Street
Charleston, South Carolina 29401

Direct: (843) 793-6039
Office: (843) 727-1144
Fax: (843) 727-7696
email: jmassalon@wmalawfirm.net
Web: www.wmalawfirm.net

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From: Douglas Pratt-Thomas [mailto:dpt@p-tw.com]
Sent: Friday, July 31, 2015 5:01 PM
To: John Hagerty; Shelia Pace; John Gilbert; Stuart Fred; Thomas Morgan (tom@morganenergy.net); paullynch@mvalaw.com; Edwin S. Pearlstine (Pearlprop@aol.com); abower@hsblawfirm.com
Cc: Ellison, Morris; Grimball, Henry; John A. Massalon; Tom Gressette
Subject: RE: 150 Bee Street-2014 Tax Returns

John,

I have spoken with Tom Morgan and he agrees with your recommendation as to a meeting of the members and is available on August 11th. We will need a call-in number for those members and their representatives who cannot be physically present. It is my understanding that a decision needs to be made about the LLC asserting indemnification claims against BIG and BIG II in the construction lawsuit. John Massalon has advised that the statute of limitations is approaching to assert that claim if it is going to be asserted, and John recommended a tolling agreementas an alternative; however, it is my understanding that Bella Vista will not consent to a tolling agreement as to these potential indemnification claims. If I am reading your email correctly, decisions for legal action, other than those in the ordinary course of business, requires a majority vote of the eligible voting members of the LLC. John Massalon has been copied with this email and we would appreciate his informing us as to what he feels in the date in August by which any such claim must be filed so any required meeting of the members to vote on that issue can be scheduled in sufficient time for John Massalon to get the indemnification claim filed, if that is the decision of a majority of the voting members. Can such a decision be made by a resolution or similar document signed by a majority of the voting members or must such a vote take place at a formal meeting of the members? I ask in case there are scheduling issues as to a meeting prior to whatever deadline is recommended by John Massalon.

With warmest regards,

Douglas

EXHIBIT L

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

suggest you have another lender lined up as Amegy Bank will want to be paid off if John and I are no longer involved in the project.

Let me be crystal clear that once we begin the process of you taking control of the LLC and development, you will become personally responsible for any mismanagement and costs associated with the ownership change. We will use reasonable efforts to assist you in a smooth transition. In addition, we will require you to place the above-mentioned 90% profit in an interest bearing escrow account to our benefit. This will ensure your attentiveness in expediting this process so as the project will not stagnate effecting Neal and Edwin while you are gearing up your development, construction and marketing team.

In closing, I now consider you a hostile partner and will be taking all necessary actions afforded me as the managing member of the LLC to protect the LLC until this transfer has taken effect. I will leave it up to you to officially notify Neal and Edwin of your position

STUART
FRED
BOMASADA GROUP INC. SUITE 200
8980 LAKES AT 610 DRIVE
HOUSTON
TEXAS 77054
OFFICE 713 668 6886
FAX 713 668 6880
STUARTFRED@BOMASADA.COM
BOMASADA1@AOL.COM
WWW.BOMASADA.COM

Stuart,

As I have thought about your e-mail again, I am astounded at your pompous attitude. As I said in my previous e-mail, I am happy to stay in the project with you, and am pleased with your work. But your remark that I don't understand real estate is insulting. I am an astute real estate investor and have made millions of dollars for myself and my partners over the past 30 years on many projects. I have never lost one dollar on any real estate deal I have ever done. I am not an experienced large project construction person; however, I have marketed my own properties for the past 30 years and have extracted the maximum dollars out of each one.

Just to set the record clear, I would make the same proposal to you as you have to me. I will be glad to take the project over at this time and give you or any of the partners their money back. I

EXHIBIT M

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

feel fully confident that I could finish the project myself, and also do a much better job of marketing the units than you have done. So please let me know if you wish to get out and I will take the project over myself and give you your money back. If you don't want me as a partner, I am happy take over your position and get you out of this project.

I don't really appreciate you and John's confrontational attitude, and rude remarks about my real estate ability when I am just trying to make a very good suggestion. By the way, when I am signed personally on a large loan, I am not considered a passive investor. You have provided me with very little reporting requirements as required in the agreement, and when I ask a question to John I don't get answers for weeks, so my only choice to ask the sales team, who I'm sure you told not to return my calls. Never in my life have I been treated so rudely by you and John as a partner in an investment.

Please change your attitude if you want my cooperation. I would also like to see all of your invoices for travel expenses. I don't understand why there is $750,000 in travel expenses for this project.

Tom

-----Original Message-----
From: stuartfred@bomasada.com [mailto:stuartfred@bomasada.com]
Sent: Wednesday, April 25, 2007 5:45 PM
To: Tom Morgan
Cc: 'John Gilbert'; 'Edwin Pearlstine'; 'Neal Baker'; 'Stuart Fred'
Subject: RE: Bee Street Lofts - Weekly Update

tommy i just got both your and neals email...i

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

John Gilbert

From: stuartfred@bomasada.com
Sent: Friday, April 27, 2007 8:18 AM
To: John Gilbert
Cc: KNEELEYE@AOL.COM
Subject: [Fwd: RE: Bee Street Lofts - Weekly Update]

tommy's comments

--

STUART FRED
BOMASADA GROUP INC. SUITE 200
8980 LAKES AT 610 DRIVE
HOUSTON TEXAS 77054
OFFICE 713 668 6886
FAX 713 668 6880
STUARTFRED@BOMASADA.COM
BOMASADA1@AOL.COM
WWW.BOMASADA.COM

---------- Original Message ----------
Subject: RE: Bee Street Lofts - Weekly Update
From: "Tom Morgan" <tom@morganenergy.net>
Date: Fri, April 27, 2007 12:29 am
To: stuartfred@bomasada.com

Stuart,

Please address all your comments to my lawyer from this point forward. I will no longer communicate with you or your staff. You have no right under the operating agreement to make the demands in your previous e-mails. I suggest you review the operating agreement.

I asked a very reasonable question about the marketing of the unsold units, which you could have replied with a civil answer: that you don't agree with my suggestion. I only asked for your and the other partner's opinion.
Instead you started this whole argument with your extremely rude and pompous comment:

"frankly you should not be in this deal....you dont understand real estate like you do oil and gas...thats where your time and money should be positioned....leave the real estate to others who do it daily and either be a passive investor or respectively get out"

Rather than make such a rude comment, you should provide your partners with the monthly information that is required under the operating agreement Article 6.01, which I have never received from you; or answer my questions in a business like manner. I am sick of you and John's know it all attitudes. Please do not contact me again. From now on you can deal through my lawyer:

Mr. Joel Goldman

EXHIBIT N

BOMASADA 1065

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

1221 Brickell Avenue, 21st Floor
Miami, Florida 33131-3224
Phone: (305) 579-0828
Email: goldmanj@gtlaw.com

Please send any demands directly to him, as I will not be communicating with you any further.

Sincerely,

Thomas H. Morgan

-----Original Message-----
From: stuartfred@bomasada.com [mailto:stuartfred@bomasada.com]
Sent: Thursday, April 26, 2007 11:20 PM
To: Tom Morgan
Subject: RE: Bee Street Lofts - Weekly Update

Tommy you must be in another world. I suggest you re-read the emails you sent to us. How you can now say im being rediculous is absurd. Let me quote just one of your comments " I feel fully confident that I could finish the project myself, and also do a much better job of marketing the units than you have done". Thats pretty clear as to the entire project not just what position you convientantly want to assume. I am not spending any more of my time bantering with you. My attitude and the way i deal with you will not change. You have crossed the line with your continued false accusations and repeated rediculous comments. As an example the $750,000 dollar travel expense which you suggest is improper is the developer fee which you participated in. I take personnel offense to your accusation.
nd frankly John and i do not want to be a partner with anyone who questions our integrity. We have significantly more on the line than you do as its our bank, its our reputation, its our experience that got this project off the ground. I suggest you respond to my deadline as indicated in my previous email. If you fail to do so i will consider your non response as an acceptance of my terms and will proceed with the notifications. Please notify Neal and Edwin of your intentions as i will do so myself if you have not by friday at the expiration of the deadline.

--

STUART FRED
BOMASADA GROUP INC. SUITE 200
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STUARTFRED@BOMASADA.COM
BOMASADA1@AOL.COM
WWW.BOMASADA.COM

Stuart,

You are being ridicules.

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Greenberg Traurig

Joel K. Goldman
Tel. (305) 579-0828
Fax (305) 579-0717
goldmanj@gtlaw.com

May 15, 2007

Via: Facsimile (843) 720-4308
John B. Hagerty, Esq.
Nelson Mullins Riley & Scarborough LLP
151 Meeting Street, Sixth Floor
Charleston, SC 29401-2239

Re: 150 Bee Street, LLC

Dear Mr. Hagerty:

I am in receipt of your letter dated April 30, 2007 and the Operating Agreement and Development Agreement which you were kind enough to forward to my attention. I have had the opportunity to discuss the matters set forth in your letter with my client, and we have determined that it would not be productive to respond to the specific issues raised in your letter at this time. Instead, we have the following requests:

1. Section 6.01 of the Operating Agreement includes the following language:

"The Managing Members shall track the Project's performance against the Budget and shall distribute to the **Members** monthly financial reports of the Project's performance in relation to the Budget."

My client has advised me that he has not been receiving these monthly financial reports. Please arrange for the prior reports to be provided as soon as possible, and we otherwise assume that the reports will be provided monthly on a going forward basis.

2. My client has advised me that he has been receiving weekly sales and marketing reports as promised by Mr. Gilbert. We trust that these reports will continue to be circulated to my client on a going forward basis.

If we have any questions or concerns following our receipt of the reports, we will let you know. My client reserves all of its rights under the Operating Agreement, and nothing set forth herein shall be deemed a waiver of the same.

We appreciate your assistance and cooperation with respect to the delivery of the foregoing reports, and we look forward to the successful completion of this project.

Sincerely,

Joel K. Goldman

cc: Thomas H. Morgan

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

Grimball, Henry

From: Chris Staubes <Cstaubes@CLAWSONANDSTAUBES.COM>
Sent: Wednesday, November 16, 2011 12:17 PM
To: Grimball, Henry
Cc: Barrett Brewer; Christy Fargnoli; GP Diminich; Thomas Morgan
Subject: 2011-182 150 Bee Street, LLC

Henry,

Tom is checking his calendar, but here our concerns:

1) Can we find a solution to wrap up the project? a) owner finance sale (Howard has discussed this with both Tom and Stuart)? b) distribute the assets? c) mediation?

2) Does 150 Bee Street, LLC have any construction records? Are we honestly to believe that all construction records are in the name of Bomasada Investment Group II, LLC (BIGII) only?

3) Is BIGII willing to share with the 150 Bee Street, LLC members what money flowed to them as a result of this project so the 150 Bee Street, LLC members can confirm that the amount was in line with the agreement?

4) Is Bomasada willing to share with the 150 Bee Street, LLC members what money flowed to them as a result of this projects so the 150 Bee Street, LLC members can confirm that the amount was in line with the agreement? Stuart said "PLAINLY ALL COST ARE PASSED THROUGH TO THE OWNERSHIP AT COST.....BOMASADA DOES NOT AND WILL NOT PROFIT OTHER THAN THE 1% FEE." We just want confirmation of this.

5) Signature card for bank accounts. Is this for all accounts, or just a new account?

6) What is the real story on the arrangement with the Tennessee real estate company?

7) Are your folks willing to agree to stay any statute of limitations defense claim to allow us time to mediate/meet? This will give us some comfort in holding off on filing the suit.

Chris

CLAWSON AND STAUBES LLC

Chris B. Staubes
Licensed in SC & NC
SC Certified Circuit Court Mediator

126 Seven Farms Drive, Suite 200 | Charleston SC | 29492-8144
Phone: 843 577 2026 | Fax: 843 722 2867| Mobile: 843 224 2413

Website: www.clawsonandstaubes.com | **Email:** cstaubes@clawsonandstaubes.com | **Location:** Map

EXHIBIT P

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Grimball, Henry

From: Chris Staubes <Cstaubes@CLAWSONANDSTAUBES.COM>
Sent: Tuesday, November 29, 2011 12:22 PM
To: Thomas Morgan; Grimball, Henry
Cc: Angela Fralish; GP Diminich
Subject: 150 Bee Street, LLC
Attachments: Consent Tolling Agreement.pdf

Henry,

Talk to your clients, and let me know your proposal for how we can arrange a dissolution? Some thoughts are:

1) we split the units up based on percentage (maybe we can use the appraisals to support the division);
2) toll the Statute of Limitations (tolling agreement attached);
3) we don't give up any claims;
4) have Carolina One agree to release the units so Tom and the Estate can market and sell them as they see fit.

This communication for settlement purposes only. Thanks.

Chris

CLAWSON AND STAUBES LLC

Chris B. Staubes
Licensed in SC & NC
SC Certified Circuit Court Mediator

126 Seven Farms Drive, Suite 200 | Charleston SC | 29492-8144
Phone: 843 577 2026 | Fax: 843 722 2867| Mobile: 843 224 2413

Website: www.clawsonandstaubes.com | **Email:** cstaubes@clawsonandstaubes.com | **Location:** Map

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EXHIBIT Q

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Grimball, Henry

From: Chris Staubes <Cstaubes@CLAWSONANDSTAUBES.COM>
Sent: Tuesday, December 13, 2011 10:01 AM
To: Grimball, Henry
Subject: Re: Tom Morgan and Bomasada

I will put together the greater clarification letter when I get out of court.

Thanks.

Chris

Chris Staubes, Esquire
Clawson & Staubes, LLC
126 Seven Farms Dr, suite 200
Charleston, SC 29492
(843) 577-2026
cstaubes@clawsonandstaubes.com
-----Original Message-----
From: "Grimball, Henry" <HGrimball@wcsr.com>
To: Chris Staubes <Cstaubes@CLAWSONANDSTAUBES.COM>
Cc: Sheryl Beczynski <SBeczynski@wcsr.com>

Sent: 12/13/2011 9:57:45 AM
Subject: RE: Tom Morgan and Bomasada

I have it, and thank you. I hope to get a letter to you later today. Stuart wants greater clarification and more detail of the various complaints in your letter to me of late last week.

From: Chris Staubes [mailto:Cstaubes@CLAWSONANDSTAUBES.COM]
Sent: Monday, December 12, 2011 1:29 PM
To: Grimball, Henry
Subject: Re: Tom Morgan and Bomasada

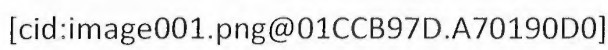
Henry,

Attached is the signed tolling agreement. Tom asked that I put January 16, 2012 as the expiration date, but we can discuss an extension if we are making progress.

Thanks.

EXHIBIT R

Chris


Chris B. Staubes
Licensed in SC & NC
SC Certified Circuit Court Mediator

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ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C/A NO.: 2011-CP-10-
COUNTY OF CHARLESTON)	
)	
THOMAS H. MORGAN,)	
)	
PLAINTIFF(S),)	
)	
v.)	CONSENT AGREEMENT TO
)	TOLL STATUTE OF LIMITATIONS
JOHN L. GILBERT, STUART L. FRED,)	
150 BEE STREET, LLC,)	
BELLA VISTA PARTNERSHIP, A)	
TEXAS GENERAL PARTNERSHIP,)	
BOMASADA GROUP, INC., A TEXAS)	
CORPORATION, BOMASADA)	
INVESTMENT GROUP II, LLC, A)	
TEXAS LIMITED LIABILITY COMPANY)	
and LAURALIS MANAGEMENT, INC.,)	
A TEXAS CORPORATION.)	
)	
DEFENDANT(S))	
)	

This Consent Tolling Agreement ("this Agreement") is made effective as of the 7th day of December, 2011 (the "Effective Date") by and between Thomas Morgan (the "Claimant") and John Gilbert, Stuart Fred, Bella Vista Partnership, a Texas Partnership, Bomasada Group, Inc., a Texas Corporation, Bomasada Investment Group II, LLC, a Texas Limited Liability Company and Lauralis Management, Inc., a Texas Corporation (collectively referred to as "Respondents"). The Claimant and Respondents are collectively referred to as the "Parties."

WHEREAS, the Parties deem it to be in their mutual benefit and interest that Claimant's alleged Claims against Respondents not be asserted in litigation at the present time;

EXHIBIT S

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

WHEREAS, the Parties desire to encourage resolution and/or such further review of Claimant's Claims as may result in no lawsuit or claim being filed and, in any case, wish to avoid the expense and uncertainty of litigation of the Claims if at all possible, and are willing to make the stipulations, covenants, and agreements hereinafter set forth in order to defer and postpone the commencement of litigation;

WHEREAS, the Parties desire that for the period of this Agreement, they should be able to consider issues relating to the possibility of settling disputes without regard to the time constraints that exist because of any future expiration of any applicable statute of limitations;

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, including, but not limited to, the temporary forbearance of claims as described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

1. As used in this Agreement, the following terms shall have the following meanings:

   (a) "Claims" shall mean any and all claims and/or causes of action, if any, known or unknown, that any of the Parties may have against each other in connection with 150 Bee Street, LLC.

   (b) "Tolling Period" shall mean the period from and including the Effective Date of this Agreement until and including the Expiration Date (as defined below) of this Agreement.

   (c) "Expiration Date" shall mean the earlier of January 16, 2012, or

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

30 days from the date that written notice of termination of this Agreement has been served by either of the Parties on the other in accordance with Paragraph 9 of this Agreement.

(d) "Timing Defenses" shall mean and include, and shall be limited to, any affirmative defenses to Claimant's claims that Respondents may have to the extent based upon (1) any statute of limitations, (2) laches, and/or (3) any failure of the Parties to institute or commence litigation or other legal proceedings within some specified period, before a specified date, or before the happening of a specified event.

2. The Claimant and Respondents stipulate, covenant, and agree that Timing Defenses applicable to the Claims shall be tolled during the Tolling Period.

3. The Claimant and Respondents stipulate, covenant, and agree that this Agreement shall have no effect on any Timing Defenses that may be available to the Parties prior to the Effective Date, and that all time periods prior to the Effective Date and after the Expiration Date (and prior to the filing of any lawsuit or other legal proceeding) shall be included in the calculation of and running of any applicable Timing Defenses. Nothing contained herein shall preclude the Parties from asserting any Timing Defenses to the extent that such defenses already exist as of the Effective Date, and nothing herein shall be deemed to revive any claims barred as of the Effective Date.

4. The Claimant and Respondents stipulate, covenant, and agree that the Parties, by executing and entering into this Agreement, are not waiving or otherwise impairing by estoppel or any other means the Parties' rights and

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

abilities to raise any Timing Defenses available to them for the periods prior to the Effective Date and after the Expiration Date (and prior to the filing of any lawsuit or other legal proceeding).

5. The Parties agree to forebear filing a petition or complaint or otherwise initiating a lawsuit or other legal proceeding against one another until on or after the last day of the Tolling Period that is not a Saturday, Sunday, or legal holiday.

6. The provisions of this Agreement comprise all of the terms, conditions, and representations of the Parties regarding the tolling of the Timing Defenses. This Agreement may not be altered or amended except by written agreement executed by both the Claimant and Respondents.

7. It is understood that no provision of this Agreement shall be construed against any party hereto by reason of either party having drafted or prepared this Agreement.

8. This Agreement shall terminate on the Expiration Date as provided in paragraph 1(c) above, unless extended in writing by the parties to be bound.

9. Either the Claimant or the Respondents may terminate this Agreement, effective 30 days after the date of serving a written notice of termination, by serving notice of termination by letter to the other party. Such notice letter shall be served by certified mail, return receipt requested, to the attorney(s) representing the party(s) being served.

10. On or after the Expiration Date of this Agreement, the Parties shall have the right to file and pursue any and all Claims and to seek any and all legal

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

remedies that may be available, and the Parties shall be entitled to assert any Timing Defenses or other defenses, if any, subject to the terms of this Agreement.

11. Nothing in this Agreement shall be construed as an admission or denial by any of the Parties as to the merits of any of the Claims or defenses.

12. Neither Claimant nor Respondents nor any of their agents, witnesses, or attorneys will mention or allude to this Agreement, its terms, its execution, or the existence of any Tolling Period in any way, directly or indirectly, before a jury or any factfinder in any proceeding for any purpose. The terms of this paragraph will survive termination of this Agreement.

13. Claimant represents and warrants that the attorney signing this Agreement on his behalf has the authority to sign on his behalf and to agree to the terms and conditions of this Agreement. Respondents represent and warrant that the attorney signing this Agreement on their behalf has the authority to sign on their behalf and to agree to the terms and conditions of this Agreement.

I AGREE:

Thomas Morgan

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

WE AGREE TO THIS TOLLING AGREEMENT:

December 7, 2011

John Gilbert, as counsel

Stuart Fred, as counsel

BELLA VISTA PARTNERSHIP, A TEXAS PARTNERSHIP:

By:_____, Authorized Representative

BOMASADA GROUP, INC., A TEXAS CORPORATION:

By:_____, Authorized Representative

BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LLC:

By:_____, Authorized Representative

Lauralis Management, Inc., a Texas Corporation:

By:_____, Authorized Representative

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON THOMAS H. MORGAN Plaintiff, v. JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, Defendants.	IN ARBITRATION IN THE COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580 **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' RULE 12(b)(1), SCRCP, MOTION TO DISMISS**

INTRODUCTION

Defendants have moved to dismiss this arbitration under Rule 12(b)(1), SCRCP, on the basis that the arbitration panel has no jurisdiction to decide it. The Defendants argue that the Plaintiff, in his original complaint filed in January 2012, prior to the case being referred to arbitration, did not name the company, 150 Bee Street, LLC (the "Company"), as a party and that deprives this panel of jurisdiction to decide this matter. Further, the Plaintiff did not follow the provisions of the Second Amended and Restated Operating Agreement ("Operating Agreement") governing the Members of the Company in not "filing" a mediation and in not obtaining a vote of the majority of the Members approving the filing of this lawsuit, thereby also depriving this panel of jurisdiction.

The Defendants' arguments are incorrect in both instances. This panel has jurisdiction by order of Judge Hughston dated July 9, 2012, to which the Defendants consented. The Plaintiff complied fully with the requirements of the South Carolina Uniform Limited Liability Company Act

in bringing this action, which does not mention the inclusion of the Company as necessary to providing subject matter jurisdiction to the court to decide a derivative action involving a limited liability company. Nevertheless, the former panel chair, Dawes Cook, granted a motion to amend the complaint and the First Amended Complaint did (and this Second Amended Complaint does) include 150 Bee Street, LLC, and that inclusion relates back to the filing of the original complaint.

Further, the record is clear that Plaintiff Morgan, through his counsel, sought to mediate and arbitrate this dispute as the Operating Agreement provided and those overtures were rejected by the Defendants, through their counsel. As for obtaining majority consent of the Members, it was apparent that no majority would support bringing the case, and it was futile to continue to pursue a vote of the members when no voting member, but Morgan, would vote for it. And, given that it was necessary to file the suit and obtain a temporary restraining order to prevent funds from being removed by one of the Managing Members, Stuart Fred, from the Company's account, it was in the ordinary course of business of the Company to safeguard and preserve its assets, so no vote of the Members was required under the Operating Agreement.

This arbitration panel has subject matter jurisdiction to decide this case, and the motion to dismiss should be denied.

STANDARD OF REVIEW

Defendants have filed a Rule 12(b)(1), SCRCP motion to dismiss for lack of subject matter jurisdiction. A question of subject matter jurisdiction is a question of law for the court. *Lake v. Reeder Constr. Co.,* 330 S.C. 242, 247, 498 S.E.2d 650, 653 (Ct. App. 1998).

FACTS

This arbitration was initiated by a consent order approved by all parties, entered by Judge Thomas L. Hughston, Jr. on July 9, 2012. **Exhibit 39, exhibit 1**. That order provided, among other things:

- "1. All claims, both compulsory and non-compulsory, specifically including all claims, counter-claims, and/or third-party claims, related to the underlying facts, transactions, and/or occurrences that are the subject matter of the pleadings and claims asserted in this case, shall be decided by binding arbitration that shall be conducted in accordance with the terms of this Order and otherwise pursuant to the Federal Arbitration Act and all of the parties submit themselves to the jurisdiction of this court and arbitration panel. All parties shall assert all claims they may have against one another arising out of this matter, including, without limitation, any claims for breach of the arbitration agreement by the other party by the filing of the instant action.
- 8. This arbitration shall follow the South Carolina Rules of Civil Procedure where practical and to the extent not inconsistent herewith.
- 9. The arbitrator(s) shall apply the substantive law that the arbitrator(s) determine(s) to be applicable to the issues in the dispute."

In a letter sent to counsel for the Defendants on September 26, 2011, Morgan complained about the misconduct of the Defendants, demanded that the Defendants correct the wrongs identified in the letter, and proposed a remedy in the form of a settlement payment to Morgan. This letter identified the alleged wrongdoers, described the factual basis of the wrongful acts and the harm caused to the LLC and to Morgan, and requested remedial relief. **Exhibit 39, exhibit 2**.

On November 8, 2011, the Defendants, through counsel, responded, denying that Defendants had engaged in "fraud, gross mismanagement and use of company funds to reimburse themselves for personal vacations on their private jet, safaris, work on their personal home and jet hangers, as well as self-dealing in a position of fiduciary responsibility." **Exhibit 39, exhibit 3**.

On or about November 14, 2011, Morgan tendered a demand letter "individually and/or derivatively for 150 Bee Street, LLC" pursuant to and in compliance with S.C. Code Ann. § 33-44-1101 and the Operating Agreement, on the Defendants to engage in mediation and arbitration or adjudication in court, for various causes of action, including but not limited to breach of fiduciary duties, civil conspiracy, conversion, breach of contract, declaratory judgment, accounting and unfair trade practices act violations. The demand asked the Defendants to consent to those actions and to toll the statute of limitations. **Exhibit 39, exhibit 4**.

The Defendants did not respond to that demand letter or consent to the actions demanded in it.

On November 16, 2011, Morgan tendered a demand pursuant to S.C. Code Ann. § 33-44-1101 and the Operating Agreement, that Fred, as Co-Managing Member of the LLC, consent to and commence a derivative lawsuit on behalf of the Company against various Defendants for various causes of action, including but not limited to arbitration, breach of fiduciary duty, civil conspiracy, conversion, breach of contract, declaratory judgment, accounting and unfair trade practices act violations, and provided a deadline of November 25, 2011 to consent to this action or for Plaintiff Morgan to be deemed to be entitled to bring a derivative action on behalf of 150 Bee Street, LLC. **Exhibit 39, exhibit 5**.

On November 16, 2011, the Defendants' counsel responded to a request by Morgan to meet to resolve Morgan's complaints stating in part:

> I am unwilling to pass your letter on or set up a conference in light of the letter I received from G.P. Diminich as I was speaking with you this morning. Are you people nuts?? Do you really think my clients will come to a good faith conference having received that letter? He needs to withdraw the letter and notify me to that effect. . . .

On November 28, 2011, Morgan, tendered an additional demand, pursuant to S.C. Code Ann. § 33-44-1101 and the Operating Agreement, reiterating the same demands stated in the earlier November 16, 2011 letter and demanding that Fred, as a Managing Member of the LLC, consent to and commence a derivative lawsuit on behalf of the LLC against the Defendants and arrange a vote of the members of the LLC on whether to consent to said lawsuit; and giving a second deadline of December 2, 2011 for Fred to respond to the demands and arrange for a vote of the members of the LLC or be deemed to have refused to consent and commence such a suit under S.C. Code Ann. § 33-44-1101. **Exhibit 39, exhibit 6**.

On November 30, 2011, Fred's counsel explicitly declined Morgan's demands stated in the letter of November 28, 2011, referenced above, and warned that:

> As I understand your letter of November 28 and your client's demand pursuant to S.C. Code Ann. Section 33-44-1101, Mr. Morgan wants Stuart Fred to commence an action against himself, as well as others. . .. You are now on notice that should your client commence a court suit as described in your letter, my clients will move to stay any such action and will seek damages from your client in the ensuing mediation/arbitration for breach of the Agreement. (Emphasis added.)

Morgan repeatedly asked Company Member Edwin Pearlstine to join with him to form a majority vote to take actions to authorize a derivative lawsuit. For example, on October 7, 2011, Morgan made a request of Mr. Pearlstine's representative, Shelia Pace, President and CFO, Pearlstine Family Companies, LLC, as a key senior official and agent of Pearlstine, that Mr. Pearlstine join Morgan to create a majority vote to remedy the complaints of Morgan. **Exhibit 40.** Despite this, Pearlstine did not agree, though Morgan continued to try to persuade him to do so until the filing of the complaint in January 2012. **See, Exhibits 41, 42**.

The Defendants, therefore, received numerous demands from Morgan to bring this derivative action, but refused to do so, refused to mediate, or arbitrate this dispute, and refused even to call a meeting of the members of the LLC so they could vote on whether to authorize such an action.

Section 14.11 of the Operating Agreement states in part that "[t]he Managing Members may in their discretion convene a meeting for any purpose, and the Managing Members **shall call a meeting of the Members** upon the **written** request of Members owning at least 51% of the Interests owned by all Members." (Emphasis added.) **Exhibit 1.** Morgan demanded that Bella Vista, through Fred and Gilbert, and Pearlstine vote with Morgan to authorize remedies to Morgan's complaints, mediation and arbitration and a derivative lawsuit for the LLC, and to convene a meeting of the Members to consider those actions, but both Bella Vista (Fred and Gilbert), and Pearlstine refused. Without the written consent of either one or both Bella Vista or Pearlstine, who together controlled over 51% of the LLC, it was not possible to convene a meeting to vote to initiate a derivative lawsuit.

On January 26, 2012, Morgan initiated this action by filing a summons and verified complaint, demanding an arbitration of the matters in dispute, and seeking a temporary restraining order based on the imminent threat to the Company that Managing Member Fred had sole control and access of the Company bank account, though Morgan was also a Managing Member, and would likely divert the proceeds of an upcoming condominium unit closing and distribute it to himself or other Bomasada entities to the detriment of the Company and the other Members. **Exhibits 43, 44**. The Circuit Court entered a Temporary Restraining Order and set a hearing for a Preliminary Injunction. **Exhibit 45**. After a hearing on February 8, 2012, the Circuit Court granted a Preliminary Injunction, finding that the Plaintiff had a likelihood of success on the merits and that the Company would suffer irreparable harm if the order was not granted, and requiring the agreement of both Co-Managing Members, Fred, and Morgan, to any action relating to the disbursement of any asset or taking any other action relating to the business of the Company. **Exhibit 46**. The Court also denied the Defendants' Motion to Dismiss and ruled the arbitration provision of the Second Operating Agreement was not enforceable. **Exhibit 47**.

Nevertheless, by agreement of all the parties, on July 9, Judge Hughston referred this matter to arbitration by order and the consent of all parties. **Exhibit 39, exhibit 1**.

ARGUMENT

1. **The consent order initiating the arbitration established exclusive and binding subject matter jurisdiction in the panel for all matters raised by the pleadings in this matter.**

This arbitration panel has subject matter jurisdiction to decide this matter, as it was given that jurisdiction by order of the Circuit Court, which itself had subject matter jurisdiction over this matter.

Subject matter jurisdiction is the "power to hear and determine cases of the general class to which the proceedings in question belong." *Coon v. Coon,* 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005); *Mr. T v. Ms. T,* 378 S.C. 127, 133, 662 S.E.2d 413, 416 (Ct. App. 2008). "Subject matter jurisdiction is met

if the case is brought in the court which has the authority and power to determine the type of action at issue." *Washington v. Whitaker,* 317 S.C. 108, 115, 451 S.E.2d 894, 898 (1994).

There is only one circuit court in South Carolina, and it has uniform subject matter jurisdiction throughout the State. *Dove v. Gold Kist,* 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994); *see also* S.C. Const. art. V, § 1. The circuit court has subject matter jurisdiction over civil and criminal actions. *Id.*

The first paragraph of the Order of July 9, 2012, states:

> **All claims**, both compulsory and non-compulsory, specifically including all claims, counter-claims, and/or third-party claims, **related to the underlying facts, transactions, and/or occurrences that are the subject matter of the pleadings and claims asserted in this case, shall be decided by binding arbitration** that shall be conducted in accordance with the terms of this Order and otherwise pursuant to the Federal Arbitration Act **and all of the parties submit themselves to the jurisdiction of this court and arbitration panel**. (Emphasis added).

There is nothing ambiguous about the language: "all parties submit themselves to the jurisdiction of this court and arbitration panel." The Defendants submitted themselves to the subject matter jurisdiction of the Circuit Court and this arbitration panel. They cannot raise a motion to dismiss for lack of subject matter jurisdiction at this point now. The motion should be denied without going further.

2. **The Plaintiff initiated this derivative action in accordance with the SC Uniform Limited Liability Act and the SC Rules of Civil Procedure.**

Addressing the remaining arguments of the Defendants, the Plaintiff Morgan satisfied the requirements of South Carolina's limited liability statute and the Rules of Civil Procedure.

The South Carolina Uniform Limited Liability Company Act of 1996 provides the following related to derivative actions:

> Right of Action.
>
> A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to do so have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to

succeed.

S.C. Code Ann. § 33-44-1101 (LexisNexis, Lexis Advance through 2022 Regular Session Act No. 148, not including changes and corrections made by the Code Commissioner).

Proper Plaintiff.

In a derivative action for a limited liability company, the plaintiff must be a member of the company when the action is commenced; and
(1) must have been a member at the time of the transaction of which the plaintiff complains; or
(2) the plaintiff's status as a member must have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

S.C. Code Ann. § 33-44-1102 (LexisNexis, Lexis Advance through 2022 Regular Session Act No. 148, not including changes and corrections made by the Code Commissioner).

Pleading.

In a derivative action for a limited liability company, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a member or manager or the reasons for not making the effort.

S.C. Code Ann. § 33-44-1103 (LexisNexis, Lexis Advance through 2022 Regular Session Act No. 148, not including changes and corrections made by the Code Commissioner).

The Plaintiff, Morgan satisfied each of these provisions. The Members and Managers refused to bring the action though Morgan requested it several times, and had the Members or Managers met to consider it, which they refused to do, it is highly likely based on the correspondence and the subsequent actions of the Defendants in responding to the pleadings of the Plaintiff that they would not have agreed. S.C. Code Ann. § 33-44-1101. Morgan was a Managing Member of the Company and had been a Member since the formation of the Company. S.C. Code Ann. § 33-44-1102. The complaint that was filed on January 26, 2012, sets forth Morgan's efforts to secure initiation of the action by the Members in paragraphs 10-14.

Morgan also satisfied the provisions of Rule 23, SCRCP which states:

(1) Derivative Actions by Shareholders

> In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort.

Rule 23, SCRCP.

Morgan's complaint was verified and contained the provisions called for both by this rule and by the statute as stated above.

3. **The Company was added as a nominal defendant in the First Amended Complaint, allowed by order of the Panel Chair, and the addition of that party related back to the original filing of the complaint.**

Notably, there is no mention of naming the limited liability company in a derivative action as an indispensable party in either the Act cited above or in Rule 23, SCRCP. Nor was the undersigned able to find any reported South Carolina decisions stating that the limited liability company is an indispensable party in any derivative action without which the court would have no subject matter jurisdiction to decide the case. In fact, all the case decisions cited by the Defendants are from jurisdictions other than this one.

There is a South Carolina decision that does allude to this requirement relating to corporations generally, though not to limited liability companies specifically. In a 1991 decision that predates the adoption of the Uniform Limited Liability Corporation Act in this state, our Supreme Court stated:

> Under former S. C. Code Ann. § 15-5-40 (1976), it was required that parties united in interest be joined as plaintiffs or defendants. A party whose consent could not be obtained could be named as a defendant. This Court never construed § 15-5-40 in the context of a shareholder derivative suit and it has now been superseded by the South Carolina Rules of Civil Procedure. Rule 23(b), SCRCP, governing derivative suits makes no mention of the need to name the corporation as a party defendant. Other jurisdictions have held that a shareholder derivative suit must be dismissed if the corporation is not named as a party defendant where the corporation is not defunct. *See, e.g.*, *Wagner v. Bisco*, 190 Ga. 474, 9 S.E.2d

> 650 (1940). The reasoning for such a rule is that the court must have all interested parties before it to fix their respective rights. Further, because a stockholder has no power to bind the corporation, the corporation must be named as a defendant if it has not brought the action in its own right. *Id.* While we decline at this time to adopt such a requirement, we hold a corporate defendant may be named in a shareholder's derivative suit as a party defendant even where no wrongdoing by the corporate entity is alleged. (emphasis added).

Hotz v. Minyard, 304 S.C. 225, 231, 403 S.E.2d 634, 637-38 (1991).

Nevertheless, Morgan filed a Motion to Amend the complaint under Rule 15, SCRCP, which was granted by Panel Chair Dawes Cooke. The First Amended Complaint, **Exhibit 48**, added 150 Bee Street, LLC as a nominal defendant. That amendment and inclusion of the Company relates back to the filing of the original complaint and resolves any pleading issue relating to the inclusion of indispensable parties, if any such issue exists under South Carolina law, which it does not appear to do.

Defendants' Motion and Memorandum fail to account for the application of SCRCP Rules 15(c) and 17(a). Those rules allow relation-back of amendments to address pleading defects. Defendants ignore the relation-back effect of the amendment. That relation-back effect is important.

South Carolina's Rules of Civil Procedure expressly allow complaints to be amended within a reasonable time after an objection has been lodged to bring into the suit a real party in interest. "No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest." SCRCP 17(a). "In a derivative action in this state the stockholder is the nominal plaintiff, and the corporation is the real party in interest." *Ward v. Atlas Const. Co.*, 276 S.C. 346, 347, 278 S.E.2d 621, 622 (1981). Section 17(a) is thus directly applicable to this case.

Rule 17(a)'s operation was explained in *Thomas v. Grayson*, 318 S.C. 82, 87–89, 456 S.E.2d 377, 380–81 (1995):

> The Reporter's Note to Rule 17(a), SCRCP states the rule is intended to prevent forfeiture in those cases in which the determination of the proper party to sue is difficult or when there has been an honest mistake. Rule 17(a) has changed the result when the amended pleading merely amplifies the old cause of action, provided that the defending party was originally placed on notice of the events involved. The real party in interest is no longer precluded from being named plaintiff, after the statute of limitations has run on a claim timely filed by one who lacked capacity to sue because he was not the real party in interest. *Davis v. Piper Aircraft Corp.*, 615 F.2d 606 (4th Cir. 1980), cert. denied, 448 U.S. 911, 101 S.Ct. 25, 65 L.Ed.2d 1141 (1980). Instead, a reasonable time must be allowed after objection for ratification of commencement of the action and it has the same effect as if the action had been commenced in the name of the real party in interest. We find that the current Rule 17(a) changes existing State law where the action was brought within the applicable limitations and the real party in interest joined and ratified the action shortly thereafter in accordance with the requirements of Rule 17(a). (Emphasis added).

South Carolina's two "relation-back" provisions, Rule 15(c) and Rule 17(a), were designed to prevent dismissals based on technical pleading errors to promote lawsuits being decided on their true facts. "The purpose of 'Rule 15 is to provide maximum opportunity for each claim to be decided on its merits rather than on procedural technicalities.'" *Slayton v. American Express Co.*, 460 F.3d 215, 228 (2d Cir. 2006) (internal quotation marks omitted) (quoting *Siegel v. Converters Transp., Inc.*, 714 F.2d 213, 216 (2d Cir. 1983)).

Thomas v. Grayson, 318 S.C. 82, 456 S.E.2d 377 (1995), is a South Carolina case that explains the relation-back policies underlying Rules 15(c) and 17(a). In *Thomas*, the court refused to find the plaintiff's case was time-barred because she was not a duly qualified personal representative in South Carolina, though she became one after the statute of limitations ran. In ruling, the court made it clear beyond any doubt that the precise reason for a relation-back provision in the civil pleading rules is to promote the *continuation of claims that would otherwise be time time-barred.* Specifically, in addition to the above-quoted discussion about section 17(a)'s availability to allow continuance of cases, the court in *Thomas* said this about the liberality accorded relation-back of amendments in this state:

> The purpose of Rule 15(c) is to salvage causes of action otherwise barred by the statute of limitations. *See Hiers by Hiers v. Mullens*, 310 S.C. 63, 425 S.E.2d 57 (Ct. App.1992). The test to be used in determining whether or not an amendment should be allowed to relate back under Rule 15(c) to the date of the original pleading to avoid the statute of limitations, is found in the language of the Rule; specifically, whether the claim or defense

> asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth in the original pleading.
>
> Rule 15(c) is based on the concept that once litigation involving particular conduct or a given transaction or occurrence has been instituted, the parties are not entitled to the protection of the statute of limitations against the later assertion by amendment of defenses or claims that arise out of the same conduct, transaction, or occurrence as set forth in the original pleading. Wright & Miller, Federal Practice and Procedure § 1496 (1990). In *Davis v. Piper Aircraft Corp.*, 615 F.2d 606 (4th Cir.1980), cert. denied, 448 U.S. 911, 101 S.Ct. 25, 65 L.Ed.2d 1141 (1980) the issue of a subsequently appointed foreign representative was addressed. The court in Davis found that Rule 15(c) authorized the relation back of the foreign representative's qualification to the commencement of the wrongful death action. A number of courts have applied Rule 15(c) to allow relation back of amendments in wrongful death actions where the personal representative was not properly appointed. See *Davis, supra*; *Slaughter v. Southern Talc Co.*, 949 F.2d 167 (5th Cir.1991); *Santana v. Holiday Inns, Inc.,* 686 F.2d 736 (9th Cir.1982); *Burcl v. North Carolina Baptist Hospital, Inc.*, 306 N.C. 214, 293 S.E.2d 85 (1982).
>
> The subsequent adoption of Rules 15(c) and 17(a), SCRCP allow for the relation back of an amendment to the complaint to assert the qualification in South Carolina of the foreign personal representative in an action which was otherwise timely.
>
> While our older cases answered this question negatively, our present Rules of Civil Procedure 15(c) and 17(a) require that such a pleading now be permitted. The rationale of the older cases was based on the idea that a change in plaintiff's capacity to sue was tantamount to bringing a new cause of action. The rule does not defeat the legitimate use of the statute of limitations. It, however, prevents the defendant from defeating the plaintiff's claim on a technicality in the pleading. We find that relation back of an amendment to assert the qualification under South Carolina law can be allowed. (Emphasis added).

Thomas v. Grayson, 318 S.C. 82, 87–89, 456 S.E.2d 377, 380–81 (1995).

The Defendants rely heavily on the unpublished New Jersey Superior Court decision in *Riccuitti & Rubinstein v. McEwan,* 2015 WL 10015196 (Unpublished Opinion, Superior Court of New Jersey, Appellate Division, 2016). *Riccuitti,* which has never been cited as authority by any court in a reported decision, was not decided under South Carolina's liberal pleading rules. SCRCP 15(c) expressly covers "Relation Back of Amendments." It provides: "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading." The original pleadings in this case indisputably attempted to set forth "derivative claims." We know this

because that is what the original, timely-filed complaint says in paragraph 9: "Plaintiff demands arbitration or a trial by jury individually and in a representative capacity as a derivative claim asserted on behalf of 150 Bee Street LLC as permitted by S.C. Code Ann. 33-44-1103 et. seq. and Rule 23b1 of the South Carolina Rules of Civil Procedure and other precedent."

4. **The Plaintiff attempted to mediate and arbitrate the case pursuant to the Operating Agreement and the Defendants rejected that attempt.**

The Defendants argue that Morgan failed to mediate as the Operating Agreement requires, so he is barred from pursuing this arbitration now. When confronted with the response that counsel for Morgan offered to mediate the case in a letter to Defendants counsel, that counsel responds that Morgan was required to mediate, somehow, without the cooperation of the Defendants and failure to do so bars him from proceeding with this action. See **Defendant's Motion to Dismiss, page 16**, ("Morgan did not need the consent of member Bella Vista to initiate mediation."); **Exhibit 2, page 95, line 10- page 96, line 2.**

> A. If I ever noticed mediation, and you refused to mediate, how do you have mediation, if you don't show up?
>
> Q. The question is, did you, pursuant to that paragraph, notice a mediation, saying we're going to it, we're getting a mediator, whether you like it or not, whether you show up or not.

Exhibit 2, page 95, line 21-page 96, line 2.

That is an absurd argument.

Mediation is a facilitated settlement discussion. If one side refuses to negotiate, or even enter the process, the other cannot proceed. It is well settled law that equity will not require the doing of a futile act. *Shupe v. Settle*, 315 S.C. 510, 515, 445 S.E.2d 651, 654 (Ct. App. 1994), citing *Carmichael v. Dan Nance Corp.,* 274 S.C. 357, 264 S.E.2d 601 (1980).

5. **The Plaintiff attempted to obtain approval of the Members to bring the derivative claim and that attempt was rejected; any attempt at a formal vote was futile.**

Likewise, Morgan attempted several times to obtain approval from his Co-Managing Member either to bring a derivative action or to call a meeting of the Members to consider bringing the action. He was rebuffed every time he tried. Despite the Operating Agreement's language, if a Member attempted to follow its provisions and was wrongfully blocked from proceeding, he cannot be said to have violated the Operating Agreement and be barred from proceeding by recalcitrant fellow Members. Again, equity does not require the doing of a futile act.

6. **The Plaintiff as one of three Managing Members was authorized to bring the derivative action and seek a temporary restraining order in the ordinary course of the Company's business to safeguard the Company's assets.**

Finally, as the motion for a temporary restraining order and the Circuit Court's orders granting a Temporary Restraining Order and a Preliminary Injunction state, it was necessary for Morgan to file this action to prevent likely irreparable harm to the Company for which he was one of two Managing Members at the time. As such, under the language of the Operating Agreement, he brought the action in the ordinary course of business of the Company, to safeguard and preserve its assets, which he was empowered to do as Managing Member by the Operating Agreement. **Exhibit 1, Sec. 6.03(h).**

CONCLUSION

This panel has subject matter jurisdiction by order of the Circuit Court instituting this arbitration proceeding. That order was by consent of all parties. Morgan followed the Act and the Rules of Civil Procedure in bringing this derivative action. If including the Company as a nominal party was necessary, which it does not appear it was under South Carolina law, the First Amended Complaint addressed that issue, and that amendment relates back. Morgan made a good faith attempt to comply with the requirements of the Operating Agreement related to disputes and litigation involving the Company. He was rebuffed at every turn by the Defendants and could do no more.

The motion to dismiss should be denied.

Respectfully submitted,

/s/ W. Andrew Gowder, Jr.

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May 31, 2022
Charleston, SC

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON THOMAS H. MORGAN Plaintiff, v. JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, Defendants.	IN ARBITRATION IN THE COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580 **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

The Plaintiff Thomas H. Morgan ("Morgan" or "Plaintiff"), through his undersigned counsel, submits this memorandum in opposition to Defendants' Motion for Summary Judgment.

INTRODUCTION

This case is about a scheme by the Bomasada entities and their principals, Stuart Fred and John Gilbert, to improperly fund their business operations and other personal recreation and living expenses from the operating funds of 150 Bee Street, LLC ("LLC," "Company," or "Owner"),[1] and to surreptitiously siphon over $2,000,000+ in profit from the Project through their captive general contractor, Bomasada Investment Group II ("BIG II") without the knowledge of their partner Members in the Company and hidden from those Members until years into this litigation. The Defendants Fred and Gilbert did this through having themselves and their wholly owned entities

[1] A company that developed, built, and sold a condominium project ("Project') in Charleston South Carolina located at 150 Bee Street.

named as one of two Managing Members of the Owner LLC, the Developer for the Project, and its General Contractor, even though BIG II was unlicensed in South Carolina and required the involvement of an actual licensed general contractor, Hightower Construction, to do the work. Though there was no need for BIG II to serve as general contractor, as Hightower did most of the actual construction, Fred and Gilbert set up BIG II as the general contractor to be able to run the books of the Project beyond the scrutiny of their lender and their LLC partners and ultimately to pay themselves over $1,000,000 in travel expenses, millions more in overhead reimbursements, and over $2,000,000 in "profit" far beyond the $750,000 development fee and 1% cost-plus figure that their contracts with the Company allowed. This was all done with the cooperation of the other Managing Partner, Neal Baker, who may not have known about these overcharges but enjoyed using the company money to fund golf and vacation excursions with his friend, Stuart Fred, all without the knowledge of the other Members, Pearlstine and Morgan.

Though Morgan was increasingly frustrated with the lack of answers to his questions about travel expense line items he did not understand and the slow pace of sales activity in light of a looming real estate collapse he was watching happen in real time in Miami, the actions of Fred and Gilbert in failing to provide monthly reports of actual expenses versus the budget or any meaningful financial reporting hid the true financial activity of the enterprise from the other Members, including Morgan. Further, using BIG II as the general contractor allowed Fred and Gilbert to have a complete separate set of books that the construction lender and the Company Members were never allowed to see that provided for payments of operating expenses unrelated to the Project as well as a $2,000,000+ "profit"' to BIG II, completely "off the books"' of the Company.

Despite all this secrecy and deception, the Defendants now claim that Mr. Morgan should have known that they were overcharging and taking money from the Company through these methods no later than his frustrated and angry emails to them in 2008, and as a result, he should now be barred

from pursuing this case on his own behalf and on behalf of the Company. The Defendants' acts in hiding information and misleading Morgan and the other Members not only prevented Morgan from being able to know he and the Company had a claim but should both equitably estop the Defendants from claiming the defense, and equitably toll the statute of limitation as a bar this claim.

STANDARD OF REVIEW

Rule 56(c), SCRCP, provides that a circuit court may grant a motion for summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Kunst v. Loree*, 404 S.C. 649, 653, 746 S.E.2d 360, 362 (Ct. App. 2013) *citing Bovain v Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (quoting Rule 56(c), SCRCP). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Id., citing Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). To withstand a motion for summary judgment "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence." *Id, citing Hancock,* 381 S.C. at 330, 673 S.E.2d at 803.

FACTS

150 Bee Street, LLC, Members and Operating Agreement

Defendant Bomasada Group Inc. ("Bomasada") is a Houston based privately held multifamily real estate development/contracting firm owned by Defendants Stuart Fred ("Fred") and John Gilbert ("Gilbert"). Defendant BIG II is Bomasada's construction entity and is wholly owned by Defendants Fred and Gilbert. BIG II was never licensed as a general contractor in South Carolina.

On March 4, 2005, Plaintiff Thomas H. Morgan ("Morgan") signed the "Second Amended and Restated Limited Liability Company Agreement of 150 Bee Street, LLC ("Operating Agreement").

Exhibit 1. Morgan was one of four Members of the Company, the other three being Neal I. Baker, Edwin S. Pearlstine, Jr., and Bella Vista Partnership ("Bella Vista"). Defendant Bella Vista is a Texas General Partnership whose partners are Fred and Gilbert.

The stated purpose of the Project was the development of "the for sale horizontal property regime… on the real property located near the intersection of Lockwood Drive and Bee Street in Charleston, South Carolina." The Operating Agreement named the initial Managing Members of the Company to be Stuart Fred (as a representative of Bella Vista Partnership) and Neal Baker, Morgan's brother-in-law. **Exhibit 1, Section 6.01**. The Operating Agreement provided that one of the representatives of the Bella Vista Partnership would always be a Managing Member. **Exhibit 1, Section 6.01.** The Operating Agreement also stated that "at all times while either Neal Baker or Tom Morgan is a Member, Neal Baker shall be one of the Managing Members (or in the event of his death or disability, Tom Morgan shall serve in such capacity)." **Exhibit 1, Section 6.01.**

Failure to Provide Monthly Operating Statements

The Operating Agreement required that the initial Managing Members prepare a budget for the Project, which was attached to the Operating Agreement as Exhibit B (the "Budget"), and the Managing Members were also required to track the Project's performance against the Budget and distribute to the Members monthly financial reports of the Project's performance in relation to the Budget. **Exhibit 1, Section 6.01.** Though BIG II did provide construction draws to its lenders that purported to show a construction budget and amount expended against those budget line items during the billing period, monthly reports showing actual expenses against the Operating Agreement's budget were not prepared by the Managing Members for the other Members and only the construction draws were regularly distributed to the Managing Members. **Exhibit 2, pages 135, line 22-136, line 10.**

Construction Travel Expense Line Item on the Monthly Draw

Neal Baker was Tom Morgan's brother-in-law. When they were together during the holidays in December 2006, Morgan accompanied Baker to his office, where Morgan saw some paperwork on Baker's desk that had to do with the Company. These were documents that had been sent to Baker from Defendants, but not to Morgan. **Exhibit 2, page 133, lines 5-13**. This was one of the monthly construction bank draws. Morgan looked over the document and saw a line item for Construction Travel Expense that seemed to show a large amount, around $200,000. Morgan asked Baker why the Company had charged that much money for Construction Travel Expense. Baker called Fred on the phone in response to Morgan's question, and Fred told Baker (who told Morgan) that the travel expenses were for moving equipment, material, and workers to the job site from out of town. Baker further told Morgan not to be concerned about the amount, because Baker would make sure that if those expenses were not correct Baker would make Fred credit them back. **Exhibit 2, page 138, line 10- page 140, line 1**.

Structural Concealment of Documents and Financial Records Through the Use of BIG II as General Contactor

Fred and Gilbert arranged for Bomasada to act as Developer and as Developer to hire BIG II as the General Contractor, on a cost plus 1% fee arrangement. This was done, it now appears, not only to obtain a fee without acting as the actual general contractor, but also and more importantly to be able to run the construction finances through a set of books that were outside the review of the Members and the Lender and to enable them to overcharge the Project and make a profit far more than what the Operating Agreement, **Exhibit 1**, Development Agreement, **Exhibit 3**, and General Contractor's Agreement, **Exhibit 4**, allowed.

The Company entered two separate contracts for the development and construction of the Project with Bomasada entities. The Company executed a Development Agreement with Bomasada pursuant to which Bomasada was to act as "Developer" for a fee of $750,000. **Exhibit 3, Section 1.3**.

The terms of the Development Agreement specified that Bomasada's duties were among, other things: "(iv) selecting and engaging Bomasada Investment Group II, LLC ("Contractor") as the contractor for a fee of one per cent (1 %) of the general contracting costs of the Project pursuant to the terms of an AIA Cost Plus contract ("Construction Contract"), (v) entering into a Cost Plus contract with Hightower Construction Co., Inc. ("Hightower") as a subcontractor for construction of improvements on the Property, (vi) supervising the construction work during all phases of construction; and (vii) otherwise assisting in all aspects of the Project." **Exhibit 3, Section 1.2**.

In addition, the Company entered an AIA Contract with BIG II pursuant to which BIG II was to act as "Contractor" for a fee of one percent (1%) of the general contracting costs of the Project. **Exhibit 4**. [2] Strangely, Bomasada also entered into a General Contractor's agreement with BIG II named as Owner and Hightower named as general contractor, leading to inconsistent positions being taken by Bomasada as recently as the **Defendants' Answer to Second Amended Complaint and Counterclaims, paragraphs 9 and 77**, where "the Defendants admit that BIG II signed an AlA Contract with 150 Bee Street. LLC to act as a general contractor for the project but in explanation, would allege and assert that at all times alleged in the Complaint, the parties hereto understood that this was an accommodation for a bank loan and that the correct and true general contractor was Hightower, which Hightower to its detriment admitted in the construction case referred to in this Complaint." (Emphasis added).

Clearly from the loan documents and the construction draw documents, Amegy Bank, the lender, regarded BIG II as the general contractor; it had no relationship with Hightower. **Exhibit 7**.

[2] Though the Development Agreement provided that the Developer would engage BIG II at on a cost-plus 1% basis, the contract with BIG II was a "Stipulated Sum" contract for the sum of $25,000,000. Mr. Gilbert signed for the "Owner" 150 Bee Street, LLC as Member, though he was neither a Member nor a Managing Member, and Mr. Fred signed for BIG II.

In addition, Gilbert signed an affidavit on July 6, 2012, stating the Company hired BIG II as the general contractor. **Exhibit 6, paragraph 14.**

The BIG II books, the Records of 150 Bee Street, and those submitted for Draw Requests to the Lender.

The Defendants stated that the purpose of hiring its own in-house contractor (BIG II) was to save money for the Company. If that was the purpose, it failed. BIG II overran the budget by $6,535,090.35. Fred and Gilbert's real purpose of hiring their own in-house contractor was so they could mark up the construction costs and conceal the charges from the other Members thus pocketing the difference themselves, not to save money for the Company.

The Company paid BIG II $31,535,090.35 to construct the Project, out of which it paid Hightower Construction $23,445,419.28 for Hightower's part. Thus, after deducting the amount BIG II paid Hightower, BIG II collected $8,089,672.77 for its portion of the work. **Exhibit 8**.

All parties understood (despite the Stipulated Sum AIA contract) that the $8,089,672.77 paid to BIG II was to be at actual cost with no markup other than the 1% contractor fee. As part of the arbitration, the accounting firm Elliott Davis was hired by the Company to review expenditures claimed by Defendants directly on the Company's books as well as the construction costs incurred by BIG II within its books. **Exhibit 9**.

On October 16, 2013, Elliott Davis asked Defendants to provide them with a reconciliation of the items showing the amounts paid to its subs and trades, plus its 1% contract fee, that total to the $8,090,672,77 difference. **Exhibit 8**. Elliott Davis asked whether BIG II could provide amounts paid to its subs and trades, plus its 1% contract fee that total the difference between the actual BIG II pay apps for construction totaling $31,535,092.05 and the total Hightower contract with change orders of $23,445,419.28 which was $8,089,672.77. **Exhibit 8.**

Defendants attempted a reconciliation using budgeted numbers rather than actual. Elliott Davis did not accept Defendants' reconciliation as correct and stated, "No documentation was

available to support these costs." **Exhibit 9, page 3, number 7**. Defendants, through their CPA, William Shields, claimed the missing backup documents had been shredded by Bomasada. **Exhibit 10**. BIG II's internal bookkeeper, Jyotsna (Jo)Ved, though, when deposed in this proceeding, asserted unequivocally that no documents had been lost or destroyed and all BIG II and other 150 Bee Street related records were intact at the office when she left in 2015. **Exhibit 11, page 48, line 24- page 49, line 11.**

According to Elliott Davis' Schedule 7, Defendants provided backup invoices for BIG II's subs and trades that added up to only $5,053,251.48. Elliott Davis estimated BIG II's 1% contract fee to be $285,063.92, leaving a difference of $2,743,636.35 in missing invoices. According to Elliott Davis, Defendants did not produce backup invoices in an amount totaling $2,743,636.35 as part of the $8,090,672.77 they claimed to have spent constructing the Project. **Exhibit 9, Schedule 7**.

Ms. Ved, in her deposition, said that she kept BIG IIs' actual bookkeeping records for the construction project showing amounts paid out by BIG II from the construction draws and provided numbers to Gilbert monthly who then used those numbers to prepare the construction draws based on the line-item budget on the draw form. **Exhibit 11, page 77, line 6- page 81, line 7.** Back up was not provided with the construction draws and neither the Lender nor the Members saw the BIG II records "'behind'" the construction draws. In fact, when Morgan attempted to see the BIG II records, Bomasada denied him access, saying they were not related to the Company, and even when his investigator, Randall Harris, traveled to Houston review the documents in 2010-2011 he was denied access to the BIG II records. **Exhibit 13, paragraph 7**. Without seeing the BIG II records and back up, however, there was no way to see how the Company's money was spent on the Project, specifically who was paid, or how much.

During the arbitration discovery process, however, based on the BIG II records that were produced, at least some of the questions about where the money went could finally be answered.

Specifically, when questioned about the difference between the amount paid to BIG II from draws and the amount paid out to all vendors, Ms. Ved identified the net figure of over $2,000,000, as "profit made by BIG II." **Exhibit 12, page 63, line 13- page 64, line 9**. This "profit made by BIG II" was of course not authorized by any agreement signed by the Company with BIG II and was not disclosed to any Member in the Company at any time during the Project. This "profit made by BIG II" together with other expenditures by the Defendants for their own benefit through the course of the Project, described below, were the reason for setting up the Project and its books, to avoid any Member, Mr. Morgan included, from having any ability to discover them.

Hidden travel expenses in the "overhead" line items in the Company books.

Details from the QuickBooks records show that a total of $607,529 was booked to travel expenses within the Company books and records. **Exhibit 14, exhibit 5**. In addition, $481,250 was charged through BIG II as Construction Travel Expense. **Exhibit 33**. Defendants have not produced one backup invoice for $481,250 charged through BIG II**.** Through discovery in this case, we have been able to determine that the total amount charged to the Project for travel expenses was approximately $1,088,779, well beyond any budgeted amount for travel and any amount approved by or known to the Members of the Company.

When Morgan was finally able to send an investigator to the Houston corporate office of Bomasada to review 150 Bee Street, LLC (not BIG II) records, Morgan for the first time learned that much of the travel charged to the company was for expensive golf vacations to Pebble Beach and Arizona, vacations to Cabo San Lucas, fishing vacations to Cancun, a trip to Las Vegas, and an African safari. These were obviously not for Project business and were not revealed to or approved by the Members. Fred's defense of them at his deposition was that he and Baker, the Managing Partners, decided between themselves to charge the Company for these expenses, and did so. **Exhibit 9, Schedule 1; Exhibit 15, page 147, line 10- page 151, line 7.**

As described earlier, when Morgan asked Baker what the travel expenses were for, Baker had been told by Fred that these expenses were moving men and equipment to the job site. Baker told Morgan to stop worrying about the travel expenses and that he would never let Fred charge expenses to the Project that were not legitimate, and Baker would make sure that any expenses that did not pertain to the project would be credited back. **Exhibit 2, page 138, line 10- page 140, line 1**

Active Denial of Information to Morgan by Managing Members and Company Counsel.

The Defendants now claim that that they provided Morgan full access to discovery, including all Company records. That is not true. Defendant Fred stated in an email to Defendant Gilbert and the other Managing Member, Baker, that "I vote we need to shut down communication to him…make him spend money to get info…" **Exhibit 16**.

Defendants further claim that even though they refused to provide Morgan or his accountants any information or copies of accounting records of the Company of which he was a member, much less BIG II, the Company's general contractor, they always offered to let Morgan or his representative come to Houston (Bomasada's office) to view the books and records of the Company and agreed to let him copy any records he wanted as long as Morgan paid the cost of the copies. This is also untrue. Defendants instructed the Company CPA, William Shields, to write a letter to Morgan that Morgan was required to pay a $5,000 retainer in advance before he or his representative could travel to the Houston corporate offices of Bomasada where the 150 Bee Street records were being held to inspect the documents under the supervision of Shields, Bomasada's CPA. Copies would not be sent or provided. **Exhibit 17, 18**.

To that end, Defendants engaged Company attorney Hagerty and his law firm, using Company funds, to write a letter to the Company CPA Shields in Houston instructing him not to provide Morgan's CPA with Morgan's requested accounting information, and to keep expenses to a minimum in terms of any Members who wish to review the books and records of the Company. **Exhibit 19.**

Even when Defendants finally allowed Morgan's representative, Randall Harris, to come to Bomasada's corporate headquarters in Houston in 2010, Defendants refused to allow Harris to copy any items, or to look at any records of BIG II, which is where the real accounting for the construction was being done. Defendants refused every attempt that Morgan or his representatives made to see the BIG II records, so he would not be able to see that the actual construction records did not match the Company records or the draw requests. Further, he would not be able to see what travel was being done and charged to the company, much less the personal vacations all being paid for by the Company and its Members. Defendants knew that by refusing to let Morgan or his representative see the books and records of BIG II, that would prevent Morgan from knowing he had a claim upon which he could bring a lawsuit.

Despite reimbursing themselves hundreds of thousands of dollars in overhead charges using Company funds to pay the salaries of their accountants, accounting software, CPA, receptionist, health insurance, bonuses, as well as salaries for themselves, Defendants refused to answer simple and specific accounting questions from Morgan's CPA, Rich Merg, and refused to email the QuickBooks backup file. Defendants knew that there would be no significant financial cost to the Company to answer Morgan's CPA's questions and email him the QuickBooks file but used the excuse that they would not expend Company funds to answer an individual Member's questions. They did not do so because they did not want Morgan to have enough information to do further investigating or to know he had a claim.

In July 2008, Rich Merg once again contacted John Gilbert telling him he had still not received the accounting information from Shields that had been requested on June 4. On July 9, 2008, Baker wrote an email to Gilbert telling him that Shields had never responded to Morgan's CPA and that if Shields will call Rich Merg that will put an end to the questions that Morgan had been asking and the escalating frustration on both sides. **Exhibit 22.** It was at this point that Defendants realized they

would have to do everything they could possibly do to prevent Morgan from obtaining the accounting records and see what they had hidden up to that point.

On July 14, 2008, Shields responded to Merg telling him that he had never received Merg's email of June 4, 2008. In that email, Shields asked Merg to: "please let me know what other questions you have at your earliest convenience so I can compile the information and forward it to you this week." **Exhibit 17**. The evident strategy at this point, in hindsight, was to slow roll the response and hope that Morgan would lose interest and stop asking.

Merg again asked for the QuickBooks's file as well as for other accounting information. On July 16, 2008, Shields wrote an internal email, not copying Morgan, to John Gilbert saying that: "As you will note, he [Merg] is still requesting the QuickBooks file. Do you want to authorize us to send him the QuickBooks file and if not, how do you want me to respond to the specific request that he referenced in his first item?" **Exhibit 17.**

Then on that same day, July 16, 2008, Gilbert wrote an internal email to Stuart Fred and Neal Baker as follows: "I am forwarding you an email I received from Bill Shields in response to an email he received from Tom Morgan's account, Rich Merg. Prior to us doing anything, what was John Hagerty's position on Tommy? Bill seems to think this guys email was litigious in nature. If we feel Tommy is a hostile partner, I don't think we should send him anything. Please let me know how you'd like to proceed. **Exhibit 17**.

On July 17, 2008, Merg wrote a letter directly to John Hagerty requesting accounting information, stating: "It is also my understanding that Mr. Morgan, for whatever reason, has received little financial information to date and none of the reports that we have requested below."

Exhibit 23.

On July 28, 2008, Shields sent Merg an email attaching accounting information that he had already earlier sent to Merg, but again without the QuickBooks files and other important information

requested by Merg. **Exhibit 18.** Merg responded to Shields on August 8, 2008, again asking for the QuickBooks file and other information.

The Company attorney wrote a letter upon request of Defendants to the Company CPA telling him not to provide Morgan with requested information. **Exhibit 19**.

Shields accordingly replied to Morgan's CPA as follows: "I reviewed your request for additional information for 150 Bee Street, LLC ("the Company") with Mr. John Gilbert (Managing Member, Bella Vista, LLC – Managing Member, 150 Bee Street, LLC) today and he, under advice from the Company's legal counsel, requested that we confirm that we have already provided to you all of the documents that are required pursuant to the Amended and Restated Limited Liability Company Agreement of 150 Bee Street, LLC as of February 28, 2003. Further, the Managing General Partners, Neal Baker, and Stuart Fred, additionally advised this office that any further requests as to information can be reviewed in the offices of Bomasada Group here in Houston at your time and expense under the supervision of my office. A retainer in the amount of $5,000 will be required to schedule this review as the Managing General Partners will not allocate Company funds to authorize us to respond to the requests of an individual member of the Company." **Exhibit 18**.

On August 19, 2008, John Gilbert wrote a secret email to John Hagerty, the Company attorney, following up an earlier conversation asking him to write a threatening letter to Morgan. Mr. Hagerty turned the matter over to Richard Farrier, another attorney at Nelson Mullins. John Gilbert wrote an email to John Hagerty stressing that the letter to Morgan should be harsh and threatening. **Exhibit 20.** The firm, however, determined that such a letter to Mr. Morgan was not warranted **Exhibit 21**.

Thereafter, over the next two years, Defendants continued to conceal their financial records and again provided incomplete and misleading financial statements to both Morgan and Baker.

On September 23, 2009, Leslie Berry, Morgan's controller, wrote an email to Julia DuMars, Baker's controller, trying to get the accounting information. DuMars wrote back to Leslie Berry that Baker was not getting the accounting information either. **Exhibit 24**.

On September 24, 2010, Leslie Berry wrote an email to John Gilbert asking for backup for certain charges and asking how the overhead expenses reimbursements were calculated. **Exhibit 25**. Gilbert wrote back as follows: "Leslie, in response to your request for additional information on 150 Bee Street, please note that this office will not be providing any receipts, invoices, etc. on the project. Although on the surface, these requests are not unreasonable, based upon the underlying tone and history of Mr. Morgan's conduct towards the partnership, we are adhering strictly to our obligations under the Operating Agreements. And frankly, we do not have the time to be burdened by this spurious request. This is not the first time that Mr. Morgan or his CPA, Mr. Merg, have made these such requests…they are welcome to come to Houston, at their expense, and review all books and records of 150 Bee Street. They can make copies of anything they want, again at their expense." **Exhibit 25**.

In response to Gilbert's email, Morgan responded to Gilbert and Fred: "I insist that you, Stuart, cease and desist from charging your private jet to the partnership. This project is underwater, and the partners will be lucky to get any portion of their investment returned, let alone with the continual bleeding of cash from your unwarranted and unnecessary expense reimbursements. In that regard I have hired Peter Galbraith, a former FBI fraud specialist and certified fraud investigator to conduct an audit of not only the partnership's direct expenses but of those related to the construction and sale of the Bee Street Units." **Exhibit 25**.

Fred responded to Gilbert and Baker: "First lets remember a few things...He's a midget with a pea brain...so consider the source...Honestly let this go in one ear and out the other...there is nothing there as to his claims and who cares who or what he claims...there's nothing there...NEAL and I are

the general Partners and can do what we want...And we are doing a great job as fiduciaries for the [partnership...I don't hear Edwin crying how bad we are...F**K the MIDGET...I am not going to change one thing that I or we are doing...So don't let his chirping or nipping at your heels bother any of us because the MIDGET is nothing but empty air as this has been the way he has done biz forever...The MIDGET has a NAPOLEON complex and he chirps with no substance...he does not think this deal will make money so lets give buy him out cause we will be making money...He is ill...seriously he is sick and has issues...Hagerty I predict will agree and will laugh this off as no attorney or FBI guy once they talk to KING Developer will take any of his accusations seriously...he is a pecker nut MIDGET with a little dick that hides behind his mommies skirt...So f**k him and go play golf or watch Texas loose to Oklahoma...I am" **Exhibit 26**.

On November 10, 2010, John Gilbert wrote an internal email to Stuart Fred. Fred replied with an internal memo to Gilbert's:

> read corrections below ...grammar mostly… and a little content...do not want to make judgments on market as it will be used against us by the midget...I would also suggest that the more you use me or I you place a target on your back for the midget to shoot at… also I don't think we send this to Tommy as he is adversarial... Ill check with Neal....Then attorney.... I vote we need to shut down communication to him… make him spend money to get info...he has proven time and time again he is adversarial.... later. **Exhibit 16**.

Stuart Fred wrote back to Gilbert: "Please allow this email to serve as notice from me and Neal as the co-managing general partners that we have decided not to provide T. Morgan any further information due to the continued threats of lawsuits etc. leveled against the group and us individually...Accordingly do not provide T. Morgan or any of his affiliates or agents any information…". Gilbert replied: "Thanks. I will follow your instructions." **Exhibit 27**.

On May 3, 2011, Leslie Berry, Morgan's Controller, wrote an email to John Gilbert, asking for information on any sales of units. Gilbert replied to Leslie Berry's email "As I mentioned earlier, I have been told not to send out any information to Tom Morgan." Berry replied: "I think you're

obligated to send the financials by virtue of the Operating Agreement. Like it or not, Tom is still a partner and has every right to be told about pending contracts etc. I just don't see the point in fanning the flames by denying information." Gilbert replied: "With all due respect, you have a hell of a lot of nerve talking about 'fanning the flames. Mr. Morgan has been deemed a hostile partner by the managing partners… On several occasions he has made totally unfounded charges and accusations about Stuart Fred and me stealing money from the LLC. In the past few months, he has hired an investigator to review the books and records of the LLC without a shred of evidence of any wrongdoing…". **Exhibit 28**.

In response to Morgan's continued insistence on receiving basic financial information about the Company, and his retention of Randal Harris to review the Company's records, Fred wrote his Co-Managing Member, Neal Baker, and his partner in Bomasada, John Gilbert, on May 5, 2011, at 6:10pm: "F**k the ankle biting midget. Don't telegraph what we are going to do. Wait till we r ready till we r ready to disburse then send out with no notice. Let's talk on the phone because maybe we might have partnership expenses first." At 11:48pm that evening Baker replied to Fred's email: "ok these are being deleted. nb." **Exhibit 29** (emphasis added).

Morgan's Concerns in 2007-2008 Leading to Dispute with Managing Members.

The Defendant in their brief make much of Morgan's frustrated and at time profane emails to Stuart and Gilbert in the summer of 2008 as evidence that Morgan knew or should have known at that point that he had a claim, triggering the statute of limitations at that point. A review of the correspondence in context, though, coupled with the exchanges already reviewed above where the Managing Members conspired to deny Morgan the most basic financial information show that Morgan was frustrated about what he saw as a looming market debacle and no sense of urgency to sell the units from the Managing Members. That, and not suspicions that Bomasada was diverting millions

to its own benefit through their structuring of the project, was what led to the heated email exchanges in 2008.

In April of 2007, Morgan, who lived in Miami where the housing bubble started, was seeing cracks in the condo market there, with buyers starting to back out of their contracts. Morgan became worried that the condo market in Charleston would follow suit, and that buyers at the Bee Street Lofts would start to back out of their contracts as well. Morgan suggested that the Managers get aggressive and drop prices to sell the project as quickly as possible before the market completely collapsed.

On April 25, 2007, Morgan wrote the following email to the members: "It is my opinion that we should immediately get more aggressive on price reductions or incentives during the prime selling season which is now. The remaining unsold units are the most unfavorable in the building and will be the hardest to sell. The project is projected to be completed in September and it would be nice to have all the units sold at that time." **Exhibit 30.**

Neal Baker replied, "I don't agree at all with your position… Charleston is a totally different market and I'm willing to take a chance that things aren't that bad here." Gilbert piled on: "It is apparent by your email and recent discussions with me that you are not comfortable being a partner in this deal. If you would like to get out right now, I know Stuart and I would be more than willing to assume your liability with Amegy bank. Please let me know if that is your preference and I'll make arrangements with the bank. Stuart Fred joined in: "tommy i just got both your and Neal's email…i concur with Neal…although i have not been in communication with you I have been aware of your position for some time….frankly you should not be in this deal….you don't understand real estate like you do oil and gas…that's where your time and money should be positioned….leave the real estate to others who do it daily and either be a passive investor or respectively get out." **Exhibit 30**.

After a response from Morgan, Fred replied: "In closing, I now consider you a hostile partner and will be taking all necessary actions afforded me as the managing member of the LLC to protect the LLC until this transfer has taken effect." **Exhibit 30**.

After Defendant Fred deemed Morgan a "hostile partner," Morgan told Fred to contact him through his regular transactional attorney in Miami, Joel Goldman. Goldman and John Hagerty corresponded back and forth in 2007 about what records were available and were being produced to Members under the Operating Agreement with Hagerty explaining the lack of monthly reports as required by Section 6.01 of the Operating Agreement by stating: "I have been told at this time that there are no operating budgets as the project is still under construction." **Exhibits 31, 32**.

After that time, Gilbert started providing Morgan and the other Members sporadic reports regarding sales activity; however, he did not provide monthly financial reports of the Project's performance in relationship to the budget as required in the Agreements. Morgan did obtain a copy of the final draw request, Draw 33. **Exhibit 33**. On it, Morgan confirmed the line item that showed Construction Travel Expense at $481,250.

On May 2, 2008, John Gilbert emailed to the Members a December 31, 2007, balance sheet and 2007 Schedule of Costs for 150 Bee Street. **Exhibit 34**.

Morgan was confused. He didn't understand how the line item 6350 "Travel" showed that $0 had been booked to travel expense for the entire year of 2007, when the draws sent to Amegy Bank that Baker possessed showed a total of $481,250 for Construction Travel Expense. Morgan could not get responses to his requests for additional information and kept getting delayed and put off. **Exhibit 35**.

At this point Morgan did not know that Defendants were charging hourly rates as high as $2000/hr. for their private jet travel to the Company in addition to fuel costs, and in addition they charged through their construction company BIG II a substantial portion of $25,000 per month to

lease their airplane and include it in the construction costs in an amount of $481,250 for construction travel expenses. **Exhibit 12, page 11, line 5-page 12, line 25; page 16, line 12-page 18, line 22**. All of this was contained in the BIG II files, not available to Morgan and the other partners, and the travel charges themselves distributed through various lines items on the Draw Request and in the Company's financial reports. Through discovery in this case, it was revealed that Defendants charged the Company $1,088,779 for travel expenses. **Exhibit 14, exhibit 5 and Exhibit 33**.

When asked in depositions in this proceeding to determine these charges from the Company's records, including the draw requests to the lender, neither Fred, **Exhibit 15.1, page 380, line 10-383, line 7**, or the bookkeeper, Ms. Ved, **Exhibit 11, page 128, line 11-page 130, line 5,** could do it. Clearly, Morgan, without the benefit of the discovery in this case or hindsight, could not discern the the misapplication of funds to safaris, junkets, and vacations from the draw requests in 2008.

Morgan asked his CPA in Denver, Rich Merg, to investigate. That correspondence is outlined above.

Morgan waited over almost two months for a reply from either John Gilbert or Bill Shields regarding the accounting questions, wanting to find out about the $481,250 in travel expense charged to the Company. Morgan also tried to call the sales team in Charleston at the Project to find out how sales of the units were going. Gilbert's update letters to the Members were always rosy and projected optimistic sales. Morgan was friendly with the sales staff, and they had told Morgan that sales had slowed and that the overall market in Charleston seemed to be slowing dramatically.

Now the sales staff stopped taking Morgan's calls and would not return his messages. Morgan found out that the sales staff was told they were no longer allowed to speak to Morgan. After being deemed a hostile Partner by Fred, Morgan realized he was being cut out of all reliable information about the Project, and the Managing Members refused to answer questions.

Morgan had several million dollars invested and had personally guaranteed a significant portion of the $30,000,000+ construction loan. Sales were slowing dramatically at the Project and any profits to be made were evaporating. Morgan could not get the Managing Members to pay attention, to lower prices and get rid of units. **Exhibit 2, page 129, lines 3-24**. Interest on the construction loan was adding up and funds were vanishing. **Exhibit 2, page 146, line 5- page 149, line 5**. Tempers did reach the boiling point in the summer of 2008, and Morgan did send the email featured by Defendants in their brief. Even though Morgan stated he would sue, though, he had no basis to believe he had a cause of action or claim. Rather, he was frustrated and angry that the project was going nowhere while a real estate collapse was happening in real time, and he was personally exposed with seemingly no ability to affect the outcome. **Exhibit 2, page 152, line 4- page 155, line 6**.

Removal of Baker and Denial of Manager Role to Morgan

Though the Operating Agreement clearly stated that Morgan would serve as Managing Member if Baker chose not to or was unable to serve, Fred and Gilbert were so intent on hiding the financial activity of the Project from Morgan that they conspired to violate the Operating Agreement and deny Morgan the ability to serve as Managing Member, knowing he would then have access to the financial records and decision-making of the Company. This Bomasada could not allow.

In January 2011, Baker wanted to resign as a Managing Member due to poor health. Defendant Fred knew that if Baker resigned Morgan would automatically become a Managing Member. Fred and Gilbert flew to Charleston to meet with John Hagerty, the Company attorney. They were trying to figure out a way to circumvent the terms of paragraph 6.01 of the Operating Agreement which automatically named Morgan as a managing member upon the resignation of Baker. **Exhibit 36**.

Hagerty responded by restating the language of Operating Agreement Paragraphs, 6.01, 14.01, and 14.07, and explained that if Baker resigns, Morgan automatically became a Managing Member.

Exhibit 36. Despite that advice from Hagerty that they could not legally circumvent those provisions, Fred and Gilbert asked Hagerty to prepare the documents to do just that. Hagerty sent Defendants an email attaching the draft resolution to install Stuart Fred as the sole Managing Member in violation of the Operating Agreement but stating that he had not given advice regarding paragraph 6.01, or any other Company issues, despite the meeting just held in Hagerty's office discussing this very topic. **Exhibit 37**. Fred, Gilbert, and Baker all illegally signed the resolution attempting to cut Morgan out from becoming a Managing Member. **Exhibit 38**.

Morgan and the other Member, Pearlstine, were not told about the secret resolution, and they were not provided copies of the resolution as required by the Operating Agreement.

ARGUMENT

1. Morgan did not know and could not reasonably have known that he or the Company had a claim based on what the Defendants actively and intentionally hid from him.

Assuming for purposes of this argument that the three-year statute of limitations applies to all causes of action pled in this case, S.C. Code Ann. § 15-3-535 (2005), the discovery rule would apply. See, *Moore v. Benson*, 390 S.C. 153, 165, 700 S.E.2d 273, 279 (Ct. App. 2010) (applying the discovery rule to causes of action arising under section 15-3-530(5)), citing *Rumpf v. Massachusetts Mut. Life Ins. Co.,* 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004) (stating "[i]n determining when a cause of action arose under section 15-3-530, we apply the 'discovery rule'").

According to the discovery rule, the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist. *Moore*, 700 S.E.2d at 279, citing *Abba Equip., Inc. v. Thomason,* 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999).

The date on which discovery of the cause of action should have been made is an objective question. *Id.*, citing *Joubert v. S.C. Dep't of Soc. Servs.,* 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). "In other words, whether the particular plaintiff actually knew he had a claim is not the test.

Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist." *Id.*, citing *Young v. South Carolina Department of Corrections,* 333 S.C. 714, 719, 511 S.E. 2d 413, 416 (Ct. App. 1999).

Here, based on the information that was available to Morgan, he could not have known he had a claim on behalf of the Company or on his own behalf for the kinds of misspending that were taking place behind the scenes by Fred and Gilbert using their development company, Bomasada, and their construction company, BIG II.

The Members were not getting monthly financial reports showing actual expenses versus the budget as contemplated by the Operating Agreement; they were simply not being prepared. The construction draws that were being submitted by Gilbert to obtain the loan draws from Amegy Bank only went to Baker, as the only non-Bomasada Managing Member, and Baker was clearly aligned with Fred and Gilbert. Further, it is unclear how many of the details of the BIG II financial allocations and expenditures Baker knew. It was clear Baker trusted Fred and attempted to reassure Morgan when Morgan had questions about the line items for travel and overhead on the construction draws. Based on one question that Morgan posed, Baker, after consulting with Fred, told Morgan that the travel figure on the draw was for transporting materials, equipment, and men to the project in Charleston. **Exhibit 2, page 138, line 19-page 140, line 1**. There was no way for Morgan to know that overhead and travel line items were also camouflaging entries for safaris, fishing and golf junkets and vacations. Or that Bomasada was paying its overhead completely on the back of the several projects they had underway at any time or that Fred's plane was being leased to BIG II and that the cost of the lease was being borne by however many projects were underway, including 150 Bee Street. All these entries and the backup for them were on the books of BIG II and in their back up files and those files were off limits to Morgan (and other non-Bomasada Members). The 150 Bee Street

financial reports, to the extent they were prepared, and the construction draws were carefully prepared by Gilbert not to reveal what was specifically being spent for personal travel and how much profit was being made in BIG II. Morgan had no reason to know any of this, or to know that he or the Company had a claim for any of these expenditures by Bomasada/BIG II.

Morgan was certainly frustrated in the summer of 2008 that the sales and marketing efforts were lagging when a real estate collapse was imminent, he was seeing no sense of urgency by management, and he was completely shut out from getting any information about sales or expenditures by the Company. That frustration and the rude treatment he was receiving by Fred, Gilbert, and his own brother-in-law, led to his lashing out and saying, as people do when they are angry, "I am going to sue…" but Morgan had no reason to know that he had a basis for any suit or claim and under the discovery rule, a person of common knowledge and experience could not have been on notice given the information that was available to him that some right of his has been invaded. **Exhibit 2, page 152, line 4- page 155, line 6.**

It was not until Morgan was finally forced by the Managing Members to go at his own expense to Bomasada's corporate headquarters in Houston through an investigator that he hired, Randall Harris, that he learned sufficient information to put him on notice that he had a claim, in January 2011. **Exhibit 13**. It was then that Morgan's claim arose, and the filing date of this action, in January 2012, was one year later, well within the three-year statute of limitations for these claims.

2. Defendants are equitably estopped from claiming that the statute of limitations was triggered in 2008 based on the Defendants' false and misleading answers to his inquiries and their conduct in hiding information from Morgan that he was entitled as a Member to see.

Even if the panel were to determine that the date the statute of limitations was triggered was more than three years before the date of the filing of the action, the Defendants by their actions should be estopped from raising the defense.

"In South Carolina,

> [a] defendant will be estopped to assert the statute of limitations in bar of a plaintiff's claim when the delay that otherwise would give operation to the statute has been induced by the defendant's conduct.
>
> The doctrine is, of course, most clearly applicable where the aggrieved party's delay in bringing suit was caused by his opponent's intentional misrepresentation; but deceit is not an essential element of estoppel. It is sufficient that the aggrieved party reasonably relied on the words and conduct of the person to be estopped in allowing the limitations period to expire.
>
> The conduct may involve either inducing the plaintiff to believe that an amicable adjustment of the claim will be made without suit or inducing the plaintiff in some other way to forbear exercising his right to sue. Some courts hold that repairs by a defendant may toll the statute of limitations. One's assurances to an injured party that defects can be corrected coupled with his attempts to correct them is conduct that may lead the injured party to reasonably believe that it will receive satisfaction without resort to litigation. (Emphasis added).

Magnolia N. Prop. Owners' Ass'n v. Heritage Cmtys., Inc., 397 S.C. 348, 372-73, 725 S.E.2d 112, 125-26 (Ct. App. 2012), citing *Dillon Cnty. Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc.,* 286 S.C. 207, 218-19, 332 S.E.2d 555, 561 (Ct. App. 1985), overruled on other grounds, *Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 462 S.E.2d 858 (1995) (citations and quotation marks omitted).

The question of whether a defendant's conduct lulled a plaintiff into a false sense of security and thereby prevented the plaintiff from filing suit within the statutory period is ordinarily one of fact for a jury to determine. *Dillon Cty. Sch. Dist.,* 332 S.E.2d at 561, citing *Lovell v. C.A. Timbes, Inc.*, 263 S.C. 384, 210 S.E.2d 610 (1974).

In the *Magnolia N. Prop. Owners' Ass'n* case, the property owners association had sued the developer for construction defects. The court upheld the use of equitable estoppel against the developer's attempted use of the statute of limitations as a defense. The court pointed out that until the turnover, the developer assured the unit owners the construction defects would be repaired, and, as a result, the owners were justified in relying on those assurances. At the time these representations were made, a reasonable owner could have believed that it would be counterproductive to file suit before giving the developer the opportunity to honor the representations, especially given the developer's efforts to make some repairs. The Court of Appeals affirmed the trial court's holding that

the developer was equitably estopped from asserting the statute of limitations as a defense. *Magnolia N. Prop. Owners' Ass'n*, 725 S.E.2d at 125-26.

Here, Morgan's delay in filing earlier than he did was clearly the result of the Defendant's conduct. Fred and Gilbert's active and aggressive efforts to hide the true financial records of the Project from Morgan are set out in detail above and throughout the internal email uncovered in discovery. The Defendants delayed, obfuscated, and stonewalled Morgan and his professionals' efforts to get basic financial data to which he as Member was entitled under the Operating Agreement and state law. The Defendants told Morgan, when he asked, that the travel figures he saw and questioned were for delivering materials, equipment, and personnel to the job site, when in fact they were funding the personal travel of Fred, Gilbert, and their friends, and funding personal vacations and trips around the world. Finally, when it became apparent that Morgan might become a Managing Member and become privy to this information, they conspired against the advice of Company counsel (but with his assistance) to violate the Operating Agreement to have Fred serve as the sole Managing Member.

Clearly, at this point, there is at least a question of fact supporting the use of equitable estoppel against the defense of statute of limitations raised by the Defendants.

3. The statute of limitations in this case is equitably tolled based on the Defendants' wrongful acts, including their conduct in hiding financial information from Morgan that he was entitled to see and in conspiring to deny him the Managing Member role in violation of the terms of the Operating Agreement.

South Carolina law also provides for tolling of the applicable limitations period under various circumstances under the court's equitable power to do justice and avoid unfair and unduly harsh results. The court in *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 115-17, 687 S.E.2d 29, 32-33 (2009) explored the law generally in this area and listed a number of circumstances in which courts in various jurisdictions had invoked the doctrine of equitable tolling, including one, *Kaplan v. Morgan Stanley & Co.,* 987 A.2d 258, 2009 VT 78 (Vt. 2009) (2009 WL 2401952) which held "Equitable

tolling applies either where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit, or where the plaintiff has timely raised the same claim in the wrong forum." (citing *Beecher v. Stratton Corp.,* 170 Vt. 137, 743 A.2d 1093, 1098 (Vt. 1999)); *cf. Machules v. Dep't of Admin.,* 523 So. 2d 1132, 1134 (Fla. 1988) (stating the doctrine of equitable tolling, unlike equitable estoppel, does not require deception or misrepresentation by the defendant; rather, it serves to ameliorate the harsh results that sometimes flow from a strict, literalistic application of administrative time limits).

The *Hooper* court then went on to say: "In our view, the situations described above do not constitute an exclusive list of circumstances that justify the application of equitable tolling. 'The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other.' *Hausman v. Hausman,* 199 S.W.3d 38, 42 (Tex. App. 2006). Equitable tolling may be applied where it is justified under all the circumstances. We agree, however, that equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." *Hooper,* 687 S.E.2d at 32-33.

The *Magnolia N. Prop. Owners' Ass'n* opinion cited earlier states: "Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness." *Magnolia N. Prop. Owners' Ass'n,* 725 S.E.2d at 125. In that case, the court found that equitable tolling was also appropriate, in addition to equitable estoppel, because the POA board consisted of developer's officers until the date of "turnover," September 9, 2002, and the court found it "unpersuasive" that an organization the developer controlled would have initiated an action against itself during this period. Further, after the property owners gained control over the POA, they

exercised due diligence by filing this action on May 28, 2003, approximately eight months after assuming control. *Id.*

Likewise, in *Orlando Residence, Ltd. v. Hilton Head Hotel Investors*, the court invoked equitable tolling to pause the statute of limitations for the period the defendant controlled the confession of judgment that was entered by the plaintiff. 2013 U.S. Dist. LEXIS 36087, 2013 WL 1103027, at *12 (D.S.C. Mar. 15, 2013), aff'd sub nom. *Orlando Residence, Ltd. v. Nelson*, 565 F. App'x 212 (4th Cir. 2014). The court found the facts to be like *Magnolia North*, and that because the defendant's control of the confession of judgment prevented the plaintiff from suing, in that case for 18 years, applying equitable tolling was appropriate, even for a period of that long duration. *Id.*

In *Hooper,* the Supreme Court of South Carolina tolled the statute of limitations for a plaintiff who was unable to serve the defendant until limitations had run, due in large part to the defendant's failure to properly list its registered agent for service with the Secretary of State. Id. at 33-34. The court held that "public policy and the interests of justice" warranted equitable tolling. *Hooper*, 687 S.E.2d at 34.

Here, there is more than enough basis for the panel to find that public policy and the interest of justice warrant equitably tolling the statute of limitations to avoid barring Morgan's claim. As detailed earlier in this memorandum, the Managing Members maintained a prolonged and active campaign to prevent Morgan from seeing even the most basic financial information. They misled him about what line items in the documents he did see meant, they belittled and scolded him for asking questions and requesting information, they schemed behind his back to use the Company's own lawyers to threaten him and discourage him from continuing to seek information and conspired to deny him the management position to which he was entitled under the Operating Agreement, all in service of the Defendants' aim to run the Project the way they had envisioned, under their control, and for their own gain, at the expense of their partner Members.

CONCLUSION

The questions of when the statute of limitations was triggered under the discovery rule and the use of equitable estoppel and equitable tolling are all questions of fact to be determined at trial, or in this case, at the arbitration hearing. Certainly, more than a "scintilla" of evidence exists to support Morgan's arguments and the panel should deny the Defendant's motion for summary judgment based on the statute of limitations.

Respectfully submitted,

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May 31, 2022
Charleston, SC

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON THOMAS H. MORGAN Plaintiff, v. JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, Defendants.	IN ARBITRATION IN THE COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580 **PLAINTIFF'S PREHEARING BRIEF**

The Plaintiff Thomas H. Morgan ("Morgan" or "Plaintiff"), through his undersigned counsel, submits this Prehearing Brief according to the Third Amended Scheduling Order, dated April 29, 2022, in this arbitration matter.

INTRODUCTION

The Bomasada entities and their principals, Stuart Fred and John Gilbert, improperly funded their business operations and other personal entertainment and living expenses from the operating funds of 150 Bee Street, LLC ("LLC," "Company," or "Owner"),[1] and surreptitiously siphoned millions in profit from the Project through their wholly owned entity, Bomasada Group, Inc. ("Bomasada"), and their captive general contractor, Bomasada Investment Group II ("BIG II"), without the knowledge of the other Members in the Company and hidden from those Members until

[1] A company that developed, built, and sold a condominium project ("Project') in Charleston South Carolina located at 150 Bee Street.

years into this litigation. Fred and Gilbert did this through having themselves named as one of two Managing Members of the Owner LLC, having Bomasada chosen as Developer for the Project, and having BIG II hired as General Contractor, even though BIG II was unlicensed in South Carolina and required the involvement of an actual licensed general contractor, Hightower Construction, to do the work.

Though there was no need for BIG II to serve as general contractor, as Hightower did most of the actual construction, Fred and Gilbert set up BIG II as the general contractor to be able to run the books of the Project beyond the scrutiny of the construction lender and their Company partners, and ultimately to pay themselves over $1,000,000 in travel expenses, millions more in overhead reimbursements, and millions in "profit" far beyond the $750,000 development fee and 1% cost-plus figure that their contracts with the Company allowed. This was all done with the cooperation of the other Managing Partner, Neal Baker, who may not have known about these overcharges but enjoyed using the Company's money to fund golf and vacation excursions with his friend, Stuart Fred, all without the knowledge of the other Members, Pearlstine and Morgan.

Though Morgan was increasingly frustrated by the lack of answers to his questions about the overhead and travel expense line items he did not understand and the slow pace of sales activity in light of a looming real estate collapse he was watching happen in real time in Miami, the actions of Fred and Gilbert in refusing to provide monthly reports of actual expenses versus the Budget or any meaningful financial reporting hid the true financial activity of the enterprise from the other Members, including Morgan. Further, using BIG II as the general contractor allowed Fred and Gilbert to have a separate set of books that the construction lender and the Company Members were never allowed to see that provided for payments of operating expenses unrelated to the Project as well as millions "profit"' to BIG II, completely "off the books"' of the Company.

FACTUAL BACKGROUND

Bomasada is a Houston-based privately held multifamily real estate development and contracting firm owned by Stuart Fred ("Fred") and John Gilbert ("Gilbert"). BIG II is Bomasada's construction entity and is wholly owned by Fred and Gilbert. BIG II has never been licensed as a general contractor in South Carolina.

On March 4, 2005, Plaintiff Thomas H. Morgan ("Morgan") signed the "Second Amended and Restated Limited Liability Company Agreement of 150 Bee Street, LLC ("Operating Agreement") as one of four Members of the Company, the other three being Neal I. Baker, Edwin S. Pearlstine, Jr., and Bella Vista Partnership ("Bella Vista"). Bella Vista is a Texas General Partnership whose partners are Fred and Gilbert.

The stated purpose of the Project was the development of "the for sale horizontal property regime… on the real property located near the intersection of Lockwood Drive and Bee Street in Charleston, South Carolina." Section 6.01 of the Operating Agreement named the initial Managing Members of the Company to be Fred (as a representative of Bella Vista Partnership) and Neal Baker, Morgan's brother-in-law. This section also provided that one of the representatives of Bella Vista would always be a Managing Member. Section 6.01 also stated that "at all times while either Neal Baker or Tom Morgan is a Member, Neal Baker shall be one of the Managing Members (or in the event of his death or disability, Tom Morgan shall serve in such capacity)."

The Company entered two separate contracts for the development and construction of the Project with Bomasada and BIG II. The Company executed a Development Agreement with Bomasada pursuant to which Bomasada was to act as "Developer" for a fee of $750,000. Section 1.2 of the Development Agreement specified that Bomasada's duties were among, other things: "(iv) selecting and engaging Bomasada Investment Group II, LLC ("Contractor") as the contractor for a fee of one per cent (1%) of the general contracting costs of the Project pursuant to the terms of an

AIA Cost Plus contract ("Construction Contract"), (v) entering into a Cost Plus contract with Hightower Construction Co., Inc. ("Hightower") as a subcontractor for construction of improvements on the Property, (vi) supervising the construction work during all phases of construction; and (vii) otherwise assisting in all aspects of the Project."

The Company was supposed to have entered an AIA Cost Plus Contract with BIG II pursuant to which BIG II was to act as "Contractor" for a fee of one percent (1%) of the general contracting costs of the Project. Though the Development Agreement provided that the Developer would engage BIG II on a cost-plus 1% basis, the contract that Fred and Gilbert executed on behalf of the Company with BIG II was a "Stipulated Sum" contract for the sum of $25,000,000. On that AIA Standard Form Stipulated Sum agreement dated February 10, 2005., Mr. Gilbert signed for the "Owner" 150 Bee Street, LLC as Member, though he was neither a Member nor a Managing Member, and Mr. Fred signed for BIG II. This was weeks before either the Operating Agreement or the Development Agreement were executed by the Members of the Company and was entered without their knowledge or consent.

Strangely, Bomasada also entered an AIA A111 Standard Form General Contractor's agreement, naming BIG II as Owner and Hightower named as Contractor, leading to inconsistent positions being taken by Bomasada as recently as the Defendants' Answer to Second Amended Complaint and Counterclaims, paragraphs 9 and 77, where "the Defendants admit that BIG II signed an AlA Contract with 150 Bee Street. LLC to act as a general contractor for the project but in explanation, would allege and assert that at all times alleged in the Complaint, the parties hereto understood that this was an accommodation for a bank loan and that the correct and true general contractor was Hightower, which Hightower to its detriment admitted in the construction case referred to in this Complaint." (Emphasis added).

FACTUAL ISSUES IN DISPUTE

1. **Bomasada reimbursed itself in amounts that far exceeded the overhead figure in the Budget, and many of those reimbursements were not reasonable or related to the Project and were outside the scope of the Development Agreement**.

Bomasada was the owner's representative, or Developer, under the Development Agreement. It was to be compensated for that arrangement with the generous payment of $750,000 as a Developer's Fee and to be reimbursed reasonable expenses incurred in connection with doing its work on the Project. Bomasada had a line item in the Budget attached as Exhibit B to the Operating Agreement ("Budget") that was supposed to account for all the reimbursable expenses payable to Bomasada in the course of its work. That was the "'Developer Overhead" line item in the amount of $304,000. Bomasada exceed that budget line item without obtaining Member consent as required by the Operating Agreement and Development Agreement. Bomasada was also reimbursed substantial amounts for its overhead expenses at its Houston headquarters through BIG II, over and above the $150,000 amount budgeted as part of the hard costs on the BIG II construction draw, again without any knowledge or approval of the Members of the Company. On later inspection during this litigation, the Elliott Davis accounting firm who reviewed the construction documents and Morgan's expert witness, Ronald Burkett, CPA, concluded that many of the payments to Bomasada could not be verified because there is no back up for the payment.

Consequently, Bomasada paid itself substantially more than the amount of the Developer Fee of $750,000 provided in the Budget and the Development Agreement and reimbursements allowed under the Development Agreement.

2. **Bomasada's additional reimbursement payments by BIG II were known or approved by the Company, far exceeded the amounts that were stated in the Budget, were not reasonable or related to the Project, and were outside the scope of the Development Agreement and the construction agreement with BIG II.**

Fred and Gilbert throughout the construction process and through much of the litigation process refused to provide those portions of the Project construction files that showed payments to BIG II beyond the construction loan draws submitted to the construction lender, Amegy Bank. Fred and Gilbert never showed the Members BIG II tax returns, claiming they had been shredded or lost (though they did have all the Company and Bomasada returns). Further, Fred and Gilbert refused to show the portions of audit reports produced by an outside accounting firm for which the Company paid, at least in part.

As a result, the Members never saw BIG II's payments to third party contractors or to Fred and Gilbert, Bomasada, Lauralis Management (Fred's wholly owned company that owned and leased back his private plane to the Company without its knowledge) ("Lauralis") and other Bomasada-related entities throughout the Project. These payments were never shown to Morgan prior to the litigation, were not provided to Morgan's forensic investigator, Mr. Harris, when he went to Houston to review the construction records and were not revealed to the Members of the Company until Elliott Davis conducted a financial investigation of the construction records as part of this arbitration process in 2013-2014.

Having had a chance to review those records for the first time, Elliott Davis concluded that BIG II paid expenses that were not actual costs of the Project and that millions of dollars of expenditures had no documentary evidence and could not be supported. This included substantial amounts paid to Bomasada beyond what the Budget and the Development Agreement allowed and what the Members of the Company knew about. The Burkett firm has likewise reviewed this material and will testify concerning the amounts of the Company's money that was paid to the Bomasada entities or their owners during the Project through 2007 and continuing until the commencement of the litigation in 2012 for which there is no evidentiary support or backup.

Details from the QuickBooks records show that a total of $607,529 was booked to travel expenses within the Company books and records. In addition, $481,250 was charged through BIG II under the line item Construction Travel Expense. Defendants have never produced one backup invoice for the $481,250 charged through BIG II. Through discovery in this case, we have been able to determine that the total amount charged to the Project for travel expenses was approximately $1,088,779, well beyond any budgeted amount for travel and any amount approved by or known to the Members of the Company.

When Morgan was finally able to send an investigator to the Houston corporate office of Bomasada to review 150 Bee Street, LLC (not BIG II) records, Morgan for the first time learned that much of the travel charged to the Company was for expensive golf vacations that Fred, Baker, and Gilbert took to Pebble Beach and Arizona, vacations to Cabo San Lucas, fishing vacations to Cancun, a trip to Las Vegas, and an African safari (and taxidermy for the trophies gathered there). They also included a home theater system at Fred's home in Scottsdale. These were obviously not for Project business and were not revealed to or approved by the Members. Fred's defense of them is that he and Baker, the Managing Partners, had the right to decide between themselves to charge the Company for these expenses, and did so.

3. **BIG II paid itself from construction draws in amounts far beyond the actual costs of the Project allowed by its contract by not only paying for costs that were not reasonable or were unrelated to the Project, but also by collecting millions in profit, well beyond the 1% allowed by the contract.**

BIG II's agreement with the Company was that it would be paid actual costs plus 1% (despite the erroneous language of the February 10, 2022, signed contract).[2] BIG II has never provided backup for millions of dollars in expenses it paid itself through the Amegy Bank construction draws. BIG II was paid far more than its actual costs related to this Project and a 1% fee. Based on the difference

[2] Bomasada's failure to ensure that BIG II executed a cost plus contract and then performed under it is an additional breach of the Development Agreement with 150 Bee Street.

between the amount BIG II was paid through the construction draws and the amounts it disbursed, it appears, in the view of Bomasada and BIG II's bookkeeper, Jyotsna Ved, that BIG II took millions in profit beyond the 1% fee provided in the Construction Contract.

According to the Elliott Davis Report Schedule 7, Defendants provided backup invoices for BIG II's subcontractors and trades that added up to only $5,053,251.48. Elliott Davis estimated BIG II's 1% contract fee to be $285,063.92, leaving a difference of $2,743,636.35 in missing invoices. According to Elliott Davis, Defendants did not produce backup invoices in an amount totaling $2,743,636.35 as part of the $8,090,672.77 they claimed to have spent constructing the Project, beyond the "hard costs" paid to Hightower.

Ms. Ved, in her deposition, said that she kept BIG IIs' actual bookkeeping records for the construction project showing amounts paid out by BIG II from the construction draws and provided numbers to Gilbert monthly who then used those numbers to prepare the construction draws based on the line-item budget on the draw form.[3] Back up was not provided with the construction draws and neither the Lender nor the Members saw the BIG II records "'behind"' the construction draws. In fact, when Morgan attempted to see the BIG II records, Bomasada denied him access, saying they were not related to the Company, and even when his investigator, Randall Harris, traveled to Houston to review the documents in 2010-2011 he was denied access to the BIG II records. Without seeing the BIG II records and back up, however, there was no way to see how the Company's money was spent on the Project, specifically who was paid, or how much.

During the arbitration discovery process, however, based on the BIG II records that were produced, at least some of the questions about where the money went could finally be answered. Specifically, when questioned about the difference between the amount paid to BIG II from draws and the amount paid out to all vendors, Ms. Ved identified the net figure as "profit made by BIG II."

[3] Jo Ved Deposition Vol. II transcript page 77, line 6- page 81, line 7

[4] This "profit made by BIG II" was of course not authorized by any agreement signed by the Company with BIG II and was not disclosed to any Member in the Company at any time during the Project. This "profit made by BIG II," together with other expenditures by the Defendants for their own benefit through the course of the Project, were the reason for setting up the Project and its books, to avoid any Member, Mr. Morgan included, from having any ability to discover them.

4. **The Managing Member, Fred, his agent, Gilbert, and Bomasada as the Developer continually failed to abide by the requirements of the Operating Agreement and the Development Agreement to inform and obtain approvals by the Members.**

Fred, as Managing Member, and his appointed agent, Gilbert, failed to have Member votes and obtain majority consent to increase the budget by more than $50,000, or document an action without a meeting if that occurred (which it did not). Throughout the construction process, Fred and Gilbert acted throughout as if they were the sole members of 150 Bee Street and made decisions and spent money without the knowledge or consent of the Members as required by the Operating Agreement and the Development Agreement.

Section 6.01 of the Operating Agreement additionally required that the initial Managing Members prepare a budget for the Project, which was attached to the Operating Agreement as Exhibit B (the "Budget"), and the Managing Members were also required to track the Project's performance against the Budget and distribute to the Members monthly financial reports of the Project's performance in relation to the Budget. Though BIG II did provide construction draws to its lenders that purported to show a construction budget and amount expended against those budget line items during the billing period, monthly reports showing actual expenses against the Budget were never prepared by the Company Managing Members for the other Members and even the Amegy Bank construction draws were regularly distributed only to the Managing Members.

[4] Jo Ved Deposition Vol. II page 63, line 13- page 64, line 9.

The Operating Agreement also required Members to disclose and get approval to do business with Affiliated Companies of Members. The Company paid substantial amounts to Fred's wholly owned company, Lauralis Management to lease and fund the operation of Fred's private jet, but no such disclosure or approval was ever sought or given by the Members.

5. **Fred and Gilbert's pattern of not providing information to the Members was an intentional practice to hide these unauthorized payments to themselves and the Bomasada entities from the Company's Members.**

The pattern of not providing monthly budget versus actual reports to members as required by the Operating Agreement, increasing the budget without prior knowledge of or vote of Members, not providing backup for construction expenses by BIG I or BIG II, and refusing information to Morgan when he insisted on it was an intentional scheme of deception and obfuscation intended to hide the payment of millions of dollars to Fred and Gilbert-controlled entities, BIG I and BIG II, which was not allowed by the Operating Agreement or the Development Agreement.

The Defendants failed and refused to provide Morgan full access to Company records. In fact, Fred stated in an email to Gilbert and the other Managing Member, Baker, that "I vote we need to shut down communication to him…make him spend money to get info…" Defendants further claim that even though they refused to provide Morgan or his accountants any information or copies of accounting records of the Company of which he was a member, much less BIG II, they always offered to let Morgan, or his representative come to Houston (Bomasada's office) to view the books and records of the Company and agreed to let him copy any records he wanted if Morgan paid the cost of the copies. This is also untrue. Defendants instructed the Company CPA, William Shields, to write a letter to Morgan that Morgan was required to pay a $5,000 retainer in advance before he or his representative could travel to the Houston corporate offices of Bomasada where the 150 Bee Street records were being held to inspect the documents under the supervision of Shields, Bomasada's CPA. Copies would not be sent or provided.

To that end, Defendants engaged Company attorney Hagerty and his law firm, using Company funds, to write a letter to the Company CPA Shields in Houston instructing him not to provide Morgan's CPA with Morgan's requested accounting information, and to keep expenses to a minimum in terms of any Members who wish to review the books and records of the Company.

Even when Defendants finally allowed Morgan's representative, Randall Harris, to go to Bomasada's corporate headquarters in Houston in 2010, Defendants refused to allow Harris to copy any items, or to look at any records of the Project kept by BIG II, which is where the real accounting for the construction was being done. Defendants refused every attempt that Morgan or his representatives made to see the BIG II records so he would not be able to see that the actual construction records did not match the Company records or the draw requests. Further, he would not be able to see what travel was being done and charged to the Company, much less the personal vacations all being paid for by the Company and its Members. Defendants knew that by refusing to let Morgan or his representative see the books and records of BIG II, that would prevent Morgan from knowing he had a claim upon which he could bring a lawsuit.

Despite reimbursing themselves hundreds of thousands of dollars in overhead charges using Company funds to pay the salaries of their accountants, accounting software, CPA, receptionist, health insurance, bonuses, as well as salaries for themselves, Defendants refused to answer simple and specific accounting questions from Morgan's CPA, Rich Merg, and refused to email the QuickBooks backup file. Defendants knew that there would be no significant financial cost to the Company to answer Morgan's CPA's questions and email him the QuickBooks file but used the excuse that they would not expend Company funds to answer an individual Member's questions. They did not do so because they did not want Morgan to have enough information to do further investigating or to know he had a claim.

In July 2008, after earlier efforts at obtaining basic financial information, Rich Merg contacted Gilbert telling him he had still not received the accounting information from Shields that he had requested of him on June 4. On July 14, 2008, Shields responded to Merg telling him that he had never received Merg's email of June 4, 2008. In that email, Shields asked Merg to: "please let me know what other questions you have at your earliest convenience so I can compile the information and forward it to you this week." The evident strategy at this point, in hindsight, was to slow roll the response and hope that Morgan would lose interest and stop asking.

Merg again asked for the QuickBooks's file as well as for other accounting information. On July 16, 2008, Shields wrote an internal email, not copying Morgan, to Gilbert saying that: "As you will note, he [Merg] is still requesting the QuickBooks file. Do you want to authorize us to send him the QuickBooks file and if not, how do you want me to respond to the specific request that he referenced in his first item?"

Then on that same day, July 16, 2008, Gilbert wrote an internal email to Fred and Neal Baker as follows: "I am forwarding you an email I received from Bill Shields in response to an email he received from Tom Morgan's accountant, Rich Merg. Prior to us doing anything, what was John Hagerty's position on Tommy? Bill seems to think this guy's email was litigious in nature. If we feel Tommy is a hostile partner, I don't think we should send him anything. Please let me know how you'd like to proceed.

On July 28, 2008, Shields sent Merg an email attaching accounting information that he had already earlier sent to Merg, but again without the QuickBooks files and other important information requested by Merg. Merg responded to Shields on August 8, 2008, again asking for the QuickBooks file and other information.

The Company attorney wrote a letter upon request of Defendants to the Company CPA telling him not to provide Morgan with requested information. Shields accordingly replied to Morgan's CPA

as follows: "I reviewed your request for additional information for 150 Bee Street, LLC ("the Company") with Mr. John Gilbert (Managing Member, Bella Vista, LLC – Managing Member, 150 Bee Street, LLC) today and he, under advice from the Company's legal counsel, requested that we confirm that we have already provided to you all of the documents that are required pursuant to the Amended and Restated Limited Liability Company Agreement of 150 Bee Street, LLC as of February 28, 2003. Further, the Managing General Partners, Neal Baker, and Stuart Fred, additionally advised this office that any further requests as to information can be reviewed in the offices of Bomasada Group here in Houston at your time and expense under the supervision of my office. A retainer in the amount of $5,000 will be required to schedule this review as the Managing General Partners will not allocate Company funds to authorize us to respond to the requests of an individual member of the Company."

On August 19, 2008, Gilbert wrote a secret email to Hagerty, the Company attorney, following up an earlier conversation asking him to write a threatening letter to Morgan. Hagerty turned the matter over to Richard Farrier, another attorney at Nelson Mullins. Gilbert wrote an email to Hagerty stressing that the letter to Morgan should be harsh and threatening. The firm, however, determined that such a letter to Morgan was not warranted.

Over the next two years, Defendants continued to conceal their financial records and again provided incomplete and misleading financial statements to both Morgan and Baker. In 2010, Fred instructed Gilbert: "Please allow this email to serve as notice from me and Neal as the co-managing general partners that we have decided not to provide T. Morgan any further information due to the continued threats of lawsuits etc. leveled against the group and us individually...Accordingly do not provide T. Morgan or any of his affiliates or agents any information…". Gilbert replied: "Thanks. I will follow your instructions."

6. **The improper payments to Bomasada and BIG II of overhead and other personal costs and expenses for vacations and unrelated travel were not oversights or mistakes but were intentional and were the reason Fred and Gilbert convinced the Members to name Fred as a permanent Managing Member, Bomasada as Developer, and BIG II as general contractor.**

The Company did not need Bomasada as a Developer, acting essentially as an owner's representative. Fred could have accomplished this as a Managing Member. This arrangement was manufactured by Fred to siphon off funds beyond the amounts contemplated by the Development Agreement without the knowledge of the Members of the Company.

The Company did not need BIG II as a general contractor. Hightower was licensed in South Carolina and did most of the work. Throughout, there has been confusion over who the general contractor was, and this confusion was intentionally created by Fred and Gilbert. Fred and Gilbert represented to Amegy Bank that BIG II was the general contractor, but they later denied it and said that Hightower was, when that was more convenient. Naming BIG II as the general contractor in the Development Agreement and in the agreement with Bomasada was the way Fred and Gilbert could create a set of books off-limits to Company Members and hide expenditures back to BIG II, to Lauralis and a "profit" that far exceeded the 1% provided for in the Construction Agreement.

The Defendants stated that the purpose of hiring its own in-house contractor (BIG II) was to save money for the Company. If that was the purpose, it failed. BIG II overran the budget by $6,535,090.35. Fred and Gilbert's real purpose of hiring their own in-house contractor was so they could mark up the construction costs and conceal the charges from the other Members thus pocketing the difference themselves, not to save money for the Company.

The Company paid BIG II $31,535,090.35 to construct the Project, out of which it paid Hightower Construction $23,445,419.28 for Hightower's part. Thus, after deducting the amount BIG II paid Hightower, BIG II collected $8,089,672.77 for its portion of the work.

All parties understood (despite the Stipulated Sum AIA contract) that the $8,089,672.77 paid to BIG II was to be at actual cost with no markup other than the 1% contractor fee. As part of the arbitration, the accounting firm Elliott Davis was hired by the Company to review expenditures claimed by Defendants directly on the Company's books as well as the construction costs incurred by BIG II within its books.

On October 16, 2013, Elliott Davis asked Defendants to provide them with a reconciliation of the items showing the amounts paid to its subs and trades, plus its 1% contract fee, that total to the $8,090,672,77 difference. Elliott Davis asked whether BIG II could provide amounts paid to its subs and trades, plus its 1% contract fee that total the difference between the actual BIG II pay apps for construction totaling $31,535,092.05 and the total Hightower contract with change orders of $23,445,419.28 which was $8,089,672.77.

Defendants attempted a reconciliation using budgeted numbers rather than actual. Elliott Davis did not accept Defendants' reconciliation as correct and stated, "No documentation was available to support these costs." Defendants, through their accountant, William Shields, claimed the missing backup documents had been shredded by Bomasada. BIG II's internal bookkeeper, Jyotsna (Jo)Ved, though, when deposed in this proceeding, asserted unequivocally that no documents had been lost or destroyed and all BIG II and other 150 Bee Street related records were intact at the office when she left in 2015.

7. **In January 2011, when Baker resigned as Managing Member and Morgan should have been named a Managing Member under the OA, Fred instructed the Company counsel, Hagerty, to draft a resolution that Hagerty knew was not supported by the OA, naming Fred as sole Managing Member.**

Though the Operating Agreement clearly stated that Morgan would serve as Managing Member if Baker chose not to or was unable to serve, Fred and Gilbert were so intent on hiding the financial activity of the Project from Morgan that they conspired to violate the Operating Agreement

and deny Morgan the ability to serve as Managing Member, knowing he would then have access to the financial records and decision-making of the Company. This Bomasada could not allow.

In January 2011, Baker wanted to resign as a Managing Member due to poor health. Defendant Fred knew that if Baker resigned Morgan would automatically become a Managing Member. Fred and Gilbert flew to Charleston to meet with John Hagerty, the Company attorney. They were trying to figure out a way to circumvent the terms of paragraph 6.01 of the Operating Agreement which automatically named Morgan as a managing member upon the resignation of Baker.

Hagerty responded by restating the language of Operating Agreement Paragraphs, 6.01, 14.01, and 14.07, and explained that if Baker resigns, Morgan automatically became a Managing Member. Despite that advice from Hagerty that they could not legally circumvent those provisions, Fred and Gilbert asked Hagerty to prepare the documents to do just that. Hagerty sent Defendants an email attaching the draft resolution to install Stuart Fred as the sole Managing Member in violation of the Operating Agreement but stating that he had not given advice regarding paragraph 6.01, or any other Company issues, despite the meeting just held in Hagerty's office discussing this very topic. Fred, Gilbert, and Baker all illegally signed the resolution attempting to cut Morgan out from becoming a Managing Member.

Morgan and the other Member, Pearlstine, were not told about the secret resolution, and they were not provided copies of the resolution as required by the Operating Agreement. From January 2011 to just before Baker's death in August 2011, Fred acted as the sole Managing Member, without the knowledge of Morgan or Pearlstine.

8. **Stuart Fred, as Managing Member, and Bomasada as Developer failed to obtain insurance as required in the Development Agreement and the Operating Agreement, depriving the Company of indemnification for liability claims and for costs of defense against those claims and causing the Company to be forced to pay attorney's fees to defend the litigation and the settlement amount out of its own funds.**

Fred, as Managing Member, obtained liability insurance protecting Bomasada and BIG II, but obtained no liability insurance providing indemnification and a defense for the Company from claims of the homeowners for construction defects. As a result, the Company was forced to retain counsel to defend it in the construction litigation and associated coverage litigation and was forced to pay funds out of the Company's operating account to settle the construction lawsuit, since no liability carrier either assumed the duty to defend or indemnified the Company. Nevertheless, Bomasada used Company funds to pay premiums for policies that did not protect the Company. This was a breach of Bomasada's contract and a breach of fiduciary duty by Managing Member Fred.

9. At Bomasada's direction, the Company paid real estate commissions more than the 5 % commission called for in the Marketing Agreement and marketing fees to Solve, an entity that had no contractual connection to the Company.

The Company, through Bomasada, hired a firm not licensed to sell real estate in SC, Village Real Estate, to market and sell the condo units and be paid a 5% commission for those sales. Because it was not licensed in SC, Village then entered into an agreement with a South Carolina firm, Agent-Owned Real Estate to list the properties and collect the commissions at closing. These commissions, though, were passed on to Village, and Agent Owned only received a much smaller contractual amount from Village. Many of the commissions collected at the sale of these units exceeded the contractual amount of 5%. Further, Agent Owned Real Estate hired another marketing firm, Solve, to participate in marketing the units and those costs were passed on to the Company by Bomasada, though there was no provision in any Company contract providing for the payment of those Solve marketing costs, and they were in addition to the commission payment that 150 Bee Street had agreed to pay.

CAUSES OF ACTION, AFFIRMATIVE DEFENSES, AND OTHER LEGAL ISSUES

10. Breach of Contract, Duty of Good Faith and Fair Dealing, Breach of Contract Accompanied by a Fraudulent Act, Unjust Enrichment, Conversion, Misappropriation of Company Assets.

All these causes of action alleged in the Amended Complaint relate to (1) the various breaches of the Operating Agreement by Fred as Managing Member and by Gilbert as partner in Bella Vista and the Managing Members' appointed agent; (2) the breaches of the Development Agreement by Bomasada, and (3) the breaches of the Construction Agreement by BIG II. These include but are not limited to the payments to Fred, Gilbert, and their related Bomasada and other entities outside the provisions of the three operative agreements. These are all breaches of contract under SC law. The intentional deception and misappropriation of funds by the defendants in conjunction with these breaches of contract violate the covenant of good faith and fair dealing, *Tharpe v. G.E. Moore Co.,* 254 S.C 196, 164 S.E.2d 397 (1970), and supply the additional fraudulent acts to comprise breaches of contract accompanied by a fraudulent act. *Minter v. GOCT, Inc.,* 322 S.C. 525, 529-30, 473 S.E.2d 67, 70 (Ct. App. 1996). The payment of Company funds to the Defendants without approval by the Members or authorization by the operative contracts is conversion, *Mullis v. Trident Emergency Physicians*, 351 S.C. 503, 506-07, 570 S.E.2d 549, 550 (Ct. App. 2002) and a misappropriation of Company assets. And, to the extent that any of the payments to the Defendant entities were not somehow covered by one of the contract provisions, retention of those payment is inequitable, and is unjust enrichment that should be returned to the Company. *Myrtle Beach Hosp. v. City of Myrtle Beach,* 341 S.C. 1,8-9, 532 S.E.2d 868, 872(2000).

11. **Breach of Fiduciary Duty, Member Oppression, Indemnification, and Accounting**

Fred, as a Managing Member, owes a fiduciary duty to the other Members of the Company, which he breached through the facts alleged in the Amended Complaint and described generally here.

Further, the actions of Fred and Gilbert as Bella Vista Partnership, in conjunction with Neal Baker, in their roles as Managing Members and a majority interest of the membership directed toward freezing out Morgan, denying him information and taking money from the Company that otherwise would have been Company assets, amount to minority member oppression under S.C. Code § 33-44-801(e). Under the Operating Agreement, Fred, and Gilbert, as Bella Vista Partnership, are liable to the Company for indemnification for their wrongful acts and their actions subject to an accounting by this panel.

12. Fraud and Misrepresentation, Civil Conspiracy, Unfair Trade Practices, Alter Ego

The facts alleged in the Amended Complaint and that will be proven at trial will show numerous false misrepresentations by Fred and Gilbert to the Company and to Morgan, upon which the Company and Morgan justifiably relied and based on which they have been damaged. The Defendants combined with each other and with others, to cause harm to the Company and to Morgan and so have engaged in a civil conspiracy. *Paradis v. Charleston Cty. Sch. Dist.,* 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021). The testimony to be presented is expected to establish that Bomasada's practice in having the projects in which they engage cover all their overhead and operating expenses, regardless of the time spent on that client's project amounts to an unfair trade practice under the South Carolina statute. Further, Fred and Gilbert's use of Bomasada and BIG II as means to unlawfully direct payments to themselves justify the panel to disregard the corporate entity to reach the improperly obtained assets where they are held. *Magnolia N. Prop. Owners' Ass'n v. Heritage Cmtys., Inc.,* 397 S.C. 348, 358, 725 S.E.2d 112, 117 (Ct. App. 2012).

13. Statute of Limitations

Based on the Defendants' pattern and program of activity, Morgan could not have known he had a claim against Fred, Gilbert, or the Bomasada entities, though he was often frustrated and

angered by their actions, until Randall Harris first found the evidence of unauthorized trips to Africa, Mexico, and golf courses in the US in Bomasada's records in Houston in 2011.

This issue has been briefed in full in response to Defendant's dispositive motions.

14. Derivative Action

Morgan attempted several times to have the Members vote on bringing this derivative action in late 2011, but Fred (and Bella Vista) refused, Pearlstine would not agree, and Baker Estate had no vote. Morgan had to bring the lawsuit to obtain a TRO to prevent Fred and Gilbert from taking over $200,000 in cash out of the account unilaterally, ostensibly to reimburse themselves for an insurance premium that they now admit they never paid (the Company did). There was no requirement that the Company be named in the derivative suit. The Company was later named in the Amended Complaint and that amendment relates back to the original filing of the lawsuit.

This issue has been briefed in full in response to Defendant's dispositive motions.

15. Mediation/ Arbitration

Morgan attempted to mediate and arbitrate before the lawsuit was filed, but Fred and Gilbert refused, and the need for the TRO required the immediate filing of a lawsuit. Soon after, Morgan agreed to refer the matter to arbitration. The case was mediated and reached an impasse.

16. Final Order in Construction Case.

The order ending the construction case released the Company's claims against any third parties for liability claims against it in the construction case. The matters in arbitration could not have been litigated in the construction case and were not affected by that order.

This issue has been briefed in full in response to Defendant's dispositive motions.

Respectfully submitted,

/s/ W. Andrew Gowder, Jr.

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Re: *Thomas Morgan v. John L. Gilbert, et al.*

Dear Counselors:

Please find enclosed *Defendants' Motion for Reconsideration of Arbitration Award* in the above-referenced matter.

With kind regards, I remain

Sincerely,

Womble Bond Dickinson (US) LLP

Henry E. Grimball
Partner

HEG:jva
Encl.

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IN ARBITRATION

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580
THOMAS H. MORGAN Plaintiff, v. JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, Defendants.	)	**DEFENDANTS' MOTION FOR RECONSIDERATION OF ARBITRATION AWARD**

Defendants (excepting 150 Bee Street, LLC) (collectively, the "**Defendants**") herewith submit to the Arbitration Panel (the "**Panel**") this Motion for Reconsideration of its Arbitration Award (the "**Award**").

ISSUES TO RECONSIDER

1) DERIVATIVE ACTION/SUBJECT MATTER JURISDICTION ISSUE

This issue was briefed and heard by the Panel on June 16, 2022. Although the Panel issued an order denying the Defendants' Motion at that time without making findings of fact or conclusions of law and without prejudice, the Defendants renewed this Motion at the hearing commencing October 31, 2022 (the "**Hearing**") and introduced further evidence bearing on this issue.

In the Panel's Award, the Panel ruled on this issue (at page 5) as follows: "the Defendants'

Motion for Dismissal of the Derivative Action, which was renewed after presentation of the Plaintiff's case and at the conclusion of the testimony, is hereby DENIED." The Panel again made no findings of fact and no conclusions of law.

2) STATUTE OF LIMITATIONS ISSUE

This issue was also briefed and heard by the Panel on June 16, 2022, and thereafter denied, without prejudice and without findings of fact or conclusions of law.

The Defendants renewed this Motion at the Hearing and introduced further evidence bearing on this issue.

In the Panel's Award, the Panel ruled on this issue (at page 5) as follows: "The Defendants' Motion for Dismissal on the grounds that the three-year statute of limitations had run prior to the filing of the original complaint on January 26, 2012, is hereby DENIED." The Panel again made no findings of fact and no conclusions of law.

3) INSURANCE ISSUE/CLAIMS ARISING OUT OF THE CONSTRUCTION LITIGATION[1]

The Panel considered this issue on pages 15 and 16 of its Award. It found:

a) "Defendants' Ex. 51.1 is a Certificate of Insurance indicating that 150 Bee Street had been listed as an additional insured under the policy to be issued by Westchester Insurance."

b) "However, the actual insurance policy was not entered as an exhibit at the hearing so there is no way for the Panel to determine if the insurance policy actually contained an endorsement listing the Company as an insured."

[1] Civil Acton No. 2014-CP-10-5120

c) "The Plaintiff did enter Exhibit 197 which was a denial of coverage letter from Chubb denying coverage to the Company under the liability policy issued by Westchester Insurance."

LAW

I) ISSUES 1 AND 2

As to these two issues, the Defendants move pursuant to SCRCP 59(e) for the Panel to reconsider its rulings and alter or amend its judgment.

SCRCP 52 states:

> RULE 52. FINDINGS BY THE COURT
>
> (a) **Effect.** In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58….

The record/award reflects the Panel did not explicitly rule on the Defendants' arguments concerning issues 1 and 2, *supra*.

The Defendants herewith move pursuant to Rule 59(e) for the Panel to reconsider its Award and amend or alter its judgment on this ground.

II) ISSUE 3

The evidence in the record makes clear that, despite Morgan's claims to the contrary, Bella Vista did obtain commercial general liability insurance for the Company which was available to pay any claims by the HOA against the Company in the Construction Litigation. The record unambiguously shows Morgan never presented the ACORD Certificate evidencing this coverage for the Company to the insurance carrier and failed to pursue this coverage in the Construction Litigation.

The record demonstrates that the Defendants purchased a CGL policy naming the

Company as an insured through the Pasadena Insurance Agency ("**Pasadena**"). The Defendants brought the existence of this policy to the attention of the Company and its counsel in March 2014 when the HOA first threatened suit.[2] At that time, Morgan, one of the Company's Managing Members with effective control of the Company, took the lead role in trying to obtain insurance coverage for the Company in the Construction Litigation. The record shows he did not present any evidence of coverage to the insurance carrier and did not successfully pursue the coverage. It is unclear from the record why Morgan did not pursue this coverage to a successful conclusion, but his claim that the Bomasada Defendants did not obtain such coverage is clearly incorrect.

The record directly contradicts Morgan's assertion in paragraph 144 of his verified Second Amended Complaint[3] that 150 Bee Street "was denied insurance coverage because 150 Bee Street was not named as an insured by the Defendants."

The Company's records contain an email dated April 9, 2005[4] from John Gilbert to Jay Karkowski of Pasadena requesting that Karkowski add the Company as an additional insured to the policy insuring BIG II. Until then, the named insureds appear to have been BIG II and BGI in Westchester Surplus Lines Inc.'s policy GLW7893630.[5]

Pasadena sent Gilbert an invoice dated 7/14/05 with an Acord Certificate of Liability Insurance Policy GLW7893630 with the Company added as a named insured.[6] Morgan never presented that certificate to the carrier.

Attorney Tom Hildebrand, representing the Bomasada Defendants in the Construction

[2] Defs.' Hearing Exs. 38, 39, and 42.5.
[3] Defs.' Hearing Ex. 30.
[4] Defs' Hearing Ex. 44.
[5] Defs.' Hearing Ex. 45.
[6] Defs. Hearing Ex. 46.

Litigation, sent a December 3, 2014 letter to Westchester[7] demanding a defense and indemnification under the Westchester policy in question. Unlike Morgan, Hildebrand, a highly qualified and seasoned construction attorney knowledgeable about such coverage, did not accept the initial denial of coverage and finally confirmed that coverage in his February 21, 2017, letter to Westchester.[8]

Hildebrand testified, without contradiction, that (a) despite Morgan's plea that he needed to see the policy itself to be persuaded about coverage, Hildebrand customarily relied on Acord certificates to confirm coverage;[9] (b) Hildebrand saw no reason why the Company as a named insured in the Westchester policy would not, if properly demanded, have obtained the same coverage Hildebrand ultimately secured for the Bomasada Defendants under the same policy; and (c) the letter of Michele Blais of Chubb to Ryan Earhart of February 23, 2016, declining coverage to the Company[10] was ineffective, because Morgan had demanded coverage under the original Westchester policy issued to BIG II, not the amended policy naming 150 Bee Street LLC as an insured. Blais was the same Chubb representative with whom Hildebrand dealt in 2017 for the Bomasada Defendants.[11] The Acord Certificate unambiguously names 150 Bee Street LLC as a named insured. There was no evidence that, unlike Hildebrand, Morgan or the Company ever made demand on the carrier based on the Acord Certificate naming 150 Bee Street, LLC, as a named insured and simply dropped the matter.

Moreover, in the Construction Litigation, where the Westchester coverage was an issue,

[7] Defs.' Hearing Ex. 48.
[8] Defs.' Hearing Ex. 49.
[9] Tr. at 1316:1 – 22. Hildebrand testified unequivocally that "I don't think I've ever attached the actual policy. ….[W]e just attach the ACORD Certificate and that's what typically implicates the coverage."
[10] Pltfs.' Hearing Ex. 197.
[11] Defs.' Hearing Ex. 49.

the Company through Morgan and the HOA represented to the Court of Common Pleas in a fairness hearing that the Mutual Settlement and Release Agreement entered into between the Company and the HOA was the "complete agreement" between the parties. That representation was patently untrue. The Mutual Settlement and Release Agreement also assigned any claims which the Company might have against any insurer including "contractual indemnity, equitable indemnity and 'additional insured' status" claims."[12] These actions should preclude Morgan's insurance/construction claims in this arbitration proceeding.

In any event, because the Panel appears to base its ruling as to the Westchester policy on the absence in the record of the policy itself, the Defendants have fortuitously contacted Westchester and discovered that it can and will produce the policy. Defendants have asked Westchester to expedite a non-certified copy of the policy and thereafter a certified copy, both of which the Defendants will submit to the Panel as soon as possible for its reconsideration of this issue now being made pursuant to SC Code §§ 15-48-100 et. seq.

Similarly, the record from the Hearing demonstrates unequivocally that Morgan entered into a "Recovery Sharing Agreement" with the HOA which was not disclosed to the Court of Common Pleas as part of the resolution of the Construction Litigation despite Morgan's representation to that Court that the Mutual Settlement and Release Agreement entered into between the Company and the HOA was the "complete agreement" between the parties. Filed on May 3, 2018,[13] Judge Harrington's Order approving the resolution of the Construction Litigation as to the parties to the instant proceeding included and denominated as "Settling Defendants" Bomasada Group, Inc., Bomasada Charleston, Ltd., Bomasada Investment Group II,

[12] Defs.' Hearing Ex. 2, para. 4.
[13] Defs' Ex. 138.2.

LLC, Stuart L. Fred, and John L. Gilbert, Sr. The Order specifically stated: "Further, the Court hereby dismisses, with prejudice [emphasis of the Court], any and all cross-claims of 150 Bee Street, LLC and Hightower Construction Co. Inc., **including those that were or might have been made** [emphasis added] in the above referenced matter, as to the Settling Defendants only, with each party to bear its own costs."

Simply put, the unambiguous record in the instant proceeding relating to the handling of the Company's insurance and the settlement of claims in the Construction Litigation involving the secret Recovery Sharing Agreement and Judge Harrington's order present alternative independent bases for modifying the Award as it relates to claims arising out of the Construction Litigation.

CONCLUSION

For the reasons above, Defendants respectfully request that the Panel reconsider and amend its award.

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ATTORNEY FOR DEFENDANTS [Except 150 Bee Street, LLC]

April 18, 2023
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN ARBITRATION
	)	
COUNTY OF CHARLESTON	)	Previously:
	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	C/A NO: 2012-CP-10-580
THOMAS H. MORGAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
JOHN L. GILBERT, et al.	)	
	)	
Defendants.	)	
	)	

I do hereby certify that on April 18, 2023, I served a copy of the ***Defendants' Motion for Reconsideration*** on all counsel of record in the within entitled matter via E-Mail as follows:

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WOMBLE BOND DICKINSON (US) LLP

s/Jade Alderman

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON THOMAS H. MORGAN Plaintiff, v. JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, Defendants.	IN ARBITRATION IN THE COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580 **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION OF ARBITRATION AWARD**

INTRODUCTION

Defendants have moved the arbitration panel to reconsider the arbitration award. Defendants have stated no valid basis for the panel to modify or alter its decision. There has been no intervening change in controlling law, there is no new evidence that was not available at trial (more on that, below) and there is no clear error of law or manifest injustice in the award. The Defendants simply disagree with the award and seek to relitigate issues that the panel has decided. The panel should deny the motion.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savanah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e)relief). Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening

change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinston v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to [*2] raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does "[a] party's mere disagreement with the court's ruling . . . warrant a Rule 59(e) motion." In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F. Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat'l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

ISSUES 1 AND 2

The Defendants have asked the panel to issue findings of fact and conclusions of law on their motions to dismiss.

Judge Hughston's order, paragraph 13, instructed the arbitrators as follows: " The arbitrators shall issue a final determination within thirty (30) days of the completion of the hearing unless otherwise agreed to in writing by the parties. The determination shall be issued in the form of an award on all claims and counterclaims."

The South Carolina Uniform Arbitration Act imposes only one requirement regarding the arbitration award, which is that it be in writing:

> (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

S.C. Code Ann. § 15-48-90.

The panel is not required to issue findings of fact or conclusions of law in ruling on the Defendants' motions to dismiss and the decision of the panel is clear from the text of the award. There is no need to modify or supplement the dismissal of the motions as described in the written text of the award.

ISSUE 3

Here, the Defendants take issue with the panel's decision with regard to the Defendants' failure to obtain liability insurance protecting 150 Bee Street, LLC, as required by the Development Agreement between Bomasada and 150 Bee Street and by Fred's fiduciary duty to the Company as a Managing Member (see Arbitration Award, pages 15-16). The Defendants argue with the panel's conclusions that even though a Certificate of Insurance (Defendant's Exhibit 51.1) indicated that 150 Bee Street had been added as an additional insured after the fact, there was no policy of insurance introduced into evidence and in fact the Plaintiff did enter a letter (Exhibit 197) from Chubb denying coverage to the Company under the liability policy issued by Westchester Insurance.

The panel correctly decided this issue and the Defendant cites no basis for the panel reversing its considered decision. The Defendants had a contractual and fiduciary obligation to provide insurance coverage and the evidence is that Westchester took the position in the construction case that no coverage existed and stated so in a coverage denial letter, which is in evidence (Exhibit 197). There is no liability policy in evidence showing that 150 Bee Street LLC is a named insured. The refusal by Westchester to defend or indemnify 150 Bee Street in the construction litigation and 150 Bee Street's resulting need to fund its own defense and contribute to the settlement amount (which amounts were not contested by the Defendants, as the panel points out) is compelling evidence that the Defendants failed to procure such liability coverage, as the panel concluded.

Remarkably, now, nearly 6 months after the Defendants rested their case and the hearing was closed and 11 years since this case was filed, the Defendants want to produce a policy to the panel indicating that such coverage exists. If such a policy ever did exist, it would have been known to the Defendants and the Defendants could have procured it and introduced into evidence in this case, (not to mention during the construction case when the Company needed a defense and indemnity). Clearly, this policy does not qualify as "new evidence not available at trial" under the Hutchinston test cited above. The panel should deny this request to introduce new evidence after the close of the record and after the award.

Finally, the Defendants argue yet again their motion to dismiss based on Judge Harrington's order ending the construction case. These issues were briefed and argued extensively at the motion to dismiss/summary judgment stage in June 2022. The panel denied that motion based on those arguments at the motion to dismiss stage and again in the Award, after the trial.

Again, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, supra, at *2. Nor does "[a] party's mere disagreement with the court's ruling . . . warrant a Rule 59(e) motion." In re Pella Corp., 269 F. Supp. 3d at 691; Lyons,781 S.E.2d at 137.

There is nothing new in the arguments raised by the Defendants regarding the effect of the construction case final order on this arbitration proceeding. As argued previously, the language in Judge Herrington's order was standard for all orders of dismissal and meant to dismiss claims that could have been brought in that construction defect case. It was not meant to, nor does it, affect a prior filed, pending, unrelated case between some but not all the same parties.

Nor could it. Judge Hughston's consent order of 2012 required that all claims by the parties listed in this caption against each other at that time be litigated in the arbitration case, exclusively.

Morgan and 150 Bee Street, LLC could not have raised these same claims already being litigated in this arbitration in the construction case even if they wanted to, which they did not.

For all of the reasons stated above, and those presented by the Plaintiff at trial and in post-trial written submission, the Plaintiff respectfully requests that the panel deny the motion for reconsideration filed by the Defendants.

Respectfully submitted,

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May 3, 2023
Charleston, SC

ELECTRONICALLY FILED - 2023 Jun 30 2:40 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

IN ARBITRATION

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580
THOMAS H. MORGAN Plaintiff, v. JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, Defendants.	)	**DEFENDANTS' MOTION TO VACATE OR MODIFY THE FINAL ARBITRATION AWARD**

YOU WILL PLEASE TAKE NOTICE that the Defendants (excepting 150 Bee Street, LLC) (collectively, the "**Defendants**"), by and through their undersigned counsel, move before the Court of Common Pleas, Charleston County, on the 10th day after service hereof or as soon thereafter as counsel may be heard, for an Order vacating the Final Arbitration Award served on the parties on June 20, 2023, attached hereto as **Exhibit "A,"** (the "**Award**") with the panel's transmittal letter and email from the Panel's chair, H. Brewton Hagood. The Award lacks findings of fact and conclusions of law. This motion is made pursuant to S.C. Code § 15-48-130 and such case law as applies. Alternatively, Defendants seek to modify or correct the Award pursuant to S.C. Code § 15-48-140. The grounds of this motion include the following:

1. NO SUBJECT MATTER JURISDICTION

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The arbitrators (or the "**Panel**") have exceeded their powers and/or manifestly disregarded the law governing their jurisdiction in this matter in that the Panel lacked subject matter jurisdiction to hear the case and should have dismissed the case as a matter of law.

Plaintiff Thomas H. Morgan ("**Morgan**" or "**Plaintiff**") and Defendant Bella Vista Partnership, a Texas General Partnership ("**Bella Vista**"), were two of the four members of Defendant 150 Bee Street, LLC, a South Carolina limited liability company ("**150 Bee Street**," the "**Company**" or the "**LLC**"). The Company constructed a condominium building in Charleston, South Carolina. The principals of Bella Vista are Defendants Stuart Fred ("**Fred**") and John Gilbert ("**Gilbert**").

On January 26, 2012, Morgan filed his verified derivative complaint (the "**2012 Complaint**") against Bella Vista, Fred, Gilbert and other related defendants on behalf of the Company. However, in this Complaint, Morgan did not name the Company as a party plaintiff or defendant. The Original Complaint did not name the Company as a defendant, though the Company was a necessary party to a derivative action. The Defendants raised the defense of lack of subject matter jurisdiction in Paragraph 79 of their original answer to the 2012 Complaint filed on March 13, 2012.

Morgan did nothing to correct this error until six (6) years later when he filed a motion with the Panel in February, 2018, seeking to amend his 2012 Complaint to add the Company as a party, years beyond South Carolina's three year statute of limitations. Over the objections of the Defendants, the Panel Chairman allowed the amendment.

Morgan had no explanation for this error during the Hearing (the "**Hearing**" or the "**Trial**"), which began October 31, 2022. In addition, in his verified 2012 Complaint, Morgan asserted that as a Managing Member of the Company, he had the authority to initiate the suit

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himself without seeking authority from the Company's other members to do so despite the express language of the Company's operating agreement forbidding him from doing so.

The uncontradicted law throughout the United States is that the Company was an indispensable party to the instant litigation and should have been named as a party from the outset. In a stockholder's or an LLC member's derivative action, the corporation on behalf of which the action is brought is not merely a proper party but is an essential, **indispensable** party. A failure to make the corporation or company, as applicable, a party is not a mere defect of parties, but leaves the plaintiff without a cause of action and the tribunal without subject matter jurisdiction. Whenever it appears that a court lacks subject matter jurisdiction because of the failure of the plaintiff to join an indispensable party, the law requires the tribunal to dismiss the action.

In addition, S.C. Code § 33-44-1101 authorizes a claimant to commence a derivative action only if "the members or managers having authority to do so have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed."

Morgan's unilateral decision to bring the instant suit violated this statute and the Panel lacked subject matter jurisdiction.

The Court and, thereafter, the Panel lacked subject matter jurisdiction, and the case should have been, and must be, dismissed as a matter of law.

2. MORGAN DID NOT COMPLY WITH THE THREE YEAR STATUTE OF LIMITATIONS

The applicable statute of limitations also bar Morgan's action as a matter of law.

On July 6, 2008, more than four (4) years before filing his 2012 Complaint, Morgan emailed other Company's members:

> I am turning all my correspondence on this project over to my lawyers and accountants. Stewart [sic. "Stuart"] **you have stolen too much money from us**. There is no way we have spent $450,000 on travel expenses. I am tired of your

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> theft and bullshit. Don't ever contact me again. **I am going to sue your ass** and get our money back!
>
> (Emphasis added)

Two days later, July 8, 2008, Morgan emailed his brother-in-law Neal Baker ("**Baker**"), then a Managing Member of the Company:

> "My attorneys and accountants will handle it from here in the courtroom."

In August 2008, Morgan again exchanged emails with Baker and specifically noted in an August 23, 2008 email;

> The only reason I don't plan to sue John and Stuart is that I don't want to involve you in the middle of all this. So anyway you don't have to worry about ending this deal in a lawsuit in any case.

South Carolina law applies the "discovery rule" to applicable statutes of limitation. The discovery rule provides that the applicable statute begins to run when the plaintiff should know that he might have a potential claim against another, not when he develops a full blown theory of recovery. Moreover, consultation with an attorney has been held to indicate that a claimant has discovered or reasonably ought to have discovered a potential claim. Or as the Fourth Circuit Court of Appeals has put it: "South Carolina's statute of limitations begins to run when the facts and circumstances would alert an injured person of common knowledge and experience that she [or he] might have a cause of action, not that she [or he] certainly has one…. Plainly, it takes very little to start the clock." When Morgan finally filed his 2012 Complaint on January 26, 2012, the clock had long since run out.

On this additional ground, the Panel should have dismissed the case as a matter of law.

3. PURSUANT TO THE DOCTINE OF "UNCLEAN HANDS," THE PANEL SHOULD NOT HAVE AWARDED MORGAN ATTORNEY'S FEES

S.C. Code § 33-44-1104 permits, but does not require, an award of plaintiff's "reasonable expenses, including reasonable attorney's fees" if a derivative action is successful. South Carolina

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case law makes it clear that the doctrine of unclean hands applies to any request for attorney's fees. Beyond any doubt, Morgan's hands were unclean in his management of the Company and prosecution of this case.

As noted above, the purpose of the LLC was to build a condominium building [eventually to be controlled by a homeowner's association] in Charleston. During the pendency of Morgan's derivative action, on August 22, 2014, the 150 Bee Street homeowner's association (the "**HOA**") filed a construction defect case naming multiple defendants, including 150 Bee Street LLC, Gilbert, Fred, and Bella Vista (the "**Construction Case**"). While Morgan was not a party to the Construction Case, he had become a Managing Member of the Company and, with Managing Member Edwin Pearlstine's acquiescence, had absolute control of the Company.

In mid-2017, settlement negotiations began in earnest in the Construction Case. The Company's members tentatively authorized a settlement of the claims against it in the Construction Case. However, approval of the proposed settlement by the Company was contingent on the Company's acquiring a "fairness opinion." Pursuant to the required authorization of the Company's members, the Company retained attorney Kirkland Grant to provide the Company with the required "fairness opinion" as to the settlement terms with the HOA. Moreover, the Company's resolution authorizing the proposed settlement recited very specific settlement terms.

At a December 5, 2017, meeting, the Company's members, other than Bella Vista, again voted on a resolution to settle the Construction Case and authorized Morgan to execute the "Settlement Agreement," also voting to request that Grant complete his fairness opinion, a preliminary copy of which he had issued. On December 15, 2017, the Company and HOA executed a "Settlement and Release Agreement" with the Company paying the HOA $470,000. The settlement paradoxically required the Company to remain in the Construction Case as a

ELECTRONICALLY FILED - 2023 Jun 30 2:40 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

defendant (without its attorney, who withdrew). Like 150 Bee Street, LLC, Fred, Gilbert and their related defendant entities, represented by Tom Hildebrand, Esq., remained defendants in the Construction Case.

Unbeknownst to anyone else, including the Company's other Members and Kirkland Grant, Morgan, his counsel Andy Gowder and Mike Rose, and Jesse Kirchner representing the HOA, had entered into a secret "Recovery Sharing Agreement" whereby the HOA would receive 40% of any settlement or verdict Morgan achieved in the instant derivative action. Morgan's unauthorized "Recovery Sharing Agreement" was hidden from (a) the LLC, (b) the LLC's other Members, (c) Kirkland Grant, (d) Hildebrand, and (e) most seriously of all, the Court. In a series of misrepresentations, Morgan, through counsel, advised the trial court in its approval of the settlement of the Construction Case that the Court was being provided with all the settlement terms when in fact the "Recovery Sharing Agreement" was not disclosed. Without a doubt, Morgan's unauthorized and fraudulent actions reduced the Company's potential recovery in the instant derivative action by 40% with no disclosure to Grant, the trial court, and the Company's other Members, all in direct violation of the Company's Operating Agreement.

Under these circumstances of fraud and deceit, Morgan should not be awarded any attorney's fees or costs.

4. CONTRARY TO THE DICTATES OF SCRCP 52, THE PANEL PEREMPTORILY DENIED DEFENDANTS' TWO MOTIONS TO DISMISS WITHOUT GIVING ANY REASON

The Defendants' two motions, to dismiss for lack of subject matter jurisdiction and for Morgan having missed the statute of limitations deadline, were briefed and filed 3-4 years before finally being heard by the Panel on June 16, 2022. In July 2022, the Panel issued its order denying the Defendants' motions without giving any reason, without discussion, and without any findings

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of fact or conclusions of law, but without prejudice to the Defendants renewing the two motions at the Hearing where the Defendants introduced further evidence bearing on these motions.

Following the Hearing, Plaintiff and Defendants submitted proposed orders to the Panel on December 22, 2022. The Panel issued its initial Arbitration Award nearly four months later on April 10, 2023. In its Award, the Panel ruled on these two issues as follows:

> The Defendants' Motion for Dismissal of the Derivative Action, which was renewed after presentation of the Plaintiff's case and the conclusion of the testimony, is hereby DENIED.

Once again, the Panel offered no reason or rationale for its rulings, with no findings of fact and no conclusions of law. Once again, the Panel did not offer one case or other legal support for its decision.

On April 18, 2023, the Defendants, pursuant to SCRCP 59(e) and 52, filed a Motion for Reconsideration in which they requested that the Panel rule explicitly on these issues with findings of fact and conclusions of law. Once again, the Panel, on June 19, 2023, issued a perfunctory ruling: "Defendants' Motion is hereby denied as to issues 1 [subject matter jurisdiction] and 2 [the statute of limitations] set forth in the Motion for Reconsideration."

If the issue is raised, South Carolina law requires that a tribunal determine as a threshold issue whether the tribunal has subject matter jurisdiction. Subject matter jurisdiction is the power of a tribunal to hear and determine a case. Without subject matter jurisdiction, anything a tribunal does is void "ab initio." As a result, a tribunal has a duty to take notice of the jurisdictional boundaries set by the law. Most importantly, subject matter jurisdiction may not be waived, and the issue may be raised at any time, including when raised for the first time on appeal to the South Carolina Supreme Court.

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In the absence of findings of fact and conclusions of law, the Defendants contend that the Panel was neglectful of this critical, legally bedrock issue. The Defendants further contend the Panel's peremptory, unreasoned denial of the Defendants' motions resulted from the Panel's inability to find any law, case, statute, or otherwise to support its rulings on the issues of subject matter jurisdiction and the applicability of the statute of limitations.

Moreover, cases have ruled that the arbitrators' failure to explain their award was a factor in an appellate court's determination that the arbitrators disregarded the law.

Defendants further contend that regardless of the Panel's failure to make a reasoned decision, because the lack of subject matter jurisdiction may be raised at any time, the Defendants raise it now, de novo, and petition the Court to dismiss this case for the reasons stated.

While the issue of the statute of limitations may not be quite as fundamental to the proper administration of justice, it remains a very important principle in all our jurisprudence.

The Defendants believe that the Panel manifestly disregarded the law governing this issue and the requirement of findings of fact and conclusions of law.

For these additional reasons, the Panel's award should be dismissed.

5. CONCLUSION

For the reasons expressed above, the Defendants ask this Court to vacate the Award and dismiss the instant action. Alternatively, even if the Court were to affirm the Panel substantively, under no circumstances should Morgan be awarded legal fees due to his unclean hands in his fraudulent, untruthful conduct in his settlement in the Construction Case.

The results here, if otherwise allowed to stand, would erode confidence in the integrity and fairness of the arbitration process. Therefore, the Award must be vacated or, alternatively, modified by the Court.

In further support of this Motion, the Defendants will rely upon prior filings and trial exhibits, a supplemental Memorandum of Law, and the presentation of counsel at a hearing.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

s/ Morris Ellison
Henry E. Grimball, S.C. Bar No. 2313
Morris A. Ellison, S.C. Bar No. 1881
5 Exchange Street (29401)
P.O. Box 999
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(843) 722-3400

ATTORNEY FOR DEFENDANTS [Except 150 Bee Street, LLC]

June 30, 2023
Charleston, South Carolina

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IN ARBITRATION

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580
THOMAS H. MORGAN Plaintiff, v. JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, Defendants.	)	**FINAL ARBITRATION AWARD**

Dates of Hearing:	**October 31, 2022 – November 8, 2022**
Arbitration Panel:	**H. Brewton Hagood, Chair** **Hon. Costa M. Pleicones** **Paul A. Dominick**
Attorneys for Plaintiff:	**W. Andrew Gowder, Jr.** **Michael T. Rose**
Attorneys for Defendants:	**Henry E. Grimball** **Morris A. Ellison**
Court Reporter:	**Judy W. Galuppo, Veritext Legal Solutions**

The Panel issued its Arbitration Award on April 10, 2023, awarding judgment against the Defendants, except for 150 Bee Street, LLC, in the total amount of $2,976,234.00, excluding attorneys' fees and costs. The Plaintiff was directed to provide a detailed summary of expenses,

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including legal fees, within 15 days from the date of the Award. The Defendants were given 15 days to respond to Plaintiff's submission.

On April 17, 2023, the Plaintiff sent an e-mail to the Panel requesting an award of attorneys' fees and costs in the amount of $2,002,805.18 and attached: Plaintiff's Exhibit 202; Schedule 1 Exhibit 220 Breakout; and Addendum 1 Thomas H. Morgan Transaction Report. On May 1, 2023, Defendants submitted a Memorandum In Opposition to Plaintiff's Demand for Attorneys' Fees.

On April 18, 2023, the Defendants submitted a Motion for Reconsideration of Arbitration Award, and Plaintiff submitted a Memorandum in Opposition to Defendants' Motion for Reconsideration of Arbitration Award on May 3, 2023. The Panel will address the Motion for Reconsideration of Arbitration Award first.

Defendants' Motion for Reconsideration of Arbitration Award

Defendants' Motion for Reconsideration presents three issues for the panel to rule upon:

1) Derivative Action/Subject Matter Jurisdiction issue;

2) Statute of Limitations Issue; and

3) Insurance Issue/Claims Arising Out of the Construction Litigation.

The first two issues were raised by previously by Defendants in Motions to Dismiss under Rule 12 and a Motion for Summary Judgment under Rule 56, all of which were treated as having been made under Rule 56 since matters outside the pleadings were submitted when oral arguments were heard by the Panel on June 16, 2022. These motions were denied by Order of the Panel dated July 11, 2022. Defendants renewed these motions following the presentation of the Plaintiff's case during the arbitration hearing and again at the conclusion of the hearing. Defendants assert that the Panel's Order violates SCRCP 52 stating that there were no specific finding of facts and

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conclusions of law issued by the panel when the Panel again denied Defendants' motions as part of its Arbitration Award dated April 10, 2023.

The Panel notes that this dispute was referred to Arbitration by a Consent Order agreed to by counsel for the parties and signed by Judge Thomas L. Hughston dated July 9, 2012. Paragraph 8 of the Consent Order stated that "This arbitration shall follow the South Carolina Rules of Civil Procedure where practical and to the extent not inconsistent herewith". The only provision in the Consent Order addressing the form of the Award is the requirement in paragraph 13 that "The determination shall be issued in the form of an award on all claims and counter-claims". The Panel issued a 25-page unanimous Arbitration Award addressing each of the claims asserted by the Plaintiff in his Second Amended Complaint, except those which the Plaintiff withdrew following the hearing. The Panel did not award any relief to the Defendants under the Counterclaims set forth in the Defendants' Answer to Second Amended Complaint and Counterclaims dated April 26, 2022.

The Panel has considered the grounds and law cited in Defendants' Motion for Reconsideration of Arbitration Award dated April 18, 2023, and the arguments presented in Plaintiff's Memorandum In Opposition To Defendants Motion For Reconsideration Of Arbitration Award dated May 3, 2023. The Panel finds that it is not required to issue separate findings of fact or conclusions of law when ruling on motions presented and ruled upon prior to the hearing which are renewed during the hearing. In ruling on Defendants' Motions, the Panel noted that Defendants had submitted proposed Orders of Dismissal on the Statute of Limitations Issue and the Derivative Action Issue and that it had considered the testimony presented at the hearing, excerpts from the depositions of Jo Ved and Stuart Fred submitted by counsel, all exhibits entered into evidence by the parties and the proposed Orders submitted by counsel. The Defendants presented no new

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arguments in the Motion for Reconsideration which had not previously been presented to the Panel at the hearing held on June 16, 2022, after which the Panel issued its July 11, 2022, Order Denying Defendants' Motions to Dismiss and For Summary Judgment. Defendants' Motion is hereby denied as to issues 1 and 2 set forth in the Motion for Reconsideration.

Issue 3 in the Motion for Reconsideration of the Arbitration Award is identified as "Insurance Issue/Claims Arising Out Of The Construction Litigation". The Panel noted that Defendants had not entered a copy of the Westchester Insurance Policy into evidence at the hearing and had only entered a Certificate of Insurance into evidence purporting to list Bee Street Lofts, LLC as an additional insured. Defendants state in their Motion for Reconsideration dated April 18, 2023, that they are attempting to obtain a copy of the insurance policy. Morris Ellison informed the Panel in an e-mail dated May 12, 2023, that they had not yet obtained a copy of the insurance policy. Andy Gowder replied to Mr. Ellison's e-mail later on May 12, 2023, stated that the Panel should not receive or consider the insurance policy if it is located since it is not newly discovered evidence that could not have been produced over the years that the case has been pending. As of the date of this Final Arbitration Award no policy of insurance issued by Westchester has been submitted to the Panel.

The Panel finds that the record was kept open after the issuance of the Award for the sole purpose of allowing the Plaintiff to submit any documents relevant to recoverability of attorneys' fees and costs and Plaintiff's position as to the amounts of attorneys' fees and expenses being sought.

While not separately set forth as one of the 3 issues to be ruled upon in Defendants' Motion for Reconsideration of Arbitration Award, Defendants again argue that Judge Harrington's Order approving the settlement of the Construction Litigation, in effect, precludes Mr. Morgan from

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pursuing a claim that the failure of the Defendants to procure a policy of insurance covering 150 Bee Street, LLC caused damages to 150 Bee Street for the amount of legal fees paid to defend itself and the amount paid by 150 Bee Street to settle the Construction Litigation. The Panel has already ruled on this issue and no new evidence has been presented which would cause the Panel to reconsider this ruling.

For the above reasons, the Panel denies relief on all grounds set forth in Defendants' Motion For Reconsideration Of Arbitration Award submitted on April 18, 2023.

Plaintiff's Request for Attorneys' Fees

As directed by the Panel in the April 10, 2023, Arbitration Award, Plaintiff's counsel sent an e-mail on April 17, 2023, summarizing the amounts of legal fees and expenses requested by the Plaintiff and forwarded copies of the following documents to the Panel:

1. Exhibit 202, which was introduced and admitted into evidence during Mr. Morgan's testimony listing attorneys' fees and costs up to the time of trial;

2. Schedule 1, Exhibit 202 Breakout separating attorneys' fees from legal costs; and

3. Addendum 1, which lists legal fees and expenses incurred during and after the arbitration trial which are not included in Exhibit 202.

On May 1, 2023, counsel submitted Defendants' Memorandum In Opposition To Plaintiff's Demand For Attorneys Fees. Defendants agree that SC Code Ann. Section 33-44-1104 of the South Carolina Uniform Limited Liability Act permits, but does not require, an award of Plaintiff's "reasonable expenses, including reasonable attorney's fees" if the derivative action is successful. Defendants argue that the Plaintiff's derivative claims sought damages of approximately $12,000,000 and the Panel awarded $2,900,000 in actual damages, which is less than 25% of the amount sought. Defendants argue that Morgan had requested an additional

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$17,800,000 in individual damages and the Panel awarded no individual damages to Mr. Morgan. When viewing the total damages sought by Mr. Morgan, in both his derivative capacity and as an individual, Defendants argue that Mr. Moran was only awarded approximately 10% of the total damages sought.

Defendants then question the proof presented by the Plaintiff since no distinction is made between the attorneys' fees and expenses incurred by Morgan in his individual capacity and those incurred to prosecute the derivative claims.

The Panel has reviewed the evidence and considered the arguments submitted by counsel for the Plaintiff and the Defendants. The law is clear that the Panel, has the discretion to determine the reasonableness of a claim for the recovery of attorneys' fees under the South Carolina Uniform Limited Liability Act. The Panel finds that Mr. Morgan successfully prosecuted the derivative claims and the evidence presented indicates that Mr. Morgan personally funded all of the legal fees and expenses to prosecute these claims. Had Mr. Morgan not done so, there would be no recovery in favor of 150 Bee Street, LLC in the amount of $2,976,234. The Panel is mindful of the fact that Mr. Morgan did not obtain a recovery of any individual damages but, as counsel for the Defendants note, there is no statutory authority for the recovery of attorneys' fees by Mr. Morgan as an individual.

The Panel finds that since Mr. Morgan advanced the legal fees and costs necessary for 150 Bee Street to receive an affirmative award of $2,976,234, Mr. Morgan is entitled to a charging lien on the amounts of attorneys' fees awarded by the Panel to 150 Bee Street. This amount should be paid to Mr. Morgan to reimburse him for these advances, prior to the distribution of any funds received from the judgment to the members of the LLC. The Panel has already ruled that no portion

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of the recovery from the judgment is awarded to Bella Vista, the Bomasada Defendants, Stuart Fred or John Gilbert.

As to the amount to be awarded, the South Carolina Supreme Court has identified six factors which should be considered in determining whether a request for attorneys' fees is reasonable:

1. The nature, extent and difficulty of the case;
2. The time necessarily devoted to the case;
3. The professional standing of counsel;
4. Contingency of compensation;
5. Beneficial results obtained and
6. Customary legal fees for similar services.

In considering the above factors, the Panel finds that the case prosecuted by Mr. Morgan was a very difficult case which filed on January 26, 2012, and was referred to arbitration by Consent Order issued on July 9, 2012. The case was hotly contested by the Defendants and was originally scheduled for arbitration in May of 2020. The schedule for the arbitration was suspended due to the Covid 19 pandemic and travel for depositions was adversely affected. The case was not heard by the present Panel until late October of 2022. The online file at the Charleston County Clerk of Court's office indicates that Mediation was held on September 21, 2022, with Rebecca Laffitte as the Mediator, and an impasse was declared. Additionally, both sides retained expert witnesses who had to review and opine on both the amount and entitlement to damages.

Although the Panel was not furnished with detailed time and billing records, the summary provided showed that Mr. Morgan initially started with the firm of Clawson and Staubes, and later moved to Pratt-Thomas Epting and Walker. Mr. Gowder, who had been a member of Pratt-Thomas Epting and Walker, took over the representation after he formed his new firm. Michael T. Rose

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worked with Mr. Gowder on the case and participated in all pretrial proceedings and the Arbitration Hearing. The Panel finds that the summary provided of legal fees and expenses paid is representative of a case of this difficulty and magnitude and the time devoted to pre-hearing discovery, motions and a contested hearing. The Panel finds that Mr. Gowder and Mr. Rose are well respected members of the local bar who have been practicing law for many years.

As to the contingency of compensation, the submissions indicate that Mr. Morgan paid his attorneys on an hourly basis. Thus, the contingency in this case was not whether the attorneys would be paid but whether there would be an affirmative recovery in a contested case which was unable to be resolved short of a full hearing.

While Defendants argue that there only a recovery of 10 to 20% of the total damages sought, the recovery obtained through Mr. Mogan's efforts and advancement of attorneys' fees costs on behalf of Bee Street Lofts was $2,976,234, which is actually 48.9% of the claimed actual damages of $6,080,881.[1] It would be inequitable for Bee Street Lofts to receive the benefits of the award without awarding attorneys fees and costs as a charging lien to the benefit of Mr. Morgan before any amounts are distributed to the members of Bee Street Lofts, other than Bella Vista.

The Panel is required to exercise their collective discretion to arrive at a reasonable amount. After substantial discussion among the members of the Panel following the submissions by counsel, the Panel finds that the below approach achieves a result which is a customary award of legal fees and costs for similar services after consideration of the six factors:

[1] See Plaintiff's post-hearing proposed order in which he claims this amount. See also page 6 of the Arbitration Award of April 10, 2023.

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Total Award **$2,976,234.00**

Legal Fees

One-third of Gross Recovery = $992,078.00

Per cent recovered versus amount claimed = 48.9%

Fee Award After Applying Percentage versus amount claimed = $485,126.00

COSTS

Approved Costs = $266,746

Approved Cost After Applying Percentage of 48.9% = **$130,439.00**

Costs of Arbitration Requested (100%) = **$80,944**

TOTAL FEES AND COSTS AWARDED = $696,509.00

TOTAL ARBITRATION AWARD INCLUDING FEES AND COSTS = $3,672,743

This Final Arbitration Award, if confirmed by the Court, is intended be entered as a judgment against the Defendants, except for Bee Street Lofts, LLC, in favor of Bee Street Lofts, LLC, except for member Bella Vista Partnership, and John L. Gilbert and Stuart L. Fred, but no proceeds from any recovery on this judgment are to be distributed to the members of Bee Street Lofts, LLC until the charging lien in favor of Thomas H. Morgan has been fully satisfied.

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FOR THE PANEL

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Paul A. Dominick, Member
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Exhibit A
REC 0800

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON THOMAS H. MORGAN Plaintiff, v. JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, Defendants.	IN ARBITRATION IN THE COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580 **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO VACATE OR MODIFY THE FINAL VACATION AWARD AND PLAINTIFF'S MOTION TO CONFIRM AWARD**

INTRODUCTION

The arbitration award that the Defendants seek to vacate or modify is a result of a 10-year arbitration proceeding pursuant to a valid arbitration agreement and an order of this court referring the matter to arbitration with the consent of the Defendants. All of the issues raised by the Defendants in this motion were briefed and argued many times before the Panel and ultimately the Panel ruled against the Defendants' arguments on each occasion. Now, the Defendants seek another bite of the apple before this Court, in this motion to vacate. This the Defendants cannot have under the law of this state.

By the terms of the order referring this matter to arbitration, the Defendants consented to the subject matter jurisdiction of the court and the arbitration proceeding (**Exhibit B).**

The Panel was a 3-arbitrator panel made up of experienced lawyers chosen by consent of the parties that changed somewhat over the course of the ten years but the panel that decided the

dispositive motions and tried the case over more than a week's time consisted of two experienced and accomplished members of the Charleston County Bar[1] and a retired Chief Justice of the South Carolina Supreme Court[2].

The Panel read and examined thousands of pages of briefs, memos, exhibits, statutes, and legal opinions, and heard days of testimony from live witnesses, as well as reading hundreds of pages of submitted deposition testimony. The panel read memoranda on three separate dispositive motions (**Exhibits C and D**) filed by the Defendants and briefed by the parties and heard arguments on the motions at a hearing after which the Panel issued an order denying the motions (**Exhibit E**). Thereafter, the court heard testimony and argument at an arbitration hearing that began on October 31, 2022, and ended on Nov 8, 2022 (See Prehearing Brief, **Exhibit F**). Thereafter, the Plaintiff and Defendants prepared and submitted hundreds of pages of final written argument in the form of proposed orders which the panel considered and issued a written award on April 10, 2023 (**Exhibit G**). After considering the Defendants' motions and supporting memoranda on a Motion for Reconsideration, the panel issued a final award on June 19, 2023, which also resolved the award of attorney's fees which had likewise been briefed and contested by the Defendants.

The Defendants now argue that this Court should overturn all that. Under the law of South Carolina, though, the question is not whether these three arbitrators made a wrong decision, **but whether the arbitrators knew what the law was and simply disregarded it.** There is no basis for this argument that these experienced and accomplished lawyers and distinguished jurist simply disregarded the law, and instead their careful and meticulous consideration of the evidence and law in this case are evidenced by the panel's thoughtful written decisions that resolved the dispositive motions and decided the merits of the arbitration proceeding.

[1] H. Brewton Hagood, Chair; Paul A. Dominick, Member
[2] Costa M. Pleicones, Member

The Court must deny the motions of the Defendants to vacate or modify the arbitration award and must confirm the award of the arbitrators.

THE SCOPE OF REVIEW OF ARBITRATION AWARDS

(A) **A motion to modify may only be made on certain grounds provided by the statute, which do not exist in this case**.

S.C. Code Ann. Sec. 15-48-140 provides:

> (a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where: (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award; (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.
> (b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.
>
> S.C. Code Ann. § 15-48-140 (LexisNexis, Lexis Advance through 2023 Regular Session Act No. 7, not including changes and corrections made by the Code Commissioner) ("SC Arbitration Act")

There is no evident miscalculation, decision on a matter not submitted, or flaw in form not affecting the merits raised by the Defendants in their motion. There is, therefore, no basis in the law for modifying or correcting the panel's award. The motion made under 15-48-140 should be denied.

(B) **Review of an arbitration award is limited, and the decision of the arbitrator will be vacated only upon certain grounds as provided by statute, or upon the non-statutory ground of manifest disregard or perverse misconstruction of the law.**

Arbitration is not "litigation carried on by other means." Lauro v. Visnapuu, 351 S.C. 507, 516, 570 S.E.2d 551, 555-56 (Ct. App. 2002), citing White v. Preferred Research, Inc., 315 S.C. 209, 212, 432 S.E.2d 506, 508 (Ct. App. 1993). Judicial review of an arbitration award is therefore limited in scope, and any attempt to convert arbitration into a trial-like judicial proceeding is looked upon with disfavor. Lauro, 570 S.E. 2d at 555-556.

Arbitration is a favored method of settling disputes in South Carolina. When a dispute is submitted to arbitration, the arbitrators determine questions of both law and fact. Id. Generally, an arbitration award is conclusive, and courts will refuse to review the merits of an award. Id, citing Pittman Mortgage Co. v. Edwards, 327 S.C. 72, 75-76, 488 S.E.2d 335, 337 (1997) (citations omitted). Review of an arbitration award is limited, and the decision of the arbitrator will be vacated only under certain grounds as provided by statute, or upon the non-statutory ground of manifest disregard or perverse misconstruction of the law. Id., citing Harris v. Bennett, 332 S.C. 238, 503 S.E.2d 782 (Ct. App. 1998).

"Generally, an arbitration award is conclusive, and courts will refuse to review the merits of an award." Crouch Constr. Co. v. Causey, 405 S.C. 155, 163, 747 S.E.2d 482, 486 (2013), citing C-Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013) (quoting Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009)). "An award will be vacated only under narrow, limited circumstances." Id. "The judiciary should minimize its role in arbitration **as judge of the arbitrator's impartiality**." Id., quoting Commonwealth Coatings Corp. v. Cont'l Cas. Co., 393 U.S. 145, 151, 89 S. Ct. 337, 21 L. Ed. 2d 301 (1968) (White, J., concurring) (emphasis added).

In reviewing arbitration awards, "the standards for judicial intervention are . . . narrowly drawn to assure the basic integrity of the arbitration process without meddling in it." Id., quoting Merit Ins. Co. v. Leatherby Ins. Co., 714 F.2d 673, 681 (7th Cir. 1983). "The reasons for this are not hard to identify." Id., citing In re Andros Compania Maritima, S.A., 579 F.2d 691, 700 (2d Cir. 1978).

A decision to vacate an arbitration award may only be made on the specific grounds found in S C Code Ann. Sec. 15-48-130 or on the non-statutory basis of "manifest disregard or perverse misconstruction" of the law.

The SC Arbitration Act provides:

> (a) Upon application of a party, the court shall vacate an award where: (1) The award was procured by corruption, fraud or other undue means; (2) There was evident partiality by an

> arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party; (3) The arbitrators exceeded their powers; (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 15-48-50, as to prejudice substantially the rights of a party; or (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under § 15-48-20 and the party did not participate in the arbitration hearing without raising the objection. **But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.**
>
> S.C. Code Ann. § 15-48-130(a) (emphasis added).

Decisions of courts in this and other jurisdictions have vacated arbitration awards where there has been "a manifest disregard or perverse misconstruction of the law." Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009), citing Technical College v. Lucas and Stubbs, 286 S.C. 98, 333 S.E.2d 781 (1985); S.C. Code Ann. § 15-48-130(a); Batten v. Howell, 300 S.C. 545, 548-49, 389 S.E.2d 170, 172 (Ct. App. 1990) (citations omitted). However, decisions recognizing this non-statutory ground for vacating arbitration awards have required "something beyond and different from a mere error of law or failure on the part of arbitrators to understand or apply the law." Batten, 389 S.E.2d at 172. **"[A]rbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable**.'" Id. (emphasis added). If a ground for the award can be inferred from the facts, the award should be confirmed. Id.

For a court to vacate an arbitration award based upon an arbitrator's manifest disregard of the law, the governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable. Id. Case law presupposes something beyond a mere error in construing or applying the law. Even a "clearly erroneous interpretation of the contract" cannot be disturbed. Id. at 108, 333 S.E.2d 787. The focus is on the conduct of the arbitrator and presupposes something beyond a mere error in construing or applying the law. Id. at 108, 333 S.E.2d at 787. Accord, Harris v. Bennett, 332 S.C. 238, 503 S.E.2d 782 (Ct. App. 1998).

An arbitrator's "manifest disregard of the law" as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it. Gissel, 676 S.E. 2d at 324, citing Weimer v. Jones, 364 S.C. 78, 610 S.E.2d 850 (Ct. App. 2005). **Factual and legal errors by arbitrators do not constitute an abuse of power, and a court is not required to review the merits of a decision so long as the arbitrators do not exceed their powers.** Id., Pittman, supra (emphasis added).

Here, the Defendants argue that the award should be vacated under the statute because "The arbitrators exceeded their powers" "and/ or manifestly disregarded the law governing their jurisdiction in this matter in that the Panel lacked subject matter jurisdiction to hear the case and should have dismissed the case as a matter of law." Defendants' Motion to Vacate, at 1.

The Defendants' burden, therefore, in this motion to vacate, is to prove that as a matter of law the arbitrators (1) **knew that they had no authority to decide this case**, (2) **ignored the law**, and (3) **decided the arbitration proceeding in knowing and manifest disregard of that law**. This, clearly, the Defendants cannot do.

ARGUMENT

1. **The issue of subject matter jurisdiction was thoroughly briefed and argued before the panel at both the dispositive motion stage, at the trial and at the post-trial stage, and the panel ultimately decided in favor of the arguments recognizing the court's and panel's subject matter jurisdiction.**

The consent order initiating the arbitration (**Exhibit B**) established exclusive and binding subject matter jurisdiction in the panel for all matters raised by the pleadings in this matter. The consent order referring this matter to arbitration dated July 9, 2012, to which the Defendants explicitly agreed, referred:

> **All claims**, both compulsory and non-compulsory, specifically including all claims, counter-claims, and/or third-party claims, **related to the underlying facts, transactions, and/or occurrences that are the subject matter of the pleadings and claims asserted in this case, shall be decided by binding arbitration** that shall be conducted in accordance with the terms of this Order and otherwise pursuant to the Federal Arbitration Act **and all of the**

parties submit themselves to the jurisdiction of this court and arbitration panel. (Emphasis added.)

This is not a matter of a party raising subject matter jurisdiction later in the case. Rather, subject matter jurisdiction in this case was decided by court order and by consent submission of the parties, including these Defendants pursuing this argument. This Court, and the arbitration Panel to which it referred this matter, unequivocally have subject matter jurisdiction of this matter.

Still, this matter was extensively argued throughout the course of the arbitration proceedings by the Defendants and, specifically, in the motions for summary judgment, at trial, post-trial, and in a motion for reconsideration. Likewise, at every stage, the Plaintiffs presented arguments establishing the court's subject matter jurisdiction and arguing against the Defendant's position. (See **Exhibits C, D, E, F, and G**)

The Panel ruled against the motion based on lack of jurisdiction at the summary judgment stage (See **Exhibit E**), and after hearing the evidence and legal arguments of counsel at trial and considering their extensive arguments in arguments submitted post-trial, the panel decided in favor of the Plaintiff's position and found that the Panel did have subject matter jurisdiction (See **Exhibit A**). The Defendants raised the argument yet again in the Motion for Reconsideration and the Panel once again, in its ruling on that motion, rejected Defendants arguments and found that the Defendants had raised no new issues or arguments, and the Panel did have subject matter jurisdiction to issue an award in the arbitration proceeding (See Defendants' Motion, Exhibit A).

Now, the Defendants seek to make the same arguments here, again, hoping for a different result.

The Defendants cannot vacate the arbitrator's award, however, by arguing that the panel did not fully consider their argument or even that the panel wrongly decided the issue. Rather, they must show that there is a clear law supporting their position that the panel recognized to be controlling and simply refused to follow it. There is no such clear controlling law, and there is no evidence that the

panel disregarded the law of South Carolina in any respect. Rather, the Panel disagreed with the Defendants' interpretation of the law and facts and instead adopted the argument made by the Plaintiff.

The Defendants are simply disappointed in the result and want this Court to reverse the panel to get yet another chance at the issue. The law of arbitration in South Carolina does not support such a result, however, and this argument by the Defendants must fail. The Plaintiff argues he is correct on the law, as he has consistently argued. The panel apparently agreed with Plaintiff.

There is no clear legal principle that compels a decision for Defendants that the panel knowingly failed to follow. The panel simply disagreed with Defendants' argument and adopted Plaintiff's argument on this issue. The motion to vacate on this issue must be denied.

2. **The issue of the statute of limitations was exhaustively briefed and argued before the panel at both the dispositive motion stage, the trial and at the post-trial stage, and the panel ultimately decided against Defendants' arguments**.

The same analysis applies to the Defendants' statute of limitations argument. The issue was briefed and argued at the dispositive motions, at trial, post-trial, and post-award. At each stage, the Plaintiff made arguments against applying the statute of limitations defense as a bar to recovery. In each instance, the panel rejected the Defendants' arguments and decided that the statute of limitations defense did not bar recovery in this case.

As with the subject matter jurisdiction issue, the Defendants must prove not only that the panel members erred as a matter of law but did so knowing a clear and unassailable principle of law that controlled the outcome of the issue and knowingly disregarded it in order to render their decision. There is absolutely no support for this argument in the record or the award, and this Court must reject the Defendants' motion to vacate on this issue.

3. **The Panel invited and considered the arguments of the Defendants regarding the attorney's fees award and ultimately made an award to the Plaintiff that was less than Plaintiff requested**.

Even more so, with regard to the attorneys' fee issue, the Defendants do not even argue that the arbitration panel knowingly disregarded the law. The Defendants simply disagree with the panel's conclusion not to bar the Plaintiff's recovery for attorney's fees based on an unfounded theory of "unclean hands." The Defendants challenged this measured award, by the Panel, set out in detail in its June 19, 2023, written ruling, which was less than the Plaintiff requested, and based on a reasoning detailed in the text.

The Defendants argue that the panel was wrong in making the award and ask the Court to apply an equitable doctrine, unclean hands, to vacate or modify the panel's award. The Defendants provide no authority provided in 15-48-130 or -140 that would supply a basis for such an action. Nor have the Defendants shown any "manifest disregard of the law" with regard to this award of attorney's fees. The motion on this issue, too, must fail for want of any support in the law.

4. **The panel's award was detailed and specific, and it is not required under the Arbitration Act to issue its ruling in any particular format.**

The Defendants raised this issue explicitly in the Motion to Reconsider filed with the Panel after the arbitration award of April 10, 2023. In their final award ruling of July 19, 2023, at pages 3-4, the Panel rejected this argument as follows:

> The Panel notes that this dispute was referred to Arbitration by a Consent Order agreed to by counsel for the parties and signed by Judge Thomas L. Hughston dated July 9, 2012. Paragraph 8 of the Consent order stated that 'This arbitration shall follow the South Carolina Rules of Civil Procedure where practical and to the extent not inconsistent herewith". The only provision in the Consent Order addressing the form of the Award is the requirement in paragraph 13 that `The determination shall be issued in the form of an award on all claims and counterclaims.' The Panel issued a 25-page unanimous Arbitration Award addressing each of the claims asserted by the Plaintiff in his Second Amended Complaint, except those which the Plaintiff withdrew following the hearing. The Panel did not award any relief to the Defendants under the Counterclaims set forth in the Defendants' Answer to Second Amended Complaint and Counterclaims dated April 26, 2022.
>
> The Panel has considered the grounds and Motion for Reconsideration of Arbitration Award dated April 18, 2023, and the arguments presented in Memorandum In Opposition To Defendants Motion For Reconsideration Of Arbitration Award dated May 3, 2023. The Panel finds that it is not required to issue separate findings of fact or conclusions of law when ruling

on motions presented and ruled upon prior to the hearing which are renewed during the hearing. In ruling on Defendants Motions the Panel noted that the Defendants had submitted proposed Orders of Dismissal on the Statute of Limitations Issue and the Derivative Action Issue and that it had considered the testimony presented at the hearing, excerpts from the depositions of Jo Ved and Stuart Fred submitted by counsel, and all exhibits entered into evidence by the parties and the proposed Orders submitted by counsel. The Defendants presented no new arguments in the Motion for Reconsideration which had not previously been submitted to the Panel at the hearing held on June 16, 2022, after which the panel issued its July 11, 2022, Order Denying Defendants' Motions to Dismiss and for Summary Judgment.

S.C. Code Ann. Sec. 15-48-90 states that

(a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

There is no other requirement for the form of the award, which is consistent with the law of arbitration in SC that it is not "litigation by other means." Beyond the Arbitration Act provisions, the only other law governing the mode of trial and award for this arbitration was the Consent Order of Reference, July 9, 2012. As cited by the Panel, that Order required that the Panel "address each of the claims," which the Panel did. Not only that, the Panel addressed each affirmative defense argued by the Defendants, in writing, numerous times. That the Defendants are disappointed in the result is no basis for finding fault with the form of the Panel's award.

Again, there is no support for this argument in 15-28-130 or -140, and the Court should deny the Defendants' motion on this argument, as well.

MOTION TO CONFIRM

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

S.C. Code Ann. § 15-48-130 (LexisNexis, Lexis Advance through 2023 Regular Session Act No. 7, not including changes and corrections made by the Code Commissioner).

Having heard and resolved the Motions to Vacate and Modify the arbitration award, the Plaintiff moves confirmation of the award under SC Code Ann. Sec. 15-48-130.

CONCLUSION

For all the reasons stated above, the Plaintiff respectfully request that the court deny the motions to vacate or modify and confirm the arbitration award.

Respectfully submitted,

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July 17, 2023
Charleston, SC

EXHIBITS

A. Award of Panel (April 10, 2023)
B. Consent Order Referring Matter to Arbitration (July 9, 2012)
C. Plaintiff's Memorandum in Opposition to Defendants' Rule 12(b)(1), SCRCP, Motion to Dismiss (May 31, 2022)
D. Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment (May 31, 2022)
E. Order Denying Defendants' Motions (July 11, 2022)
F. Plaintiff's Prehearing Brief (October 24, 2022)
G. Plaintiff's (Proposed) Order (December 23, 2022)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON THOMAS H. MORGAN Plaintiff, v. JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, Defendants.	IN ARBITRATION IN THE COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580 **PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO VACATE**

INTRODUCTION

In its 3 separate memoranda supporting its motion to vacate the arbitration award issue by a 3-person arbitration panel in this matter, the Defendants argue that the panel issued its award when it had no subject matter jurisdiction and, if it had jurisdiction to decide the matters before it, knowingly disregarded the law and issued its decision in knowing and willful defiance of that law.

Though Defendants are free to make whatever arguments they wish to attempt to support their motion to vacate this arbitration award, these arguments are astounding.

First, the Defendants argue that the panel never had jurisdiction to decide this matter at all because the panel lacked subject matter jurisdiction to decide it. The problem with that argument is that the Defendants say they raised that very defense of lack of subject matter jurisdiction in their pleadings, then consented to refer the entire dispute between the parties, including their defense of

lack of subject matter jurisdiction, to the panel to decide. The July 9, 2012, Order of Judge Hughston, referring this matter to arbitration, contained the following language, in paragraph 1 of that Order:

> **The parties, through their counsel, have stipulated** to the entry of this Order referring the above captioned matter to binding arbitration.
>
> NOW THEREFORE, IT IS HEREBY ORDERED:
>
> 1. **All claims**, both compulsory and non-compulsory, specifically including all claims, counter-claims, and/or third-party claims, related to the underlying facts, transactions, and/or occurrences that are the subject matter of the pleadings and claims asserted in this case, **shall be decided by binding arbitration** that shall be conducted in accordance with the terms of this Order and otherwise pursuant to the Federal Arbitration Act and **all of the parties submit themselves to the jurisdiction of this court and arbitration panel**. All parties shall assert all claims they may have against one another arising out of this matter, including, without limitation, any claims for breach of the arbitration agreement by the other party by the filing of the instant action. ... (emphasis added).

Clearly, all matters in the case, including the presence or absence of subject matter jurisdiction were submitted to binding arbitration for final determination by the arbitration panel, and all parties submitted themselves to the jurisdiction of the court and the arbitration panel.

Second, for the Defendants to argue that the panel knew what the law was and yet willfully disregarded it, is to say that these arbitration panel members, including senior and well-regarded members of the South Carolina Bar (Dawes Cooke, Paul Dominick, Brew Hagood), and a former Chief Justice of the SC Supreme Court (Chief Justice Costa Pleicones (ret.)), were not only wrong in deciding this matter, but disregarded the law they knew to be binding and issued a willfully erroneous decision in spite of that knowledge.

There is simply no support for that argument in the record before this Court. As recounted in the Plaintiff's earlier memorandum and as will be described in more detail here, the arbitration panel members reviewed arguments of counsel in written form and oral argument on motions, at trial, during post-trial motions, and on a motion to reconsider. The panel considered hundreds of pages of briefing and reviewed thousands of pages of exhibits and heard many days of testimony in reaching their

decisions. Their written findings are not cursory but describe their decisions and reasoning in some detail.

The Defendants here simply want not only a second bite, but rather fifth or sixth bites at the apple, rehashing arguments that they have made on multiple occasions that failed to persuade the panel to decide in their favor.

There is no appeal of an arbitration award in South Carolina. Rather, there is only a motion to vacate under the very limited circumstances afforded by South Carolina law. Those circumstances clearly do not exist here. This court must deny the motion of the Defendants to vacate.

ARGUMENT

1. The Defendants moved to compel this arbitration and submitted the issues they are arguing now to binding arbitration.

The case file in this matter reveals the origin of the litigation and provides insight to the early contentions of the parties and how the matter came to be submitted to be decided by binding arbitration.

On January 26, 2012, the Plaintiff filed the initial Summons and Complaint in this matter and obtained a Temporary Restraining Order. On February 1, 2012, the Defendants filed a Motion to Dissolve the Temporary Restraining Order and to Dismiss the Complaint, arguing, notably, that the parties were bound by an arbitration clause in their Company's Operating Agreement.

> The Defendants, now move pursuant to SCRCP 12(b)(l) to dismiss and assert (1) that the Circuit Court was without subject matter jurisdiction inasmuch as the Agreement in question requires submission of the disputes in the Plaintiffs Complaint to a binding arbitration; (2) that the Circuit Court was the improper venue due to the fact that the proper forum to hear the case was the appropriate arbitration panel.

Defendants' February 1, 2012, Motion, Page 3 of 7.

On February 27, 2012, the Court denied the Motion to Dismiss and to Compel Arbitration, citing the fact that the Operating Agreement did not comply with the notice provision contained in

the SC Uniform Arbitration Act, and even if the federal act applied, not all parties before the court were parties to the arbitration agreement.

On March 13, 2012, the Defendants filed an Answer to the Complaint, with affirmative defenses, and counterclaims against the Plaintiff. One of the affirmative defenses was lack of subject matter jurisdiction based on the arbitration clause (paragraph 79).

Despite the fact that the Court had ruled that the arbitration clause was not a bar to the Complaint filed in Circuit Court, the parties nonetheless, on July 9, 2012, consented to submit the entire case for a binding arbitration to reach a final decision on the matter before the court. The Court's order not only provides the jurisdictional referral language excerpted above, but it also provided for the following procedural details that have some relevance to the arguments currently before the court:

> 4. The **Chairperson shall have sole authority and responsibility to hear and decide procedural, scheduling, and discovery-related motions, disputes, and issues**, including but not limited to:
>
> (A) Initiating a scheduling conference and establish a schedule for arbitration proceedings, including the hearing on the merits;
>
> (B) Conducting pre-hearing conferences;
>
> (C) Disposing of motions to amend the pleadings;
>
> (D) Ordering discovery, including in-state and out-of-state subpoenas to third parties;
>
> (E) Resolving discovery disputes and impose sanctions against a party that does not comply with the orders of the Chairperson/Panel; and
>
> (F) Resolving motions concerning discovery, compelling discovery responses, and protecting parties from discovery abuses.
>
> 5. **All other motions, disputes, and/or issues, including dispositive motions**, rulings on the admissibility and exclusion of evidence and/or witnesses, injunctive relief, and any other non-procedural, non-scheduling, and non-discovery issue, **must be determined by a majority vote of the full Panel** unless otherwise agreed to by both sides. …
>
> 7. **The arbitrator(s) are not required to strictly follow the South Carolina Rules of Evidence.** The arbitrator(s) shall exercise discretion in applying evidentiary rules **to secure fairness in the hearing, consistent with the expedited purpose of arbitration**. It is the intent of this arbitration agreement to expedite and streamline the presentation of evidence and witnesses at the arbitration hearing, and, to that end, the parties do hereby agree that records custodians shall not be required to authenticate documents at the hearing. Moreover, to the extent that the parties may agree on the relevancy or admissibility of evidence, exhibits and witnesses to be presented at trial, the panel of arbitrators shall defer to the parties'

agreement. In order to encourage the streamlined presentation of witnesses and evidence, the parties shall be required to exchange proposed exhibits and witnesses with each other ten (10) days in advance of the first day of the arbitration trial hearing and will make best efforts to submit one comprehensive list of exhibits to the panel. It is not necessary that the parties agree to the exhibits in the exhibit list, only that the parties intend to introduce the exhibits at trial. Moreover, the exhibit list shall not be a bar to the admission of other evidence that may become relevant at trial.

8. **This arbitration shall follow the South Carolina Rules of Civil Procedure where practical** and to the extent not inconsistent herewith.

9. **The arbitrator(s) shall apply the substantive law that the arbitrator(s) determine(s) to be applicable to the issues in the dispute.**

10. The Court shall enter appropriate orders to ensure compliance with the Orders and awards of the arbitrator(s) and to ensure that the arbitrator(s) receive payment. …

13. The arbitrators shall issue a final determination within thirty (30) days of the completion of the hearing unless otherwise agreed to in writing by the parties. **The determination shall be issued in the form of an award on all claims and counterclaims.**

14. This case shall be administratively stayed pending completion of the arbitration. **The Court retains jurisdiction** to enforce this Order and **to enter any Orders including a judgment upon the arbitrator's award or order.**

July 9, 2012, Order (emphasis added).

After Judge Hughston's order, the panel convened, and the panel chair directed discovery and heard motions on pleading and discovery matters. The order of July 9, 2012, governed the administration of this arbitration process through the final award.

2. <u>The Defendants argued each of these motions on multiple occasions to the arbitration panel and the panel made considered and well-grounded decisions on each based on the evidence presented to them and the written and oral arguments of counsel.</u>

<u>Motion to Dismiss/ For Summary Judgment (Subject Matter Jurisdiction/ Derivative Action)</u>

Though the Defendants argue that they first raised "subject matter jurisdiction" in their original Answer, that reference in paragraph 79 stated that the circuit court had no jurisdiction because the case was governed by the arbitration agreement between the parties. That argument became moot after the order referring the entire case to arbitration.

The first substantive argument related to the inclusion of the Company, 150 Bee Street, LLC in the case came during the arbitration chair's consideration of the Plaintiff's Motion to Amend to add, among other things, 150 Bee Street as a nominal party. The Plaintiffs argued that the law of South Carolina and Rule 15, SCRCP, allowed liberal amendment and relation back, among other arguments. The Defendants filed their memorandum in opposition, making the same or similar argument to the one the raise here. The panel chair allowed the amendment, adopting the Plaintiff's reasoning, though it did allow the Defendants to continue raising this argument as a defense, which they did.

In June 2022, the arbitration panel scheduled and heard in person dispositive motion arguments from the Defendants. Among them was this argument. The Plaintiff's argument is attached as Exhibit F and fully incorporated, but not repeated, here. The Defendants filed their memorandum, making a similar argument to the one they make here. The arbitration panel heard arguments, reviewed the memoranda and hundreds of pages of exhibits submitted by both sides and denied the Defendant's motion to dismiss. Exhibit A.

At trial, the Defendants elicited testimony and presented evidence on this issue and argued for a Directed Verdict on this same issue. The parties repeated their arguments from the dispositive motion stage. At the hearing, the panel took this motion under advisement.

The arbitration panel requested proposed briefs in lieu of final closing arguments and the parties submitted hundreds of pages of argument, including on this issue. The panel also waited until the transcript of the hearing was completed (1,504 pages) and considered the testimony, the exhibits admitted into evidence and the voluminous written and oral arguments of counsel before issuing their ruling.

The panel issued its final award, ruling against the Defendants on this issue:

> After considering the testimony presented at the hearing, including the deposition excerpts of Jo Ved and Stuart Fred, and reviewing the transcript of the hearing and the exhibits entered into evidence by the parties along with the proposed Order submitted by the parties, the Panel issues the following rulings:

> The Defendants' Motion for Dismissal of the Derivative Action, which was renewed after presentation of the Plaintiff's case and at the conclusion of the testimony, is hereby DENIED.

(Exhibit E).

The Defendants then moved and submitted a memorandum supporting its motion for reconsideration of this ruling, and, after briefing in opposition from the Plaintiff, the arbitration panel denied the Defendants' motion.

Now, the Defendants, for at least the fifth time, argues this motion again, in full, before this Court, hoping for a different result.

Motion for Summary Judgment (Statute of Limitations)

The track record for this argument is much the same as that for the subject matter jurisdiction/ derivative case argument.

This issue was fully briefed, with multiple exhibits and argued before the arbitration panel on June 16, 2022. The Plaintiff's argument is attached as Exhibit B and fully incorporated, but not repeated, here.

Again, after considering the hundreds of pages of briefing and exhibits and extensive argument of counsel at the hearing, the panel denied the motion for summary judgment on this issue by Order of July 11, 2022. (See Order, Exhibit A).

As recounted by the Defendants in their memorandum before this, at the trial of this case conducted before the Panel between October 31 and November 8, 2022 (the "Hearing"), Defendants presented evidence directly related to this issue and renewed their motion. In its initial Arbitration Award on April 10, 2023, the Panel denied Defendants' Motion.

On April 18, 2023, Defendants served their Motion for Reconsideration of Arbitration Award. The Plaintiff filed a memorandum in opposition. See Plaintiff's Memo, Exhibit C. The Panel then

issued its Final Arbitration Award on June 19, 2023 (the "Final Award"). As, the Defendants concede, "[f]or a third time," the Panel denied Defendants' Motion.

The Defendants now make the very same argument that they made on at least three occasions without success to the arbitration panel, hoping for a different result from this Court.

Motion to Vacate Based on the Award of Attorney's Fees

In its Initial Award, the panel made the following ruling concerning attorneys' fees.

> Plaintiff's proposed Final Determination of the Arbitration Panel requested an award of attorney's fees of $1,707,725.00. However, no accounting was provided as to when and to whom attorneys were paid. Counsel for Defendants have argued that the Plaintiff used various attorneys over the years which could affect the Panel's determination of the reasonableness of the fees requested.
>
> Thus, the Panel directs that Plaintiff provide a detailed summary of expenses, including, legal fees, related to the prosecution of this action within fifteen (15) days of the date of this Award, and that Defendants respond to Plaintiff's summary within fifteen (15) days of its receipt.

The Plaintiffs made a submission of attorney's fees as requested by the Court, see Exhibit D, and the Defendants argued against the award of any attorney's fees.

In its Final Award, the arbitration panel awarded the Plaintiff $696,509.00, significantly less than the Plaintiff requested, based on the panel's view of the evidence and the equities between the parties.

In its memorandum, the Defendants make a lengthy argument about the Plaintiff's "secret agreement" with the plaintiffs in the construction case pending against the Company, in an effort to preserve some amount of recovery for the Company and its members (not including the Defendants but including a member who is not a party to this case). The panel heard these arguments and the Defendants put a witness on the stand to testify concerning this issue.

The panel made no specific ruling on this issue in the Initial or Final Award in this matter.

In each instance, the three issues argued by the Defendants were thoroughly litigated before the arbitration panel, and the panel issued its ruling in its Initial and Final Awards after careful

consideration of all of the evidence, testimony, and extensive and voluminous briefing of counsel for both sides.

As detailed in Plaintiff's earlier memorandum opposing the motion to vacate, there is no appeal under South Carolina law for binding arbitration. That is why it is called binding arbitration.

The only remedy by a party disappointed in an arbitration decision is to move to vacate under the statutory provisions of S.C. Code Ann. § 15-48-130 or to argue that the panel exhibited a "a manifest disregard or perverse misconstruction of the law" in reaching its ruling. However, decisions recognizing this non-statutory ground for vacating arbitration awards have required "something beyond and different from a mere error of law or failure on the part of arbitrators to understand or apply the law." Batten v. Howell, 300 S.C. 545, 389 S.E.2d 170, 172 (Ct. App. 1990) ("[A]rbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'")

The fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award. S.C. Code Ann. § 15-48-130(a).

In this case, the Defendants argue, with regard to the subject matter jurisdiction/ derivative case argument, first, that the panel had no ability to hear it. That is clearly contrary to the provision of the order referring this entire case to binding arbitration that submitted "[a]ll claims, both compulsory and non-compulsory, specifically including all claims, counter-claims, and/or third-party claims, related to the underlying facts, transactions, and/or occurrences that are the subject matter of the pleadings and claims asserted in this case..." to binding arbitration and "all of the parties submit themselves to the jurisdiction of this court and arbitration panel." Order, July 9, 2012, paragraph 1.

The issue was submitted to the panel to decide, it was argued before the panel numerous times, and the panel decided it. An argument that the court or arbitration panel lacks subject matter jurisdiction does not mean that the court or arbitration panel cannot decide the issue (clearly, they

can), but whether the Plaintiff is entitled to relief. Here, the panel decided that the Plaintiff is entitled to relief, and dismissed the motion based on this argument.

For the subject matter jurisdiction/ derivative issue, as well as the statute of limitations issue and the "unclean hands/ attorney's fees" issue, the Defendants are left arguing that the panel exhibited a "manifest disregard or perverse misconstruction of the law" in reaching its ruling.

As laid out in the Plaintiff's earlier memorandum and in this supplemental memorandum, to argue that this arbitration panel, made up of these distinguished lawyers and jurist who took the care to hear, review, and rule on these and many other issues over the course of days and hours of testimony and argument and even more hours of review of the record and internal deliberation, knew what the law was and knowingly and intentionally disregarded it to reach their decision, is laughable.

The Defendants simply seek to appeal decisions on issues on which they did not prevail.

In binding arbitration there is no appeal.

This Court should deny the Motion to Vacate and confirm the Final Arbitration Award.

CONCLUSION

For all the reasons stated above, the Plaintiff respectfully request that the court deny the motions to vacate or modify and confirm the arbitration award.

Respectfully submitted,

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November 9, 2023,
Charleston, South Carolina

Exhibits

A. Order Denying Defendants' Motions (July 11, 2022)

B. Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment (May 31, 2022)

C. Plaintiff's Memorandum in Opposition to Defendants' Motion for Reconsideration (May 3, 2023)

D. Attorney Fee Submission (April 17, 2023)

E. Final Arbitration Award (June 19, 2023)

F. Plaintiff's Memorandum in Opposition to Defendants' Rule 12(b)(1), SCRCP, Motion to Dismiss (May 31, 2022)

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN ARBITRATION
	)	
COUNTY OF CHARLESTON	)	PREVIOUSLY:
	)	IN THE COURT OF COMMON PLEAS
THOMAS H. MORGAN	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	CASE NO: 2012-CP-10-580
Plaintiff,	)	
v.	)	
JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY	)	**ORDER DENYING DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT**
Defendants.	)	

This case is being arbitrated pursuant to the terms of the Consent Order Referring Matter to Arbitration filed on July 9, 2012. The composition of the panel has changed over the years. M. Dawes Cooke, the initial chair of the panel, recused himself on June 9, 2019. Paul A. Dominick was substituted in place of Mr. Cooke under the terms of a Consent Order Substituting Arbitrator in September of 2019. Claron A. Robertson, III resigned from the Panel and the parties agreed to a Consent Order Substituting Arbitrator filed on May 9, 2022, in which Costa M. Pleicones was substituted in place of Mr. Robertson.

The Defendants filed two motions pursuant to Rule 12, SCRCP, and a third motion under Rule 56, SCRCP. Because matters outside the pleadings were submitted by both parties, without objection and considered by the panel, the Rule 12 motions were also treated as having been made under Rule 56. In accordance with the Third Amended Scheduling Order dated April 29, 2022, counsel for the parties provided the members of the panel with electronic and hard copies of the Motions, memoranda in support and in opposition to the Motions along with exhibits and excerpts from depositions.

Oral arguments were heard by the panel on June 16, 2022, at the offices of Nexsen Pruet in Charleston. W. Andrew Gowder, Jr. and Michael T. Rose appeared on behalf of the Plaintiff. Henry E. Grimball and Morris A. Ellison appeared on behalf of the Defendants. The parties agreed to split the cost of a court reporter, Marie McCollum, for the hearing. On June 23, 2022, Ms. McCollum provided a link to download a certified transcript of the hearing to counsel for the parties and the panel chair. The panel chair downloaded the transcript and provided a copy to the other members of the panel. The Court Reporter provided an index at pages 125 and 126 of the transcript listing the eight Exhibits which were marked by counsel for Defendants at the hearing.

At the conclusion of the hearing counsel for Defendants agreed that the notebooks and electronic copies sent by Plaintiff's counsel to the members of the panel which contained the Plaintiff's Memoranda In Opposition to the Defendants' three Motions and Exhibits submitted to the Panel were considered to be part of the record for the hearing even though these documents were not marked as individual exhibits at the hearing.

The panel conferred following the hearing on June 16, 2022, and each member of the panel had an opportunity to review the transcript of the hearing prior to the issuance of this Order. Additionally, the panel met via Zoom on June 30, 2022, to deliberate and finalize their ruling on the three outstanding Motions.

After review of Defendants' Motions, the memoranda in support and in opposition to the Motions, the exhibits filed by the parties and consideration of the oral arguments by counsel at the hearing on June 16, 2022, which are set forth in the transcript, it is the ruling of the panel that each of Defendants three Motions are hereby **DENIED.**

AND IT IS SO ORDERED.

By: H. Brewton Hagood
H. Brewton Hagood, Chair,
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Dated: July 11, 2022

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Dated: July 11, 2022

STATE OF SOUTH CAROLINA)COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)CASE NO.: 2012-CP-10-580
THOMAS H. MORGAN,
Plaintiff(s),
-vs-
JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP, II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION, AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY,
Defendant(s).

Volume II Arbitration
Before Panel: Brewton Hagood, Costa Pleicones, and Paul Dominic

Date Taken: Tuesday, November 1st, 2022

Time Taken: 9:00 a.m.

Location: Womble Bond Dickinson
5 Exchange Street
Charleston, South Carolina 29401

Reported By: Judy W. Galuppo, Court Reporter

A-P-P-E-A-R-A-N-C-E-S

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Also Present

Jade Alderman, Paralegal
Thomas Morgan, Plaintiff
John Gilbert, Defendant
Ronny Burkett, CPA
Elizabeth Baker

INDEX AT REAR OF TRANSCRIPT

I N D E X

Tom Morgan
DIRECT EXAMINATION CONTINUED
By Mr. Gowder 253
CROSS-EXAMINATION
By Mr. Grimball 371
CERTIFICATION OF REPORTER 531

longer a voting interest, as it turned out?
A That's right.
Q So you and Edwin Pearlstine, together, with your percentages there, as a part of the three voting Members, by my math, comes to about 63.6 percent. And so y'all had the total voting rights in the LLC. They were under your control as long as you and Pearlstine voted together, correct? As long as y'all voted together --
A Say that again?
Q -- y'all had over 50 percent, correct?
A Can you say that again?
Q Yeah. If you add -- if Neal Baker's percentage is gone and no longer voting, you got these three numbers to add together, and between you and Pearlstine, y'all had a majority voting interest, correct?
A Or between Bella Vista and Pearlstine would be the majority, as well.
Q No, but you and Mr. Pearlstine, as long as you voted, together with Pearlstine, y'all had a majority vote, correct?
A Yes, but if Pearlstine and Bella Vista voted together they would have majority.
Q All right. I'll show you Defendant's

Q And isn't it fair to say that the project went forward and then the great recession began? The great recession? You know, you've heard of the great recession?

A I have, yes.

Q Yeah. And we've got a stipulation now that -- I forget the name of the bank, I mean the Lehman Brothers, we stipulated, went bankrupt?

A They did, yes.

Q And you know, as well, Wachovia went bankrupt. A number of huge banks went bankrupt.

A Yeah, our bank did, Wachovia, yes.

Q Okay. And in point of fact, you knew that the condominium market in Miami had started to collapse as soon as April 2006?

A I knew that yes.

Q Okay. And I think you called Miami the canary in the cage like the coalminer would --

A Canary --

Q -- if the canary died --

A Yeah.

Q -- you knew you were in trouble. And Miami was like that canary in the cage?

A The canary in the coal mine, yes.

Q And you became worried and emailed -- let me

show it to you, Defendant's Exhibit 72.

You became worried about all that. This is email April 25, 2007; Condominium market already collapsing in 2006 in Miami.

(Defendant's Exhibit 72, Email, 1 page, is offered into evidence.)

A Right.

Q You wrote your fellow members and said, Dear Partners, I am reading the article in today's Wall Street Journal that housing and condo sales continue to deteriorate across the country caused by tightening credit requirements to buyers. The article predicts worse times ahead, particularly in the fourth quarter of 2007. In regard to Bee Street, I would like to get everyone's feedback. It is my opinion we should immediately get more aggressive on price reductions or incentives during the prime selling season, which is now.

That's what you wrote, didn't you?

A I did.

Q And I'm sure you understood that under the second amended operating agreement, the people that called the shots and the pricing were your brother-in-law, Neal Baker --

A That's right.

Q -- and Stuart Fred?
A That's right.
Q Okay. And we've already reviewed them. The responses of Baker and -- Baker, it's already in evidence?
A Right.
Q Baker's response --
A That's right.
Q -- was up here in that same, that Exhibit 72.
A Right.
Q He says, in effect, spoke to Stuart and John -- I haven't spoken to Stuart, John or Edwin. As far as I'm concerned, I'm willing to give you back all your money and get you released from the liability.
This is your brother-in-law, right?
A That's right.
Q And he says, I don't agree at all with your position. Why did Beazer just fund us $2 million if the market is so bad in Charleston?
He goes on to say, Charleston is a totally different market and I'm willing to take a chance that things aren't that bad here.
That's what he wrote you?
A He did.

STATE OF SOUTH CAROLINA)COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)CASE NO.: 2012-CP-10-580
THOMAS H. MORGAN,
Plaintiff(s),
-vs-
JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP, II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION, AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY,

Defendant(s).

Volume III Arbitration
Before Panel: Brewton Hagood, Costa Pleicones, and Paul Dominic

Date Taken: Wednesday, November 2nd, 2022

Time Taken: 9:00 a.m.

Location: Womble Bond Dickinson
5 Exchange Street
Charleston, South Carolina 29401

Reported By: Judy W. Galuppo, Court Reporter

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Also Present

Jade Alderman, Paralegal
Thomas Morgan, Plaintiff
John Gilbert, Defendant
Ronny Burkett, CPA
Elizabeth Baker

INDEX AT REAR OF TRANSCRIPT

I N D E X

Tom Morgan
CROSS-EXAMINATION CONTINUED
By Mr. Grimball 553
REDIRECT EXAMINATION
By Mr. Gowder 737
RECROSS EXAMINATION
By Mr. Grimball 742
Brandon Renaud
DIRECT EXAMINATION
By Mr. Gowder
CROSS EXAMINATION
By Mr. Ellison
CERTIFICATION OF REPORTER

And he goes on to cite Section 6.01. In paragraph 1 it says, My client has advised me that he has not been receiving monthly financial reports.

In paragraph 2 he says, My client has advised me that he has been receiving weekly sales and marketing reports as promised by Mr. Gilbert. We trust those reports will continued to be circulated to my client on a going forward basis.

That's what he says, doesn't he?

A Yes. I wasn't receiving the budget versus actual that were required under the operating agreement.

Q Yeah. And at the bottom -- you say he's a non-litigator, but he writes at the bottom in that paragraph right there, If we have any questions or concerns following our receipt of the reports, we'll let you know. My client reserves all its rights under the Operating Agreement, and nothing set forth herein shall be deemed as a waiver of the same.

That's what he wrote, didn't he?

A He did.

Q All right. And then there's this issue about what knowledge you had of what was happening. And you testified yesterday under Direct Examination that you happened to be in Mr. Baker's office in December 2006.

A Right.
Q And you saw draw requests on a table.
A On Mr. Baker's desk.
Q On his deck. He was outside the room.
A Yes.
Q You looked at it.
A Yes.
Q And then you said, I want to see these things.
A I asked him, What are these?
And he said those were being supplied to me by Mr. Fred office and Mr. Gilbert's office.
And I asked him why I had not seen these, why I had not been receiving them.
And he said you're not supposed to receive them, Stuart said, because you're not a managing member.
Q All right. In any event, had Julia DuMars, his assistant, September 20, 2007, to Thomas Morgan, you realize that's between four and five years before you brought this action, was September 20, 2007?
A Right.
Q She writes, Here is most recent. We're missing one. Julia.
And what she's talking about is the draw requests, correct?

(Defendant's Exhibit 80, Emails, 7 pages, is marked for identification.)

A That's right.

Q And you had written a little below that, Tom, Tom Morgan, this is the last monthly I've received on Bee Street. If you have August and September's report could you please email them to me.

And she did that?

A She did. Neal said, Don't tell Stuart that I'm sending these to you.

Q Now, hold on now. We're getting into hearsay. I'm not asking you what she said. I'm just asking if she sent it to you. And you indicated she did.

And in this document that you got here, we look down it, it's got these cost items, original budget, change orders, revised budgets. And as an example it says right here, Developer Fee.

See right there, Developer Fee?

A That's right.

Q $750,000.

And then Developer Overhead, $304,000. Change Order, 150,000. It's now $450,000.

Interim Property Operations, 300,000; the Change Order is 150,000. So it's gone up to $450,000.

A Right.
Q All right. And on the next page, and that's submitted to Amegy Bank.
By the way, did you understand that Amegy Bank sent inspectors to look at all this work? They wouldn't approve any of these payments without having the owner inspect or look at it?
A I read all those inspection reports. And they didn't look at all the travel expenses. If you want to pull those reports out, I'll tell you exactly what they looked at.
Q All right. And then the next page is Original Written Contract Signed. Do see that, $25 million?
A Yes.
Q Net change by Change Orders, $4,851,062.25.
Right there. Do you see that?
A That's right.
Q And you can read that. You've got an MBA from Stanford; is that right?
A I have a Master's degree. I took all the MBA classes, yes.
Q Right. And then contract sum to date, $29,851.
Right there. Do you see it?

A Yes.

Q And then we go down a little, not too far. This is another page of this document.

MR. HAGOOD: This is all part of 80?

MR. GRIMBALL: Yes, sir. All part of it. This is what she had sent him. And we look at line item 1145, Construction Travel Expense. And the original budget was $350,000.

And you can see there's been a change order. And the change order is easy to see. It's right there.

A Yes.

Q Change order of $50,000 is now up to $400,000.

And then we go on down a little, because Mr. Staubes later asks about all these entries.

A Right.

Q We have people that are working on this matter. And I look to line item 1220, that's Division Manager, originally budgeted at 155,000. He's been raised to 185,000.

And I'm just going to take one or two others. Project Manager, he's budgeted at 109,000, he's been raised $30,600, it looks like over there, $30,800.

On down to Field Secretary, item 1256 (sic), Field Secretary, right there, that's 50,200 as

originally budgeted, and she or he has been raised $9,800. Do you see that?

A Yes.

Q Pretty easy to read. I mean it's right there in black and white, no question?

A These were a combination.

Q You could read it.

MR. GOWDER: Let him answer, please.

Q Could you read it?

MR. GOWDER: Let him answer the question.

A I said these are a combination of what Hightower was being paid and BIG II. And I had -- there's nothing to say what Hightower was paid, who these people were, whether they were Hightower's people, whether they were BIG II's people. No breakout of any of this. And they said Hightower did 75 percent, at least. John Gilbert said they did 90 percent of the work. I had no idea what portion was Hightower's and what portion was BIG II's. So it was impossible to tell what these categories were.

Q Let me direct you to this last item 1295, Corporate Overhead, that's been raised by what, $50,000, from 200,000 to 250; do you see that?

A Yes.

Q I'm going to now take you to Exhibit 81.

And Julia DuMars again emails you and says, Here is the latest.

Do you see it? December 17, 2007.

A Yes.

Q Four years and a month before you brought suit.

A Correct.

Q And it's got attached to that, if we scroll down, attached to it, that's Exhibit 81, she's sending you this draw request again. And it's dated up here in the upper right, December 4th, 2007, Draw No. 33. That happens to be the last draw request, correct?

(Defendant's Exhibit 81, Email, 6 pages, is offered into evidence.)

A Yes. And as I said, it was very confusing. The numbers were confusing. Hightower was doing the work. What was BIG II doing? And what was 150 Bee Street doing?

And I looked at this developer fee, 750,000, and I thought that was travel expenses. And it was not travel expenses. Because travel expenses don't even show here. They didn't break it out. I had no idea what the travel expenses were. So for some reason, I just looked at it pretty quickly. I thought 750 was the travel expenses. And Mr. Fred explained, you were --

I -- you read that letter earlier that said the travel expenses that you referred to were the corporate overhead.

Q All right?

A Or the development fee. Sorry.

Q Look at line item 1145 right here. Make sure I'm on the right page. There it is further down, see it right there? You said there is nothing about travel expenses. 1145, Construction Travel Expense. It says that right there, doesn't it?

A It did. And I explained to you what Neal told me they were after speaking with Mr. Fred.

Q Let's not go into what Neal said.

A I explained that earlier.

Q And the travel expenses are budgeted at $350,000, right there?

A And I believe showed the actual spent to date on the right.

Q It had gone up 131,000 to 41,250, correct, right there (sic)?

A Right.

Q And if we go back to that first page. I don't want to belabor this, but -- but these entries are here. And right here, Developer Overhead has gone up $250,000, shows it right there. Interim Property

Operations has gone up $250,000. And we go back to this page that had travel expenses on it and we look at those different people who are working on the job. Division Manager, his change now is up to 85,250 for a total of $240,250. Right there. Do you see it?

A I do. And all of these costs were supposed to be actual costs plus 1 percent. So I assume that's what's happening, that these were actual costs.

Q Corporate Overhead down here has gone from 200 to 310, right? See it?

A Yes. Again, actual costs, and when you go back to look at it later and seen the breakout, if you do have an audit, that should have been actual costs. They would never show me the backup for this, even after 2007. It wasn't until 2014 that Elliott Davis got backup for any of these expenses. They refused to show me the backup for the construction costs here that you show. It was impossible to know what it was without seeing the backup.

Q Going to Exhibit 82. This is an email from John Gilbert sending out balance sheet as of December 31, 2007 -- 2007 Schedule of Costs of 150 Bee Street, and you got a copy of that, didn't you?

(Defendant's Exhibit 82, Email, 4 pages, is offered into evidence.)

A I did. They were supposed to send this 90 days after the end of the fiscal year. They did not send it for 2005, 2006. And he sent it out for 2007 and it showed travel expenses zero.

Q You got it May 2, 2008. See the date right there, May 2, 2008?

A Yes, that was for the year 2007, December 31, 2007, for the year 2007.

Q Well over three years before you filed your suit.

A Yes.

Q Let's just go down to one entry here, if I can find it. General & Administrative Expenses -- let me blow that up just a little. General & Administrative Expenses, line item 6035, Airplane Fuel, $18,873.69.

Do you see that?

A Yes, that's what my CPA asked about. But if you look up above it shows, Travel, zero.

Q Did you think they were buying fuel for Delta Airlines? Or did you think it would be going to that jet?

A Yes, I did think it might be going to the jet; that's whether why I was asking what it was.

Q Because you had ridden on the jet.

A I asked him, What were the travel expenses?

He didn't say anything about we're traveling on our jet, do you agree we can travel on our jet. Because we never spoke to me about it. And he didn't answer my questions properly. I said I would like to see the travel expenses. Well, he didn't show them to me. And I wondered at that point where he claims we all knew about the travel expenses, why he didn't say, Mr. Morgan, you knew we were going to travel on our jet and charge -- travel to Charleston, travel to Phoenix, Las Vegas, Pebble Beach, you knew it, Mr. Morgan, and here they are.

Q Mr. Morgan, you flew on the jet.

A I did twice as a ride; and it didn't help me at all. I flew from here to Nashville.

Q All right. And Nashville was one of the project sites they had?

A That's right.

Q Okay. Subject, 1150 Bee Street, LLC, Exhibit 84 for the record. This is an email from Rich Merg; do you see it right there?

(Defendant's Exhibit 84, Email, Morgan02578, is offered into evidence.)

A Yes.

Q And Rich Merg was your accountant.

A He was. At that time I was wondering what

That's what you wrote him.

A I did.

Q That's not a very endearing email, is it?

A Well, they weren't writing very endearing emails in 2007, Mr. Fred didn't. And I didn't feel like I needed to be very nice to him after what they wrote to me.

Q Do you think they might construe that as a hostile email? I mean, does it get more hostile than that?

A Well, if you look at what Mr. Hagerty's office said. He said I was not a managing partner, I could say whatever I want legally. But I don't think it was a nice email.

Q Now, that email that we just looked at, the July 6th, 2008 at 12:10, and you said, I want to hear from you in a week. So at 25 minutes later, didn't you email him again, Tom Morgan to John Gilbert, Edwin Pearlstine, Neal Baker and Stuart Fred?

A I did. I was upset that they weren't answering my -- they didn't give me the backup for the financial reports that they sent out. It had been -- May we asked for them, and here it is July; never received the reports. And I had called the sales office and nobody was answering the sales office. Nobody was

Bomasada 01395, is offered into evidence.)

A Yes.

Q Didn't you write Neal, in the first paragraph, I've been telling you for three years that Stuart and John have no intention of doing good for us. They have insulted me beyond belief. I'm fed up with their bullshit. They're total assholes as far as I'm concerned and they have fucked up this entire project.

And then at the end of that paragraph don't you say, I will never deal with them again. I am tired of their arrogant attitude. They have never given us the information on the travel expenses, overhead, et cetera. Why not? We have asked them for a year for the information.

And then don't you go down to the second paragraph right here and say right there, I am finished with Stuart and John and don't give a shit if they respond to me or not.

And then you say here, I've had it with them and I'm not going to stand for the arrogant attitude any more. I will not respond to them. My attorneys and accountants will handle it from here in the courtroom. I do plan to sue them if they don't respond with the entire construction expenses. Just get me away from these guys so I never have to deal with them again. I

have never in my life been so insulted by such arrogant assholes.

That's what you wrote him, didn't you?

A I did. And right after that I asked my accountants to try and find out, you know, look at the books to try to find out looking at the books. And he was stonewalled. They wouldn't show us the books.

Q And just before that, on July 7, Baker had written you. He had written you July 7 and said, right at the top, I can't tell -- I can't tell how disappointed I am in your last non-professional emails. You have no idea the damage you've done to our relationship and this partnership. There is one thing I am sure of is that John nor Stuart will respond to you.

And then he goes on to say right here.

MR. HAGOOD: What exhibit is this?

Q This is in Exhibit 88. He says, this is a very difficult time in real estate. We should be working together, not calling the other people liars, thieves and whatever else you've said. That's what he wrote to you.

And then you responded that you were going to sue them, correct?

A Well, it was interesting that in 2007, over a year earlier, I said let's sell these. And then Neal

Q Okay. And he lists 11 items there. The first item he lists is construction travel expenses, $481,250?

A Right.

Q You understand you didn't file suit until January 26, 2012, well beyond three years after this, you understand that?

A I wanted to see the expenses, what they were, a backup of it. There's no way I could have filed suit just saying $481,000. I was threatened by Hagerty's firm. I read threatening letters by them that you better stop asking these kind of questions. And I was trying to get the backup to see what these construction travel expenses were, and they wouldn't give them to me. This 400 -- just one line item, there's no way I could sue. I'm sure that based on the letter that was written to me, they had talked about countersuing me. So I had to be very careful not to file a lawsuit, a frivolous lawsuit and get sued back. I needed to do know what these travel expenses were and the backup for them. And they wouldn't give them to us.

Q Hagerty was threatening things to you? You were threatened by that, by Hagerty?

A There's a letter by Mr. Farrier, I believe is how you say his name, there was a threatening letter

to me.

Q Then we have these other items after travel expenses, and most of these are items 2 through 9 of these employees that had these increases that you saw in the draw requests, correct?

A Yes. And I wasn't concerned particularly about the charges by Hightower. And I believe -- I still never got an answer. But I think most of these are Hightower expenses. They should have given me a backup of what they were. There was no reason not to give me an explanation of all of these expenses.

Q Ten and 11, Production Incentive and Corporate Overhead; do you see that those?

A I do.

Q And then he says at the end, Please provide similar schedule for account 6035, airplane fuel of $18,873.69.

Do you see that?

A Correct. That's what he said. And it was very surprising they wouldn't give me an answer to this.

Q Now I'm going to show you Exhibit 92. Mr. Shields writes Mr. Merg on August 8, 2008. Do you see that?

(Defendant's Exhibit 92, Email, WBD Bomasada 01429, is offered into evidence.)

A I do.
Q And he copies John Hagerty, the company counsel, Neal Baker and John Gilbert and Stuart Fred. Do you see that?
A I do.
Q Doesn't he write, I have reviewed your request for additional information for 150 Bee Street, LLC with Mr. John Gilbert today, and he, under advice from the company's legal counsel, requested that we confirm that we have already provided to you all of the documents that are required pursuant to the Amended and Restated Limited Liability Company Agreement of 150 Bee Street, LLC as of February 28th.
Do you see that?
A I do. I'm excited to hear Mr. Hagerty's testimony about what he told them.
Q Now --
A Because that's not what he said in his deposition.
Q Mr. Morgan, call Mr. Hagerty. If you think he's going to say that, call him.
A We are calling him.
Q Good.
A He'll be here in the next couple of days.
Q Well, let's not talk about what he may say

or not say. Call him as a witness.

A He is. He's coming in.

Q All right. He goes on to say -- and by the way, do you know of any response to Mr. Hagerty to that email where he said no, guys, you've got it wrong. You haven't produced all the documents you need to produce? Hagerty never wrote that did he?

A I don't think he knew what was produced or what was not produced.

Q All right.

A And that's what he said in his testimony, his deposition. He says that's not what he was told by Mr. Gilbert and Mr. Fred.

Q He goes on to say in this email, any further requests for information can be reviewed in the offices of Bomasada Group here in Houston at your time and expense under the supervision of my office. A retainer in the amount of $5,000 will be required in order to schedule this review as the Managing General Partners will not allocate Company funds to authorize us to respond the requests of an individual member of the Company.

Do you see that?

A Yes.

Q Do you understand that the South Carolina

A That's absolutely true.

Q Right. And then we go to the next page in that top paragraph, didn't you write to your brother-in-law, The only reason I don't plan to sue John and Stuart is that I don't want to involve you in the middle of all this. So anyway, you don't have to worry about ending this deal in a lawsuit in any case.

That's what you wrote, didn't you?

A That was my thinking right at that moment, but it changed very quickly.

Q By the way, you go on to say --

A Can I finish?

MR. GOWDER: Please let him finish.

A I said that was my thinking right at that moment, but it changed shortly afterwards.

Q And we were seeing that within a year you sued your brother-in-law down in Miami, right, in the post office matter?

A I did. I was upset that he wouldn't make a capital call to help on the project we were in, but he was making capital calls to Mr. Fred and Mr. Gilbert here. And he said he didn't have the money, but he had bought a jet share, says in a jet share. So I thought he did have the money. I was pretty upset. And I was upset that he was siding with Mr. Fred and Mr. Gilbert

and not his brother-in-law that he'd been in business with for 30 years. I was pretty upset that Neal had been duped by these two guys, Mr. Fred, who he was playing golf with, and --

Q You remained upset with him for years, weren't you, until his death? You were upset that Neal Baker sided with Stuart Fred?

A I was upset. And then when Neal saw the -- we sent him the Randall Harris report, everything completely changed.

Q All right. You were so upset that when he died in August 2011 you didn't even come to his funeral?

A That's not it. I was in Europe.

Q You were in Europe?

A Yes.

Q All right. And then this email in number 94 ends with, By the way -- right here -- don't worry about my mental health. I always get this pissed off and write nasty notes to people like John and Stuart if I feel they are taking advantage of me.

That's what you wrote didn't you?

A I did.

Q Okay. And this animosity -- I'm going to show you Exhibit 94.1, slightly out of order. But let's look at it. Leslie Berry, you've introduced her

yesterday as one of your employees.

(Defendant's Exhibit 94.1, Emails, Morgan00658, 00737, 00745, 00751 - 00753, is offered into evidence.)

A That is right.

Q A confidant of yours, right?

A She was my employee and my controller.

Q Right, your controller. She writes on April 9, 2010, Leslie Berry to you, cc to Pamflavors, whoever that is?

A That's my sister.

Q Your sister, okay. And didn't she write, Hi Tom, I'm injecting myself offering unsolicited advice. I think you should travel to AZ -- Arizona -- and see Neal and Elizabeth. I think you need to tell Neal how hurt and betrayed you felt over this siding with Stuart and treating you so poorly.

And then further down doesn't she write right here, I think Elizabeth is really torn between her support of Neal and her love for her family. She maybe doesn't feel she can turn to you because you knows how upset you've been over Bee Street. I think if for no other reason than to show support for Elizabeth you should take the high road and make the first step. I don't want anything happening to Neal without you

getting this off your chest directly and then put it to rest.

Do you remember that?

A I do, very well.

Q Neal by that time had liver cancer?

A Yes. And then he got better for a while after his transplant and then he passed away.

Q All right. And I'm just going to show it here in just a moment. We've already looked at. And you brought suit against Neal on December 16, 2009 in Florida, correct? And I'm not offering that, it's already in, it's Exhibit 95, but it's not going to be put in. Do you see it? (By Agreement of Counsel, All Exhibits Referenced Will Be Entered into Evidence.)

(Defendant's Exhibit 95, Verified Complaint for Damages, is offered into evidence.)

A I explained what happened there, yes. We settled that very quickly.

Q And then we go to Exhibit 96. This is September 17, 2008. Again, before the -- you know, you didn't bring the suit until over three years later -- over three years later. This is from -- this is from Ian Gardenswartz, he's the one who signed it. Do you remember that letter?

(Defendant's Exhibit 96, Letter dated

9/17/08 to Mr. Farrier from Ian Gardenswartz, is offered into evidence.)

A He was the owner or head of the firm, if you look up Ian Gardenswartz & Associates. So I talked to him about the financials. Even Rich Merg actually worked for Ian. And so I said let me talk to Ian about it. He said, I'll write a letter to the attorney as well. And I showed him the letter that I had received -- the threatening letter I had received from Mr. Farrier that Mr. Gilbert said please write a letter as threatening as possible to Mr. Morgan. And I don't -- I believe you saw that yesterday, day before in my testimony, please write a threatening letter, we want it to be as harsh as possible.

Q September 17, 2008, Mr. Gardenswartz writes to Mr. Farrier. Doesn't he write right at the top, In regard to your letter dated September 4, 2008, Mr. Morgan is no longer reviewing correspondence to the Bee Street Loft project. He had asked that our office review and respond to any communication.

That's what he wrote, correct?

A Yes.

Q Now, we know from those draw requests there had been change orders. The change orders are noted in the draw requests; do you understand that?

Park, 4400 Post Oak Parkway, Houston, Texas.

That's what that first paragraph reads, doesn't it?

A Yes.

Q And if we go to the top, that's Exhibit 123, top of page -- bottom of page 1, Note shall mean that certain Promissory Note dated March 31, 2005, executed by Obligor, payable to order of lender in the original principal sum of 32,450,000, as increased by that certain First Modification to Note, Mortgage and Assignment of Rents dated March (blank), 2007, to the principal sum of $38,665,000, together with any and all renewals, extensions, modifications, increases or rearrangements thereof.

That's what it says, doesn't?

A Yes, sir.

Q All right. And we've talked about it probably more than enough. By the spring of 2008, the Great Recession had the country in a financial mess, lending was in gridlock?

A That's right.

Q And Lehman Brothers was folding and Wachovia was folding. It was a royal mess for people especially in real estate. And Miami, in particular, was terrible by then, just terrible?

A Yes.
Q Okay. And I think at that point, when I was talking to you about this in your deposition, that's when you volunteered that Miami was like a canary in the coal mine?
A Yeah, it started early there.
Q Started in 2006.
A Yeah, it did. And that's why I was worried the it would spread to Charleston, to this project, and I thought we should get these things sold.
Q Okay. By March 2008, the balance on the Amegy loan was down to $18,118,988 and became -- you had paid, didn't you?
A What is that?
Q By March 2008, right in the middle of the Great Recession, the balance on the Amegy note was $18,118,988.64?
A Right.
Q And became due and payable?
A That's right.
Q And you would have had to come up with over $4 million out of your own pocket if they called it.
A That's right.
Q And on August 25, 2008, Neal Baker emailed you about the finances, which you've seen that where it

A Did I have a clue?
Q Yeah?
A Whether the jet fuel?
Q Hasn't it been your position that you did not know what the fuel was for?
A That's not my position.
Q Well, in your deposition on page 529. I went into that with you on page 529 and after.
A I said I was trying to find out because I wanted my CPA -- he asked what it was for.
Q Well, didn't you tell me that in your deposition, that you did not know what the fuel was for?
A I can't remember.
Q If I told you it was in your deposition on page 529 at line 18, would you agree with me.
Question, line 11, No question that they are not flying commercial, they're buying fuel for the plane.
Answer at line 14, I knew they were buying fuel for 18,000. I didn't know what that was for. That's what you said under oath, right?
A Pretty much.
Q And you agree with me, they sure as heck weren't buying it for Delta Airlines.
A Of course not.

A That's what he says. I believe they did that.

MR. HAGOOD: Henry, I think on the same basis, asking this witness about motions and legal issues, I think that's a problem.

MR. GRIMBALL: All right.

BY MR. GRIMBALL:

Q Now, the next thing is, y'all have submitted -- and I'm going about to end. You submitted a spreadsheet, Exhibit -- I'm skipping a bunch of exhibits here. You submitted a document here.

MR. HAGOOD: Exhibit number, please.

MR. GRIMBALL: 138.8.

MR. GOWDER: Also Plaintiff's 202.

BY MR. GRIMBALL:

Q We'll refer to Plaintiff's 202. And for identification purposes, it's the spreadsheet that's been offered for reimbursement, if this panel so deems fit, reimbursement of attorneys' fees.

I'm looking at page 1 right here. The first entry, check number 646 dated January 3, 2011 to Gable & Heidt; Gable & Heidt is a law firm, right? (by Agreement of Counsel, All Exhibits Referenced Will Be Entered into Evidence.)

(Defendant's Exhibit 138.8, Transaction

Report, 5 pages, is offered into evidence.)

A Yes.

Q And the second entry, check 660, dated February 22, 2011, is to Prothro Wilhelmi. That's not a legal firm, that's a CPA firm, correct?

A That's right.

Q And all entries that you put on this sheet are within one year and a few days of your filing suit on January 26, 2012, right?

A These first entries, yes, before I actually filed the suit, yes.

Q And there's another one down there, check number 790, 790 is an accounting firm right there, Ferira & Company. See that?

A Yes. We were going to hire him as an expert, but we didn't do it.

Q Yeah. And you know, given the timeframe here, none of those entries deal with a trigger a problem with the three-year statute of limitation because the first entry is January 3, 2011, right?

A That's right.

Q Well, I've got some exhibits here. We know -- I can go back and show it to you, Exhibit 69, we know that Greenberg Taurig was representing you as far back as 2005. And certainly in 2007, April 27, 2007,

STATE OF SOUTH CAROLINA)COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)CASE NO.: 2021-CP-10-580
THOMAS H. MORGAN,
Plaintiff(s),
-vs-
JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP, II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION, AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY,
Defendant(s).

Volume VI Arbitration
Before Panel: Brewton Hagood, Costa Pleicones, and Paul Dominic

Date Taken: Tuesday, November 8th, 2022

Time Taken: 9:00 a.m.

Location: Womble Bond Dickinson
5 Exchange Street
Charleston, South Carolina 29401

Reported By: Judy W. Galuppo, Court Reporter

A-P-P-E-A-R-A-N-C-E-S

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Also Present

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Thomas Morgan, Plaintiff
John Gilbert, Defendant
Ronny Burkett, CPA
Elizabeth Baker

INDEX AT REAR OF TRANSCRIPT

I N D E X

WILLIAM M. SHIELDS, CPA
DIRECT EXAMINATION
BY MR. ELLISON 1341
CROSS-EXAMINATION
BY MR. GOWDER 1412
CERTIFICATION OF REPORTER 1498

it via a web portal.

Q You did?

A Yes.

Q That's your memory?

A Yes.

Q You said, We also received a schedule of soft/hard general administrative costs report for 2007 that does not tie into the balance sheet and income statement provided in item 1. Is there another entity this accounts for the construction costs that this report comes from? If so, can we have a backup copy of that QuickBooks file as well? In other words, we would like to see the line item detail for the construction phase as well.

Did you provide that?

A No, it doesn't exist.

Q When you say it doesn't exist, what do you mean?

A As we talked about earlier, the construction was maintained in BIS, not in QuickBooks.

Q All right. Would you have provided the information in BIS?

A We couldn't do a backup file and send it to him unless he was a BIS license holder.

Q Did you offer to provide the access to the

BIS license so that he could review those documents?

A That's not allowed under the license agreement.

Q Would there have been any way to provide the information on the BIS system to him? Could you print it out?

A It would be hugely voluminous. If he had given specific questions, we could have responded that way on a reasonable basis.

Q Could you have provided the information to him so that he could also have a license to review it, was that offered to him?

A If he was willing to pay for it.

Q But that was never discussed with him?

A He never asked about that.

Q You never offered? In fact, you never explained to him the fact that this information was contained on the BIS system, did you?

A Yes, I did.

Q Would that be in the emails that are between you?

A No. I talked to him on the phone about that. He knew that that wasn't available on QuickBooks.

Q The master worksheet that allocates the cost of goods sold and individual units sold. Underlying

and expense under the supervision of my office. A retainer in the amount of $5,000 will be required in order to schedule this review as the Managing General Partners will not allocate company funds to authorize us to respond to the request of an individual member of the Company.

Do you remember sending that response?

A Yes.

Q And you didn't send any other information to Mr. Merg as a result of this, did you, following this?

A Actually, I did.

Q Do you have any emails or any correspondence indicating that you did?

A No.

Q In fact, Mr. Shields, the first time that you sent QuickBooks backup to anyone on Mr. Morgan's behalf was when Mr. Morgan became the managing member in 2011; isn't that true?

A No, that was the second time we provided it.

Q Let's look at Plaintiff's Exhibit 129. We went over this paragraph, the Prothro Wilhelmi report.

And you and Mr. Ellison talked this morning about Mr. Shields' (sic) visit to your office. This was the first time that anyone on Mr. Morgan's behalf was able to come to Houston and review the documents, right

Q Let's look at Plaintiff's Exhibit 152. This is an email from you to Mr. Morgan copying Mr. Fred of November 11th. And you say, I am out of town but received a voice mail message and wanted to let you know that I will follow up on your request when I return to my office this coming Monday. We will obtain and upload a backup copy of the QuickBooks data file for 150 Bee Street, LLC to our secure site at yousendit.com at that time and will forward you the information via email that will be needed to download and restore the file.

Please note that we will plan to include both you and Mr. Fred on any email or other messages concerning the transfer of financial, tax or other information for the LLC so that we can ensure that both of you have the requested information.

Do you remember whether you, in fact, did upload this backup copy of the QuickBooks data to your secure site so that Mr. Morgan could access it at that time?

(Previously Marked Plaintiff's Exhibit 152, Email, 2 pages, is referenced.)

A I believe we did, but that's not something I personally would have done.

Q You would have had somebody in your office do that?

A Yes, that's correct.
Q But you believe it was done?
A I believe it was.
Q Could this transfer of this information really have been done to him at any time in the previous years?
A Yes and no. The web portal process which started in 2008, which was the first time we used it, fairly early in this process, it was not as good as it was by 2011, and certainly not as good as it is today.
Q Okay. But in --
MR. ELLISON: Let him finish answering the question, Andy.
MR. GOWDER: Sorry. I thought he was finished.
BY MR. GOWDER:
Q Did you have more to add?
A No.
Q QuickBooks is software, right? It's a computer program; isn't that right?
A Yes.
Q All right. So that could have been conveyed rather easily by some means to Mr. Morgan at any time in the years preceding 2011, couldn't it?
A Yes.

exhibit, that's all it is. Because keeping track of this I think has been challenging.

MR. HAGOOD: I'll accept that.

MR. ELLISON: That's all it is, I introduce it as a demonstrative exhibit.

MR. GOWDER: I mean, I wouldn't even call it an exhibit, it is whatever it is.

MR. HAGOOD: It's a summary document.

MR. ELLISON: That's all. If you can keep track of all the dates and all the documents, more power to you. I can't. But I guess there's other stuff I would add and other stuff Andy would add. I'm just trying to simplify stuff.

(Summary Document 521 is offered for demonstrative purposes only.)

MR. ELLISON: At this point, the defense rests. And it's appropriate at this time for me to renew our motions that you ruled on after the June 16 hearing. We've had a lot of additional testimony on those, and you've been fully briefed by both sides, and we ask that you take those motions under re-advisement, and after we brief, make your decisions on those.

MR. HAGOOD: So you're renewing the motions that we heard at the Summary Judgment hearing?

MR. ELLISON: The motion that involves

issues of this being a derivative action improperly filed, because, one, 150 Bee Street, LLC was not named as a party, it was a dispensable party, it wasn't brought in until some six years later, and we think that effects subject matter jurisdiction. The demand on Pearlstine we think is not there. That's the derivative issue.

The second is the statute of limitations issue, which we and Mr. Gowder have thoroughly briefed, and there's been additional -- there has been testimony here live in this hearing about that.

And third, and I think it has maybe more importance than I first gave it credit, Kristi Harrington issued an order and she dismissed with prejudice in the construction case all claims of 150 Bee Street, LLC had made, including cross-claims, had made or could have made in the construction case. And that was an un-appealed order and that's res judicata, and we are going to get all of these -- you know, we had a big debate here just today about construction expenses, and we think that that order says what it says, it's un-appealed and precludes a lot of the claims in this case. Those are the three that are pending, they've been thoroughly briefed. Mr. Gowder briefed it beautifully, I briefed it I hope as well, and they're

pending before you, and we hope that you will take those under advisement and consider them when you get the briefs, the additional briefs and summaries of our whole argument which we are going to make non-orally.

MR. HAGOOD: Right. And I just want to make the record clear, we're still dealing with the same three issues?

MR. ELLISON: Those three that were heard June 16th by you.

MR. HAGOOD: I understand. And we have already denied those. And I understand that you are renewing those on the same grounds and there is additional evidence that came in during this proceeding --

MR. ELLISON: Correct.

MR. HAGOOD: That add additional information for the panel to consider; is that a fair statement?

MR. ELLISON: Correct. Because what you had to consider then was not this live testimony that was under oath before you.

MR. HAGOOD: I understand that.

MR. ELLISON: And there's a difference.

MR. HAGOOD: I agree with that.

MR. ELLISON: Thank you. Well, we'll take the renewed motions under advertisement as supplemented

by the testimony that we received.

So your case is complete?

MR. GOWDER: No additional testimony.

MR. HAGOOD: No additional testimony.

MR. GOWDER: Except we would like to submit, and honestly I've just not been able to do the work to designate some passages from Mr. Fred, as we talked about. And so I'd like to be able to provide those to Defense Counsel, to Henry, and let them do any counter-designations they want and then provide them to you as we did for Ms. Ved.

MR. HAGOOD: So how long do you need to do that?

MR. GOWDER: I need a day or two.

MR. ELLISON: A day or two.

MR. HAGOOD: Can we have that by the end of the week?

MR. GOWDER: Sure.

MR. HAGOOD: And today is Tuesday. If you get it by --

MR. GOWDER: I can get it to him by the end of day tomorrow.

MR. HAGOOD: That's Wednesday. And then you want to look at Mr. Fred's deposition and see if there's anything you want to designate in anticipation of what

SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

OF

150 BEE STREET, LLC

THIS AGREEMENT IS SUBJECT TO
ARBITRATION PURSUANT TO SOUTH CAROLINA
CODE SECTION 15-48-10 ET SEQ. AS MODIFIED HEREIN

THE MEMBERSHIP INTERESTS IN THE COMPANY HAVE NOT BEEN REGISTERED UNDER THE SOUTH CAROLINA UNIFORM SECURITIES ACT IN RELIANCE UPON THE EXEMPTIONS FROM REGISTRATION SET FORTH IN SECTION 35-1-320 OF SUCH ACT. IN ADDITION, THESE INTERESTS HAVE NOT BEEN REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM SUCH REGISTRATION SET FORTH IN THE SECURITIES ACT OF 1933 PROVIDED BY SECTION 4(2) THEREOF. THESE INTERESTS MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD OR TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT AND IN A TRANSACTION WHICH IS EITHER EXEMPT FROM REGISTRATION UNDER SUCH ACTS OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACTS.

150 BEE STREET, LLC

SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

TABLE OF CONTENTS

ARTICLE I DEFINITIONS 1
1.01 Act 1
1.02 Adjusted Capital Account Deficit 2
ARTICLE II FORMATION AND PURPOSES 5
2.01 Formation 5
2.02 Name 5
2.03 Principal Office 5
2.04 Term 5
2.05 Purpose of the Company 5
ARTICLE III CAPITAL CONTRIBUTIONS AND LOANS 5
3.01 Initial Capital Contributions 5
3.02 Additional Capital Contributions 5
3.03 Failure to Contribute 6
3.04 Member Security Interest 7
3.05 No Interest on Contributions 7
3.06 Loans 7
ARTICLE IV PROFITS AND LOSSES 8
4.01 General Allocations 8
4.02 Special Allocations 8
4.03 Facilitation of Economic Arrangement 9
4.04 Contribution or Revalued Property 9
4.05 Tax Items 9
4.06 Allocation on Transfer 10
ARTICLE V DISTRIBUTIONS OF AVAILABLE CASH 10
5.01 Distributions 10
5.02 Tax Distributions 10
5.03 Withholding 10
5.04 Liability of Managing Members 11
ARTICLE VI MANAGEMENT 11
6.01 Managing Members 11
6.02 Powers of Managing Members 12
6.03 Limitations on Authority 13
6.04 Related Party Transactions 14
ARTICLE VII OBLIGATIONS AND RIGHTS OF MEMBERS 15
7.01 No Liability for Company Obligations 15
7.02 Right to Distributions 15
ARTICLE VIII INDEMNIFICATION OF MEMBERS 15

8.01 Indemnification 15
ARTICLE IX COMPENSATION AND REIMBURSEMENT 16
9.01 Managing Member Compensation 16
9.02 Reimbursement 16
ARTICLE X ACCOUNTING, BOOKS AND RECORDS 16
10.01 Accounting Method 16
10.02 Books and Records 16
10.03 Financial Statements 16
10.04 Tax Returns 16
10.05 Tax Matters Partner 17
ARTICLE XI TRANSFER AND ASSIGNMENT OF INTERESTS 17
11.01 General Prohibition 17
11.02 Permitted Transfers 17
11.03 Conditions of Transfer and Assignment 18
11.04 Additional Members 18
11.05 Withdrawal 18
ARTICLE XII DISSOLUTION 19
12.01 Events of Dissolution 19
ARTICLE XIII DISTRIBUTION UPON DISSOLUTION 19
13.01 Liquidation 19
13.02 Distributions in Kind 20
13.03 No Action for Dissolution 20
13.04 No Further Claim 21
ARTICLE XIV MISCELLANEOUS 21
14.01 Amendments 21
14.02 Additional Documents 21
14.03 Notices 21
14.04 Applicable Law 21
14.05 Entire Agreement 21
14.06 Severability 21
14.07 Successors 22
14.08 Counterparts 22
14.09 Headings 22
14.10 Company Property 22
14.11 Meetings of Members; Voting 22
14.12 Gender and Number 22
14.13 Securities Representations 22
14.14 Mediation and Arbitration 23

SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

OF

150 BEE STREET, LLC

THIS SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") is made and entered into on March ____, 2005, by and between the Members (as hereinafter defined) for the purpose of amending and restating in its entirety the Amended and Restated Limited Liability Company Agreement of the Company dated as of February 28, 2003.

W I T N E S S E T H:

WHEREAS, pursuant to Articles of Organization filed with the Secretary of State of the State of South Carolina, filed on February 7, 2000 and pursuant to that certain Limited Liability Company Agreement dated February 7, 2000 (the "Initial Agreement"), Neal I. Baker, Thomas H. Morgan, Edwin S. Pearlstine, Jr., and Ernest L. Masters, Jr. organized the Company as a limited liability company known as 150 Bee Street, LLC under the South Carolina Uniform Limited Liability Company Act of 1986, as from time to time amended (the "Act"); and

WHEREAS, on or about February 28, 2003, the Original Members entered into that certain Amended and Restated Limited Liability Company Agreement of the Company (the "Amended and Restated Agreement") replacing the Initial Agreement in its entirety; and

WHEREAS, the Members constituting all of the members of the Company as of the date hereof desire to further amend and restate the Amended and Restated Limited Liability Company Agreement for the Company as provided herein.

NOW, THEREFORE, pursuant to the Act, the following shall constitute the Second Amended and Restated Limited Liability Company Agreement, as amended from time to time, for the Company.

ARTICLE I
DEFINITIONS

For purposes of this Agreement, the following capitalized terms shall have the following meanings (all capitalized terms used in this Agreement that are not defined in this Article I shall have the meanings set forth elsewhere in this Agreement):

1.01 "Act" means the Uniform Limited Liability Company Act of 1996, S.C . Code Ann. § 33-44-101 et. seq., as amended from time to time, and any successor to such statute.

1.02 "Adjusted Capital Account Deficit" means, with respect to a Member, the deficit balance, if any, in such Member's Capital Account as of the end of the applicable Fiscal Year or other relevant date, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provisions of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations sections 1.704 2(g)(1) and 1.704 2(i)(5); and

(b) Debit to such Capital Account the items described in (4), (5) and (6) of Treasury Regulations section 1.704 1(b)(2)(ii)(d).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations section 1.704 1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

1.03 "Affiliate" means a Person or Persons directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the Person(s) in question. The term "control", as used in the immediately preceding sentence, means, with respect to a Person that is a corporation, the right to the exercise, directly or indirectly, of more than 50% of the voting rights attributable to the shares of such controlled corporation and, with respect to a Person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such controlled Person.

1.04 "Available Cash" means, with respect to any point in time, all cash of the Company on hand as of such point in time after the payment of all then due debts and liabilities of the Company and after any prepayments of any debts and liabilities of the Company that the Managing Members deem reasonably appropriate to cause the Company to make, less any reserves deemed reasonably necessary by the Managing Members, consistent with the provisions of this Agreement, for (a) the repayment of any debts or liabilities of the Company, (b) the working capital requirements of the Company, and (c) any contingent or unforeseen liabilities of the Company.

1.05 "Capital Account" of a Member consists of the cash and the fair market value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Code Section 752), plus such Member's share of Net Profits allocated pursuant to Section 4.01 and any items of income or gain that are specially allocated to such Member pursuant to Section 4.02 or 4.03 hereof, less (a) all distributions of cash and the fair market value of property distributed to such Member (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752), and (b) such Member's share of Net Losses allocated pursuant to Section 4.01 and any items of deduction or loss that are specially allocated to such Member pursuant to Section 4.02 or 4.03 hereof. The Capital Accounts of the Members shall be maintained in accordance with Treasury Regulations section 1.704 1(b)(2)(iv) and the provisions of this Agreement shall be interpreted consistently therewith. Upon the transfer of all or part of a Member's Interest, other than a transfer that

terminates the Company within the meaning of Code Section 708(b)(1)(B), the Capital Account of the transferor Member that is attributable to the transferred Interest will carry over to the transferee. In the event of a transfer of all or part of an Interest that causes a termination of the Company within the meaning of Code Section 708(b)(1)(B), the Capital Accounts will be adjusted in accordance with Treasury Regulations section 1.704-1(b)(2)(iv)(l).

1.06 "Certificate" means the certificate of formation required to be filed by the Act.

1.07 "Code" means the Internal Revenue Code of 1986, as amended from time to time.

1.08 "Company" means 150 Bee Street, LLC.

1.09 "Company Interest" or "Interest" means the interest in the Company acquired by each Member hereunder. The initial Interests of the Members are noted on Exhibit A attached hereto and incorporated by this reference.

1.10 "Emergency Costs" means costs and expenses required to (a) correct a condition that if not corrected would endanger imminently the preservation or safety of any Property or the safety of tenants, guests or other persons at or using such Property, (b) avoid the imminent suspension of any necessary service in or to any Property, or (c) prevent any of the Members from being subjected imminently to criminal or substantial civil penalties or damage.

1.11 "Family Members" of (i) an individual shall mean such individual's spouse, domestic partner, children (including natural, adopted and stepchildren), grandchildren, parents and grandparents, and any trust for the benefit of any such person, and any custodian or legal guardian for any such person, or (ii) a partnership shall mean the partners of such partnership.

1.12 "Fiscal Year" of the Company means the calendar year.

1.13 "Majority Consent" means the affirmative consent or approval, either in writing or at a meeting of the Members, of Members owning a majority of the Company Interests owned by Members entitled to vote, based upon the percentages of each such Company Interest.

1.14 "Managing Member" means a Member or members designated as such pursuant to Section 6.01 hereof.

1.15 "Members" means Neal I. Baker, Thomas H. Morgan, Edwin S. Pearlstine, Jr., Bella Vista Partnership (a Texas general partnership), and each Person to whom all or any portion of the Interest of any of such Persons is transferred or assigned and who is admitted to the Company as a Member in accordance with the provisions of Section 11.03 or 11.04 hereof.

1.16 "Net Profits" and "Net Losses" mean the Company's taxable income or loss determined in accordance with Code Section 703(a) for each of its Fiscal Years (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) will be included in taxable income or loss); provided, such Net Profits and Net Losses will be computed as if items of tax-exempt income and nondeductible, noncapital

expenditures (under Code Section 705(a)(1)(B) and 705(a)(2)(B)) were included in the computation of taxable income or loss; and provided further, that any items of income, gain, loss or deduction specially allocated pursuant to Section 4.02 or 4.03 hereof shall not be taken into account in computing Net Profits and Net Losses. If any Member contributes property to the Company with an initial book value to the Company different from its adjusted basis for federal income tax purposes to the Company, or if Company property is revalued pursuant to Treasury Regulations section 1.704 1(b)(2)(iv)(f) or as otherwise required by the Regulations, Net Profits and Net Losses will be computed as if the initial adjusted basis for federal income tax purposes to the Company of such contributed or revalued property equaled its initial book value to the Company as of the date of contribution or revaluation. Credits or debits to Capital Accounts due to a revaluation of Company assets in accordance with Treasury Regulations section 1.704 1(b)(2)(iv)(f), or due to a distribution of noncash assets as provided in Section 13.02 hereof, will be taken into account as gain or loss from the disposition of such assets for purposes of Article IV hereof.

1.17 "Person" means an individual, partnership, joint venture, association, limited liability company, corporation, trust or any other legal entity.

1.18 "Project" means the for sale horizontal property regime to be developed on the real property located near the intersection of Lockwood Drive and Bee Street in Charleston, South Carolina.

1.19 "Required Expenditure" "means to the extent the Company and its subsidiaries do not have sufficient working capital available to fund all costs, expenditures or amounts required (i) to fund Emergency Costs and (ii) any and all ordinary course operating costs and expenses reasonably incurred in connection with carrying any of the Property, such as debt service, property taxes, insurance and maintenance.

1.20 "Supermajority" "means the affirmative consent or approval, either in writing or at a meeting of the Members, or Members owning seventy-five percent (75%) of the Company Interests owned by Members entitled to vote, based upon the percentages of each such Company Interest.

ARTICLE II
FORMATION AND PURPOSES

2.01 Formation. The Company was formed on February 7, 2000 by the filing of a Certificate as required by the Act.

2.02 Name. The name of the Company is 150 Bee Street, LLC.

2.03 Principal Office. The principal office of the Company is located at 8980 Lakes at 610 Drive, Suite 200, Houston, Texas 77054. The Company may change its principal office and have additional offices at such other locations, as the Members shall determine by Majority Consent.

2.04 Term. The term of the Company commenced on the date of filing of the Articles of Organization with the Secretary of State of the State of South Carolina, and shall continue in existence for the period fixed in the Articles for the duration of the Company, or such earlier time as this Operating Agreement may specify.

2.05 Purpose of the Company. The purpose and business of the Company shall be as follows:

(a) to acquire, develop, construct, own, operate, manage, sell or lease the Project and any other property, real, personal or mixed, tangible or intangible related thereto;

(b) to mortgage, assign, transfer, exchange or otherwise encumber or dispose of the Project and any other property of the Company, or any portion thereof or interest therein;

(c) to make any investment or expenditure, to borrow money and to take any and all other actions which are incidental or reasonably related to any of the specific purposes recited above; and

(d) to do any and all things necessary and desirable to carry out the foregoing activities and any other activities contemplated by this Agreement.

The purposes of the Company shall not be changed without the unanimous agreement of the Members.

ARTICLE III
CAPITAL CONTRIBUTIONS AND LOANS

3.01 Initial Capital Contributions. As of the date hereof, each of the Members shall have made a total capital contribution to the Company as provided in Exhibit A, attached hereto and incorporated herein upon the execution of this Agreement.

3.02 Additional Capital Contributions. Each of the Members shall make additional capital contributions to the Company in an amount reasonably determined by either of the

Managing Members to be necessary to enable the Company to be properly operated and to discharge its costs, expenses, obligations, and liabilities (the "Additional Capital Contributions). The Managing Members, following the determination of the need for Additional Capital Contributions, shall notify each Member of the need for Additional Capital Contributions in accordance with Section 14.03, which notice must include a statement in reasonable detail of the proposed uses of the Additional Capital Contributions. Notwithstanding the foregoing, any Member with the Majority Consent of the Members, may request the Members to make Additional Capital Contributions to fund Required Expenditures. Such Member shall notify each Member of the need for Additional Capital Contributions in accordance with Section 14.03, which notice must include a statement in reasonable detail of the proposed uses of the Additional Capital Contributions. The Additional Capital Contributions shall be due and payable in cash within thirty (30) days of receipt of the notice.

3.03 Failure to Contribute.

(a) If a Member does not contribute within the time required all or any portion of an Additional Capital Contribution that a Member is required to contribute in accordance with Section 3.02 (a "Non-Contributing Member"), any other Member who has funded its required Additional Capital Contribution may at its option and upon notice to the Non-Contributing Member, pay the total amount of any deficiency resulting from the Non-Contributing Member's failure to make an Additional Capital Contribution pursuant to Section 3.02 (the "Deficiency"); and the Member(s) making payment of the Deficiency is hereinafter referred to as the "Contributing Member(s)"). If there is more than one Contributing Member then each Contributing Member shall be entitled to fund its proportionate share of the Deficiency (based upon Company Interests) or in such other percentages as they may agree. If the Contributing Member(s) satisfies the Deficiency, the amount advanced shall be treated as a nonrecourse, demand loan by the Contributing Member(s) to the Non-Contributing Member(s) (a "Deficiency Loan"), bearing interest at the lower of the maximum rate permitted by law or thirty five percent (35%) per annum from the date advanced until repaid and an Additional Capital Contribution by the Non-Contributing Member to the Company. The interest shall accrue thereon from the date of the Contributing Member's payment of the Deficiency to the Company until the occurrence of the earliest of the following events:

(i) the Deficiency Loan becomes eliminated due to the payment by the Non-Contributing Member to the Contributing Member of an amount equal to the Deficiency Loan plus interest accrued thereon to the date of payment; or

(ii) the satisfaction of the Deficiency Loan plus interest accrued thereon as the result of distributions made pursuant to Article 7 hereof.

(b) All distributions from the Company that otherwise would be made to the Non-Contributing Member (whether before or after dissolution of the Company) instead shall be paid to the Contributing Member(s) until the loan and all interest accrued on it have been paid in full to the Contributing Member(s) (with payments being applied first to accrued and unpaid interest and then to principal). The payment of the loan and interest accrued on it is secured by a security interest in the Non-Contributing Member's Company Interest, as more fully set forth in

this Section, and the Contributing Member(s) has the right, in addition to the other rights and remedies granted to it pursuant to this Operating Agreement or available to it at law or in equity, to take any action (including without limitation court proceedings) that the Contributing Member may deem appropriate to obtain payment by the Non-Contributing Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Non-Contributing Member.

3.04 Member Security Interest.

(a) Each Member grants to the Company, and to each Contributing Member with respect to any loans made by the Contributing Member to that Member as a Non-Contributing Member pursuant to this Section, as security, equally and ratably, for the payment of all Capital Contributions that Member has agreed to make and the payment of all loans and interest accrued on them made by Contributing Members to that Member as a Non-Contributing Member pursuant to this Section, a security interest in and a general lien on its Company Interest and the proceeds thereof, all under the Uniform Commercial Code of the State of South Carolina. On any default in the payment of a Capital Contribution or in the payment of such a loan or interest accrued on it, the Company or the Contributing Member, as applicable, is entitled to all the rights and remedies of a secured party under the Uniform Commercial Code of the State of South Carolina with respect to the security interest granted in this Section, which may include the sale, without notice of any kind, of the Non-Contributing Member's Company Interest at public or private sale, with no right of appraisal being held by, or granted to, the Non-Contributing Member, and with any such right of appraisal being hereby waived. Each Member shall execute and deliver to the Company and other Members all financing statements and other instruments that the Managing Members or the Contributing Member, as applicable, may request to effectuate and carry out the preceding provisions of this Section. At the option of the Managing Members, or a Contributing Member, this Operating Agreement or a carbon, photographic, or other copy hereof may serve as a financing statement.

3.05 No Interest on Contributions. Except as indicated in Section 3.03 herein, no Member shall be entitled to receive interest on his or her capital contributions.

3.06 Loans. In the event the Members determine by Majority Consent that the Company does not have sufficient funds to pay the costs incurred or to be incurred by the Company in carrying out the purposes of the Company, the Managing Members are authorized to cause the Company to borrow funds, including from Members and/or their Affiliates, to pay all or part of such costs, provided that the interest rate and other terms of such loans from Members or their Affiliates are no less favorable to the Company than the Company could have secured from third parties.

ARTICLE IV
PROFITS AND LOSSES

4.01 General Allocations. After giving effect to the special allocations set forth in Section 4.02 and 4.03, Net Profits and Net Losses for each Fiscal Year shall be allocated among the Members in accordance with their respective Company Interests.

4.02 Special Allocations. The following special allocations shall be made in the following order:

(a) Minimum Gain Chargeback. Notwithstanding any other provision of this Article IV, if there is a net decrease in Partnership Minimum Gain (as defined in Treasury Regulations section 1.704 2(b) and (d)) during any Fiscal Year, each Member shall be specially allocated items of income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount and manner sufficient to satisfy the requirements of Treasury Regulations section 1.704 2(f). This Section 4.02(a) is intended to comply with the minimum gain chargeback requirement in such section of the Treasury Regulations and shall be interpreted consistently therewith.

(b) Partner Minimum Gain Chargeback. Notwithstanding any other provision of this Article IV except Section 4.02(a), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain (as defined in Treasury Regulations section 1.704 2(i)) during any Fiscal Year, each Member who has a share of the Partner Nonrecourse Debt Minimum Gain shall be specially allocated items of income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount and manner sufficient to satisfy the requirements of Treasury Regulations section 1.704 2(i). This Section 4.02(b) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations section 1.704 2(i) and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event a Member unexpectedly receives any adjustments, allocations or distributions described in (4), (5) or (6) of Treasury Regulations section 1.704 1(b)(2)(ii)(d), then each such Member shall be specially allocated items of Company income and gain in an amount and manner sufficient to eliminate, to the extent required by such Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible. This Section 4.02(c) is intended to constitute a "qualified income offset" under Treasury Regulations section 1.704 1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(d) Nonrecourse Deductions. Nonrecourse Deductions (as defined in Treasury Regulations section 1.704 2(b) and (c)) for any Fiscal Year or other period shall be allocated to Members in accordance with their respective Interests.

(e) Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions (as defined in Treasury Regulations section 1.704 2(i)) for any Fiscal Year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the

Partner Nonrecourse Debt (as defined in Treasury Regulations section 1.704 2(b)(4)) to which such Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations section 1.704 2(i).

(f) Interest on Member Loans. Any interest expense of the Company on a loan made to the Company by a Member shall be specially allocated to the Member who made such loan.

(g) Section 707 Payments. In the event that any fees, interest or other amounts paid to a Member or Affiliate of a Member pursuant to this Agreement, or any agreement between the Company and the Member or Affiliate providing for the payment of such amounts, and deducted by the Company in reliance upon Code Section 707(a) and/or 707(c), are disallowed as deductions to the Company on its federal income tax return for the Fiscal year in or with respect to which such amounts are paid and are treated as Company distributions, then:

(i) the Net Profits or Net Losses, as the case may be, for the Fiscal Year in or with respect to which such fees, interest or other amounts were paid shall be increased or decreased, as the case may be, by the amount of such fees, interest or other amounts that are so disallowed and treated as Company distributions; and

(ii) there shall be allocated to the Member who received (or whose Affiliate received) such payments, prior to the allocations pursuant to Section 4.01, an amount of gross income for the Fiscal year in or with respect to which such fees, interest or other amounts were paid equal to the amount of such fees, interest or other amounts that are so disallowed and treated as Company distributions.

4.03 Facilitation of Economic Arrangement. Any special allocations pursuant to Section 4.02 shall be taken into account in computing subsequent allocations pursuant to this Article IV, so that the net amount of any items so allocated and the income, gain, loss, deduction and any other item allocated to such Member pursuant to this Article IV shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Article IV if such special allocations had not occurred.

4.04 Contributed or Revalued Property. For United States income tax purposes, any income, gain, loss or deduction with respect to property contributed by a Member to the Company that has a fair market value different from its adjusted basis for United States income tax purposes, or with respect to any Company property that has been revalued pursuant to Section 6.04 hereof, shall be allocated among the Members in accordance with Code Section 704(c) and the Treasury Regulations thereunder.

4.05 Tax Items. Except as otherwise provided herein, any allocation to a Member of a portion of the Net Profits or Net Losses for a Fiscal Year will be deemed to be an allocation to that Member of the same proportionate part of each item of income, gain, loss, deduction or credit that is earned, realized or available by or to the Company for United States income tax purposes.

4.06 Allocation on Transfer. In the event of any transfer of a Company Interest in accordance with the provisions of this Agreement, the distributive share of Net Profits or Net Losses with respect to the Interest so transferred will be allocated between the transferor and transferee in accordance with the ratio that the number of days in the Fiscal Year of the transfer before and after such transfer bears to the total number of days in that Fiscal Year, or in such other manner, in the discretion of the Managing Members, as is permitted under applicable Treasury Regulations.

ARTICLE V
DISTRIBUTIONS OF AVAILABLE CASH

5.01 Distributions. Subject to any applicable restrictions in loan documents with the Company's creditors, from time to time, as determined by Majority Consent, the Managing Members shall distribute Available Cash to the Members pro rata in accordance with their respective Company Interests at such times as reasonably determined by the Managing Members, but at least one time per fiscal quarter. The foregoing notwithstanding, following the occurrence of an event of dissolution as provided in Article XII hereof, cash distributions shall be made in accordance with Article XIII hereof.

5.02 Tax Distributions. Subject to any applicable restrictions in loan documents with the Company's creditors and there being Available Cash, the Managing Members shall distribute to each Member with respect to each Fiscal year, either during such Fiscal year or within ninety (90) days thereafter, an amount of cash equal to the product determined by multiplying (a) a percentage not to exceed the highest marginal income tax rate (combined state and federal) that any Member may be subject to, as determined by the Managing Members, times (b) the taxable income for federal income tax purposes of the Company allocated to such Member for such Fiscal Year. The preceding sentence is subject to the reasonably required needs of the Company, as determined by the Managing Members, to maintain sufficient funds for working capital and other business purposes so as not to impair the ability of the Company to continue its business operations.

5.03 Withholding. The Company is authorized to withhold from amounts to be distributed to any Member hereunder any amount required to be withheld by any provision of the Code, Treasury Regulations or other applicable law, and to pay such amounts to the Internal Revenue Service ("IRS") or other appropriate taxing authority in accordance with the Code, Treasury Regulations or other applicable law. In addition to such withholding from distributions, the Company is specifically authorized to remit to the IRS or other appropriate taxing authority any amounts due as a result of the allocation of taxable income to any Member and, if the Company has insufficient cash to remit such amounts, each Member agrees to contribute to the Company his portion of such remittance. Any amounts paid over to the IRS or other appropriate taxing authority with respect to a Member pursuant to this Section 5.03 shall be treated for all purposes hereunder as a distribution made to the Member with respect to whom such withholding or remittance was made. Notwithstanding anything herein to the contrary, distributions for a Fiscal Year to be made to a Member pursuant to Sections 5.01 or 5.02 will be

reduced by any withholding made pursuant to this Section 5.03 with respect to such Member during or with respect to such Fiscal Year.

5.04 Liability of Managing Members. Upon the determination in good faith to pay and distribute Available Cash in the manner herein provided, the Managing Members shall incur no liability on account of such distribution, even though such distribution may result in the Company retaining insufficient funds for the operation of its business, which insufficiency results in loss to the Company or the borrowing of funds by the Company.

ARTICLE VI
MANAGEMENT

6.01 Managing Members. The assets, affairs and operations of the Company shall be managed by one or more Managing Members. The number of Managing Members shall be established by Majority Consent of the Members. There shall initially be two Managing Members who shall be as follows: Stuart L. Fred (as a representative of Bella Vista Partnership) and Neal I. Baker. The Managing Members shall appoint officers for the Company and such officers shall exercise such powers and perform such duties as are prescribed by the Managing Members. Any number of offices may be held by the same person, as the Managers, may determine. All actions to be taken by the Managing Members on behalf of the Company shall be determined by Majority Consent among the Managing Members; provided, from time to time the Managing Members may designate in writing one or more Managing Members to be primarily responsible for certain aspects of the Company's business. Each Managing Member so designated shall keep the other Managing Member(s) apprised of his or her actions taken with regard to the Company. A Managing Member may resign as a Managing Member at any time by giving written notice thereof to all of the other Members at least 10 days prior to the effective date of such resignation. A Managing Member may be removed as a Managing Member at any time by Majority Consent (excluding for such purpose any Company Interests held by the Managing Member or its Affiliates), and shall automatically be removed (without any further action of the Members) as a Managing Member upon the occurrence of an Event of Dissociation (as defined in Section 12.02 hereof) to such Managing Member. In the event of the resignation or removal of a Managing Member at a time when he or she is the only Managing Member, the remaining Members shall elect one or more Members by Majority Consent to replace such Managing Member. The Members may elect a Managing Member at any time by Majority Consent. Notwithstanding the above, at all times while Bella Vista Partnership or any of its Affiliates is a Member of the Company, Stuart L. Fred (as the representative of Bella Vista Partnership) shall be one of the Managing Members (or in the event of his death or disability, John L. Gilbert shall serve in such capacity) and at all times while either Neal Baker or Tom Morgan is a Member, Neal Baker shall be one of the Managing Members (or in the event of his death or disability, Tom Morgan shall serve in such capacity).

The Managing Members shall be responsible for preparing a budget for the Project, which budget is attached hereto as Exhibit B (the "Budget"). The Managing Members shall track the Project's performance against the Budget and shall distribute to the Members monthly financial

reports of the Project's performance in relation to the Budget. The Managing Members shall also be responsible for all sales and marketing efforts regarding the Project.

6.02 Powers of Managing Members. Subject to the limitations set forth in this Agreement, the Managing Members shall have full, exclusive and complete discretion in the management and control of the Company and shall make all decisions affecting its business and affairs. By way of illustration, but not in limitation of the foregoing, the Managing Members shall have the power and authority, on behalf of the Company:

(a) To execute all agreements and other documents necessary to implement the purposes of the Company, and to take such actions as may be necessary to consummate the transactions contemplated thereby;

(b) To collect and enforce the collection of all rentals, leases and other monies due the Company;

(c) To hire, supervise and terminate on behalf of the Company all independent contractors and employees, including attorneys, accountants and other professionals, but all such independent contractors and employees shall be independent contractors and employees of the Company and not of the Members;

(d) To incur obligations in the ordinary course of business;

(e) To draw, make, accept, endorse, sign and deliver any notes, drafts or other negotiable instruments or commercial paper;

(f) To purchase liability and other insurance to protect the Company's property and business;

(g) To hold and own any Company real and/or personal properties in the name of the Company;

(h) To establish, maintain and draw upon checking, savings and other accounts in the name of the Company in such bank or banks as the Members may from time to time select;

(i) To compromise any claim or liability due to the Company;

(j) To execute, acknowledge, verify and file any notifications, applications, statements and other filings that the Managing Members consider necessary or desirable to be filed with any state or federal securities administrator or commission;

(k) To make any tax elections to be made by the Company;

(l) To invest funds of the Company;

(m) To execute, acknowledge, verify and deliver any and all instruments that the Managing Members consider necessary or desirable to effectuate any of the foregoing;

(n) To do any or all of the foregoing, discretionary or otherwise, through agents selected by the Managing Members and compensated or uncompensated by the Company; and

(o) To do any or all of the foregoing upon such other terms and conditions as the Managing Members, in their sole discretion, determine to be necessary, desirable or appropriate.

6.03 Limitations on Authority. Section 6.02 notwithstanding, the following actions shall not be taken on behalf of the Company without Majority Consent of the Members:

(a) the purchase of any real property, the sale, assignment, transfer, exchange or other disposition of any real property owned by the Company;

(b) borrowing money on behalf of the Company or refinancing any Company indebtedness;

(c) granting a security interest in, or otherwise encumbering or conveying as security, all or any of the assets of the Company;

(d) making, executing or delivering on behalf of the Company an assignment for the benefit of creditors;

(e) obligating the Company as a surety, guarantor or accommodation party to any obligation;

(f) lending Company funds;

(g) taking any legal action other than in the ordinary course of business, or the confession of any judgment on behalf of the Company or the filing of consent or acquiescence to any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy laws or any similar federal or state laws;

(h) other than as set forth in Section 6.04, entering into any arrangement with a Member or an Affiliate of a Member for the performance of services or the purchase of goods or property or the leasing of the same;

(i) deviating from the Budget in a net amount greater than fifty thousand and no/100 dollars ($50,000).

(j) adopting capital, operating and other budgets, and establishing the Company's working capital reserve;

(k) any sale of assets of the Company having a value in excess of $_____, other than in the ordinary course of the Company's business;

(l) approving any loan or other arrangement by which the Company will borrow funds for working capital; and

(m) approving any bank, savings and loan or other financial institution into which the funds of the Company will be deposited, as well as any investments to be made by the Company.

Notwithstanding the above, twelve (12) months from the time that the Project receives a Certificate of Occupancy from the City of Charleston, a Majority Consent of the Company may elect either to sell the Project or to convert the Project from a for sale horizontal property regime to apartments for lease.

6.04 Related Party Transactions.

(a) The Company shall enter into the Development Agreement attached hereto as Exhibit C.

(b) Nothing contained in this Agreement shall be deemed to restrict in any way the rights of any Manager, Member or any director, officer, shareholder or Affiliate of any Manager or Member, to engage in, or to conduct any other activity or trade or business, independently or with others, including, without limitation, the ownership, operation and management, of other real estate ventures, whether or not any such activity, trade or business is adverse to, competes with or is complementary with, the business of the Company or the other Member, and neither the Company nor any other Member shall have any rights in or to any such trade or business or activity or the income or profits derived therefrom. The Members: (i) acknowledge that each of the Members, their Affiliates and other related Persons, and their respective clients are currently involved in other real estate development and investment ventures and activities in the immediate vicinity of the Property and may be involved in others in the future; and (ii) agree that each of the Members and their Affiliates and other related Persons, may engage for their own accounts and for the accounts of others in any such ventures and activities (without regard to whether the interests of such ventures and activities conflict with those of the Company). Neither the Company nor any Member shall have any right by virtue of this Agreement or the existence of the Company in and to such aforementioned ventures or activities or to the income or profits derived therefrom; and no Member, his Affiliates and other related Persons, and their respective clients shall have any duty or obligation to make any reports to the Member or the Company with respect to any such aforementioned ventures or activities.

ARTICLE VII
OBLIGATIONS AND RIGHTS OF MEMBERS

7.01 No Liability for Company Obligations. No Member, including Managing Members, shall be personally liable for any debts, obligations or liabilities of the Company solely by reason of being a Member or Managing Member, except as provided by law.

7.02 Right to Distributions. No Member shall have any right to demand and receive any property other than cash from the Company and, prior to the dissolution and liquidation of the Company pursuant to Articles XII and XIII hereof, each Member's right to distribution of cash shall be limited to the rights set forth in Article V hereof.

ARTICLE VIII
INDEMNIFICATION OF MEMBERS

8.01 Indemnification.

(a) No Member shall have any liability to the Company or to any Member for any mistakes or errors in judgment or for any act or omission reasonably believed by such Member to be within the scope of the authority conferred upon him or her by this Agreement, but will have liability only for acts or omissions involving his or her intentional misconduct or knowing violation of law, or any transaction in which he or she received a personal benefit in violation or breach of this Agreement. The Company, to the extent of its assets, shall indemnify, defend and hold each of the Members harmless from, against and in respect of any liabilities, damages, losses, costs or expenses (including attorneys' and accountants' fees) incurred by them as a result of any act or omission with respect to which the Members are protected under the provisions of this Article VIII. The doing of any act or the failure to do any act by a Member, the effect of which causes loss or damage to the Company, if done pursuant to advice of independent legal counsel retained by the Company, will be conclusively presumed not to constitute intentional misconduct or a knowing violation of law on the part of such Member, unless such advice was induced by such Member's intentional misconduct or knowing violation of law.

(b) It is currently contemplated the Company will obtain construction financing from Southwest Bank of Texas, N.A. The Members agree to guarantee and provide any other credit enhancements which may be required by such financing. The principals of Bella Vista Partnership being Stuart L. Fred and John L. Gilbert (the "Principals"), shall provide such guarantee on behalf of Bella Vista Partnership . To the extent feasible, all such guarantees or other credit enhancements shall be provided each Member, and with respect to Bella Vista Partnership, the Principals, in proportion to their Company Interests; otherwise the Members and the Principals hereby agree that in the event that any Member or any Principal, is called upon to fund in excess of their pro rata share (based upon Company Interests) of any amounts to be funded under a guaranty, then, upon request of such funding party, the non funding party(ies) shall promptly reimburse the party that funded the excess amount so that the amounts funded by

REC 0900

each Member (or in the case of Bella Vista Partnership the Principals) constitutes their pro rata share (based upon Company Interests) of the total amounts funded under such guaranty. The Members and the Principals hereby promise to pay to each other any amounts payable pursuant to this paragraph within ten (10) business days following written demand therefore accompanied by an invoice itemizing the sums due. All sums payable hereunder shall bear interest on the unpaid balance thereof from the date when due until paid at the interest rate specified in the construction financing.

ARTICLE IX
COMPENSATION AND REIMBURSEMENT

9.01 Managing Member Compensation. The Managing Members shall only be entitled to such compensation for their services to the Company as shall be determined by unanimous agreement of the Members.

9.02 Reimbursement. All costs and expenses incurred by a Member or Affiliate in connection with the formation and organization of the Company shall be reimbursed or paid by the Company. Other costs and expenses reasonably incurred by a Member on behalf of the Company or otherwise in connection with the Company's business shall be reimbursed or paid by the Company.

ARTICLE X
ACCOUNTING, BOOKS AND RECORDS

10.01 Accounting Method. The Company shall maintain its books and records on such basis of accounting, as the Managing Members shall determine.

10.02 Books and Records. The Managing Members shall keep, or cause to be kept, at Company expense, full, complete and accurate books of account and other records showing the assets, liabilities, costs, expenditures, receipts and such other matters. Such books and records shall be the property of the Company, shall be kept in accordance with sound accounting principles and procedures consistently applied and shall be open to the reasonable inspection and examination by the Members and their duly authorized representatives. Such books of account shall be maintained at the principal office of the Company, or at such other place as the Members may determine by Majority Consent.

10.03 Financial Statements. As soon as practicable after the end of each Fiscal Year of the Company (but in no event later than the 90th day of the immediately following Fiscal Year), the Managing Members shall cause to be prepared and delivered to each Member unaudited financial statements of the Company for such Fiscal Year.

10.04 Tax Returns. The Managing Members shall cause the Company's tax returns and other governmental returns and reports to be prepared and timely filed. The Managing Members shall deliver copies of Schedule K-1 of Form 1065 (or a comparable schedule) and other

necessary tax information for each Fiscal Year to each Member as soon as practicable after the end of each Fiscal Year, but in no event later than the 90th day of the immediately following Fiscal Year.

10.05 Tax Matters Partner. John L. Gilbert is hereby designated the Tax Matters Partner of the Company, as provided in Treasury Regulations pursuant to Code Section 6231. The provisions on limitations of liability of the Members and indemnification set forth in Section 8.01 hereof shall be fully applicable to the Tax Matters Partner in his capacity as such. The Tax Matters Partner may resign at any time by giving written notice to the Company and each of the other Members. The Tax Matters Partner may be removed from such position by Majority Consent. Upon the resignation or removal of the Tax Matters Partner, a new Tax Matters Partner shall be elected by Majority Consent. The Tax Matters Partner shall take such action as may be necessary to cause to the extent possible each other Member to become a "notice partner" within the meaning of Section 6223 of the Code. The Tax Matters Partner shall promptly inform each other Member of all significant matters that may come to its attention in its capacity as Tax Matters Partner by giving notice thereof on or before the fifth Business Day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity. The Tax Matters Partner shall not make any election on behalf of the Company or enter into any extension of the period of limitations for making assessments on behalf of the Members without first obtaining the consent of all Members. The Tax Matters Partner shall not bind any Member to a settlement agreement without obtaining the consent of such Member. Any Member that enters into a settlement agreement with respect to any Company item (within the meaning of Code Section 6231(a)(3)) shall notify the other Members of such settlement agreement and its terms within 10 days from the date of the settlement. Each Member shall reflect on his or her individual income tax return all items of income, gain, loss, deduction, or credit relating to the Company, its property, or its business in a manner that is consistent with the treatment of such items on the Company returns.

ARTICLE XI
TRANSFER AND ASSIGNMENT OF INTERESTS

11.01 General Prohibition. Except as provided in Section 11.02, no Member may assign, convey, sell, transfer, liquidate, encumber, or in any way alienate (collectively, a "Transfer"), all or any part of his or her Company Interest without the prior consent of all Members. If a Member's Interest is Transferred pursuant to the terms of this Agreement, the transferee shall, upon compliance with the provisions of Section 11.03, succeed to the transferred Interest of the transferor Member and all rights, duties and obligations under this Agreement and the Act with respect to such transferred Interest. Any attempted Transfer of all or any portion of a Member's Interest without the necessary consent, or as otherwise permitted hereunder, shall be null and void and shall have no effect whatsoever.

11.02 Permitted Transfers. A Member may at any time, without the consent of any other Member, Transfer all or any part of his or her Interest to one or more of its, his or her Family Members or to another Member (a "Permitted Conveyance"); provided, that following any such Permitted Conveyance such transferee and such conveyed Interest shall continue to be

subject to the transfer restrictions set forth in this Article XI, and provided further, a transferee Family Member who is not already a Member shall not become a substituted Member until the provisions of Section 11.03 have been complied with.

11.03 Conditions of Transfer and Assignment. No transferee of the Interest of a Member shall become a substituted Member until all the Members consent in writing thereto and the following conditions have been satisfied:

(a) the transferor Member, his legal representative or authorized agent must have executed a written instrument of transfer of such Interest in form and substance satisfactory to the Managing Members;

(b) the transferee must have executed a written agreement, in form and substance satisfactory to the Managing Members, to assume all of the duties and obligations of the transferor Member under this Agreement and to be bound by and subject to all of the terms and conditions of this Agreement;

(c) the transferor Member, his legal representative or authorized agent, and the transferee must have executed a written agreement, in form and substance satisfactory to the Managing Members, to indemnify and hold the Company and the Members harmless from and against any loss or liability arising out of the transfer;

(d) the transferee must have executed such documents and instruments as the Managing Members may deem necessary to effect the admission of the transferee as a Member; and

(e) unless waived by the Managing Members, the transferee or the transferor must have paid the expenses incurred by the Company in connection with the admission of the transferee to the Company.

A permitted transferee who does not become a substituted Member shall be an assignee of the transferor and shall be entitled to receive only that portion of the distributions and allocations to which his transferor would otherwise be entitled with respect to the Transferred Interest; such transferee shall not be entitled to vote on any question regarding the Company; and the Transferred Interest shall not be considered to be outstanding for voting purposes; provided, however, if the Transfer is to a Family Member of the transferor and the transferor owns an Interest after the Transfer, then the Transferred Interest shall be considered to be owned by the transferor for voting purposes until the transferee becomes a substituted Member.

11.04 Additional Members. With the consent of all the Members, one or more Persons may be admitted as additional Members by issuance by the Company of Interests on such terms and conditions as all of the other Members agree upon.

11.05 Withdrawal. No Member may withdraw from the Company as a Member prior to the date specified in the Articles of Organization for dissolution of the Company.

ARTICLE XII
DISSOLUTION

12.01 Events of Dissolution.

(a) The Company shall be dissolved upon the first to occur of any of the following events:

(i) the expiration of the term of the Company as defined in Section 2.04 hereof; or

(ii) the written consent of all the Members; or

(iii) upon the written request of any Member in the event of the sale of all or substantially all of the Company's assets.

(b) If the business of the Company is continued after the occurrence of an Event of Dissociation pursuant to this Section any successor-in-interest of the Member to whom the Event of Dissociation occurred shall become an assignee of such Member but shall not be admitted as a substituted Member except in accordance with Section 11.03 hereof.

(c) Except as expressly permitted in this Agreement, a Member shall not voluntarily resign or take any other voluntary action that directly causes an Event of Dissociation under the Act. Except as otherwise expressly provided herein, a Resigning Member shall not be entitled to participate in the management or affairs of the Company or to vote on any questions regarding the Company, and his or her Interest shall not be considered to be outstanding for voting purposes. Damages for breach of this Section shall be monetary damages only (and not specific performance), and such damages may be offset against distributions by the Company to which the Withdrawing Member would otherwise be entitled.

ARTICLE XIII
DISTRIBUTION UPON DISSOLUTION

13.01 Liquidation. Upon dissolution of the Company for any reason, the Company shall promptly commence to wind-up its affairs. A reasonable period of time shall be allowed for the orderly termination of the Company's business, the discharge of its liabilities and the distribution or liquidation of its remaining assets so as to enable the Company to minimize the normal losses attendant to the liquidation process. A full accounting of the assets and liabilities of the Company as of the date of dissolution shall be taken and a written statement thereof will be furnished to each Member within sixty (60) days after such date. Such accounting and statement shall be prepared under the direction of the Managing Members or, if there are no Managing Members or if such liquidation is the result of the disassociation of the Managing Member or the breach of any provision of this Agreement by a Managing Member, by a liquidating trustee

selected by Majority Consent. The Company's property and assets and/or the proceeds from the liquidation thereof shall be applied in the following order of priority:

(a) Payment of the debts and liabilities of the Company, in the order of priority provided by law (excluding any loans by Members or their Affiliates), and payment of the expenses of liquidation;

(b) Payment of all loans made by Members or their Affiliates to the Company, plus any accrued but unpaid interest thereon; provided, that in the event the Company's funds are insufficient to fully satisfy all such loans, then all loans made by Members or their Affiliates shall be repaid on a pro rata basis;

(c) Setting up of such reserves as the Managing Members or liquidating trustee deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company or any obligation or liability not then due and payable; provided, any balance of such reserve, at the expiration of such period as the Managing Members or liquidating trustee shall deem advisable, shall be distributed in the manner herein provided; and

(d) Distribution to the Members, on a pro rata basis, of the positive balances of their Capital Accounts, adjusted to the date of distribution to take into account the allocations resulting from all aspects of the liquidation.

13.02 Distributions in Kind. Any non-cash asset to be distributed in kind (as a liquidating distribution or otherwise) to one or more Members shall first be valued at its fair market value to determine the gain or loss that would have resulted if such asset was sold for such value, and such gain or loss shall then be allocated among the Members pursuant to Article IV hereof. The Managing Members or liquidating trustee, as the case may be, shall determine the fair market value of such asset.

13.03 No Action for Dissolution. The Members acknowledge that irreparable damage would be done to the goodwill and reputation of the Company if any Member should bring an action in court to dissolve the Company. This Agreement has been drawn carefully to provide fair treatment of all parties and equitable payments in liquidation of the Interests of all Members. Accordingly, each Member hereby waives and renounces his right to initiate legal action to seek dissolution, or to seek the appointment of a receiver or trustee to liquidate the Company.

13.04 No Further Claim. Upon dissolution, each Member shall look solely to the assets of the Company for the return of his or her investment, and if the Company property remaining after payment or discharge of the debts and liabilities of the Company, including debts and liabilities owed to one or more of the Members, is insufficient to return the aggregate capital contributions of each Member, such Members shall have no recourse against any other Member.

ARTICLE XIV
MISCELLANEOUS

14.01 Amendments. This Agreement may be amended only by a written instrument signed by all of the Members.

14.02 Additional Documents. At any time and from time to time after the date of this Agreement, upon the reasonable request of a Member, the other Members shall do and perform, or cause to be done and performed, all such additional acts and deeds, and shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all such additional instruments and documents, as are reasonably required to best effectuate the purposes and intent of this Agreement.

14.03 Notices. Any notices or other communications required or permitted by this Agreement shall be in writing and shall be deemed to have been duly given and delivered when delivered in person, when sent via electronic mail ("email") to the recipient at its respective email address set forth in Exhibit A, when sent via overnight courier to the recipient at its respective address set forth in Exhibit A, or when mailed postage prepaid, by certified or registered mail with return receipt requested, to the recipient at its respective address set forth in Exhibit A. The Company and any Member may change his, her or its physical address or email address by giving notice to the Company and the other Members in accordance with this Section 14.03.

14.04 Applicable Law. This Agreement shall be governed by, construed under, and enforced and interpreted in accordance with the laws of the State of South Carolina.

14.05 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior understanding or agreement among them respecting the subject matter hereof. There are no representations, arrangements, understandings or agreements, oral or written, among the parties hereto relating to the subject matter of this Agreement, except those fully expressed herein. No waiver of any provision hereof shall be valid or binding on the parties hereto, unless such waiver is in writing and signed by or on behalf of the parties hereto, and no waiver on one occasion shall be deemed to be a waiver of the same or any other provision hereof in the future.

14.06 Severability. . If any term or provision of this Agreement is held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of the remainder of this Agreement.

14.07 Successors. Subject to the provisions hereof imposing limitations and conditions upon the transfer, sale or other disposition of Company Interests, of the provisions hereof shall inure to the benefit of and be binding upon the successors, legal representatives and assigns of the parties hereto.

14.08 Counterparts. This Agreement may be executed in counterparts, each of which shall for all purposes be deemed an original, and all of such counterparts will together constitute one and the same agreement.

14.09 Headings. Section and other headings contained in this Agreement are for reference purposes only and are in no way intended to define, interpret, describe or limit the scope, extent or intent of this Agreement or any provision hereof.

14.10 Company Property. The title to all real or personal property (or interests therein) now or hereafter acquired by the Company shall be held by and vested in the Company, and not by or in any Member, individually.

14.11 Meetings of Members; Voting. On any matter described in this Agreement with respect to which any Member is entitled to grant (or deny) his or her consent or cast his or her vote, such Member may accomplish the same by attending any meeting convened for the Members entitled to vote on the matter or he or she may grant to any person a proxy to vote for him or her at such meeting or he or she may grant (or deny) his or her consent in writing. Any Member may waive notice of a meeting, in writing, before, at or after the meeting. The attendance of a Member at a meeting of the Members shall constitute a waiver of notice of such meeting, except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not properly called or convened. Members may participate in a meeting of the Members by means of conference telephone or similar communications equipment through which all persons participating in the meeting can communicate with each other at all times, and such participation in a meeting shall constitute presence in person at such meeting. The Managing Members may in their discretion convene a meeting for any purpose, and the Managing Members shall call a meeting of the Members upon the written request of Members owning at least 51% of the Interests owned by all Members. Written notice of each meeting of the Members shall be given not less than five (5) days prior to the meeting. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by the necessary Members entitled to vote and required to approve such action. If action is taken pursuant to the preceding sentence by less than all of the Members entitled to vote thereon, the Managing Members shall give all Members who did not participate in taking the action written notice of such action.

14.12 Gender and Number. Where the context requires, the use of a pronoun of one gender is to be deemed to include a pronoun of the appropriate gender or the neuter, and singular words are to be deemed to include the plural and vice versa.

14.13 Securities Representations. Each Member hereby represents and warrants to, and agrees with, the other Members and the Company, as follows:

(a) That he or she is acquiring his or her Company Interest with the intent of holding the same for investment for his or her own account and without the intent or a view to participating directly or indirectly in, or for resale in connection with, any distribution of such Interest within the meaning of the Securities Act of 1933, as amended (the "Federal Act"), or any applicable state securities laws or regulations.

(b) That he or she acknowledges and agrees that the Company Interests are being issued and sold in reliance upon the exemptions from registration set forth in Section 4(2) of the Federal Act and Section 35-1-20 of the South Carolina Uniform Securities Act and that they cannot and will not be offered for sale, pledged, hypothecated, sold or transferred except in compliance with the terms and conditions of this Agreement and in a transaction which is either exempt from registration under such acts or pursuant to an effective registration statement under such acts.

14.14 Mediation and Arbitration.

(a) Mediation. All of the Members expressly agree that they shall seek mediation as their preferred method of handling claims, disputes or other matters in question that may arise between them. The mediation process may be initiated by the Company or any Member at such times as the parties have been unable to reach a mutually agreed upon resolution to a problem within a reasonable period of time, and at such time as it appears that such a resolution is not likely to be attainable.

(b) Arbitration. Any issues that remain unresolved following such mediation shall be submitted to binding arbitration pursuant to the Uniform Arbitration Act (S. C. Code Section 15-48-10 et. seq.) and, to the extent that the Act may be supplemented by agreement, the arbitration rules of the National Lawyers Association Alternative Dispute Resolution Service or a comparable nationally recognized dispute resolution body that is agreed upon by the parties, shall apply. Arbitration shall take place in Charleston County, South Carolina. Each of the parties shall use all reasonable efforts to insure that any arbitration proceeding is completed with in sixty (60) days following notice of a request for arbitration hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on March ___, 2005, effective as of March ____, 2005.

WITNESSES:

MEMBERS:

Neal I. Baker

Thomas H. Morgan

Edwin S. Pearlstine, Jr.

BELLA VISTA PARTNERSHIP,
a Texas general partnership

By: _____
John L. Gilbert
Managing Partner

AS TO SECTION 8.02(B):

Stuart L. Fred

John L. Gilbert

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on March 4, 2005, effective as of March ____, 2005.

WITNESSES:

MEMBERS:

Neal I. Baker

Thomas H. Morgan

Edwin S. Pearlstine, Jr.

BELLA VISTA PARTNERSHIP,
a Texas general partnership

By: _____
John L. Gilbert
Managing Partner

AS TO SECTION 8.02(B):

Stuart L. Fred

John L. Gilbert

EXHIBIT A
MEMBER NAMES, ADDRESSES FOR NOTICE CONTRIBUTIONS
AND COMPANY INTERESTS

[Adjust these numbers]

Member	Initial Capital Contribution	Company Interest
Neal I. Baker P.O. Box 1870 Charleston, SC 29402	$334,801.85	26.67%
Bella Vista Partnership 8980 Lakes at 610 Drive Suite 200 Houston, Texas 77054	$334,801.86	26.67%
Thomas H. Morgan Morgan Energy Company 1999 Broadway, Suite 2450 Denver, CO 80202	$334,792.29	26.66%
Edwin S. Pearlstine, Jr. Pearlstine Properties, LLC 5900 Core Road, Suite 5300 North Charleston, SC 29406	$251,099.00	20.00%

EXHIBIT B
[BUDGET]

BELLA VISTA

DEVELOPMENT BUDGET

COST ITEM	BUDGET
Land	$4,325,000
Hard Costs - GC contract	$25,000,000
Architects	$450,000
Engineers	$250,000
Fees (Tap/Impact/Permit)	$300,000
Title Policy	$60,000
Clubhouse & Model Furnish	$247,000
Building Signage	$60,000
Brochures & Marketing	$350,000
AECC	$35,000
Appraisal	$15,000
Southwest Bank Loan Fee	$243,789
Soft Cost Contingency	$350,000
Legal / Accounting	$195,000
Developer Fee	$750,000
Developer Overhead	$304,000
Interim Property Operations	$300,000
Interest Reserve	$1,865,211
Total	$35,100,000

From: Tom Morgan [mailto:tom@morganenergy.net]
Sent: Wednesday, April 25, 2007 10:02 AM
To: 'John Gilbert'; 'Edwin Pearlstine'; 'Neal Baker'; 'Stuart Fred'
Subject: RE: Bee Street Lofts - Weekly Update

Dear Partners,

I am reading the article in today's Wall Street Journal that housing and condo sales continue to deteriorate across the country caused by tightening credit requirements for buyers. The article predicts worse times ahead, particularly in the fourth quarter of 2007.

In regard to Bee Street I would like to get everyone's feedback. It is my opinion that we should immediately get more aggressive on price reductions or incentives during the prime selling season which is now. The remaining unsold units are the most unfavorable in the building, and will be the hardest to sell. The project is projected to be completed in September and it would be nice to have all the units sold at that time. If we wait until later in the summer to reduce prices, we may have numerous unsold units left over until next year. If that happens we will have to come out of pocket to pay the taxes from our gain on the sold units, but not have the cash from the unsold units to offset the taxes.

Please let me know your thoughts.

Regards,
Tom

From: John Gilbert [mailto:johngilbert@bomasada.com]
Sent: Sunday, April 22, 2007 12:00 PM
To: 'Edwin Pearlstine'; 'John Gilbert'; 'Neal Baker'; 'Stuart Fred'; 'Tom Morgan'
Cc: george.marshall@amegybank.com; 'Jeremy Newsom'
Subject: Bee Street Lofts - Weekly Update

Subject: Re: Bee Street Lofts - Weekly Update
Date: Wednesday, April 25, 2007 at 5:35:58 PM Eastern Daylight Time
From: kneeleye@aol.com
To: Thomas Morgan, johngilbert@bomasada.com, pearlprop@aol.com, stuartfred@bomasada.com
Attachments: image001.jpg, image001.jpg

Tommy
I haven't spoken to Stuat, John, or Edwin but as far as I'm concerned I would be willing to give you back all your money and get you released from the liability. I don't agree at all with your position. Why did Beazer just fund us $2,000,000.00 if the market is so bad in Charleston. You need to get out because you are so worried about this. Charleston is a totally different market and I'm willing to take a chance that things aren't that bad here,

Neal

Subject: RE: Bee Street Lofts - Weekly Update
Date: Wednesday, April 25, 2007 at 5:44:56 PM Eastern Daylight Time
From: John Gilbert
To: Thomas Morgan, 'Edwin Pearlstine', 'Neal Baker', 'Stuart Fred'
Attachments: image001.jpg

Tom:

It is apparent by your email and recent discussions with me that you are not comfortable being a partner in this deal. If you would like to get out right now, I know Stuart and I would be more than willing to assume your liability with Amegy bank. Please let me know if that is your preference and I'll make arrangements with the bank.

John

Subject: RE: Bee Street Lofts - Weekly Update
Date: Wednesday, April 25, 2007 at 5:45:07 PM Eastern Daylight Time
From: stuartfred@bomasada.com
To: Thomas Morgan
CC: 'John Gilbert', 'Edwin Pearlstine', 'Neal Baker', 'Stuart Fred'

tommy I just got both your and neals email...i concur with neal...allthough i have not been in communication with you i have been aware of your position for some time....frankly you should not be in this deal....you dont understand real estate like you do oil and gas...thats where your time and money should be positioned....leave the real estate to others who do it daily and either be a passive investor or respectively get out

--

STUART FRED
BOMASADA GROUP INC. SUITE 200
8980 LAKES AT 610 DRIVE
HOUSTON TEXAS 77054
OFFICE 713 668 6886
FAX 713 668 6880
STUARTFRED@BOMASADA.COM
BOMASADA1@AOL.COM
WWW.BOMASADA.COM

---------- Original Message ----------
Subject: RE: Bee Street Lofts - Weekly Update
From: "Tom Morgan" <tom@morganenergy.net>
Date: Thu, April 26, 2007 8:24 am
To: stuartfred@bomasada.com

Stuart,

As I have thought about your e-mail again, I am astounded at your pompous attitude. As I said in my previous e-mail, I am happy to stay in the project with you, and am pleased with your work. But your remark that I don't understand real estate is insulting. I am an astute real estate investor and have made millions of dollars for myself and my partners over the past 30 years on many projects. I have never lost one dollar on any real estate deal I have ever done. I am not an experienced large project construction person; however, I have marketed my own properties for the past 30 years and have extracted the maximum dollars out of each one.

Just to set the record clear, I would make the same proposal to you as you have to me. I will be glad to take the project over at this time and give you or any of the partners their money back. I feel fully confident that I could finish the project myself, and also do a much better job of marketing the units than you have done. So please let me know if you wish to get out and I will take the project over myself and give you your money back. If you don't want me as a partner, I am happy take over your position and get you out of this project.

I don't really appreciate you and John's confrontational attitude, and rude remarks about my real estate ability when I am just trying to make a very good suggestion. By the way, when I am signed personally on a large loan, I am not considered a passive investor. You have provided me with very little reporting requirements as required in the agreement, and when I ask a question to John I don't get answers for weeks, so my only choice to ask the sales team, who I'm sure you told not to return my calls. Never in my life have I been treated so rudely by you and John as a partner in an investment.

Please change your attitude if you want my cooperation. I would also like to see all of your invoices for travel expenses. I don't understand why there is $750,000 in travel expenses for this project.

Tom

Subject: RE: Bee Street Lofts - Weekly Update
Date: Thursday, April 26, 2007 at 1:52:32 PM Eastern Daylight Time
From: stuartfred@bomasada.com
To: Thomas Morgan

Tommy:

I am a little stunned by your email, but really not too surprised. I'm not going to get into a 'tit for tat' on the various issues you raised because that would serve no real purpose at this point. The bottom line is that no matter what you think, you are not and will never be a real estate developer. You are a investor. And frankly we are sick and tired of being second-guessed by your amateurish comments. We will not teach school. This is what we do for a living 24/7, something you apparently cannot comprehend. Neal brought us into this project because he knew his development capabilities were limited and he knew from past experience and our impeccable reputation that we could develop this difficult and non-typical project. (And this is a non-typical project because of the BAR issues, site conditions,finnacing difficulties, marketing, etc.) It was well understood at the time by all parties, including you that we would be the developers and that you, Neal and Edwin would be 'silent' partners. Your emails this past week have demonstrated nothing as to your need for tax planning but continnued ramblings as to market concern and your acute non understanding of what we are doing in charleston as a development group. I am sure you read your oil and gas journals and decide what to do, where to drill and when to exit your positions based upon same. In our business if we relied on those trades we would be 1-2 years behind the curve. Thats what we told you about Miami two years ago and to get out when all you could do was remind us of how you did it Miami and how great things were. If we would have listen to you then where would we be today? All you do now is remind us of how bad the Miami market is. But you know that because you are a savvy real estate guy.

I have forwarded your email to John and he and I both agree that we will be more than happy to move out of the way and let you complete the development and construction of the project of Bee Street as stated in your email. As a matter of fact, this is a great idea as it would free us up to do more of our own projects without interference from limited partners. As you know we have dedicated 100% of our organizations talent and resourses to this project and yet are only participating in 27% of the profits.

Because we have completed roughly 90% of the work on the project to date, we would be willing to take 90% of the projected profits for our share based upon our efforts. Why 90% you may ask? The simple answer is we have completed this project and placed it in a position that within reason, any astute individual could continue, assuming the individual had development / construction experience as you have indicated you do. Unlike you, we have dedicated time, expyrience and a

indicated you do. Unlike you, we have dedicated time, experience and a reputation that enabled this project to move forward, all of which you have contributed none. That is why we are entitled to a profit on our ownership and you were not offered the same opportunity. You have not provided any salient value to this project. We have eliminated a significant amount of the risk based upon our actions as stated above and should be compensated for same. We will also require a complete release of liability from you for all matters pertaining to this development. Please advise me no later than 5:00 PM, April 27th if this is acceptable to you so we can begin notifying all concerned parties advising them that you will now be taking over the project. I will also call our attorneys and have them begin preparing the necessary documentation to change the ownership structure of the LLC as well as demobilizing the construction crew and calling the sales team to let them know what is transpiring. John will call Amegy Bank to inform them of this decision. I would suggest you have another lender lined up as Amegy Bank will want to be paid off if John and I are no longer involved in the project.

Let me be crystal clear that once we begin the process of you taking control of the LLC and development, you will become personally responsible for any mismanagement and costs associated with the ownership change. We will use reasonable efforts to assist you in a smooth transition. In addition, we will require you to place the above-mentioned 90% profit in an interest bearing escrow account to our benefit. This will ensure your attentiveness in expediting this process so as the project will not stagnate effecting Neal and Edwin while you are gearing up your development, construction and marketing team.

In closing, I now consider you a hostile partner and will be taking all necessary actions afforded me as the managing member of the LLC to protect the LLC until this transfer has taken effect. I will leave it up to you to officially notify Neal and Edwin of your position

STUART FRED
BOMASADA GROUP INC. SUITE 200
8980 LAKES AT 610 DRIVE
HOUSTON TEXAS 77054
OFFICE 713 668 6886
FAX 713 668 6880
STUARTFRED@BOMASADA.COM
BOMASADA1@AOL.COM
WWW.BOMASADA.COM

---------- Original Message ----------
Subject: RE: Bee Street Lofts - Weekly Update
From: "Tom Morgan" <tom@morganenergy.net>
Date: Thu, April 26, 2007 4:23 pm
To: stuartfred@bomasada.com

Stuart,

You are being ridicules.

I have simply offered suggestions on how to market the property, (nothing to do with the construction), and you have basically told me to mind my own business in a very confrontational way, which I don't appreciate.

We all agreed that we wanted to be sold out of all the units on or before completion. Is that true? I have simply stated that at the current pricing of the unfavorable units, we will not be sold out when we all want to. I suggested that we lower the prices on those unfavorable units now during the high selling season, rather than wait until the end of the summer when the market goes into a lull, and they will really be difficult to sell.
I really don't understand your problem with my suggestion.

If you don't agree you should say so politely, as I originally asked you to politely give me your opinion on my suggestion. If you want to get aggressive with me, I will get just as aggressive back to you. Your aggressive reply deserved an aggressive answer. Just be polite and answer my reasonable questions, as any business partner would do. I don't respond well to being bullied around.

If you want me out of the project or you want me to purchase your interest, you are free to make me a buy sell offer according to the agreement. Please respond accordingly.

---------- Original Message ----------
Subject: RE: Bee Street Lofts - Weekly Update
From: "Tom Morgan" <tom@morganenergy.net>
Date: Fri, April 27, 2007 12:29 am
To: stuartfred@bomasada.com

Stuart,

Please address all your comments to my lawyer from this point forward. I will no longer communicate with you or your staff. You have no right under the operating agreement to make the demands in your previous e-mails. I suggest you review the operating agreement.

I asked a very reasonable question about the marketing of the unsold units, which you could have replied with a civil answer: that you don't agree with my suggestion. I only asked for your and the other partner's opinion.
Instead you started this whole argument with your extremely rude and pompous comment:

"frankly you should not be in this deal....you dont understand real estate like you do oil and gas...thats where your time and money should be positioned....leave the real estate to others who do it daily and either be a passive investor or respectively get out"

Rather than make such a rude comment, you should provide your partners with the monthly information that is required under the operating agreement Article 6.01, which I have never received from you; or answer my questions in a business like manner. I am sick of you and John's know it all attitudes. Please do not contact me again. From now on you can deal through my lawyer:

Mr. Joel Goldman

1221 Brickell Avenue, 21st Floor
Miami, Florida 33131-3224
Phone: (305) 579 0828
Email: goldmanj@gtlaw.com

Please send any demands directly to him, as I will not be communicating with you any further.

Sincerely,

Thomas H. Morgan

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

Nelson
Mullins

Nelson Mullins Riley & Scarborough L.L.P.
Attorneys and Counselors at Law
151 Meeting Street / Sixth Floor / Charleston, SC 29401-2239
Tel: 843.853.5300 / Fax: 843.720.4356
www.nelsonmullins.com

Jason E. Haggerty
Tel: 843.720.4302
Fax: 843.720.4356
jason.haggerty@nelsonmullins.com

April 30, 2007

Joel Goldman
1221 Brickell Avenue, 21st Floor
Miami, Florida 33131-3224

RE: 150 Bee Street, LLC/Real Estate
Our File No.: 16022/09000

Dear Mr. Goldman:

Please be advised that this firm represents 150 Bee Street, LLC ("Company").

I am in receipt of various email correspondence between Stuart Fred and Tommy Morgan regarding the suggestions and direction of the project by Mr. Morgan and his request to deal through you.

As counsel for the Company, we have been very involved from the beginning in not only tougher than usual zoning and BAR approval issues, but also in working on the various contracts, the master deed and ongoing purchaser contract issues. Obviously, I am concerned when there are any issues that may affect the Project. The purpose of this letter is to try to be of help to all Members and the Project.

As I understand it, there are at least a couple of points being raised in Mr. Morgan's e-mails related to the Company's Second Amended and Restated Limited Liability Company Agreement ("Agreement"). Section 6.01 speaks primarily about the duties and responsibilities of the Managing Members. The Managing Members are Stuart L. Fred (as a representative of Bella Vista Partnership) and Neal L. Baker. Generally speaking, all of the responsibilities for running this project have been vested in these Managing Members as indicated by Section 6.02. Section 6.01 also requires the Managing Members to prepare a budget for the project and distribute to the Members monthly financial reports of the Project's performance in relation to the budget. This same paragraph also goes on to clearly indicate that the Managing Member shall be responsible for all sales and marketing efforts regarding the Project. (See attached language) I have been told that at present time there are no operating budgets as the project is still under construction. I understand that Mr. Morgan has always promptly been provided any and all information he has requested. Further, I am informed that Mr. Fred takes issue with Mr. Morgan's accusations that phone calls are not returned and complaints continue

weeks go by after information has been requested and sent. I have confirmed this fact with Mr. Baker and Mr. John Gilbert to verify Mr. Fred's position.

I also saw some reference in the correspondence to a buy/sell offer according to the Agreement. There is not a buy/sell arrangement in the Agreement; however, Section 11 of the Agreement talks about the restrictions on transfers and assignments of interest. As you may know, this is a closely held investment and any transfer will require the consent of the Members. I am informed that based upon Mr. Morgan's position in his e mails and his stated abilities to complete this difficult project, Mr. Fred and Mr. Gilbert will agree to entertain Mr. Morgan s offer under Section 11 of the Agreement. However, any assignment of his interest by a Member must be acceptable to the other Members, in this case, Mr. Baker and Mr. Edwin Pearlstine. It is my understanding that Mr. Baker and Mr. Pearlstine will be unlikely to approve this action. Mr. Fred and Mr. Gilbert have been the driving forces in this project relating to everything from design and construction to marketing and financing.

I understand that Mr. Fred has requested that Mr. Morgan not contact his organization or any parties associated with the Project and that all communications filter through your office and then to me

Please let me know if I can provide any information or otherwise be of help to you in this matter. I have enjoyed working with all of the Members in this challenging project. Obviously, my hope is that we will not have an issue among the Members and that we can remain focused on a successful project.

Very truly yours,

John B. Hagerty

JBH:rdm

ELECTRONICALLY FILED - 2021 Mar 10 12:50 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

Greenberg
Traurig

Joel K. Goldman
Tel (305) 579-0828
Fax (305) 579-0717
goldmanj@gtlaw.com

May 15, 2007

Via: Facsimile (843) 720-4308
John B. Hagerty, Esq.
Nelson Mullins Riley & Scarborough LLP
151 Meeting Street, Sixth Floor
Charleston, SC 29401-2239

Re: 150 Bee Street, LLC

Dear Mr. Hagerty:

I am in receipt of your letter dated April 30, 2007 and the Operating Agreement and Development Agreement which you were kind enough to forward to my attention. I have had the opportunity to discuss the matters set forth in your letter with my client, and we have determined that it would not be productive to respond to the specific issues raised in your letter at this time. Instead, we have the following requests:

1. Section 6.01 of the Operating Agreement includes the following language:

"The Managing Members shall track the Project's performance against the Budget and shall distribute to the Members monthly financial reports of the Project's performance in relation to the Budget."

My client has advised me that he has not been receiving these monthly financial reports. Please arrange for the prior reports to be provided as soon as possible, and we otherwise assume that the reports will be provided monthly on a going forward basis.

2. My client has advised me that he has been receiving weekly sales and marketing reports as promised by Mr. Gilbert. We trust that these reports will continue to be circulated to my client on a going forward basis.

If we have any questions or concerns following our receipt of the reports, we will let you know. My client reserves all of its rights under the Operating Agreement, and nothing set forth herein shall be deemed a waiver of the same.

We appreciate your assistance and cooperation with respect to the delivery of the foregoing reports, and we look forward to the successful completion of this project.

Sincerely,

Joel K. Goldman

cc: Thomas H. Morgan

Grimball, Henry

From: Julia DuMars <julia@follyphotos.com>
Sent: Thursday, September 20, 2007 11:08 AM
To: Thomas Morgan
Subject: RE: FW: from Neal

Here is the most recent. We are missing one.
Julia

Tom Morgan <tom@morganenergy.net> wrote:
Thanks Julia

From: Julia DuMars [mailto:julia@follyphotos.com]
Sent: Wednesday, September 19, 2007 11:47 AM
To: Tom Morgan
Subject: Re: FW: from Neal

Tom
I think Neal has received one more since this. He has it with him so I will get it from him tomorrow and forward to you.
Julia

Tom Morgan <tom@morganenergy.net> wrote:
Hi Julia,

This is the last monthly report I've received on Bee Street. If you have August and September's report could you please e-mail them to me.

Thanks,
Tom

From: Julia DuMars [mailto:dumarsjulia@yahoo.com]
Sent: Wednesday, July 18, 2007 11:58 AM
To: Tom Morgan
Subject: from Neal

Julia DuMars, CPA
PO Box 442
Folly Beach, SC 29439

843.834.8317
dumarsjulia@yahoo.com

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received this transmission in error, please reply to the sender listed above immediately and permanently delete this message from your inbox. Thank you for your cooperation.

Amegy Bank of Texas
P.O. Box 27459
Houston, Texas 77227-7459
Attn: Jeremy Newsom

Date: September 4, 2007 *Draw: 30*

RE: Bee Street

Pursuant to the terms and conditions of the various agreements concerning the above referenced loan, we hereby make application or a loan advance as follows:

COST ITEM	ORIGINAL BUDGET	CHANGE ORDERS	REVISED BUDGET			EQUITY	LOAN			LOAN
			TOTAL	EQUITY	LOAN	PAID TO DATE	PREVIOUS DRAWS	CURRENT DRAW	TOTAL TO DATE	FUNDS REMAINING
Land	$4,325,000		$4,325,000	$1,725,000	$2,600,000	$1,725,000	$2,600,000	$0	$2,600,000	$0
Hard Costs - GC contract	$25,000,000	$4,851,062	$29,851,062	$0	$29,851,062	$0	$28,460,709	$197,844	$28,658,553	$1,192,509
Architects	$450,000		$450,000	$418,200	$31,800	$418,200	$31,800	$0	$31,800	$0
Engineers	$250,000		$250,000	$199,760	$50,240	$199,760	$50,240	$0	$50,240	$0
Fees (Tap/Impact/Permit)	$300,000		$300,000	$0	$300,000	$0	$300,000	$0	$300,000	$0
Title Policy	$60,000		$60,000	$2,034	$57,966	$2,034	$57,966	$0	$57,966	$0
Clubhouse & Model Furnish	$247,000		$247,000	$0	$247,000	$0	$64,334	$11,209	$75,543	$171,457
Building Signage	$60,000		$60,000	$353	$59,647	$353	$33,885	$1,175	$35,060	$24,587
Brochures & Marketing	$350,000		$350,000	$0	$350,000	$0	$283,224	$7,698	$290,922	$59,078
AECC	$35,000		$35,000	$0	$35,000	$975	$26,125	$0	$26,125	$8,875
Appraisal	$15,000		$15,000	$12,001	$2,999	$12,001	$2,999	$0	$2,999	$0
Amegy Bank Loan Fee	$243,375		$243,375	$0	$243,375	$0	$243,375	$0	$243,375	$0
Soft Cost Contingency	$350,000		$350,000	$0	$350,000	$0	$241,942	$0	$241,942	$108,058
Legal / Accounting	$195,000		$195,000	$88,162	$106,838	$88,162	$106,838	$0	$106,838	$0
Developer Fee	$750,000		$750,000	$0	$750,000	$0	$750,000	$0	$750,000	$0
Developer Overhead	$304,414	$150,000	$454,414	$94,089	$360,325	$94,089	$360,325	$0	$360,325	$0
Interim Property Operations	$300,000	$150,000	$450,000	$110,401	$339,599	$110,401	$307,501	$28,708	$336,209	$3,390
Interest Reserve	$1,865,211	$1,000,000	$2,865,211	$0	$2,865,211	$0	$2,865,211	$0	$2,865,211	$0
TOTALS	$35,100,000		$41,251,062	$2,650,000	$38,601,062	$2,650,975	$36,786,474	$246,634	$37,033,108	$1,567,955

Upon approval of the amount requested, please make the loan advance per instructions below:

Bank: Amegy Bank of Texas
City & State: Houston, Texas
Account Name: 150 Bee Street, LLC
Account #: 3501868
ABA# 113011258

Sincerely,
150 Bee Street, LLC

By: John L. Gilbert
Its: Member

APPLICATION AND CERTIFICATE FOR PAYMENT AIA DOCUMENT G702

TO: 150 Bee Street, LLC
6980 Lakes at 610 Drive, Suite 200
Houston, Texas 77054

PROJECT: Bella Vista
150 Bee Street
Charleston, SC

PAY APP. NO. Thirty (30)

PERIOD: 8/1/07 - 8/31/07
August

FROM: Bomasada Investment Group II, L. L. C.
6980 Lakes at 610 Drive, Suite 200
Houston, Texas 77054

ARCHITECT: The Steinberg Design Collaborative
5177 Richmond Avenue
Houston, TX 77056

CONTRACT FOR: Bella Vista, A 108 Unit Apartment Project

1. Original Contract Sum:	$25,000,000.00
2. Net Change by Change Orders:	$4,851,062.25
3. Contract Sum To Date: (Line 1 Plus Line 2)	$29,851,062.25
4. Total Complete & Stored To Date: (Column H on Schedule of Values)	29,547,420.63
5. Total Retainage Withheld: (5% of Line 4)	888,869.13
6. Total Earned Less Retainage: (Line 4 less Line 5)	28,658,551.50
7. Previous Certificate For Payment (Total Earned Less Retainage): (Line 6 from Previous Certificate Less Line 6 From This Pay Application)	$28,460,707.48
8. Current Payment Due: (Line 6 Less Line 7)	$197,844.02
9. Balance To Finish, Plus Retainage: (Line 3 less Line 6)	$1,192,510.75

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Change Orders Approved in Previous Months by Owner		2,066,044.25	
	TOTAL	$2,066,044.25	$0.00
APPROVED THIS MONTH			
NUMBER	DATE APPROVED		
CO #2		$2,785,018.00	
Net Change by Change Orders		$2,785,018.00	$0.00
	TOTAL	$4,851,062.25	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief that the work covered by this application for payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous certificates for payment were issued and payments recieved from the Owner, and that current payment shown herein is now due.

CONTRACTOR: BOMASADA INVESTMENT GROUP II, L.L.C.

By: _____ Date: 9/4-07
Stuart Fred

ANGIE KREUTZFELDT
MY COMMISSION EXPIRES
NOVEMBER 23, 2009

State of Texas, County of Harris
Subscribed and Sworn to before me this 4th day of Sept, 2007

Notary Public: _____ My Commission Expires: 11-23-09

LENDING INSTITUTION INSPECTOR'S. CERTIFICATE FOR PAYMENT

The undersigned Inspecting Agent does hereby certify that to the best of his knowledge and belief this Pay Application #30, does reasonably represent the value of work completed and/or material stored through the period ending 8/31/07.

AMOUNT CERTIFIED: _____

Attached explanation if amount certified differs from amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

INSPECTOR:

BY: _____ Date: _____
Barry Greer

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

APPLICATION SCHEDULE OF VALUES SUMMARY

OWNER: 150 Bee Street, LLC

APPLICATION NO.: Thirty (30)

PROJECT: Bella Vista

PERIOD: 8/1/07 - 8/31/07

GC: Bomasada Investment Group II, L.L.C.

A	B		C		D	E	F	H	I	J	K
DIV.	DESCRIPTION OF WORK	ORIGINAL	REVISED	CHANGE	WORK COMPLETED & STORED MATERIAL			TOTAL COMPLETED & STORED TO DATE		BALANCE TO	TOTAL RETAINAGE
NO.	ACTIVITY	VALUE	VALUE	ORDER	WORK & MATERIALS PREVIOUS APP.	WORK COMPLETED THIS PERIOD	MATERIALS STORED THIS PERIOD	$ (D+E+F)	% (H/D)	FINISH (C-H)	TO DATE (5% of H)
00000	CONTINGENCY AND FEE	$369,459	$441,055	$71,596	$353,173	$57,261	N/A	$410,434	93%	$30,622	N/A
00005	General Contractor's Fee	$123,154	$154,750	$31,596	$152,759	$0	N/A	$152,759	99%	$1,991	N/A
00010	Contingency	$246,305	$286,305	$40,000	$200,414	$57,261	N/A	$257,675	90%	$28,631	N/A
01000	GENERAL CONDITIONS	$2,107,469	$2,643,269	$535,800	$2,555,124	$33,565	N/A	$2,588,689	98%	$54,580	N/A
01015	Rough Cleanup	$71,764	$71,764	$0	$69,611	$718	N/A	$70,329	98%	$1,435	N/A
01020	Final Cleanup	$47,857	$47,857	$0	$45,464	$957	N/A	$46,421	97%	$1,436	N/A
01040	Postage & Freight (01016)	$7,000	$7,000	$0	$6,790	$70	N/A	$6,860	98%	$140	N/A
01045	Express Delivery (01016)	$7,000	$7,000	$0	$6,790	$70	N/A	$6,860	98%	$140	N/A
01050	Office Expense & Supplies	$7,000	$7,000	$0	$6,790	$70	N/A	$6,860	98%	$140	N/A
01055	Estimating & Blueprinting (01016)	$15,000	$15,000	$0	$14,550	$150	N/A	$14,700	98%	$300	N/A
01060	Scheduling Expenses (01016)	$2,000	$2,000	$0	$1,940	$20	N/A	$1,960	98%	$40	N/A
01090	Petty Cash (01016)	$1,000	$1,000	$0	$970	$10	N/A	$980	98%	$20	N/A
01120	Safety Equipment/Supplies (01016)	$1,000	$1,000	$0	$970	$10	N/A	$980	98%	$20	N/A
01125	First Aid Equipment/Supplies (01016)	$3,000	$3,000	$0	$2,910	$30	N/A	$2,940	98%	$60	N/A
01130	Small Tools	$9,048	$9,048	$0	$8,777	$90	N/A	$8,867	98%	$181	N/A
01140	Survey & Engineering	$15,000	$15,000	$0	$14,550	$150	N/A	$14,700	98%	$300	N/A
01145	Construction Travel Expense	$350,000	$400,000	$50,000	$380,000	$5,000	N/A	$388,000	97%	$12,000	N/A
01155	Unit Checkout Power (01048)	$27,000	$27,000	$0	$24,300	$1,350	N/A	$25,650	95%	$1,350	N/A
01160	Meter Hookup Charges (01048)	$27,000	$27,000	$0	$24,300	$1,350	N/A	$25,650	95%	$1,350	N/A
01165	Temporary Electrical(Trailer, Poles, W	$27,000	$27,000	$0	$26,190	$270	N/A	$26,460	98%	$540	N/A
01175	Ice, Cups, & Coffee (01016)	$2,000	$2,000	$0	$1,940	$20	N/A	$1,960	98%	$40	N/A
01185	Temporary Telephone	$2,000	$2,000	$0	$1,940	$20	N/A	$1,960	98%	$40	N/A
01190	Punch List	$16,200	$16,200	$0	$14,580	$810	N/A	$15,390	95%	$810	N/A
01195	Common Labor	$75,000	$75,000	$0	$71,250	$1,500	N/A	$72,750	97%	$2,250	N/A
01220	Division Manager	$155,000	$185,000	$30,000	$175,750	$3,700	N/A	$179,450	97%	$5,550	N/A
01225	Project Manager (01100)	$109,200	$140,000	$30,800	$133,000	$2,800	N/A	$135,800	97%	$4,200	N/A
01230	Project Secretary (01100)	$43,000	$60,000	$17,000	$57,000	$1,200	N/A	$58,200	97%	$1,800	N/A
01235	Administration/Bookkeeping (01100)	$43,000	$60,000	$17,000	$57,000	$1,200	N/A	$58,200	97%	$1,800	N/A
01240	Superintendent (01100)	$91,200	$115,000	$23,800	$109,250	$2,300	N/A	$111,550	97%	$3,450	N/A
01245	Asst. Superintendent (01100)	$70,400	$90,000	$19,600	$85,500	$1,800	N/A	$87,300	97%	$2,700	N/A
01250	Punch Foreman (01100)	$50,200	$60,000	$9,800	$57,000	$1,200	N/A	$58,200	97%	$1,800	N/A
01255	Field Secretary/Clerk (01100)	$50,200	$60,000	$9,800	$57,000	$1,200	N/A	$58,200	97%	$1,800	N/A
01265	Production Incentive	$32,400	$32,400	$0	$28,512	$0	N/A	$28,512	88%	$3,888	N/A
01275	Workmen's Compensation Ins.	$50,000	$50,000	$0	$50,000	$0	N/A	$50,000	100%	$0	N/A
01285	Insurance-Gen Liability	$200,000	$400,000	$200,000	$400,000	$0	N/A	$400,000	100%	$0	N/A
01290	Insurance-Builders Risk	$300,000	$378,000	$78,000	$378,000	$0	N/A	$378,000	100%	$0	N/A
01295	Corporate Overhead	$200,000	$250,000	$50,000	$242,500	$2,500	N/A	$245,000	98%	$5,000	N/A
02000	SITE CONSTRUCTION	$1,332,361	$1,282,361	-$50,000	$1,152,052	$51,254	$0	$1,203,306	94%	$79,056	$6,889

A	B		C		D	E	F	H	I	J	K
DIV.-	DESCRIPTION OF WORK	ORIGINAL	REVISED	CHANGE	WORK COMPLETED & STORED MATERIAL			TOTAL COMPLETED & STORED TO DATE		BALANCE TO	TOTAL RETAINAGE
NO.	ACTIVITY	VALUE	VALUE	ORDER	WORK & MATERIALS PREVIOUS APP.	WORK COMPLETED THIS PERIOD	MATERIALS STORED THIS PERIOD	$ (D+E+F)	% (H/D)	FINISH (C-H)	TO DATE (5% of H)
02005	Off-Site Improvements	$10,000	$10,000	$0	$9,021			$9,021	90%	$979	$0
02020	Traffic Signaling	$15,000	$15,000	$0	$15,000			$15,000	100%	$0	$750
02035	Sitework/Excavation	$62,561	$62,561	$0	$62,561			$62,561	100%	$0	$0
02050	Site Demolition	$10,000	$10,000	$0	$10,000			$10,000	100%	$0	$0
02065	Dewatering	$5,000	$5,000	$0	$5,000			$5,000	100%	$0	$0
02110	Concrete Pile System	$848,000	$848,000	$0	$848,000			$848,000	100%	$0	$0
02125	Soil Treatment	$5,000	$5,000	$0	$5,000			$5,000	100%	$0	$0
02135	Water Distribution	$5,500	$5,500	$0	$5,500			$5,500	100%	$0	$0
02145	Sanitary Sewers	$10,500	$10,500	$0	$10,500			$10,500	100%	$0	$0
02150	Storm Drainage	$17,500	$17,500	$0	$17,381			$17,381	99%	$119	$0
02155	Storm Drainage - Pipe (U/G Detention)	$33,000	$33,000	$0	$32,772			$32,772	99%	$228	$0
02170	Asphalt Pavement	$10,000	$10,000	$0	$9,500			$9,500	95%	$500	$0
02185	Paving Specialties	$10,000	$10,000	$0	$10,000			$10,000	100%	$0	$0
02190	Curbs and Gutters	$7,500	$7,500	$0	$7,500			$7,500	100%	$0	$0
02195	Curb Cuts/Handicap Ramps	$6,000	$6,000	$0	$6,000			$6,000	100%	$0	$0
02200	Sidewalks	$9,800	$9,800	$0	$9,800			$9,800	100%	$0	$0
02225	Irrigation System	$4,000	$4,000	$0	$4,000			$4,000	100%	$0	$0
02230	Fences and Gates	$13,000	$13,000	$0	$13,000			$13,000	100%	$0	$0
02280	Landscaping	$250,000	$200,000	-$50,000	$71,517	$51,254		$122,771	61%	$77,230	$6,139
03000	**CONCRETE**	**$4,934,020**	**$5,701,262**	**$767,242**	**$5,699,138**	**$2,124**	**$0**	**$5,701,262**	**100%**	**$0**	**$54,767**
03025	Cast-In-Place Concrete - Material	$2,500,000	$2,962,892	$462,892	$2,961,906	$986		$2,962,892	100%	$0	N/A
03025	Cast-In-Place Concrete - Labor	$2,434,020	$2,738,370	$304,350	$2,737,232	$1,138		$2,738,370	100%	$0	$54,767
04000	**MASONRY**	**$2,070,581**	**$2,210,081**	**$139,500**	**$2,209,434**	**$647**	**$0**	**$2,210,081**	**100%**	**$0**	**$44,202**
04005	Brick Masonry	$1,200,561	$1,300,081	$99,500	$1,299,414	$647		$1,300,061	100%	$0	$26,001
04020	Stucco	$870,020	$910,020	$40,000	$910,020			$910,020	100%	$0	$18,200
05000	**METALS**	**$1,261,446**	**$1,286,446**	**$25,000**	**$1,285,464**	**$982**	**$0**	**$1,286,446**	**100%**	**$0**	**$25,729**
05005	Structural Steel	$1,261,446	$1,286,446	$25,000	$1,285,464	$982		$1,286,446	100%	$0	$25,729
06000	**WOOD & PLASTICS**	**$1,208,897**	**$1,541,485**	**$332,588**	**$1,351,094**	**$51,006**	**$0**	**$1,402,100**	**91%**	**$139,385**	**$35,190**
06005	Wood Framing/Rough Carpentry	$117,760	$117,760	$0	$117,760			$117,760	100%	$0	$5,888
06010	Framing Lumber Materials	$159,523	$260,625	$101,102	$260,625			$260,625	100%	$0	N/A
06050	Finish Carpentry	$161,118	$191,587	$30,469	$186,548			$186,548	97%	$5,039	$9,327
06060	Millwork	$327,022	$462,548	$135,526	$392,320	$25,365		$417,685	90%	$44,863	N/A
06085	Cabinets	$443,474	$508,965	$65,491	$393,841	$25,641		$419,482	82%	$89,483	$20,974
07000	**THERMAL/MOISTURE PROTECTIOI**	**$414,031**	**$598,481**	**$184,450**	**$597,728**	**$753**	**$0**	**$598,481**	**100%**	**$0**	**$29,924**
07005	Built-Up Waterproofing	$362,231	$362,231	$0	$361,478	$753		$362,231	100%	$0	$18,112
07010	Sheet Waterproofing	$27,300	$27,300	$0	$27,300			$27,300	100%	$0	$1,365
07020	Building Insulation		$184,450	$184,450	$184,450			$184,450	100%	$0	$9,223
07070	Firestopping	$24,500	$24,500	$0	$24,500			$24,500	100%	$0	$1,225
08000	**DOORS & WINDOWS**	**$1,926,275**	**$1,963,491**	**$37,216**	**$1,959,081**	**$4,410**	**$0**	**$1,963,491**	**100%**	**$0**	**$98,175**
08005	Metal Doors and Frames	$75,000	$96,451	$21,451	$96,451			$96,451	100%	$0	$4,823
08045	Aluminum Windows	$1,851,275	$1,867,040	$15,765	$1,862,630	$4,410		$1,867,040	100%	$0	$93,352
09000	**FINISHES**	**$3,165,399**	**$4,688,583**	**$1,523,184**	**$4,688,584**	**$0**	**$0**	**$4,688,584**	**100%**	**-$1**	**$234,429**
09015	Gypsum Board/Drywall	$2,746,910	$3,158,083	$411,173	$3,158,083			$3,158,083	100%	$0	$157,904
09020	Ceramic Tile	$153,142	$401,000	$247,858	$401,000			$401,000	100%	$0	$20,050
09065	Stained Concrete (was Res. Flooring)	$39,881	$175,000	$135,119	$175,001			$175,001	100%	-$1	$8,750

A	B		C		D	E	F	H	I	J	K
DIV.	DESCRIPTION OF WORK	ORIGINAL	REVISED	CHANGE	WORK COMPLETED & STORED MATERIAL			TOTAL COMPLETED & STORED TO DATE		BALANCE TO	TOTAL RETAINAGE
NO.	ACTIVITY	VALUE	VALUE	ORDER	WORK & MATERIALS PREVIOUS APP.	WORK COMPLETED THIS PERIOD	MATERIALS STORED THIS PERIOD	$ (D+E+F)	% (H/D)	FINISH (C-H)	TO DATE (5% of H)
09070	Carpet	$178,666	$184,500	$5,834	$184,500			$184,500	100%	$0	$9,225
09088	8th Floor Customs	$0	$500,000	$500,000	$500,000			$500,000	100%	$0	$25,000
09090	Painting - Interior	$46,800	$270,000	$223,200	$270,000			$270,000	100%	$0	$13,500
10000	**SPECIALTIES**	**$284,400**	**$284,400**	**$0**	**$284,400**	**$0**	**$0**	**$284,400**	**100%**	**$0**	**$14,220**
10025	Granite Countertops	$221,400	$221,400	$0	$221,400			$221,400	100%	$0	$11,070
10065	Fire Extinguishers/Cabinets	$3,000	$3,000	$0	$3,000			$3,000	100%	$0	$150
10070	Postal Specialties	$10,000	$10,000	$0	$10,000			$10,000	100%	$0	$500
10085	Toilet Accessories	$50,000	$50,000	$0	$50,000			$50,000	100%	$0	$2,500
11000	**EQUIPMENT**	**$323,240**	**$323,240**	**$0**	**$323,240**	**$0**	**$0**	**$323,240**	**100%**	**$0**	**N/A**
11005	Waste Compactors	$23,000	$23,000	$0	$23,000			$23,000	100%	$0	N/A
11010	Disposals	$4,104	$4,104	$0	$4,104			$4,104	100%	$0	N/A
11017	Side by Side Refrigerator	$124,308	$124,308	$0	$124,308			$124,308	100%	$0	N/A
11020	Dishwasher	$19,764	$19,764	$0	$19,764			$19,764	100%	$0	N/A
11035	Microwave Oven	$20,088	$20,088	$0	$20,088			$20,088	100%	$0	N/A
11040	Washer	$30,240	$30,240	$0	$30,240			$30,240	100%	$0	N/A
11045	Dryer	$24,408	$24,408	$0	$24,408			$24,408	100%	$0	N/A
11046	Wall Oven	$42,228	$42,228	$0	$42,228			$42,228	100%	$0	N/A
11047	Cooktop	$35,100	$35,100	$0	$35,100			$35,100	100%	$0	N/A
				$0							
12000	**FURNISHINGS**	**$84,547**	**$84,547**	**$0**	**$84,547**	**$0**	**$0**	**$84,547**	**100%**	**$0**	**$4,227**
12020	Window Treatments	$84,547	$84,547	$0	$84,547			$84,547	100%	$0	$4,227
13000	**SPECIAL CONSTRUCTION**	**$267,000**	**$132,550**	**-$134,450**	**$132,550**	**$0**	**$0**	**$132,550**	**100%**	**$0**	**$6,628**
13040	SMATV/Security/Telephone	$250,000	$65,550	-$184,450	$65,550			$65,550	100%	$0	$3,278
13055	Access Control System	$17,000	$67,000	$50,000	$67,000			$67,000	100%	$0	$3,350
14000	**CONVEYING SYSTEMS**	**$389,000**	**$501,253**	**$112,253**	**$501,253**	**$0**	**$0**	**$501,253**	**100%**	**$0**	**$25,063**
14005	Elevators	$389,000	$501,253	$112,253	$501,253			$501,253	100%	$0	$25,063
15000	**MECHANICAL**	**$3,208,197**	**$4,002,203**	**$794,006**	**$4,002,203**	**$0**	**$0**	**$4,002,203**	**100%**	**$0**	**$200,110**
15005	Fire Protection	$412,117	$530,643	$118,526	$530,643			$530,643	100%	$0	$26,532
15010	Plumbing	$1,729,170	$2,033,970	$304,800	$2,033,970			$2,033,970	100%	$0	$101,699
15015	Water Sub-Metering System	$16,200	$16,200	$0	$16,200			$16,200	100%	$0	$810
15020	HVAC	$1,050,710	$1,421,390	$370,680	$1,421,390			$1,421,390	100%	$0	$71,070
16000	**ELECTRICAL**	**$1,653,678**	**$2,166,355**	**$512,677**	**$2,166,355**	**$0**	**$0**	**$2,166,355**	**100%**	**$0**	**$108,318**
16005	Electrical	$1,471,822	$1,884,569	$412,747	$1,884,569			$1,884,569	100%	$0	$94,228
16035	Interior Light Fixtures	$157,928	$257,858	$99,930	$257,858			$257,858	100%	$0	$12,893
16045	Exterior Light Fixtures	$23,928	$23,928	$0	$23,928			$23,928	100%	$0	$1,196
	TOTAL COST =	**$25,000,000**	**$29,851,062**	**$4,851,062**	**$29,345,418**	**$202,002**	**$0**	**$29,547,421**	**97.6%**	**$303,642**	**$888,869**

Grimball, Henry

From: Julia DuMars <julia@follyphotos.com>
Sent: Monday, December 17, 2007 11:27 AM
To: Thomas Morgan
Subject: Re: Bee Street
Attachments: bee st.pdf

Tom
Here is the latest...
Julia

Tom Morgan <tom@morganenergy.net> wrote:

> Hi Julia,
>
> Could you please e-mail me any monthly reports that you have received on Bee Street that I have not yet received? We are trying to do our final tax planning and need the reports to get an estimate of tax liabilities.
>
> Thanks for your help.
>
> Tom

No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.5.516 / Virus Database: 269.17.9/1198 - Release Date: 12/26/2007 5:26 PM

Amegy Bank of Texas
P.O. Box 27459
Houston, Texas 77227-7459
Attn: Jeremy Newsom

Date: December 4, 2007 Draw: 33

RE: Bee Street

Pursuant to the terms and conditions of the various agreements concerning the above referenced loan, we hereby make application or a loan advance as follows:

COST ITEM	ORIGINAL BUDGET	CHANGE ORDERS	REVISED BUDGET TOTAL	REVISED BUDGET EQUITY	REVISED BUDGET LOAN	EQUITY PAID TO DATE	LOAN PREVIOUS DRAWS	LOAN CURRENT DRAW	LOAN TOTAL TO DATE	LOAN FUNDS REMAINING
Land	$4,325,000		$4,325,000	$1,725,000	$2,600,000	$1,725,000	$2,600,000	$0	$2,600,000	$0
Hard Costs - GC contract	$25,000,000	$6,230,240	$31,230,240	$1,379,178	$29,851,062	$1,379,178	$29,851,062	$0	$29,851,062	$0
Architects	$450,000		$450,000	$418,200	$31,800	$418,200	$31,800	$0	$31,800	$0
Engineers	$250,000		$250,000	$199,760	$50,240	$199,760	$50,240	$0	$50,240	$0
Fees (Tap/Impact/Permit)	$300,000		$300,000	$0	$300,000	$0	$300,000	$0	$300,000	$0
Title Policy	$60,000		$60,000	$2,034	$57,966	$2,034	$57,966	$0	$57,966	$0
Clubhouse & Model Furnish	$247,000		$247,000	$0	$247,000	$0	$247,000	$0	$247,000	$0
Building Signage	$60,000		$60,000	$353	$59,647	$353	$59,647	$0	$59,647	$0
Brochures & Marketing	$350,000		$350,000	$0	$350,000	$0	$350,000	$0	$350,000	$0
AECC	$35,000		$35,000	$0	$35,000	$0	$35,000	$0	$35,000	$0
Appraisal	$15,000		$15,000	$12,001	$2,999	$12,001	$2,999	$0	$2,999	$0
Amegy Bank Loan Fee	$243,375		$243,375	$0	$243,375	$0	$243,375	$0	$243,375	$0
Soft Cost Contingency	$350,000		$350,000	$0	$350,000	$0	$350,000	$0	$350,000	$0
Legal / Accounting	$195,000		$195,000	$88,162	$106,838	$88,162	$106,838	$0	$106,838	$0
Developer Fee	$750,000		$750,000	$0	$750,000	$0	$750,000	$0	$750,000	$0
Developer Overhead	$304,414	$250,000	$554,414	$194,089	$360,325	$194,089	$360,325	$0	$360,325	$0
Interim Property Operations	$300,000	$250,000	$550,000	$210,401	$339,599	$210,401	$339,599	$0	$339,599	$0
Interest Reserve	$1,865,211	$2,000,000	$3,865,211	$1,000,000	$2,865,211	$974,422	$2,865,211	$0	$2,865,211	$0
TOTALS	$35,100,000		$43,330,240	$5,229,178	$38,601,062	$5,203,600	$38,601,062	$0	$38,601,062	$0

Upon approval of the amount requested, please make the loan advance per instructions below:

Bank: Amegy Bank of Texas
City & State: Houston, Texas
Account Name: 150 Bee Street, LLC
Account #: 3501638
ABA# 113011258

Sincerely,
150 Bee Street, LLC

By: John L. Gilbert
Its: Member

APPLICATION AND CERTIFICATE FOR PAYMENT AIA DOCUMENT G702

TO: 150 Bee Street, LLC
8980 Lakes at 610 Drive, Suite 200
Houston, Texas 77054

PROJECT: Bella Vista
150 Bee Street
Charleston, SC

PAY APP. NO. Thirty-Three (33

PERIOD: 11/1/07 - 11/30/07
November

FROM: Bomasada Investment Group II, L. L. C.
8980 Lakes at 610 Drive, Suite 200
Houston, Texas 77054

ARCHITECT: The Steinberg Design Collaborative
5177 Richmond Avenue
Houston, TX 77056

CONTRACT FOR: Bella Vista, A 105 Unit Apartment Project

1. Original Contract Sum:	$25,000,000.00
2. Net Change by Change Orders:	$6,230,240.35
3. Contract Sum To Date: (Line 1 Plus Line 2)	$31,230,240.35
4. Total Complete & Stored To Date: (Column H on Schedule of Values)	31,230,240.35
5. Total Retainage Withheld: (5% of Line 4)	0.00
6. Total Earned Less Retainage: (Line 4 less Line 5)	31,230,240.35
7. Previous Certificate For Payment (Total Earned Less Retainage): (Line 6 from Previous Certificate Less Line 6 From This Pay Application)	$30,201,992.58
8. Current Payment Due: (Line 6 Less Line 7)	$1,028,247.77
9. Balance To Finish, Plus Retainage: (Line 3 less Line 6)	$0.00

CHANGE ORDER SUMMARY			
Change Orders Approved in Previous Months by Owner		ADDITIONS 4,851,062.00	DEDUCTIONS
	TOTAL	$4,851,062.00	$0.00
APPROVED THIS MONTH			
NUMBER	DATE APPROVED		
CO #3		$1,379,178.35	
Net Change by Change Orders		$1,379,178.35	$0.00
	TOTAL	$6,230,240.35	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief that the work covered by this application for payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous certificates for payment were issued and payments recieved from the Owner, and that current payment shown herein is now due.

CONTRACTOR: BOMASADA INVESTMENT GROUP II, L.L.P.

By: _____ Date: 12/4/07
Stuart Pfeil

State of Texas, County of Harris
Subscribed and Sworn to before me this 4th day of Dec, 2007

JYOTSNA N. VED
MY COMMISSION EXPIRES
MARCH 29, 2010

Notary Public: Jyotsna N. Ved My Commision Expires: 03/29/2010

LENDING INSTITUTION INSPECTOR'S. CERTIFICATE FOR PAYMENT
The undersigned Inspecting Agent does hereby certify that to the best of his knowledge and belief this Pay Application #33, does reasonably represent the value of work completed and/or material stored through the period ending 11/30/07.
AMOUNT CERTIFIED: _____
Attached explanation if amount certified differs from amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

INSPECTOR:

BY: _____ Date: _____
Barry Greer

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

APPLICATION SCHEDULE OF VALUES SUMMARY

OWNER: 150 Bee Street, LLC

APPLICATION NO.: Thirty-Three (

PROJECT: Bella Vista

PERIOD: 11/1/07 - 11/30/

GC: Bomasada Investment Group II, L.L.C.

A	B		C		D	E	F	H	I	J	K
DIV.	DESCRIPTION OF WORK	ORIGINAL	REVISED	CHANGE	WORK COMPLETED & STORED MATERIAL			TOTAL COMPLETED & STORED TO DATE		BALANCE TO	TOTAL RETAINAGE
NO.	ACTIVITY	VALUE	VALUE	ORDER	WORK & MATERIALS PREVIOUS APP.	WORK COMPLETED THIS PERIOD	MATERIALS STORED THIS PERIOD	$ (D+E+F)	% (H/D)	FINISH (C-H)	TO DATE (5% of H)
00000	CONTINGENCY AND FEE	$369,459	$481,498	$112,039	$470,652	$10,846	N/A	$481,498	100%	$0	N/A
00005	General Contractor's Fee	$123,154	$170,854	$47,700	$160,008	$10,846	N/A	$170,854	100%	$0	N/A
00010	Contingency	$246,305	$310,644	$64,339	$310,644	$0	N/A	$310,644	100%	$0	N/A
01000	GENERAL CONDITIONS	$2,107,469	$3,027,608	$920,139	$2,769,317	$258,291	N/A	$3,027,608	100%	$0	N/A
01015	Rough Cleanup	$71,764	$71,764	$0	$71,764	$0	N/A	$71,764	100%	$0	N/A
01020	Final Cleanup	$47,857	$67,857	$20,000	$61,071	$6,786	N/A	$67,857	100%	$0	N/A
01040	Postage & Freight (01016)	$7,000	$7,000	$0	$7,000	$0	N/A	$7,000	100%	$0	N/A
01045	Express Delivery (01016)	$7,000	$7,000	$0	$7,000	$0	N/A	$7,000	100%	$0	N/A
01050	Office Expense & Supplies	$7,000	$7,000	$0	$7,000	$0	N/A	$7,000	100%	$0	N/A
01055	Estimating & Blueprinting (01016)	$15,000	$15,000	$0	$15,000	$0	N/A	$15,000	100%	$0	N/A
01060	Scheduling Expenses (01016)	$2,000	$2,000	$0	$2,000	$0	N/A	$2,000	100%	$0	N/A
01090	Petty Cash (01016)	$1,000	$1,000	$0	$1,000	$0	N/A	$1,000	100%	$0	N/A
01095	Office Rental (Sales Trailer)	$0	$24,179	$24,179	$24,179	$0	N/A	$24,179	100%	$0	N/A
01120	Safety Equipment/Supplies (01016)	$1,000	$1,000	$0	$1,000	$0	N/A	$1,000	100%	$0	N/A
01125	First Aid Equipment/Supplies (01016)	$3,000	$3,000	$0	$3,000	$0	N/A	$3,000	100%	$0	N/A
01130	Small Tools	$9,048	$9,048	$0	$9,048	$0	N/A	$9,048	100%	$0	N/A
01140	Survey & Engineering	$15,000	$15,000	$0	$15,000	$0	N/A	$15,000	100%	$0	N/A
01145	Construction Travel Expense	$350,000	$481,250	$131,250	$423,500	$57,750	N/A	$481,250	100%	$0	N/A
01155	Unit Checkout Power (01048)	$27,000	$27,000	$0	$27,000	$0	N/A	$27,000	100%	$0	N/A
01160	Meter Hookup Charges (01048)	$27,000	$27,000	$0	$27,000	$0	N/A	$27,000	100%	$0	N/A
01165	Temporary Electrical(Trailer, Poles, W	$27,000	$27,000	$0	$27,000	$0	N/A	$27,000	100%	$0	N/A
01175	Ice, Cups, & Coffee (01016)	$2,000	$2,000	$0	$2,000	$0	N/A	$2,000	100%	$0	N/A
01185	Temporary Telephone	$2,000	$2,000	$0	$2,000	$0	N/A	$2,000	100%	$0	N/A
01190	Punch List	$16,200	$16,200	$0	$16,200	$0	N/A	$16,200	100%	$0	N/A
01195	Common Labor	$75,000	$95,000	$20,000	$80,750	$14,250	N/A	$95,000	100%	$0	N/A
01220	Division Manager	$155,000	$240,250	$85,250	$204,213	$36,038	N/A	$240,250	100%	$0	N/A
01225	Project Manager (01100)	$109,200	$169,260	$60,060	$143,871	$25,389	N/A	$169,260	100%	$0	N/A
01230	Project Secretary (01100)	$43,000	$66,650	$23,650	$61,318	$5,332	N/A	$66,650	100%	$0	N/A
01235	Administration/Bookkeeping (01100)	$43,000	$66,650	$23,650	$61,318	$5,332	N/A	$66,650	100%	$0	N/A
01240	Superintendent (01100)	$91,200	$141,360	$50,160	$120,156	$21,204	N/A	$141,360	100%	$0	N/A
01245	Asst. Superintendent (01100)	$70,400	$109,120	$38,720	$92,752	$16,368	N/A	$109,120	100%	$0	N/A
01250	Punch Foreman (01100)	$50,200	$77,810	$27,610	$66,139	$11,672	N/A	$77,810	100%	$0	N/A
01255	Field Secretary/Clerk (01100)	$50,200	$77,810	$27,610	$66,139	$11,672	N/A	$77,810	100%	$0	N/A
01265	Production Incentive	$32,400	$32,400	$0	$32,400	$0	N/A	$32,400	100%	$0	N/A
01275	Workmen's Compensation Ins.	$50,000	$50,000	$0	$50,000	$0	N/A	$50,000	100%	$0	N/A
01285	Insurance-Gen Liability	$200,000	$400,000	$200,000	$400,000	$0	N/A	$400,000	100%	$0	N/A
01290	Insurance-Builders Risk	$300,000	$378,000	$78,000	$378,000	$0	N/A	$378,000	100%	$0	N/A
01295	Corporate Overhead	$200,000	$310,000	$110,000	$263,500	$46,500	N/A	$310,000	100%	$0	N/A

A	B		C		D	E	F	H	I	J	K
DIV. NO.	DESCRIPTION OF WORK / ACTIVITY	ORIGINAL VALUE	REVISED VALUE	CHANGE ORDER	WORK COMPLETED & STORED MATERIAL: WORK & MATERIALS PREVIOUS APP.	WORK COMPLETED THIS PERIOD	MATERIALS STORED THIS PERIOD	TOTAL COMPLETED & STORED TO DATE: $ (D+E+F)	% (H/D)	BALANCE TO FINISH (C-H)	TOTAL RETAINAGE TO DATE (5% of H)
02000	**SITE CONSTRUCTION**	**$1,332,361**	**$1,358,287**	**$25,926**	**$1,358,287**	**$0**	**$0**	**$1,358,287**	**100%**	**$0**	**$0**
02005	Off-Site Improvements	$10,000	$46,798	$36,798	$46,798			$46,798	100%	$0	$0
02020	Traffic Signaling	$15,000	$15,000	$0	$15,000			$15,000	100%	$0	$0
02035	Sitework/Excavation	$62,561	$62,561	$0	$62,561			$62,561	100%	$0	$0
02050	Site Demolition	$10,000	$10,000	$0	$10,000			$10,000	100%	$0	$0
02065	Dewatering	$5,000	$5,000	$0	$5,000			$5,000	100%	$0	$0
02110	Concrete Pile System	$848,000	$848,000	$0	$848,000			$848,000	100%	$0	$0
02125	Soil Treatment	$5,000	$5,000	$0	$5,000			$5,000	100%	$0	$0
02135	Water Distribution	$5,500	$5,500	$0	$5,500			$5,500	100%	$0	$0
02145	Sanitary Sewers	$10,500	$10,500	$0	$10,500			$10,500	100%	$0	$0
02150	Storm Drainage	$17,500	$24,480	$6,980	$24,480			$24,480	100%	$0	$0
02155	Storm Drainage - Pipe (U/G Detention)	$33,000	$33,000	$0	$33,000			$33,000	100%	$0	$0
02170	Asphalt Pavement	$10,000	$10,000	$0	$10,000			$10,000	100%	$0	$0
02185	Paving Specialties	$10,000	-$11,034	-$21,034	-$11,034			-$11,034	100%	$0	$0
02190	Curbs and Gutters	$7,500	$7,500	$0	$7,500			$7,500	100%	$0	$0
02195	Curb Cuts/Handicap Ramps	$6,000	$6,000	$0	$6,000			$6,000	100%	$0	$0
02200	Sidewalks	$9,800	$9,800	$0	$9,800			$9,800	100%	$0	$0
02225	Irrigation System	$4,000	$4,000	$0	$4,000			$4,000	100%	$0	$0
02230	Fences and Gates	$13,000	$13,000	$0	$13,000			$13,000	100%	$0	$0
02280	Landscaping	$250,000	$253,182	$3,182	$253,182			$253,182	100%	$0	$0
03000	**CONCRETE**	**$4,934,020**	**$5,701,262**	**$767,242**	**$5,701,262**	**$0**	**$0**	**$5,701,262**	**100%**	**$0**	**$0**
03025	Cast-In-Place Concrete - Material	$2,500,000	$2,962,892	$462,892	$2,962,892			$2,962,892	100%	$0	N/A
03026	Cast-In-Place Concrete - Labor	$2,434,020	$2,738,370	$304,350	$2,738,370			$2,738,370	100%	$0	$0
04000	**MASONRY**	**$2,070,531**	**$2,400,061**	**$329,500**	**$2,400,061**	**$0**	**$0**	**$2,400,061**	**100%**	**$0**	**$0**
04005	Brick Masonry	$1,200,561	$1,490,061	$289,500	$1,490,061			$1,490,061	100%	$0	$0
04020	Stucco	$870,020	$910,020	$40,000	$910,020			$910,020	100%	$0	$0
05000	**METALS**	**$1,261,446**	**$1,294,835**	**$33,389**	**$1,294,835**	**$0**	**$0**	**$1,294,835**	**100%**	**$0**	**$0**
05005	Structural Steel	$1,261,446	$1,294,835	$33,389	$1,294,835			$1,294,835	100%	$0	$0
06000	**WOOD & PLASTICS**	**$1,208,897**	**$1,604,092**	**$395,195**	**$1,604,092**	**$0**	**$0**	**$1,604,092**	**100%**	**$0**	**$0**
06005	Wood Framing/Rough Carpentry	$117,760	$167,573	$49,813	$167,573			$167,573	100%	$0	$0
06010	Framing Lumber Materials	$159,523	$260,625	$101,102	$260,625			$260,625	100%	$0	N/A
06050	Finish Carpentry	$161,118	$204,381	$43,263	$204,381			$204,381	100%	$0	$0
06050	Millwork	$327,022	$462,548	$135,526	$462,548			$462,548	100%	$0	N/A
06085	Cabinets	$443,474	$508,965	$65,491	$508,965			$508,965	100%	$0	$0
07000	**THERMAL/MOISTURE PROTECTION**	**$414,031**	**$616,356**	**$202,325**	**$616,356**	**$0**	**$0**	**$616,356**	**100%**	**$0**	**$0**
07005	Built-Up Waterproofing	$362,231	$362,231	$0	$362,231			$362,231	100%	$0	$0
07010	Sheet Waterproofing	$27,300	$27,300	$0	$27,300			$27,300	100%	$0	$0
07020	Building Insulation		$202,325	$202,325	$202,325			$202,325	100%	$0	$0
07070	Firestopping	$24,500	$24,500	$0	$24,500			$24,500	100%	$0	$0
08000	**DOORS & WINDOWS**	**$1,925,275**	**$1,963,491**	**$37,216**	**$1,963,491**	**$0**	**$0**	**$1,963,491**	**100%**	**$0**	**$0**
08005	Metal Doors and Frames	$75,000	$96,451	$21,451	$96,451			$96,451	100%	$0	$0
08045	Aluminum Windows	$1,851,275	$1,867,040	$15,765	$1,867,040			$1,867,040	100%	$0	$0
09000	**FINISHES**	**$3,165,399**	**$4,792,365**	**$1,626,966**	**$4,792,366**	**$0**	**$0**	**$4,792,366**	**100%**	**$1**	**$0**
09015	Gypsum Board/Drywall	$2,746,910	$3,210,853	$463,943	$3,210,853			$3,210,853	100%	$0	$0
09020	Ceramic Tile	$153,142	$426,841	$273,699	$426,841			$426,841	100%	$0	$0

A	B	C	D	E	F	H	I	J	K
DIV. NO.	DESCRIPTION OF WORK / ACTIVITY	ORIGINAL VALUE	REVISED VALUE	CHANGE ORDER	WORK COMPLETED & STORED MATERIAL: WORK & MATERIALS PREVIOUS APP.	WORK COMPLETED THIS PERIOD	MATERIALS STORED THIS PERIOD	TOTAL COMPLETED & STORED TO DATE: $ (D+E+F)	% (H/D)	BALANCE TO FINISH (C-H)	TOTAL RETAINAGE TO DATE (5% of H)
09065	Stained Concrete (was Res. Flooring)	$39,881	$175,000	$135,119	$175,001			$175,001	100%	-$1	$0
09070	Carpet	$178,668	$184,500	$5,832	$184,500			$184,500	100%	$0	$0
09080	8th Floor Customs	$0	$500,000	$500,000	$500,000			$500,000	100%	$0	$0
09090	Painting - Interior	$46,800	$295,171	$248,371	$295,171			$295,171	100%	$0	$0
10000	**SPECIALTIES**	**$224,400**	**$287,675**	**$3,275**	**$287,675**	**$0**	**$0**	**$287,675**	**100%**	**$0**	**$0**
10009	Granite Countertops	$221,400	$221,400	$0	$221,400			$221,400	100%	$0	$0
10065	Fire Extinguishers/Cabinets	$3,000	$3,000	$0	$3,000			$3,000	100%	$0	$0
10070	Postal Specialties	$10,000	$13,275	$3,275	$13,275			$13,275	100%	$0	$0
10085	Toilet Accessories	$50,000	$50,000	$0	$50,000			$50,000	100%	$0	$0
11000	**EQUIPMENT**	**$323,240**	**$323,240**	**$0**	**$323,240**	**$0**	**$0**	**$323,240**	**100%**	**$0**	**N/A**
11005	Waste Compactors	$23,000	$23,000	$0	$23,000			$23,000	100%	$0	N/A
11010	Disposals	$4,104	$4,104	$0	$4,104			$4,104	100%	$0	N/A
11017	Side by Side Refrigerator	$124,308	$124,308	$0	$124,308			$124,308	100%	$0	N/A
11020	Dishwasher	$19,764	$19,764	$0	$19,764			$19,764	100%	$0	N/A
11035	Microwave Oven	$20,088	$20,088	$0	$20,088			$20,088	100%	$0	N/A
11040	Washer	$30,240	$30,240	$0	$30,240			$30,240	100%	$0	N/A
11045	Dryer	$24,408	$24,408	$0	$24,408			$24,408	100%	$0	N/A
11046	Wall Oven	$42,228	$42,228	$0	$42,228			$42,228	100%	$0	N/A
11047	Cooktop	$35,100	$35,100	$0	$35,100			$35,100	100%	$0	N/A
				$0							
12000	**FURNISHINGS**	**$84,547**	**$84,547**	**$0**	**$84,547**	**$0**	**$0**	**$84,547**	**100%**	**$0**	**$0**
12020	Window Treatments	$84,547	$84,547	$0	$84,547			$84,547	100%	$0	$0
13000	**SPECIAL CONSTRUCTION**	**$267,000**	**$471,408**	**$204,408**	**$221,407**	**$250,000**	**$0**	**$471,408**	**100%**	**$0**	**$0**
13007	Floodproofing	$0	$250,000	$250,000	$0	$250,000		$250,000	100%	$0	$0
13040	SMATV/Security/Telephone	$250,000	$99,050	-$150,950	$99,050			$99,050	100%	$0	$0
13055	Access Control System	$17,000	$122,358	$105,358	$122,356			$122,358	100%	$0	$0
14000	**CONVEYING SYSTEMS**	**$389,000**	**$538,686**	**$149,686**	**$538,686**	**$0**	**$0**	**$538,686**	**100%**	**$0**	**$0**
14005	Elevators	$389,000	$538,686	$149,686	$538,686			$538,686	100%	$0	$0
15000	**MECHANICAL**	**$3,208,197**	**$4,048,337**	**$840,140**	**$4,048,337**	**$0**	**$0**	**$4,048,337**	**100%**	**$0**	**$0**
15005	Fire Protection	$412,117	$530,643	$118,526	$530,643			$530,643	100%	$0	$0
15010	Plumbing	$1,729,170	$2,041,809	$312,639	$2,041,809			$2,041,809	100%	$0	$0
15015	Water Sub-Metering System	$18,200	$16,200	$0	$16,200			$16,200	100%	$0	$0
15020	HVAC	$1,050,710	$1,459,685	$408,975	$1,459,685			$1,459,685	100%	$0	$0
16000	**ELECTRICAL**	**$1,653,678**	**$2,236,472**	**$582,794**	**$2,236,472**	**$0**	**$0**	**$2,236,472**	**100%**	**$0**	**$0**
16005	Electrical	$1,471,822	$1,934,686	$462,864	$1,934,686			$1,934,686	100%	$0	$0
16035	Interior Light Fixtures	$157,928	$277,858	$119,930	$277,858			$277,858	100%	$0	$0
16045	Exterior Light Fixtures	$23,928	$23,928	$0	$23,928			$23,928	100%	$0	$0
	TOTAL COST =	**$25,000,000**	**$31,230,240**	**$6,230,240**	**$30,711,102**	**$519,137**	**$0**	**$31,230,241**	**100.0%**	**$0**	**$0**

Subject: 150 Bee Street - 2007 Financials
Date: Friday, May 2, 2008 at 5:29:06 PM Eastern Daylight Time
From: John Gilbert
To: 'Edwin Pearlstine', 'John Gilbert', 'Neal Baker', 'Stuart Fred', Thomas Morgan
Attachments: image001.jpg, 150 Bee Street - 2007 Financials.pdf

Gentlemen:

Please find attached a copy of the Balance Sheet as of December 31, 2007 and the 2007 Schedule of Costs for 150 Bee Street. Should you have any questions, please do not hesitate to call.

John

John L. Gilbert
Sr. Vice President
BOMASADA GROUP, INC.
8980 Lakes at 610 Drive, Suite 200
Houston, Texas 77054
O: 713-668-6886
F: 713-668-6880
M: 713-927-8600
email: johngilbert@bomasada.com
www.bomasada.com

No virus found in this incoming message. Checked by AVG. Version: 7.5.524 / Virus Database: 269.23.7/1411 - Release Date: 5/2/2008 8:02 AM

150 BEE STREET LLC
Balance Sheet
As of December 31, 2007

	Dec 31, 07
ASSETS	
Current Assets	
Checking/Savings	
1010 · Amegy Bank of Texas 3501868	195,357.91
1030 · Amegy AC 3795764	25,578.69
Total Checking/Savings	220,936.60
Other Current Assets	
1250 · HOA Account Contributions	28,288.12
1255 · Due from Members GL Insurance	231,875.00
1260 · SunTrust Bond for Lien Release	206,412.36
1300 · Inventory	22,504,328.55
Total Other Current Assets	22,970,904.03
Total Current Assets	23,191,840.63
Fixed Assets	
1605 · Signage	43,269.00
1609 · Club House Furnishing	148,198.80
1699 · Accumulated Depreciation	-135,821.00
1700 · Land	2,375,283.50
1820 · Loan Costs	305,525.00
1830 · Accumulated Amortization	-289,886.00
Total Fixed Assets	2,446,569.30
Other Assets	
1810 · Closing Costs	32,464.00
Total Other Assets	32,464.00
TOTAL ASSETS	25,670,873.93
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
2000 · Accounts Payable	99,377.47
Total Accounts Payable	99,377.47
Other Current Liabilities	
2210 · N/P Amegy Bank	3,118,988.64
2211 · N/P Amegy (3)	5,000,000.00
2213 · N/P Amegy R2 U2	10,000,000.00
Total Other Current Liabilities	18,118,988.64
Total Current Liabilities	18,218,366.11
Total Liabilities	18,218,366.11
Equity	
3010 · Capital-B Vista LLC 23.34%	2,066,950.33
3020 · Capital- Edwin Pearlstine 20%	1,469,600.47
3040 · Capital-Neal Baker 23.33%	1,956,406.95
3050 · Capital-Thomas H Morgan	1,959,550.07
3900 · Retained Earnings	-6,563,724.27
Net Income	6,563,724.27
Total Equity	7,452,507.82
TOTAL LIABILITIES & EQUITY	25,670,873.93

150 BEE STREET LLC
Profit & Loss
January through December 2007

	Jan - Dec 07
Ordinary Income/Expense	
Income	
4010 · Income from unit Sales	23,494,444.65
4050 · Earnest Money-Units	148,565.75
4090 · Cost of Sales	-16,743,843.66
Total Income	6,899,166.74
Expense	
5000 · SOFT COSTS	
5010 · Advertising/Marketing	0.00
5025 · Bank Service Charges	0.00
5030 · Commissions	10,200.90
5045 · Customer Care	500.00
5060 · Engineering	0.00
5064 · Engineering-Environmental	0.00
5085 · Freight/Deliveries	0.00
5090 · Inspection Fee	0.00
5098 · Insurance-Flood	0.00
5100 · Insurance-Gen Liability	0.00
5110 · Interest Expense	0.00
5130 · Interim Property Operations	131.90
5135 · Internet Services	0.00
5160 · Legal	8,581.66
5180 · Office Expense	997.21
5195 · Overhead Expense Reimbursements	0.00
5210 · Permits/Fees	0.00
5220 · Reproduction-Plans	0.00
5225 · Rent-Temp Apt	0.00
5230 · Signage	0.00
5255 · Telephones	0.00
5266 · Utilities-Electricity	0.00
5270 · Utilities-Water & Sewer	0.00
Total 5000 · SOFT COSTS	20,411.67
5500 · HARD COSTS	
5510 · Club House Furnishings	0.00
5520 · Constructions Hard Costs	0.00
5535 · Construction Soft Costs	0.00
Total 5500 · HARD COSTS	0.00
6000 · GEN & ADMINISTRATIVE Expenses	
6010 · Accounting	0.00
6020 · Amortization	152,085.00
6030 · Auto Fuel	0.00
6035 · Airplane Fuel	0.00
6050 · Business Entertainment	0.00
6060 · Contributions	1,000.00
6070 · Depreciation Exp	135,821.00
6080 · Dues/Subscription	0.00
6150 · Legal	20,654.80
6210 · Outside Serv, Temp Employment	3,125.00
6290 · Repair & Maintenance	2,345.00
6350 · Travel	0.00
6420 · Taxes-Property	0.00
Total 6000 · GEN & ADMINISTRATIVE Expenses	315,030.80
Total Expense	335,442.47
Net Ordinary Income	6,563,724.27
Net Income	6,563,724.27

Accrual Basis

150 BEE STREET LLC
Schedule of Soft, Hard and General and Administrative Costs
January through December 2007

	Jan - Dec 07
Expense	
5000 · SOFT COSTS	
5010 · Advertising/Marketing	161,470.75
5025 · Bank Service Charges	6.50
5030 · Commissions	10,200.90
5045 · Customer Care	500.00
5060 · Engineering	9,597.18
5064 · Engineering-Environmental	7,105.00
5085 · Freight/Deliveries	1,895.83
5090 · Inspection Fee	9,750.00
5098 · Insurance-Flood	7,478.00
5100 · Insurance-Gen Liability	10,010.64
5110 · Interest Expense	1,964,634.34
5130 · Interim Property Operations	195,098.95
5135 · Internet Services	397.29
5160 · Legal	8,561.66
5180 · Office Expense	997.21
5195 · Overhead Expense Reimbursements	101,468.32
5210 · Permits/Fees	64.27
5220 · Reproduction-Plans	2,027.67
5225 · Rent-Temp Apt	7,546.00
5230 · Signage	16,805.12
5255 · Telephones	9,894.45
5266 · Utilities-Electricity	5,954.09
5270 · Utilities-Water & Sewer	82.99
Total 5000 · SOFT COSTS	2,531,567.16
5500 · HARD COSTS	
5510 · Club House Furnishings	147,261.58
5520 · Constructions Hard Costs	6,821,246.51
5535 · Construction Soft Costs	1,411,106.00
Total 5500 · HARD COSTS	8,379,614.09
6000 · GEN & ADMINISTRATIVE Expenses	
6010 · Accounting	12,082.43
6030 · Auto Fuel	120.90
6035 · Airplane Fuel	18,873.69
6050 · Business Entertainment	11,769.21
6060 · Contributions	1,000.00
6080 · Dues/Subscription	690.26
6150 · Legal	24,931.40
6210 · Outside Serv. Temp Employment	3,125.00
6290 · Repair & Maintenance	2,345.00
6420 · Taxes-Property	39,624.77
Total 6000 · GEN & ADMINISTRATIVE Expenses	114,562.66
Total Expense	11,025,743.91

Subject: FW: 150 Bee Street - 2007 Financials
Date: Sunday, May 4, 2008 at 12:14:21 PM Eastern Daylight Time
From: Tom Morgan
To: Kneeleye@aol.com
Attachments: image001.jpg, 150 Bee Street - 2007 Financials.pdf

Neal,

Since Bomasada is both the developer and general contractor, this statement doesn't provide us with the information we need to know concerning charges for overhead, corporate salaries, travel expenses, etc. All these items are lumped in with construction hard and soft costs.

Tommy

Subject: FW: 150 Bee Street - 2007 Financials
Date: Monday, May 12, 2008 at 3:24:31 PM Eastern Daylight Time
From: Rich L. Merg
To: mailto:johngilbert@bomasada.com
CC: Thomas Morgan
Category: Christmas Card
Attachments: image001.jpg, 150 Bee Street - 2007 Financials.pdf

John

Tom Morgan forwarded your financial statments to me as per below.

I had a couple questions—but I think that I can answer those myself if you would just attach a quickbooks backup file (.qbb) to an email sent back to me.

One other thing, do you have an excel file that showing the allocation of the cost of sales, $16,743,844 to the various units sold. I seem to remember seeing a master schedule previously.

Thank you

Rich L Merg
Ian D. Gardenswartz & Associates, P.C.
303-388-3782 – phone
303-388-9125 - fax
rich@idgcpa.com

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From: John Gilbert [mailto:johngilbert@bomasada.com]
Sent: Thursday, July 03, 2008 5:05 PM
To: 'Edwin Pearlstine'; 'John Gilbert'; 'Neal Baker'; 'Stuart Fred'; 'Tom Morgan'
Subject: Bee Street Lofts - Update

Gentlemen:

It's been a while since my last update, but I wanted to inform you about the current status of Bee Street Lofts. We have sold 66 units to date and are scheduled to close Unit 416 within a week. The current loan balance is approximately $12 million dollars. Jeremy Newsom approved our request to keep the proceeds from a recent sale to cover interest payments and other operating costs. We will be using the proceeds from the Unit 416 closing which will be approximately $400,000.

The traffic at the property has been very good recently, probably due to the price reduction we just implemented. The staff has had several favorable tours lately and are expeecting a few contracts to be produced. We are gearing up our marketing for the second half of the year and will continue to concentrate on the MUSC market as that is where the bulk of our sales has come from. We are also going to do some amrketing in Kiawah island as we have seen an increase in Kiawah owners looking for second homes on the peninsula.

In addition, we recently had our arbitration cases heard for Robert Swartz (Unit 502) and James Swartz (Unit 301). As incredible as it sounds, we lost the James Swartz case and won the Robert Swartz case. Both cases were almost identical (CO vs TCO issue) We actually came out a little ahead as we had to return James Swartz his earnest money plus about 9 months interest. Each party paid there respective legal fees; however, we get to keep Robert Swartz's earnest money plus two years of interest and he has to pay all legal costs and arbitration costs. Unfortunately, this is the state of our legal system as we had one good arbitrator who ruled by the law and another that ruled on emotion. These are prime units and have been placed back on the market. The arbitration with Kit Thrash's five unclosed units is scheduled for July 29th. I will be in Charleston and feel very good about our chances; however, you never know what may happen.

Should you have any questions, please do not hesitate to call. Best wishes for a wonderful 4th of July weekend.

John

John L. Gilbert
Sr. Vice Preseint
BOMASADA GROUP, INC.
8980 Lakes at 610 Drive, Suite 200
Houston, Texas 77054
O: 713-668-6886
F: 713-668-6880
M: 713-927-8600
email: johngilbert@bomasada.com
www.bomasada.com

No virus found in this incoming message.
Checked by AVG.
Version: 8.0.134 / Virus Database: 270.4.4/1532 - Release Date: 7/3/2008 8:32 AM

John Gilbert

From: Tom Morgan [tom@morganenergy.net]
Sent: Sunday, July 06, 2008 12:10 AM
To: John Gilbert; 'Edwin Pearlstine'; 'Neal Baker'; Stuart Fred
Subject: RE: Bee Street Lofts - Update

John,

Please give us a spreadsheet of whether we are going to make money on this project or not. I have been asking you for over six months to give us a projection. I expect an answer within a week. I'm tired of fucking around with your bullshit reports. Please give us the straight shit not bullshit anymore.

Tom

John Gilbert

From: Tom Morgan [tom@morganenergy.net]
Sent: Sunday, July 06, 2008 12:35 AM
To: John Gilbert; 'Edwin Pearlstine'; 'Neal Baker'; Stuart Fred
Subject: RE: Bee Street Lofts - Update

I am turning all my correspondence on this project over to my lawyers and accountants.
Stewart you have stolen too much money from us. There is no way we have spent $450,000 on travel expenses. I am tired of all your theft and bullshit. Don't' ever contact me again. I am going to sue your ass and get our money back.

From: Kneeleye@aol.com [mailto:Kneeleye@aol.com]
Sent: Monday, July 07, 2008 5:10 PM
To: tom@morganenergy.net
Cc: stuartfred@bomasada.com; johngilbert@bomasada.com; Pearlprop@aol.com
Subject: Re: Bee Street Lofts - Update

Tommy

I can't tell how disappointed I am in your last non professional e-mails. You have no idea the damage you've done to our relationship and this partnership.There is one thing I'm sure of is that John nor Stuart will not respond to you. You need to be very careful about calling someone a thief. You are opening your self up to a serious lawsuit. I suggest you call your accountant and attorney and they can go to Houston and check the books anyway they want.
I can't address all your issues but I will respond to a few. No one knows what the taxes are. I'm not calling the tax assessors office to find out. They may charge us like they did last year because the electicity is still in our name. Meaning it is not occupied.
If we don't have any sells in a particular week I see no reason to send out anything.
The city of Charleston thinks a TCO and a CO are the same. They said it during arbitration. Two building officials.
Every realtor in Charleston I think would agree 5% down is all you're going to get. People will walk on 5 or 10 pecent. You even told me in Miami they are walking on 20 percent down. You really need to understand Charleston and Miami are two different worlds.
As far as profit no one knows for sure. You know how much we owe. You know what we are asking for the units. Do the math. We've discussed this before. If we get out of debt soon we can raise prices--if we don't we may have to lower them. We don't have a crystal ball. This is very difficult times in real estate and we should be working together not calling the other people liars,thieves and whatever else you said.
Talking about the sign-did the agents happen to mention there is a sign ordiance. I bet they didn't.
Why--because they know everything. IN fact the city will not allow that sign back up for two reasons. The ordiance and it will cover some units where people live. I assumed by know that you knew real estate sells people are full of shit and will tell you anything you want to hear.

John Gilbert

From: Tom Morgan [tom@morganenergy.net]
Sent: Tuesday, July 08, 2008 12:03 AM
To: Kneeleye@aol.com
Subject: RE: Bee Street Lofts - Update

Neal,

I've been telling you for 3 years that Stuart and John have no intention doing good for us. They have insulted me beyond belief. I am feed up with their bullshit. They are total assholes as far as I am concerned and they have fucked up this entire project. We had a chance to make a lot of money if they had listened to me, but they thought they were so smart that they fucked up our entire profit. I will never deal with them again. I am tired of their arrogant attitude. They have never given us the information on the travel expenses, overhead, etc. Why not? We have asked them for a year for the information.

They are the ones that are non-professional. They never answer my questions with straight answers. The realtors actually tell the truth. I am finished with Stuart and John and don't give a shit if they respond to me or not. They warned me not to talk to the sales agents because they didn't want me to know the real story about what's going on. We had a chance to make $30 Million profit, and now we will be lucky to break even. If you want to believe their bullshit then go ahead. I've had it with them and am not going to stand for their arrogant attitude any more. I will not respond to them. My attorney's and accountants will handle it from here in the courtroom. I do plan to sue them if they don't respond with the entire construction expenses. Just get me away from these guys so I never have to deal with them again. I have never in my life been so insulted by such arrogant assholes.

Tommy

IAN D. GARDENSWARTZ
& ASSOCIATES, P.C.

July 17, 2008

Mr. John B Hagerty
Nelson Mullins Riley & Scarborough LLP
151 Meeting St
6th Floor
Charleston, SC 29401-2239

Re: 150 Bee St, LLC & Thomas Morgan, member

Dear Mr. Hagerty

Please be advised that this firm represents Thomas H Morgan who is a member in 150 Bee St., LLC ("Company"). It is my understanding that you represent the Company.

It is also my understanding that Mr. Morgan, for whatever reason, has received little financial information to date and none of the reports that we have requested below.

Thus, we are formally requesting certain financial information. We are entitled to this information under Section 6.01 of the Company's operating agreement. Please provide the following:

1. Copy of the Project budget that includes construction budgets as well as operating budgets and sales budgets.

2. Copies of monthly financial reports of the Project's performance in relation to the budget(s).

The financial reports should include sales, projected sales, construction costs, overhead expenses, condo fees, real estate taxes, interest expense and other expenses and costs pertinent to the Project.

Copies of the reports from inception to the present time are requested.

We thank you in advance for your assistance in this matter.

Very Truly Yours,

Rich L. Merg, CPA

Cc: Thomas Morgan

Certified Public Accountants and Financial Consultants
Ian D. Gardenswartz LaDonna M. Jurgensen Randy L. Kite Rich L. Merg
6825 E. Tennessee Ave., Suite 235 Denver, CO 80224-1628 303.388.3782 Fax: 303.388.9125 Website: idscpa.com

John Gilbert

From: Bill Shields [Bill@shieldspc.com]
Sent: Monday, July 28, 2008 10:40 AM
To: Rich L. Merg
Cc: John Gilbert; john.hagerty@nelsonmullins.com
Subject: 150 Bee Street, LLC
Attachments: 150 Bee Street, LLC - Draw Request - 2007.pdf; 150 Bee Street, LLC - Draw Request - 2005.pdf; 150 Bee Street, LLC - Draw Request - 2006.pdf; 150 Bee Street LLC - Form 1065 - 2007.pdf; 150 Bee Street LLC - BS and PL - 12-31-07.pdf

Rich,

Attached pursuant to Mr. John Gilbert's (Managing Member, Bella Vista, LLC – Managing Member, 150 Bee Street, LLC) authorization are the following documents for 150 Bee Street, LLC ("the Company") that are being provided to you for the benefit of Mr. Thomas H. Morgan in accordance with Article VI (Management) and Article X (Accounting, Books and Records) of the Amended and Restated Limited Liability Company Agreement as of February 28, 2003:

- Draw Requests No. 1 through No. 33 that were submitted by the Company to Amegy Bank of Texas during the period from April 20, 2005 through December 4, 2007 (Article 6.01 – Managing Members / Exhibit B);

- Balance Sheet and Profit and Loss Statement as of, and for the tax year ending, December 31, 2007 (Article 10.03. Financial Statements); and

- U.S. Return of Partnership Income, Form 1065 for 2007 (Article 10.04 – Tax Returns).

Once you have an opportunity to review these documents, please let me know if you have questions or comments.

Thanks,

Bill

William M. Shields, CPA
William M. Shields, P.C.
8980 Lakes at 610 Drive, Suite 100
Houston, Texas 77054
Office: 713-664-9475, Ext. #107
Fax : 713-664-9479
www.shieldspc.com

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Subject: RE: 150 Bee Street, LLC
Date: Friday, August 8, 2008 at 11:22:09 AM Eastern Daylight Time
From: Rich L. Merg
To: Bill Shields
CC: Thomas Morgan, johngilbert@bomasada.com
Category: Christmas Card

Bill:

Thank you for the information provided in your July 28, 2008 email. Please note that John had previously sent the 2007 financial statements and tax return to us and the only new information receivwed were the draw requests.

Before I request additional information, I am going to restate the items that I requested on my July 16 email request but did not receive:

1 I requested the quickbooks backup file that would show all transactions of 150 Bee St LLC
2. I requested the quickbooks backup file for the previously sent report " Schedule of Soft,Hard and General Administrative Costs for Jan-Dec 2007". That report shows $11,025,743.91 of "total expense"
3. Master worksheet that allocates the costs of goods sold to the individual units sold.
4. Monthly financial reports of the Project's performance in relation to the Project's budget.

Tom Morgan and I reviewed the "Applications and Certificates for Payment". As a result we are requesting a schedule of the detail transactions that shows the payee, date of payment, check number, amount and description of payment for the following items: (Amounts are from Draw request #33)

1. Construction Travel Expense $481,250
2. Division Manager $240,250
3. Project Manager $160,260
4. Project Secretary $55,550
5. Administrative bookkeeping $56,050
6. Superintendent $141,360
7. Asst Superintendent $109,120
8. Punch Foreman $77,810
9. Field Secretary $77,810
10.Production Incentive $32,400
11.Corporate Overhead $310,000

One other detail item is from the " Schedule of Soft,Hard and General Administrative Costs for Jan-Dec 2007" report. Please provide similar schedule for account 6035 airplane fuel for $18,873.69.

Thank you

Rich L Merg
Ian D. Gardenswartz & Associates, P.C.
303-388-3782 – phone
303-388-9125 - fax
rich@idgcpa.com

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John Gilbert

From: Bill Shields [Bill@shieldspc.com]
Sent: Friday, August 08, 2008 1:47 PM
To: Rich L. Merg
Cc: John Gilbert; Stuart Fred; kneeleye@aol.com; john.hagerty@nelsonmullins.com
Subject: FW: 150 Bee Street, LLC

Rich,

I reviewed your request for additional information for 150 Bee Street, LLC ("the Company") with Mr. John Gilbert (Managing Member, Bella Vista, LLC – Managing Member, 150 Bee Street, LLC) today and he, under advice from the Company's legal counsel, requested that we confirm that we have already provided to you all of the documents that are required pursuant to the Amended and Restated Limited Liability Company Agreement of 150 Bee Street, LLC as of February 28, 2003. Further, the Managing General Partners, Neal Baker and Stuart Fred, additionally advised this office that any further requests as to information can be reviewed in the offices of Bomasada Group here in Houston at your time and expense under the supervision of my office. A retainer in the amount of $5,000 will be required in order to schedule this review as the Managing General Partners will not allocate Company funds to authorize us to respond to the requests of an individual member of the Company.

Bill

William M. Shields, CPA
William M. Shields, P.C.
8980 Lakes at 610 Drive, Suite 100
Houston, Texas 77054
Office: 713-664-9475, Ext. #107
Fax : 713-664-9479
www.shieldspc.com

To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed within.

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John Gilbert

From: Kneeleye@aol.com
Sent: Friday, August 22, 2008 2:51 PM
To: tom@morganenergy.net
Cc: John Gilbert; Stuart Fred; FPearlstin@aol.com
Subject: (no subject)

Tommy

I'm sending this e-mail because I'm not pissed off at you but i am worried about your mental health. Last week when you called and told me Rebecca was selling a project next to us and you were concerned that a broker told you that which is totally false and I asked you please don't talk about what our partnership is doing because Chas.is like Payton Place and rumors get started quickly here. I know in Miami they do things another way but not here. I got a very disturbing call today that you have been talking to a mortgage lender about buying several units. The brokers name is Matt Hensley and he's been calling the office at Bee St. asking about a questionnaire for his client by the name of Tom Morgan who is going to take several of these units. I asked you before PLEASE don't discuss this with anyone. This is partnership business and i don't want the agents to know anything until i know if it can be done. Now i have agents that are worried about what we are doing and they won't be able to sell because we are going to split the units up. I thought you understood this is going to hurt all the partners if the word got out. Well the word is out and I still don't know if we can do this or not. Why don't you get out of the deal and maybe Stuart can get the bank to release you from the liability and get your money back from them that is there. I have spent to many years of my life with this deal to end of in a major lawsuit because this deal is heading down that road. It needs to come to an end now.
If you want out I will ask Stuart to talk to the bank. I am shocked that you don't understand what is going on in the real estate market and if you were handling the deal we could make $30,000,000.00. This needs to be over with now and if the bank will release you and you get your money back i would hope you would do that.
I will be more than happy to discuss this with you but we are not on the same page on this deal.

Neal

It's only a deal if it's where *you* want to go. Find your travel deal here.

-----Original Message-----
From: Tom Morgan <tom@morganenergy.net>
To: Kneeleye <Kneeleye@aol.com>
Sent: Sat, Aug 23, 2008 2:47 am
Subject: RE: (no subject)

Neal,

First of all let me say that you have been like a brother to me for over 20 years. You and I have done many deals together of which I have found and worked on some and you have found and worked on others. We have made a lot of money together and never had one dispute in all those years. We have lost money on some and you never complained. I remember how bad I felt about that dry hole in Louisiana that I got you into. I am glad that we are finally going to make a lot of money on Cat Creek that could be our retirement fund for us and our kids. Also within the last few weeks we are getting more information about the Morgan Marathon and Morgan United acreage. Anadarko and some other companies are discovering deeper zones that are producing in big quantities near our acreage. Rosewood is drilling their first well right now on our Rock House acreage and plans to use the new completion technique that has been so successful for Anadarko. So those partnerships could be very big. Also the Charleston shopping center has been such an amazing deal and I thank you so much for including me in that. I know it will continue to get better and better.

To address the issue at hand, I had to talk to that mortgage broker because I wanted to find out about current jumbo mortgage rates in Charleston, but I never mentioned anything about our partnership. I just told the mortgage broker that we had an incredible building and that I might be interested in buying about 6 units for my personal investment so that I could rent them out and hold on to them for a long period of time, and I asked him what rate he could get me on an investor mortgage with 30% down payment. No mention was made of any of the other partners' business. Furthermore when he called me back and quoted a rate of 8% for a 30 year mortgage, I told him I was not interested. If the sales staff thinks that something is going on, I can easily have the mortgage broker call the staff and he will tell them that he was mistaken and that no sale to Tom Morgan is going to happen.

Let me clear, I don't have any problem with anything that you have done on this project and I appreciate all of your hard work and you going up against the city and the BAR. You have worked extremely hard and had a lot of stress and deserve a medal dealing with the city of Charleston.

My problem is with Stuart and John. My Mom reviewed all of the e-mails that you sent her and highlighted in yellow the most important parts, and she is in complete agreement with me that both Stuart and John are not acting in our best interest. I don't want to be in business with Stuart or John, and I know they don't want to be in business with me. Also, I'm pretty sure that you and Edwin don't want to be in business with me either on this particular deal because I have been critical of John and Stuart and you both think that they have done a good job. I know my recent e-mails to John and Stuart were not very business-like and did contain foul language, but I have tried to be nice and complement them in the past and they still wouldn't give me the information that was required in our partnership agreement. You had to do the same thing with Beazer and are suing Beazer now on our Concrete Products parcel. You feel that you are right on that deal, and feel that I am

right on this deal. The only reason I don't plan to sue John and Stuart is that I don't want to involve you in the middle of all of this. So anyway you don't have to worry about ending this deal in a lawsuit in any case.

I think your idea of distributing individual condos to each partner is a good one. I don't know why this won't work. But if that's not possible, then the fairest way to dissolve the partnership would be to put a standard buy-sell clause into our partnership agreement. We can then dissolve the partnership easily and go our own ways.

Also I was able to secure a line of credit today to pay off in cash my share of the $12 million construction loan when it comes due in March, so I really don't need to get my money back from Amegy; so if we can't come to a dissolution agreement I'll just stay in the deal until all the units are sold.

Please let me know as soon as possible if you and the other partners are willing to put the buy-sell clause in the partnership agreement and I truly believe this will solve all of our problems. In this manner you and the other partners can get me out of this partnership if you want to, and won't have to deal with my complaints and bitching.

By the way, don't worry about my mental health. I always get this pissed off and write nasty notes to people like John and Stuart if I feel like they are taking advantage of me. You should see my correspondence with the subcontractors at Star Island and you'll think the e-mails to Stuart were love letters.

Tommy

IAN D. GARDENSWARTZ
& ASSOCIATES, P.C.

September 17, 2008

Nelson Mullins Riley & Scarborough LLP
ATTN: Mr. Richard A. Farrier, Jr.
151 Meeting Street, Sixth Floor
Charleston, SC 29401-2239

Dear Mr. Farrier,

In regard to your letter dated September 4, 2008, Mr. Morgan is no longer reviewing correspondence for the Bee Street Loft Project. He had asked that our office review and respond to any communication.

Mr. Morgan received an e-mail from Neal Baker on August 25, 2008 stating that there was an offer to buy out Mr. Morgan's interest in the Bee Street Loft Project. Please see Mr. Morgan's e-mail to Neal Baker on September 2, as follows:

> *Neal,*
>
> *Please check to see if Stuart is really interested in buying me out of Bee Street and getting me all my money back that I've invested including the 42% tax on the phantom gain of $1.8 million for 2007 taxes. If he is really interested I would want to essentially be back in the same financial position as if I never participated in the deal at all, similar to Ernie's buyout.*
>
> *I would only be interested if he will get this closed within the next 30 days.*
>
> *Thanks,*
>
> *Tommy*

Certified Public Accountants and Financial Consultants
Ian D. Gardenswartz LaDonna M. Jurgensen Randy L. Kite Rich L. Merg
6825 E. Tennessee Ave., Suite 235 Denver, CO 80224-1628 303.388.3782 Fax: 303.388.9125 Website: idgcpa.com

Please ask your client to respond accordingly and please direct all further correspondence to our office.

Regards,

IAN D. GARDENSWARTZ & ASSOCIATES, P.C.

Ian Gardenswartz
Certified Public Accountant

G:\ClientFiles\MGN\101 TOM MORGAN\Bee St\Bee Street Letter 1.docx

Subject: Neal
Date: Friday, April 9, 2010 at 11:36:51 AM Eastern Daylight Time
From: Leslie Berry
To: Thomas Morgan
CC: 'pamflavors'

Hi Tom - I'm injecting myself offering unsolicited advice. I think you should travel to AZ and see Neal & Elizabeth. I think you need to tell Neal how hurt and betrayed you felt over his siding with Stuart and treating you so poorly in the whole Bee Street deal, but that it's all water under the bridge and your concern now is Neal and Elizabeth's health and how you can be of help to them. I say this for several reasons...

I really believe Neal has known he's quite ill for some time but because of Elizabeth's cancer, he stayed mute not wanting to add more stress to her life. If the doctors are telling Neal he needs a transplant within 2-3 months (at least a month ago so now he's down to 1-2 months), I interpret that to mean he has a very aggressive cancer. Since the government has taken over how organ transplants are awarded, Neal has to go through a very rigorous evaluation process, which he may not pass. If he does pass, the liver will be awarded to the SICKEST candidate on the list in a REGION first, so if a liver does become available to him, he's going to be REALLY sick by the time he gets it (if he isn't already). And the possibility of him NOT getting a liver is also very real. If and when he does get a liver, he's got a tough recovery time and dealing with the anti-rejection meds, AND, he still has Hep C.

I don't think Neal or Elizabeth will tell you what Neal's condition really is. Neal won't be the one to extend the olive branch and apologize. I think he probably feels the family has turned against him and wants nothing to do with him. I think Elizabeth is really torn between her support of Neal and her love for her family and she maybe doesn't feel she can turn to you because she knows how upset you've been over Bee Street. I think if for no other reason than to show support to Elizabeth, you should take the high road and make the first step. I also don't want anything happening to Neal without you getting this off your chest to him directly and then put it to rest.

I just can't stop thinking about Neal and wondering how he's doing. I'm very concerned he's much worse than you realize and your time to talk to him is rapidly disappearing. So please, get yourself to AZ quickly and talk to him, let Elizabeth know she can count on your support and that you're concerned for both of them. I don't mean to sound alarmist, but I know with Nan, she never told people her true condition, partly I think because she didn't want to acknowledge it and give up hope.

I really love you all and this is a time you need to pull together and help each other get through this.

Leslie A. Berry, Controller
Morgan Energy Corporation
3333 S. Bannock Street, Suite 950
Englewood, CO 80110
303-296-9270
303-294-9077 fax
Leslie@MorganEnergy.net

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C/A NO.: 2011-CP-10-
COUNTY OF CHARLESTON	)	
	)	
THOMAS H. MORGAN,	)	
	)	
PLAINTIFF(S),	)	
	)	
v.	)	CONSENT AGREEMENT TO
	)	TOLL STATUTE OF LIMITATIONS
JOHN L. GILBERT, STUART L. FRED,	)	
150 BEE STREET, LLC,	)	
BELLA VISTA PARTNERSHIP, A	)	
TEXAS GENERAL PARTNERSHIP,	)	
BOMASADA GROUP, INC., A TEXAS	)	
CORPORATION, BOMASADA	)	
INVESTMENT GROUP II, LLC, A	)	
TEXAS LIMITED LIABILITY COMPANY	)	
and LAURALIS MANAGEMENT, INC.,	)	
A TEXAS CORPORATION.	)	
	)	
DEFENDANT(S)	)	
_____	)	

This Consent Tolling Agreement ("this Agreement") is made effective as of the 7th day of December, 2011 (the "Effective Date") by and between Thomas Morgan (the "Claimant") and John Gilbert, Stuart Fred, Bella Vista Partnership, a Texas Partnership, Bomasada Group, Inc., a Texas Corporation, Bomasada Investment Group II, LLC, a Texas Limited Liability Company and Lauralis Management, Inc., a Texas Corporation (collectively referred to as "Respondents"). The Claimant and Respondents are collectively referred to as the "Parties."

WHEREAS, the Parties deem it to be in their mutual benefit and interest that Claimant's alleged Claims against Respondents not be asserted in litigation at the present time;

WHEREAS, the Parties desire to encourage resolution and/or such further review of Claimant's Claims as may result in no lawsuit or claim being filed and, in any case, wish to avoid the expense and uncertainty of litigation of the Claims if at all possible, and are willing to make the stipulations, covenants, and agreements hereinafter set forth in order to defer and postpone the commencement of litigation;

WHEREAS, the Parties desire that for the period of this Agreement, they should be able to consider issues relating to the possibility of settling disputes without regard to the time constraints that exist because of any future expiration of any applicable statute of limitations;

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, including, but not limited to, the temporary forbearance of claims as described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

1. As used in this Agreement, the following terms shall have the following meanings:

   (a) "Claims" shall mean any and all claims and/or causes of action, if any, known or unknown, that any of the Parties may have against each other in connection with 150 Bee Street, LLC.

   (b) "Tolling Period" shall mean the period from and including the Effective Date of this Agreement until and including the Expiration Date (as defined below) of this Agreement.

   (c) "Expiration Date" shall mean the earlier of January 16, 2012, or

30 days from the date that written notice of termination of this Agreement has been served by either of the Parties on the other in accordance with Paragraph 9 of this Agreement.

(d) "Timing Defenses" shall mean and include, and shall be limited to, any affirmative defenses to Claimant's claims that Respondents may have to the extent based upon (1) any statute of limitations, (2) laches, and/or (3) any failure of the Parties to institute or commence litigation or other legal proceedings within some specified period, before a specified date, or before the happening of a specified event.

2. The Claimant and Respondents stipulate, covenant, and agree that Timing Defenses applicable to the Claims shall be tolled during the Tolling Period.

3. The Claimant and Respondents stipulate, covenant, and agree that this Agreement shall have no effect on any Timing Defenses that may be available to the Parties prior to the Effective Date, and that all time periods prior to the Effective Date and after the Expiration Date (and prior to the filing of any lawsuit or other legal proceeding) shall be included in the calculation of and running of any applicable Timing Defenses. Nothing contained herein shall preclude the Parties from asserting any Timing Defenses to the extent that such defenses already exist as of the Effective Date, and nothing herein shall be deemed to revive any claims barred as of the Effective Date.

4. The Claimant and Respondents stipulate, covenant, and agree that the Parties, by executing and entering into this Agreement, are not waiving or otherwise impairing by estoppel or any other means the Parties' rights and

abilities to raise any Timing Defenses available to them for the periods prior to the Effective Date and after the Expiration Date (and prior to the filing of any lawsuit or other legal proceeding).

5. The Parties agree to forebear filing a petition or complaint or otherwise initiating a lawsuit or other legal proceeding against one another until on or after the last day of the Tolling Period that is not a Saturday, Sunday, or legal holiday.

6. The provisions of this Agreement comprise all of the terms, conditions, and representations of the Parties regarding the tolling of the Timing Defenses. This Agreement may not be altered or amended except by written agreement executed by both the Claimant and Respondents.

7. It is understood that no provision of this Agreement shall be construed against any party hereto by reason of either party having drafted or prepared this Agreement.

8. This Agreement shall terminate on the Expiration Date as provided in paragraph 1(c) above, unless extended in writing by the parties to be bound.

9. Either the Claimant or the Respondents may terminate this Agreement, effective 30 days after the date of serving a written notice of termination, by serving notice of termination by letter to the other party. Such notice letter shall be served by certified mail, return receipt requested, to the attorney(s) representing the party(s) being served.

10. On or after the Expiration Date of this Agreement, the Parties shall have the right to file and pursue any and all Claims and to seek any and all legal

remedies that may be available, and the Parties shall be entitled to assert any Timing Defenses or other defenses, if any, subject to the terms of this Agreement.

11. Nothing in this Agreement shall be construed as an admission or denial by any of the Parties as to the merits of any of the Claims or defenses.

12. Neither Claimant nor Respondents nor any of their agents, witnesses, or attorneys will mention or allude to this Agreement, its terms, its execution, or the existence of any Tolling Period in any way, directly or indirectly, before a jury or any factfinder in any proceeding for any purpose. The terms of this paragraph will survive termination of this Agreement.

13. Claimant represents and warrants that the attorney signing this Agreement on his behalf has the authority to sign on his behalf and to agree to the terms and conditions of this Agreement. Respondents represent and warrant that the attorney signing this Agreement on their behalf has the authority to sign on their behalf and to agree to the terms and conditions of this Agreement.

I AGREE:

Thomas Morgan

WE AGREE TO THIS TOLLING AGREEMENT:

December 7, 2011

John Gilbert, as counsel

Stuart Fred, as counsel

BELLA VISTA PARTNERSHIP, A TEXAS PARTNERSHIP:

By:_____, Authorized Representative

BOMASADA GROUP, INC., A TEXAS CORPORATION:

By:_____, Authorized Representative

BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LLC:

By:_____, Authorized Representative

Lauralis Management, Inc., a Texas Corporation:

By:_____, Authorized Representative

Grimball, Henry

From: Grimball, Henry <Henry.Grimball@wbd-us.com>
Sent: Tuesday, March 12, 2019 10:16 AM
To: M. Dawes Cooke; Andy Gowder; Ellison, Morris; Mike Rose mike@mikeroselawfirm.com
Cc: Rob Robertson; Brew Hagood
Subject: RE: ARBITRATION: MORGAN v 150 BEE STREET LLC, et al.

March 12, 2019

Dear Dawes:

Our side believes that full blown discovery is going to be a very expensive exercise.

Might It not be more appropriate at this stage to engage in discovery limited to the Motion to Dismiss and the statute of limitations issue? While we have not yet filed a motion for summary judgment, if you are going to permit discovery, it would be appropriate to discover that issue.

Henry

Grimball, Henry

From: Grimball, Henry <Henry.Grimball@wbd-us.com>
Sent: Tuesday, March 12, 2019 11:10 AM
To: M. Dawes Cooke
Cc: Rob Robertson; Brew Hagood; Ellison, Morris; Andy Gowder (andy@austengowder.com); Mike Rose mike@mikeroselawfirm.com
Subject: FW: ARBITRATION: MORGAN v 150 BEE STREET LLC, et al.

March 12, 2019

Dawes:

There are two real questions here as to whether (i) the panel lacks subject matter jurisdiction; and (ii) Mr. Morgan's claims are barred by applicable statutes of limitation. The scope of discovery which Andy wishes to undertake will be breathtakingly expensive. To call it a fishing expedition does not begin to describe the scope of what Andy seeks to conduct and is an insult to fisherman everywhere. Andy's position seems to be that the parties should engage in hundreds of thousands of dollars of discovery on the merits of the Plaintiff's claims even if the panel lacks subject matter jurisdiction.

That position does not comport with any notion of judicial economy regardless of the case's age.

If discovery is going to be allowed, it should be limited to the two issues which are already squarely before the panel.

We would again request that discovery be so limited until such time as these motions are heard.

Henry

Henry Grimball
Partner
Womble Bond Dickinson (US) LLP

d: 843-720-4615
m: 843-609-8222
e: Henry.Grimball@wbd-us.com

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From: "Grimball, Henry" <Henry.Grimball@wbd-us.com>
Date: Tuesday, March 12, 2019 at 11:11 AM
To: "M. Dawes Cooke, Jr." <mdc@barnwell-whaley.com>
Cc: Rob Robertson <robertsonandcompanyllc@gmail.com>, Brew Hagood <bhagood@rrhlawfirm.com>, "Ellison, Morris" <Morris.Ellison@wbd-us.com>, "W. Andrew Gowder" <andy@austengowder.com>, "Mike Rose mike@mikeroselawfirm.com" <mike@mikeroselawfirm.com>
Subject: FW: ARBITRATION: MORGAN v 150 BEE STREET LLC, et al.

March 12, 2019

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Grimball, Henry

From: Ellison, Morris
Sent: Tuesday, March 12, 2019 11:30 AM
To: Andy Gowder; Grimball, Henry; M. Dawes Cooke
Cc: Rob Robertson; Brew Hagood; Mike Rose mike@mikeroselawfirm.com
Subject: RE: ARBITRATION: MORGAN v 150 BEE STREET LLC, et al.

Andy:

When I asked you earlier, you said that all of Morgan's claims were derivative. Maybe you should identify for all of us what "personal" claims Mr. Morgan claims to have.

I hardly call (i) a 17 page Set of Requests for Production; (ii) the 8 page draft subpoena to Amegy, which seeks among other things, all documents relating to any conversation or loan involving Amegy and any defendant on any topic or loan where the banking relationships are extensive; and (iii) 6 to 12 depositions "surgical and succinct." If the panel lacks subject matter jurisdiction, this is a complete waste.

Best regards,

Morris

Morris Ellison
Partner
Womble Bond Dickinson (US) LLP

d: 843-720-4614
m: 843-729-3174
e: Morris.Ellison@wbd-us.com

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PO Box 999 (29402)
Charleston, SC 29401

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From: "Grimball, Henry" <Henry.Grimball@wbd-us.com>
Date: Tuesday, March 12, 2019 at 11:11 AM
To: "M. Dawes Cooke, Jr." <mdc@barnwell-whaley.com>
Cc: Rob Robertson <robertsonandcompanyllc@gmail.com>, Brew Hagood <bhagood@rrhlawfirm.com>, "Ellison, Morris" <Morris.Ellison@wbd-us.com>, "W. Andrew Gowder" <andy@austengowder.com>, "Mike Rose mike@mikeroselawfirm.com" <mike@mikeroselawfirm.com>
Subject: FW: ARBITRATION: MORGAN v 150 BEE STREET LLC, et al.

March 12, 2019

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That position does not comport with any notion of judicial economy regardless of the case's age.

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We would again request that discovery be so limited until such time as these motions are heard.

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m: 843-609-8222
e: Henry.Grimball@wbd-us.com

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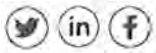

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Grimball, Henry

From:	Grimball, Henry <Henry.Grimball@wbd-us.com>
Sent:	Tuesday, March 12, 2019 11:31 AM
To:	Andy Gowder; M. Dawes Cooke
Cc:	Rob Robertson; Brew Hagood; Ellison, Morris; Mike Rose mike@mikeroselawfirm.com
Subject:	RE: ARBITRATION: MORGAN v 150 BEE STREET LLC, et al.
Attachments:	DRAFT 20190123_Subpoena_to_Amegy_Bank 2.11.19 REVISED 1.32 PM second[1].pdf

March 12, 2019

Dear Dawes:

I thing Andy has a backlash on his reel.

Attached is Andy's first step in discovery, the list of documents he wants to subpoena from Amegy Bank, which is the bank in Texas used by our clients and related companies.

It is broad beyond any reason and is objectionable.

We do not think in light of this opening by Andy that we are exaggerating in the slightest that iscovery, if conducted in this fashion, will be very, very expensive.

As for the pending dismissal issues, I can tell you that discovery as to the statute of limitations and the discovery rule can be accomplished very inexpensively. I had this issue in claims in which I defended Siemens/Westinghouse in a number of suits brought against it by Bill Gilliam.

Based on the discovery rule, the Fourth Circuit Court of Appeals dismissed each one, without oral argument.

Henry

From: "Grimball, Henry" <Henry.Grimball@wbd-us.com>
Date: Tuesday, March 12, 2019 at 11:11 AM
To: "M. Dawes Cooke, Jr." <mdc@barnwell-whaley.com>
Cc: Rob Robertson <robertsonandcompanyllc@gmail.com>, Brew Hagood <bhagood@rrhlawfirm.com>, "Ellison, Morris" <Morris.Ellison@wbd-us.com>, "W. Andrew Gowder" <andy@austengowder.com>, "Mike Rose mike@mikeroselawfirm.com" <mike@mikeroselawfirm.com>
Subject: FW: ARBITRATION: MORGAN v 150 BEE STREET LLC, et al.

March 12, 2019

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Grimball, Henry

From: Ellison, Morris <Morris.Ellison@wbd-us.com>
Sent: Tuesday, March 12, 2019 7:22 PM
To: Andy Gowder; Grimball, Henry
Cc: Rob Robertson; Brew Hagood; Mike Rose mike@mikeroselawfirm.com; M. Dawes Cooke
Subject: RE: ARBITRATION: MORGAN v 150 BEE STREET LLC, et al.

Andy:

I will review the causes of action again, but some, if not all, of these causes action, as plead, seem to be strictly derivative. I specifically recall your stating last year that all of the claims were derivative. By way of illustration, the proposed amended complaint you attached to your May 20, 2018 email to Dawes stated specifically in paragraph 13, among other places, that this was/is a derivative action. I would respectfully suggest that the only reason you are changing your position now is because you implicitly recognize that your client never satisfied, and cannot satisfy, the requirements of filing a derivative action.

With respect to the Amegy subpoena, your shotgun approach is perhaps best illustrated by the subpoena's failure in items 1, 2, 3, 18, and 19 (to name a few) are certainly not limited to this project. The requested items can be fairly read to include any project anywhere in the United States or any communications involving John Gilbert, Stuart Fred or Bomasada Group. That is a complete waste of resources when there are very real questions as to whether your client can properly bring this action.

Best regards,

Morris

From: "Ellison, Morris" <Morris.Ellison@wbd-us.com>
Date: Tuesday, March 12, 2019 at 11:30 AM
To: "W. Andrew Gowder" <andy@austengowder.com>, "Grimball, Henry" <Henry.Grimball@wbd-us.com>, "M. Dawes Cooke, Jr." <mdc@barnwell-whaley.com>
Cc: Rob Robertson <robertsonandcompanyllc@gmail.com>, Brew Hagood <bhagood@rrhlawfirm.com>, "Mike Rose mike@mikeroselawfirm.com" <mike@mikeroselawfirm.com>
Subject: RE: ARBITRATION: MORGAN v 150 BEE STREET LLC, et al.

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orris

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Date: Tuesday, March 12, 2019 at 11:11 AM
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Cc: Rob Robertson <robertsonandcompanyllc@gmail.com>, Brew Hagood <bhagood@rrhlawfirm.com>, "Ellison, Morris" <Morris.Ellison@wbd-us.com>, "W. Andrew Gowder" <andy@austengowder.com>, "Mike Rose mike@mikeroselawfirm.com" <mike@mikeroselawfirm.com>
Subject: FW: ARBITRATION: MORGAN v 150 BEE STREET LLC, et al.

March 12, 2019

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Thomas H. Morgan
Transaction Report
All Dates

	Date	Transaction Type	Num	Name	Memo/Description	Account	Split	Amount
DEDUCTIBLE EXP								
OTHER								
Legal Fees								
150 Bee Street								
	01/03/2011	Check	646	Gable & Heidt	Inv 106234 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	683.24
	02/22/2011	Check	660	Prothro Wilhelmi	Inv 201100230 Retainer 150 Bee St.	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	7,000.00
	03/04/2011	Check	664	Gable & Heidt	Inv 106429 150 Bee Street, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	450.00
	03/31/2011	Check	673	Gable & Heidt	Inv 106532 150 Bee Street, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	1,147.50
	05/02/2011	Check	696	Gable & Heidt	Inv 106641 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	157.50
	05/04/2011	Check	698	Clawson & Staubes, LLC	150 Bee Street LLC, File 20110182-000M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	5,887.50
	05/26/2011	Check	705	Clawson & Staubes, LLC	150 Bee Street LLC, File 20110182-000M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	2,327.50
	06/09/2011	Check	714	Prothro Wilhelmi	Inv 201100808 150 Bee St. due from retainer	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	14.06
	06/28/2011	Check	718	Gable & Heidt	Inv 106843 150 Bee Street LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	157.50
	07/01/2011	Check	721	Prothro Wilhelmi	Inv 201100839 150 Bee St. final report	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	521.88
	07/08/2011	Check	723	Clawson & Staubes, LLC	150 Bee Street LLC, File 20110182-000M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	302.50
	07/11/2011	Journal Entry	Clawson Inv		150 Bee Street LLC June invoice	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	-Split-	4,305.00
	09/08/2011	Journal Entry	clawson		July chgs 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	-Split-	8,085.00
	09/30/2011	Journal Entry	Clawson & S		Clawson & Staubes Stmt 8 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	-Split-	7,725.00
	11/07/2011	Check	768	Ferira & Company, LLC	Retainer 150 Bee Street LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	5,000.00
	11/07/2011	Check	770	Clawson & Staubes, LLC	150 Bee Street LLC Stmt 9	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	29,135.00
	11/09/2011	Check	773	Pro-Legal Copies, Inc.	Inv 121399 documents scanned 150 Bee Street LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	1,792.84
	11/22/2011	Check	781	Clawson & Staubes, LLC	150 Bee Street LLC, File 20110182-Stmt 10	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	16,842.50
	12/12/2011	Check	790	Ferira & Company, LLC	Inv 9755 9/21 - 12/8/11	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	3,340.75
	12/31/2011	Journal Entry	BellaVista		reclass Bella Vista to Bee Street expense	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	-Split-	1,382.00
	12/31/2011	Journal Entry	Bee St		Goodson Appraisers reclass	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	-Split-	4,945.00
	01/06/2012	Check	794	Clawson & Staubes, LLC	150 Bee Street LLC, File 20110182-Stmt 11	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	19,897.50
	01/23/2012	Check	802	Clawson & Staubes, LLC	150 Bee Street LLC, File 20110182-Stmt 12	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	7,074.50
	02/13/2012	Check	D99NB	Prothro Wilhelmi	Inv 300000129	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	710.00
	02/28/2012	Check	1103	Clawson & Staubes, LLC	File # 20110182-000M Stmt # 13	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	23,693.62
	04/20/2012	Check	1122	Clawson & Staubes, LLC	File # 20110182-000M Stmt # 14	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	29,173.62
	05/11/2012	Check	1131	Clawson & Staubes, LLC	File # 20110182-000M Stmt # 15	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	33,245.89
	05/11/2012	Check	1133	Waller Lansden Dortch & Davis, LLP	Inv 10470294 Morgan v Gilbert et al	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	380.00
	06/28/2012	Check	1143	Clawson & Staubes, LLC	File # 20110182-000M Stmt # 16	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	26,326.75
	08/20/2012	Check	1152	Clawson & Staubes, LLC	File # 20110182-000M Stmt # 17	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	21,566.80
	09/12/2012	Check	1166	Prothro Wilhelmi	Inv 300001093 MORGAN	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	1,400.45
	11/21/2012	Check	1196	Pratt-Thomas Walker, PA	Inv 68427, 68568 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	19,670.00
	12/17/2012	Check	1212	Pratt-Thomas Walker, PA	Inv 68857 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	5,880.00
	01/28/2013	Check	1232	Pratt-Thomas Walker, PA	Inv 69248 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	3,533.22
	02/20/2013	Check	1243	Pratt-Thomas Walker, PA	1/2 of Arbitrator fees - 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	5,706.96
	04/26/2013	Check	1265	Pratt-Thomas Walker, PA	Inv 69943 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	13,812.07
	06/06/2013	Check	1273	Pratt-Thomas Walker, PA	Inv 70144 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	3,255.00
	09/16/2013	Check	1304	Pratt-Thomas Walker, PA	Inv 71326 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	7,741.30

09/16/2013	Check	1304	Pratt-Thomas Walker, PA	Inv 70469 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	9,635.00
11/15/2013	Check	1326	Pratt-Thomas Walker, PA	Inv 71828 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	9,940.00
12/27/2013	Check	1337	Pratt-Thomas Walker, PA	Inv 72094 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	12,350.00
03/13/2014	Check	1353	Pratt-Thomas Walker, PA	Inv 72760 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	19,773.86
04/29/2014	Check	1361	Pratt-Thomas Walker, PA	Inv 73135 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	27,019.81
06/03/2014	Check	1366	Pratt-Thomas Walker, PA	Inv 73439 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	23,886.86
07/03/2014	Check	1371	Pratt-Thomas Walker, PA	Inv 73686 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	19,040.00
08/05/2014	Check	1389	Pratt-Thomas Walker, PA	Inv 74131 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	14,715.29
08/27/2014	Check	1396	Pratt-Thomas Walker, PA	Inv 74329 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	17,440.70
10/22/2014	Check	1416	Pratt-Thomas Walker, PA	Inv 74789 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	23,123.17
12/12/2014	Check	1426	Pratt-Thomas Walker, PA	Inv 75100 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	17,270.95
04/21/2015	Check	1491	Pratt-Thomas Walker, PA	Inv 75616 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	8,105.00
04/30/2015	Check	1495	Pratt-Thomas Walker, PA	Inv 76317 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	12,272.50
06/01/2015	Check	1509	Pratt-Thomas Walker, PA	Inv 76523 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	7,937.50
07/09/2015	Check	1532	Pratt-Thomas Walker, PA	Inv 76956 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	7,207.50
09/02/2015	Check	1553	Pratt-Thomas Walker, PA	Inv 77554 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	7,275.00
11/25/2015	Check	1583	Pratt-Thomas Walker, PA	Inv 78318 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	490.00
03/11/2016	Check	1611	Pratt-Thomas Walker, PA	Inv 79211 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	1,415.00
06/07/2016	Check	1643	Pratt-Thomas Walker, PA	Inv 80072 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	5,627.50
06/08/2016	Check	1645	Mike Rose Law Firm, PC	Retainer	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	10,000.00
07/07/2016	Check	1653	Mike Rose Law Firm, PC	Retainer	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	10,000.00
08/09/2016	Check	1660	Pratt-Thomas Walker, PA	Inv 80739 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	9,370.41
08/17/2016	Check	1663	Mike Rose Law Firm, PC	Retainer & legal invoices re 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	15,732.16
09/06/2016	Check	1667	Mike Rose Law Firm, PC	Retainer & legal invoices re 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	30,132.28
09/14/2016	Check	1669	Pratt-Thomas Walker, PA	Inv 80963 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	11,495.00
10/04/2016	Check	1674	Mike Rose Law Firm, PC	legal invoices re 150 Bee Street September	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	8,823.19
10/05/2016	Check	1677	Pratt-Thomas Walker, PA	Inv 81205 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	2,255.00
11/08/2016	Check	1683	Pratt-Thomas Walker, PA	Inv 81563 File 7349-001M	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	805.00
01/18/2017	Check	1696	Austen Gowder	Inv 44	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	315.00
02/08/2017	Check	1698	Mike Rose Law Firm, PC	legal invoices re 150 Bee Street January + $10k retainer	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	13,591.92
02/22/2017	Check	1699	Austen & Gowder, LLC	Inv 101 Acct 00039-Morgan	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	280.00
04/03/2017	Check	1708	Mike Rose Law Firm, PC	March legal invoices plus $10k retainer	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	14,365.59
04/03/2017	Check	1706	Burkett Burkett & Burkett	Retainer: Thomas Morgan v Stuart Fred & John Gilbert	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	5,000.00
04/26/2017	Check	1713	Austen & Gowder, LLC	Inv 184	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	3,017.00
05/01/2017	Check	1614281	Austen & Gowder, LLC	Inv 259	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	5,390.00
05/02/2017	Check	1714	Mike Rose Law Firm, PC	April legal invoices plus $10k retainer	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	19,197.16
05/12/2017	Check	1719	Burkett Burkett & Burkett	Inv 43179 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	2,400.00
05/19/2017	Check	193435	Austen & Gowder, LLC	Inv 340 April	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	5,530.00
06/01/2017	Check	1725	Mike Rose Law Firm, PC	May legal invoices plus $10k retainer	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	13,945.76
06/07/2017	Check	1728	Burkett Burkett & Burkett	Inv 43847 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	3,995.00
06/23/2017	Check	1155016	Austen & Gowder, LLC	Inv 439 May services	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	8,914.16
06/29/2017	Check	1732	Mike Rose Law Firm, PC	June legal services plus $10k retainer	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	19,312.49
07/28/2017	Check	1736	Burkett Burkett & Burkett	Inv 44475 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	4,450.00
08/08/2017	Check	2778043	Austen & Gowder, LLC	Inv 529 June services	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	4,970.00
08/24/2017	Check	5468356	Austen & Gowder, LLC	Inv 623 7/17 - 8/15/17 services	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	3,920.00
08/30/2017	Check	1740	Mike Rose Law Firm, PC	6/27 - 8/27/17 legal services plus $10k retainer	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	12,642.81
09/27/2017	Check	4834961	Austen & Gowder, LLC	Inv 708 8/15 - 9/8/17	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	3,395.00
10/16/2017	Check	7984025	Burkett Burkett & Burkett	Inv 45575 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	2,625.00

11/09/2017	Check	4080732	Austen & Gowder, LLC	Inv 787 9/18 - 10/16/17	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	567.00
11/27/2017	Check	3509974	Burkett Burkett & Burkett	Inv 45916 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	4,867.50
11/27/2017	Check	3282547	Austen & Gowder, LLC	Inv 844 10/19 - 11/14/17	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	2,100.00
12/13/2017	Check	35706703	Austen & Gowder, LLC	Inv 908 11/15 - 12/6/17	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	2,835.00
12/14/2017	Check	1747	Mike Rose Law Firm, PC	9/27 -12/12/17 & retainer	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	11,804.99
12/21/2017	Check	3050066	Burkett Burkett & Burkett	Inv 46222 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	954.00
01/22/2018	Check	1750	Mike Rose Law Firm, PC	1/2 -1/11/18 & retainer	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	16,065.25
01/25/2018	Check	965382	Burkett Burkett & Burkett	Inv 46343 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	2,211.00
01/26/2018	Check	694176	Austen & Gowder, LLC	Inv 981 12/07 - 1/16/18	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	12,218.50
02/21/2018	Check	1756	Mike Rose Law Firm, PC	2/5 - 2/19/18 & retainer	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	13,566.53
02/23/2018	Check	3175962	Austen & Gowder, LLC	Inv 1053 1/16 - 2/13/18	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	2,485.00
02/23/2018	Check	50628748	Burkett Burkett & Burkett	Inv 46946 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	2,394.00
03/14/2018	Check	49344377	Burkett Burkett & Burkett	Inv 47071 150 Bee Street	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	3,995.00
03/19/2018	Check	1762	Mike Rose Law Firm, PC	2/26 - 3/17/18 & retainer	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	11,527.48
03/22/2018	Check	7325019	Austen & Gowder, LLC	Inv 1129 2/15 - 3/15/18	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	8,190.00
04/24/2018	Check	901450	Austen & Gowder, LLC	Inv 1218 3/16 - 4/16/18	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	4,235.00
04/30/2018	Check	715662	Burkett Burkett & Burkett	Inv 47807 Litigation services	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	8,216.50
05/18/2018	Check	9525361	Burkett Burkett & Burkett	Inv 49174 Litigation support	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	1,034.00
05/23/2018	Check	548312	Austen & Gowder, LLC	Inv 1300 4/17 - 5/11/18	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank xx1460	2,380.00
06/19/2018	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 06-19	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	5,368.02
06/20/2018	Expense		Burkett Burkett & Burkett	BILL PAY Burkett Burkett & Burkett CPA ON-LINE No Account Number ON 06-20	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	3,530.00
06/26/2018	Expense		Mike Rose Law Firm, PC	BILL PAY Mike Rose ON-LINE No Account Number ON 06-26	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	10,664.98
07/19/2018	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 07-19	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	3,465.00
07/27/2018	Expense		Martin Mcwilliams	BILL PAY MARTIN C. MCWILLIAMS, JR. ON-LINE xxxxxxxxxxxxbert ON 07-27	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	26,460.00
08/16/2018	Expense			BILL PAY Mike Rose ON-LINE No Account Number ON 08-16	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	20,633.80
08/21/2018	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 08-21	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	3,885.00
09/05/2018	Expense			BILL PAY Mike Rose ON-LINE No Account Number ON 09-05	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	15,385.00
10/02/2018	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 10-02	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	8,585.55
10/17/2018	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 10-17 201810172	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	2,765.00
11/26/2018	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 11-26 201811265	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	1,225.00
12/18/2018	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 12-18 201812185	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	770.00
01/17/2019	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 01-17	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	2,205.00
01/29/2019	Expense			BILL PAY Mike Rose ON-LINE No Account Number ON 01-29	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	10,432.48
02/12/2019	Expense		Hiersche, Hayward, Drakeley	BILL PAY Hiersche, Hayward, Drakeley ON-LINE No Account Number ON 02-12	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	2,000.00
02/27/2019	Expense			BILL PAY Mike Rose ON-LINE No Account Number ON 02-27	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	13,304.94
02/27/2019	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 02-27	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	3,675.00
03/18/2019	Expense		Burkett Burkett & Burkett	BILL PAY Burkett Burkett & Burkett CPA ON-LINE No Account Number ON 03-18	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	5,137.50
03/19/2019	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 03-19	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	7,081.51
04/23/2019	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 04-23	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	3,605.00
05/14/2019	Expense			BILL PAY Mike Rose ON-LINE No Account Number ON 05-14	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	12,667.03
05/22/2019	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 05-22	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo Old	6,697.36
07/03/2019	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 07-03	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	4,313.46
07/08/2019	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 09-20	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	17,250.00
07/31/2019	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 07-31	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	2,520.00
08/20/2019	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 08-20	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	5,979.64
08/20/2019	Expense		Burkett Burkett & Burkett	BILL PAY Burkett Burkett & Burkett CPA ON-LINE No Account Number ON 08-20	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	2,001.50
09/20/2019	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC ON-LINE No Account Number ON 09-20	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	5,460.00
09/20/2019	Expense			BILL PAY Mike Rose ON-LINE No Account Number ON 09-20	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	11,916.80

10/29/2019	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC	ON-LINE No Account Number ON 10-29	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	4,540.00
11/13/2019	Expense			BILL PAY Mike Rose	ON-LINE No Account Number ON 11-13	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	11,362.47
11/19/2019	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC	ON-LINE No Account Number ON 11-19	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	8,610.00
12/04/2019	Expense		Burkett Burkett & Burkett	BILL PAY Burkett Burkett & Burkett CPA	ON-LINE No Account Number ON 12-04	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	9,496.00
12/18/2019	Expense		Burkett Burkett & Burkett	BILL PAY Burkett Burkett & Burkett CPA	ON-LINE No Account Number ON 12-18	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	9,534.50
01/13/2020	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC	ON-LINE No Account Number ON 01-13	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	10,000.00
01/28/2020	Expense		Burkett Burkett & Burkett	BILL PAY Burkett Burkett & Burkett CPA	ON-LINE No Account Number ON 01-28	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	4,560.00
02/04/2020	Expense			BILL PAY Mike Rose	ON-LINE No Account Number ON 02-04	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	17,912.35
02/05/2020	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC	ON-LINE No Account Number ON 02-05	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	10,000.00
02/19/2020	Expense		Burkett Burkett & Burkett	BILL PAY Burkett Burkett & Burkett CPA	ON-LINE No Account Number ON 02-19	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	682.50
02/20/2020	Expense			BILL PAY Snell & Wilmer - James Sienicki	ON-LINE xxxxxxxxxxxxxxx Rose ON 02-20	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	1,000.00
03/12/2020	Expense			BILL PAY Gordon Hanna	ON-LINE xorgan ON 03-12	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	300.00
03/12/2020	Expense		Austen & Gowder, LLC	BILL PAY Austen & Gowder, LLC	ON-LINE No Account Number ON 03-12	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	11,184.40
03/12/2020	Expense			BILL PAY Mike Rose	ON-LINE No Account Number ON 03-12	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	11,033.95
03/18/2020	Expense			BILL PAY Burkett Burkett & Burkett CPA	ON-LINE No Account Number ON 03-18	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	6,836.00
04/01/2020	Expense			BILL PAY Austen & Gowder, LLC	ON-LINE No Account Number ON 04-01	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	19,419.60
04/01/2020	Expense			BILL PAY Mike Rose	ON-LINE No Account Number ON 04-01	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	12,180.40
04/03/2020	Expense			BILL PAY Wilson and Johnson LLP	ON-LINE No Account Number ON 04-03	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	1,110.00
04/21/2020	Expense			BILL PAY Burkett Burkett & Burkett CPA	ON-LINE No Account Number ON 04-21	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	19,382.00
05/27/2020	Expense			BILL PAY Burkett Burkett & Burkett CPA	ON-LINE No Account Number ON 05-27	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	810.00
05/27/2020	Expense			BILL PAY Austen & Gowder, LLC	ON-LINE No Account Number ON 05-27	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	4,865.00
06/17/2020	Expense			BILL PAY Austen & Gowder, LLC	ON-LINE No Account Number ON 06-17	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	1,855.00
06/22/2020	Expense			BILL PAY Burkett Burkett & Burkett CPA	ON-LINE No Account Number ON 06-22	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	7,825.00
07/16/2020	Expense			BILL PAY Austen & Gowder, LLC	ON-LINE No Account Number ON 07-16	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	595.00
07/28/2020	Expense			BILL PAY Burkett Burkett & Burkett CPA	ON-LINE No Account Number ON 07-28	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	8,235.00
08/18/2020	Expense			BILL PAY Mike Rose	ON-LINE No Account Number ON 08-18	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	2,024.14
09/01/2020	Expense			BILL PAY Daniel R. Kirshbaum	ON-LINE No Account Number ON 09-01	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	6,500.00
09/16/2020	Expense			BILL PAY Burkett Burkett & Burkett CPA	ON-LINE No Account Number ON 09-16	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	990.00
09/16/2020	Expense			BILL PAY Austen & Gowder, LLC	ON-LINE No Account Number ON 09-16	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	3,745.00
09/29/2020	Expense			BILL PAY Austen & Gowder, LLC	ON-LINE No Account Number ON 09-29	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	1,855.00
10/13/2020	Expense			BILL PAY Mike Rose	ON-LINE No Account Number ON 10-13	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	1,253.00
10/20/2020	Expense			BILL PAY Austen & Gowder, LLC	ON-LINE No Account Number ON 10-20	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	4,641.03
10/27/2020	Expense			BILL PAY Burkett Burkett & Burkett CPA	ON-LINE No Account Number ON 10-27	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	5,370.00
11/10/2020	Expense			BILL PAY Mike Rose	ON-LINE No Account Number ON 11-10	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	1,032.50
11/30/2020	Expense			BILL PAY Burkett Burkett & Burkett CPA	ON-LINE No Account Number ON 11-30	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:Wells Fargo New	4,442.50
12/11/2020	Check	6001	Austen & Gowder, LLC			DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	5,495.00
12/22/2020	Check	6004	Austen & Gowder, LLC			DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	1,050.00
12/22/2020	Check	6010	Burkett Burkett & Burkett			DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	21,249.00
01/22/2021	Check	6017	Austen & Gowder, LLC			DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	2,835.00
02/19/2021	Check	6021	Austen & Gowder, LLC			DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	2,835.00
03/08/2021	Check	6026	Mike Rose Law Firm, PC			DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	3,138.33
03/26/2021	Check	6033	Austen & Gowder, LLC			DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	4,620.00
03/26/2021	Check	6038	Burkett Burkett & Burkett			DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	12,958.00
04/19/2021	Check	6048	Austen & Gowder, LLC			DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	8,855.00
04/19/2021	Check	6046	Mike Rose Law Firm, PC			DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	1,645.00
05/07/2021	Check	6057	Burkett Burkett & Burkett			DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	4,425.00
05/25/2021	Check	6059	Austen & Gowder, LLC			DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	7,810.95
06/10/2021	Check	6067	Mike Rose Law Firm, PC			DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	11,163.72

06/10/2021	Check	6068	Burkett Burkett & Burkett	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	1,113.50
06/18/2021	Check	6072	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	14,883.30
06/25/2021	Check	6075	Burkett Burkett & Burkett	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	12,578.50
07/27/2021	Check	6086	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	4,730.30
08/10/2021	Check	6089	Mike Rose Law Firm, PC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	3,809.28
08/26/2021	Check	6095	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	11,946.34
09/08/2021	Check	6102	Mike Rose Law Firm, PC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	904.16
09/27/2021	Check	6103	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	3,713.79
10/05/2021	Check	6105	Mike Rose Law Firm, PC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	2,059.16
10/05/2021	Check	6108	Burkett Burkett & Burkett	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	13,297.00
10/21/2021	Check	6111	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	3,360.00
11/12/2021	Check	6118	Burkett Burkett & Burkett	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	14,081.00
11/30/2021	Check	6121	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	6,703.30
12/09/2021	Check	6122	Mike Rose Law Firm, PC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	4,228.95
12/22/2021	Check	6125	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	13,030.03
12/22/2021	Check	6126	Burkett Burkett & Burkett	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	1,700.12
01/26/2022	Check	6130	Mike Rose Law Firm, PC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	5,350.33
01/26/2022	Check	6131	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	12,585.80
02/25/2022	Check	6136	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	4,663.60
03/17/2022	Check	31722	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	15,000.00
03/28/2022	Check	6146	Mike Rose Law Firm, PC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	8,994.87
03/28/2022	Check	6147	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	13,195.00
04/26/2022	Check	6159	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	14,764.40
05/06/2022	Check	6160	Mike Rose Law Firm, PC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	3,838.36
05/13/2022	Check	51422	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	17,729.94
05/18/2022	Check	6164	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	2,940.00
06/06/2022	Check	6170	Mike Rose Law Firm, PC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	2,974.98
06/27/2022	Check	6177	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	26,180.00
06/27/2022	Check	6178	Mike Rose Law Firm, PC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	1,758.06
07/18/2022	Check	6182	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	3,611.17
08/11/2022	Check	6190	Burkett Burkett & Burkett	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	1,446.00
08/22/2022	Check	6195	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	1,610.00
09/26/2022	Check	6205	Austen & Gowder, LLC	DEDUCTIBLE EXP:OTHER:Legal Fees:150 Bee Street	Cash:US Bank x1222	385.00
Total for 150 Bee Street						**$ 1,707,725.42**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Bentley D. Price, Circuit Court Judge

Case No. 2024-000322

Thomas H. Morgan …….Respondent,

v.

John L. Gilbert, Stuart L. Fred, Bella Vista Partnership, A Texas General Partnership, Bomasada Group, Inc., A Texas Corporation, Bomasada Investment Group II, LLC, A Texas Limited Liability Company, Lauralis Management, Inc., A Texas Corporation, and 150 Bee Street, LLC, A South Carolina Limited Liability Company, ……Defendants,

Of which John L. Gilbert, Stuart L. Fred, Bella Vista Partnership, A Texas General Partnership, Bomasada Group, Inc., A Texas Corporation, Bomasada Investment Group II, LLC, A Texas Limited Liability Company, and Lauralis Management, Inc., A Texas Corporation are the …….Appellants.

CERTIFICATE OF COUSNEL

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

Respectfully submitted,

s/Henry E. Grimball
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[Except 150 Bee Street, LLC]

Charleston, South Carolina
August 23, 2024

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Bentley D. Price, Circuit Court Judge

Case No. 2024-000322

Thomas H. Morgan …….Respondent,

v.

John L. Gilbert, Stuart L. Fred, Bella Vista Partnership, A Texas General Partnership, Bomasada Group, Inc., A Texas Corporation, Bomasada Investment Group II, LLC, A Texas Limited Liability Company, Lauralis Management, Inc., A Texas Corporation, and 150 Bee Street, LLC, A South Carolina Limited Liability Company, Defendants,

Of which John L. Gilbert, Stuart L. Fred, Bella Vista Partnership, A Texas General Partnership, Bomasada Group, Inc., A Texas Corporation, Bomasada Investment Group II, LLC, A Texas Limited Liability Company, and Lauralis Management, Inc., A Texas Corporation are the Appellants.

PROOF OF SERVICE

I do hereby certify that on the 23rd day of August 2024, I served a copy of the within ***Record on Appeal*** on all counsel of record addressed as follows:

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s/Henry E. Grimball

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[Except 150 Bee Street, LLC]

Charleston, South Carolina
August 23, 2024

reduced by any withholding made pursuant to this Section 5.03 with respect to such Member during or with respect to such Fiscal Year.

5.04 Liability of Managing Members. Upon the determination in good faith to pay and distribute Available Cash in the manner herein provided, the Managing Members shall incur no liability on account of such distribution, even though such distribution may result in the Company retaining insufficient funds for the operation of its business, which insufficiency results in loss to the Company or the borrowing of funds by the Company.

ARTICLE VI
MANAGEMENT

6.01 Managing Members. The assets, affairs and operations of the Company shall be managed by one or more Managing Members. The number of Managing Members shall be established by Majority Consent of the Members. There shall initially be two Managing Members who shall be as follows: Stuart L. Fred (as a representative of Bella Vista Partnership) and Neal I. Baker. The Managing Members shall appoint officers for the Company and such officers shall exercise such powers and perform such duties as are prescribed by the Managing Members. Any number of offices may be held by the same person, as the Managers, may determine. All actions to be taken by the Managing Members on behalf of the Company shall be determined by Majority Consent among the Managing Members; provided, from time to time the Managing Members may designate in writing one or more Managing Members to be primarily responsible for certain aspects of the Company's business. Each Managing Member so designated shall keep the other Managing Member(s) apprised of his or her actions taken with regard to the Company. A Managing Member may resign as a Managing Member at any time by giving written notice thereof to all of the other Members at least 10 days prior to the effective date of such resignation. A Managing Member may be removed as a Managing Member at any time by Majority Consent (excluding for such purpose any Company Interests held by the Managing Member or its Affiliates), and shall automatically be removed (without any further action of the Members) as a Managing Member upon the occurrence of an Event of Dissociation (as defined in Section 12.02 hereof) to such Managing Member. In the event of the resignation or removal of a Managing Member at a time when he or she is the only Managing Member, the remaining Members shall elect one or more Members by Majority Consent to replace such Managing Member. The Members may elect a Managing Member at any time by Majority Consent. Notwithstanding the above, at all times while Bella Vista Partnership or any of its Affiliates is a Member of the Company, Stuart L. Fred (as the representative of Bella Vista Partnership) shall be one of the Managing Members (or in the event of his death or disability, John L. Gilbert shall serve in such capacity) and at all times while either Neal Baker or Tom Morgan is a Member, Neal Baker shall be one of the Managing Members (or in the event of his death or disability, Tom Morgan shall serve in such capacity).

The Managing Members shall be responsible for preparing a budget for the Project, which budget is attached hereto as Exhibit B (the "Budget"). The Managing Members shall track the Project's performance against the Budget and shall distribute to the Members monthly financial

reports of the Project's performance in relation to the Budget. The Managing Members shall also be responsible for all sales and marketing efforts regarding the Project.

6.02 Powers of Managing Members. Subject to the limitations set forth in this Agreement, the Managing Members shall have full, exclusive and complete discretion in the management and control of the Company and shall make all decisions affecting its business and affairs. By way of illustration, but not in limitation of the foregoing, the Managing Members shall have the power and authority, on behalf of the Company:

(a) To execute all agreements and other documents necessary to implement the purposes of the Company, and to take such actions as may be necessary to consummate the transactions contemplated thereby;

(b) To collect and enforce the collection of all rentals, leases and other monies due the Company;

(c) To hire, supervise and terminate on behalf of the Company all independent contractors and employees, including attorneys, accountants and other professionals, but all such independent contractors and employees shall be independent contractors and employees of the Company and not of the Members;

(d) To incur obligations in the ordinary course of business;

(e) To draw, make, accept, endorse, sign and deliver any notes, drafts or other negotiable instruments or commercial paper;

(f) To purchase liability and other insurance to protect the Company's property and business;

(g) To hold and own any Company real and/or personal properties in the name of the Company;

(h) To establish, maintain and draw upon checking, savings and other accounts in the name of the Company in such bank or banks as the Members may from time to time select;

(i) To compromise any claim or liability due to the Company;

(j) To execute, acknowledge, verify and file any notifications, applications, statements and other filings that the Managing Members consider necessary or desirable to be filed with any state or federal securities administrator or commission;

(k) To make any tax elections to be made by the Company;

(l) To invest funds of the Company;

(m) To execute, acknowledge, verify and deliver any and all instruments that the Managing Members consider necessary or desirable to effectuate any of the foregoing;

(n) To do any or all of the foregoing, discretionary or otherwise, through agents selected by the Managing Members and compensated or uncompensated by the Company; and

(o) To do any or all of the foregoing upon such other terms and conditions as the Managing Members, in their sole discretion, determine to be necessary, desirable or appropriate.

6.03 Limitations on Authority. Section 6.02 notwithstanding, the following actions shall not be taken on behalf of the Company without Majority Consent of the Members:

(a) the purchase of any real property, the sale, assignment, transfer, exchange or other disposition of any real property owned by the Company;

(b) borrowing money on behalf of the Company or refinancing any Company indebtedness;

(c) granting a security interest in, or otherwise encumbering or conveying as security, all or any of the assets of the Company;

(d) making, executing or delivering on behalf of the Company an assignment for the benefit of creditors;

(e) obligating the Company as a surety, guarantor or accommodation party to any obligation;

(f) lending Company funds;

(g) taking any legal action other than in the ordinary course of business, or the confession of any judgment on behalf of the Company or the filing of consent or acquiescence to any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy laws or any similar federal or state laws;

(h) other than as set forth in Section 6.04, entering into any arrangement with a Member or an Affiliate of a Member for the performance of services or the purchase of goods or property or the leasing of the same;

(i) deviating from the Budget in a net amount greater than fifty thousand and no/100 dollars ($50,000).

(j) adopting capital, operating and other budgets, and establishing the Company's working capital reserve;

(k) any sale of assets of the Company having a value in excess of $_____, other than in the ordinary course of the Company's business;

(l) approving any loan or other arrangement by which the Company will borrow funds for working capital; and

(m) approving any bank, savings and loan or other financial institution into which the funds of the Company will be deposited, as well as any investments to be made by the Company.

Notwithstanding the above, twelve (12) months from the time that the Project receives a Certificate of Occupancy from the City of Charleston, a Majority Consent of the Company may elect either to sell the Project or to convert the Project from a for sale horizontal property regime to apartments for lease.

6.04 Related Party Transactions.

(a) The Company shall enter into the Development Agreement attached hereto as Exhibit C.

(b) Nothing contained in this Agreement shall be deemed to restrict in any way the rights of any Manager, Member or any director, officer, shareholder or Affiliate of any Manager or Member, to engage in, or to conduct any other activity or trade or business, independently or with others, including, without limitation, the ownership, operation and management, of other real estate ventures, whether or not any such activity, trade or business is adverse to, competes with or is complementary with, the business of the Company or the other Member, and neither the Company nor any other Member shall have any rights in or to any such trade or business or activity or the income or profits derived therefrom. The Members: (i) acknowledge that each of the Members, their Affiliates and other related Persons, and their respective clients are currently involved in other real estate development and investment ventures and activities in the immediate vicinity of the Property and may be involved in others in the future; and (ii) agree that each of the Members and their Affiliates and other related Persons, may engage for their own accounts and for the accounts of others in any such ventures and activities (without regard to whether the interests of such ventures and activities conflict with those of the Company). Neither the Company nor any Member shall have any right by virtue of this Agreement or the existence of the Company in and to such aforementioned ventures or activities or to the income or profits derived therefrom; and no Member, his Affiliates and other related Persons, and their respective clients shall have any duty or obligation to make any reports to the Member or the Company with respect to any such aforementioned ventures or activities.

ARTICLE VII
OBLIGATIONS AND RIGHTS OF MEMBERS

7.01 No Liability for Company Obligations. No Member, including Managing Members, shall be personally liable for any debts, obligations or liabilities of the Company solely by reason of being a Member or Managing Member, except as provided by law.

7.02 Right to Distributions. No Member shall have any right to demand and receive any property other than cash from the Company and, prior to the dissolution and liquidation of the Company pursuant to Articles XII and XIII hereof, each Member's right to distribution of cash shall be limited to the rights set forth in Article V hereof.

ARTICLE VIII
INDEMNIFICATION OF MEMBERS

8.01 Indemnification.

(a) No Member shall have any liability to the Company or to any Member for any mistakes or errors in judgment or for any act or omission reasonably believed by such Member to be within the scope of the authority conferred upon him or her by this Agreement, but will have liability only for acts or omissions involving his or her intentional misconduct or knowing violation of law, or any transaction in which he or she received a personal benefit in violation or breach of this Agreement. The Company, to the extent of its assets, shall indemnify, defend and hold each of the Members harmless from, against and in respect of any liabilities, damages, losses, costs or expenses (including attorneys' and accountants' fees) incurred by them as a result of any act or omission with respect to which the Members are protected under the provisions of this Article VIII. The doing of any act or the failure to do any act by a Member, the effect of which causes loss or damage to the Company, if done pursuant to advice of independent legal counsel retained by the Company, will be conclusively presumed not to constitute intentional misconduct or a knowing violation of law on the part of such Member, unless such advice was induced by such Member's intentional misconduct or knowing violation of law.

(b) It is currently contemplated the Company will obtain construction financing from Southwest Bank of Texas, N.A. The Members agree to guarantee and provide any other credit enhancements which may be required by such financing. The principals of Bella Vista Partnership being Stuart L. Fred and John L. Gilbert (the "Principals"), shall provide such guarantee on behalf of Bella Vista Partnership . To the extent feasible, all such guarantees or other credit enhancements shall be provided each Member, and with respect to Bella Vista Partnership, the Principals, in proportion to their Company Interests; otherwise the Members and the Principals hereby agree that in the event that any Member or any Principal, is called upon to fund in excess of their pro rata share (based upon Company Interests) of any amounts to be funded under a guaranty, then, upon request of such funding party, the non funding party(ies) shall promptly reimburse the party that funded the excess amount so that the amounts funded by

each Member (or in the case of Bella Vista Partnership the Principals) constitutes their pro rata share (based upon Company Interests) of the total amounts funded under such guaranty. The Members and the Principals hereby promise to pay to each other any amounts payable pursuant to this paragraph within ten (10) business days following written demand therefore accompanied by an invoice itemizing the sums due. All sums payable hereunder shall bear interest on the unpaid balance thereof from the date when due until paid at the interest rate specified in the construction financing.

ARTICLE IX
COMPENSATION AND REIMBURSEMENT

9.01 Managing Member Compensation. The Managing Members shall only be entitled to such compensation for their services to the Company as shall be determined by unanimous agreement of the Members.

9.02 Reimbursement. All costs and expenses incurred by a Member or Affiliate in connection with the formation and organization of the Company shall be reimbursed or paid by the Company. Other costs and expenses reasonably incurred by a Member on behalf of the Company or otherwise in connection with the Company's business shall be reimbursed or paid by the Company.

ARTICLE X
ACCOUNTING, BOOKS AND RECORDS

10.01 Accounting Method. The Company shall maintain its books and records on such basis of accounting, as the Managing Members shall determine.

10.02 Books and Records. The Managing Members shall keep, or cause to be kept, at Company expense, full, complete and accurate books of account and other records showing the assets, liabilities, costs, expenditures, receipts and such other matters. Such books and records shall be the property of the Company, shall be kept in accordance with sound accounting principles and procedures consistently applied and shall be open to the reasonable inspection and examination by the Members and their duly authorized representatives. Such books of account shall be maintained at the principal office of the Company, or at such other place as the Members may determine by Majority Consent.

10.03 Financial Statements. As soon as practicable after the end of each Fiscal Year of the Company (but in no event later than the 90th day of the immediately following Fiscal Year), the Managing Members shall cause to be prepared and delivered to each Member unaudited financial statements of the Company for such Fiscal Year.

10.04 Tax Returns. The Managing Members shall cause the Company's tax returns and other governmental returns and reports to be prepared and timely filed. The Managing Members shall deliver copies of Schedule K-1 of Form 1065 (or a comparable schedule) and other

necessary tax information for each Fiscal Year to each Member as soon as practicable after the end of each Fiscal Year, but in no event later than the 90th day of the immediately following Fiscal Year.

10.05 Tax Matters Partner. John L. Gilbert is hereby designated the Tax Matters Partner of the Company, as provided in Treasury Regulations pursuant to Code Section 6231. The provisions on limitations of liability of the Members and indemnification set forth in Section 8.01 hereof shall be fully applicable to the Tax Matters Partner in his capacity as such. The Tax Matters Partner may resign at any time by giving written notice to the Company and each of the other Members. The Tax Matters Partner may be removed from such position by Majority Consent. Upon the resignation or removal of the Tax Matters Partner, a new Tax Matters Partner shall be elected by Majority Consent. The Tax Matters Partner shall take such action as may be necessary to cause to the extent possible each other Member to become a "notice partner" within the meaning of Section 6223 of the Code. The Tax Matters Partner shall promptly inform each other Member of all significant matters that may come to its attention in its capacity as Tax Matters Partner by giving notice thereof on or before the fifth Business Day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity. The Tax Matters Partner shall not make any election on behalf of the Company or enter into any extension of the period of limitations for making assessments on behalf of the Members without first obtaining the consent of all Members. The Tax Matters Partner shall not bind any Member to a settlement agreement without obtaining the consent of such Member. Any Member that enters into a settlement agreement with respect to any Company item (within the meaning of Code Section 6231(a)(3)) shall notify the other Members of such settlement agreement and its terms within 10 days from the date of the settlement. Each Member shall reflect on his or her individual income tax return all items of income, gain, loss, deduction, or credit relating to the Company, its property, or its business in a manner that is consistent with the treatment of such items on the Company returns.

ARTICLE XI
TRANSFER AND ASSIGNMENT OF INTERESTS

11.01 General Prohibition. Except as provided in Section 11.02, no Member may assign, convey, sell, transfer, liquidate, encumber, or in any way alienate (collectively, a "Transfer"), all or any part of his or her Company Interest without the prior consent of all Members. If a Member's Interest is Transferred pursuant to the terms of this Agreement, the transferee shall, upon compliance with the provisions of Section 11.03, succeed to the transferred Interest of the transferor Member and all rights, duties and obligations under this Agreement and the Act with respect to such transferred Interest. Any attempted Transfer of all or any portion of a Member's Interest without the necessary consent, or as otherwise permitted hereunder, shall be null and void and shall have no effect whatsoever.

11.02 Permitted Transfers. A Member may at any time, without the consent of any other Member, Transfer all or any part of his or her Interest to one or more of its, his or her Family Members or to another Member (a "Permitted Conveyance"); provided, that following any such Permitted Conveyance such transferee and such conveyed Interest shall continue to be

subject to the transfer restrictions set forth in this Article XI, and provided further, a transferee Family Member who is not already a Member shall not become a substituted Member until the provisions of Section 11.03 have been complied with.

11.03 Conditions of Transfer and Assignment. No transferee of the Interest of a Member shall become a substituted Member until all the Members consent in writing thereto and the following conditions have been satisfied:

(a) the transferor Member, his legal representative or authorized agent must have executed a written instrument of transfer of such Interest in form and substance satisfactory to the Managing Members;

(b) the transferee must have executed a written agreement, in form and substance satisfactory to the Managing Members, to assume all of the duties and obligations of the transferor Member under this Agreement and to be bound by and subject to all of the terms and conditions of this Agreement;

(c) the transferor Member, his legal representative or authorized agent, and the transferee must have executed a written agreement, in form and substance satisfactory to the Managing Members, to indemnify and hold the Company and the Members harmless from and against any loss or liability arising out of the transfer;

(d) the transferee must have executed such documents and instruments as the Managing Members may deem necessary to effect the admission of the transferee as a Member; and

(e) unless waived by the Managing Members, the transferee or the transferor must have paid the expenses incurred by the Company in connection with the admission of the transferee to the Company.

A permitted transferee who does not become a substituted Member shall be an assignee of the transferor and shall be entitled to receive only that portion of the distributions and allocations to which his transferor would otherwise be entitled with respect to the Transferred Interest; such transferee shall not be entitled to vote on any question regarding the Company; and the Transferred Interest shall not be considered to be outstanding for voting purposes; provided, however, if the Transfer is to a Family Member of the transferor and the transferor owns an Interest after the Transfer, then the Transferred Interest shall be considered to be owned by the transferor for voting purposes until the transferee becomes a substituted Member.

11.04 Additional Members. With the consent of all the Members, one or more Persons may be admitted as additional Members by issuance by the Company of Interests on such terms and conditions as all of the other Members agree upon.

11.05 Withdrawal. No Member may withdraw from the Company as a Member prior to the date specified in the Articles of Organization for dissolution of the Company.

ARTICLE XII
DISSOLUTION

12.01 Events of Dissolution.

(a) The Company shall be dissolved upon the first to occur of any of the following events:

(i) the expiration of the term of the Company as defined in Section 2.04 hereof; or

(ii) the written consent of all the Members; or

(iii) upon the written request of any Member in the event of the sale of all or substantially all of the Company's assets.

(b) If the business of the Company is continued after the occurrence of an Event of Dissociation pursuant to this Section any successor-in-interest of the Member to whom the Event of Dissociation occurred shall become an assignee of such Member but shall not be admitted as a substituted Member except in accordance with Section 11.03 hereof.

(c) Except as expressly permitted in this Agreement, a Member shall not voluntarily resign or take any other voluntary action that directly causes an Event of Dissociation under the Act. Except as otherwise expressly provided herein, a Resigning Member shall not be entitled to participate in the management or affairs of the Company or to vote on any questions regarding the Company, and his or her Interest shall not be considered to be outstanding for voting purposes. Damages for breach of this Section shall be monetary damages only (and not specific performance), and such damages may be offset against distributions by the Company to which the Withdrawing Member would otherwise be entitled.

ARTICLE XIII
DISTRIBUTION UPON DISSOLUTION

13.01 Liquidation. Upon dissolution of the Company for any reason, the Company shall promptly commence to wind-up its affairs. A reasonable period of time shall be allowed for the orderly termination of the Company's business, the discharge of its liabilities and the distribution or liquidation of its remaining assets so as to enable the Company to minimize the normal losses attendant to the liquidation process. A full accounting of the assets and liabilities of the Company as of the date of dissolution shall be taken and a written statement thereof will be furnished to each Member within sixty (60) days after such date. Such accounting and statement shall be prepared under the direction of the Managing Members or, if there are no Managing Members or if such liquidation is the result of the disassociation of the Managing Member or the breach of any provision of this Agreement by a Managing Member, by a liquidating trustee

selected by Majority Consent. The Company's property and assets and/or the proceeds from the liquidation thereof shall be applied in the following order of priority:

(a) Payment of the debts and liabilities of the Company, in the order of priority provided by law (excluding any loans by Members or their Affiliates), and payment of the expenses of liquidation;

(b) Payment of all loans made by Members or their Affiliates to the Company, plus any accrued but unpaid interest thereon; provided, that in the event the Company's funds are insufficient to fully satisfy all such loans, then all loans made by Members or their Affiliates shall be repaid on a pro rata basis;

(c) Setting up of such reserves as the Managing Members or liquidating trustee deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company or any obligation or liability not then due and payable; provided, any balance of such reserve, at the expiration of such period as the Managing Members or liquidating trustee shall deem advisable, shall be distributed in the manner herein provided; and

(d) Distribution to the Members, on a pro rata basis, of the positive balances of their Capital Accounts, adjusted to the date of distribution to take into account the allocations resulting from all aspects of the liquidation.

13.02 Distributions in Kind. Any non-cash asset to be distributed in kind (as a liquidating distribution or otherwise) to one or more Members shall first be valued at its fair market value to determine the gain or loss that would have resulted if such asset was sold for such value, and such gain or loss shall then be allocated among the Members pursuant to Article IV hereof. The Managing Members or liquidating trustee, as the case may be, shall determine the fair market value of such asset.

13.03 No Action for Dissolution. The Members acknowledge that irreparable damage would be done to the goodwill and reputation of the Company if any Member should bring an action in court to dissolve the Company. This Agreement has been drawn carefully to provide fair treatment of all parties and equitable payments in liquidation of the Interests of all Members. Accordingly, each Member hereby waives and renounces his right to initiate legal action to seek dissolution, or to seek the appointment of a receiver or trustee to liquidate the Company.

13.04 No Further Claim. Upon dissolution, each Member shall look solely to the assets of the Company for the return of his or her investment, and if the Company property remaining after payment or discharge of the debts and liabilities of the Company, including debts and liabilities owed to one or more of the Members, is insufficient to return the aggregate capital contributions of each Member, such Members shall have no recourse against any other Member.

ARTICLE XIV
MISCELLANEOUS

14.01 Amendments. This Agreement may be amended only by a written instrument signed by all of the Members.

14.02 Additional Documents. At any time and from time to time after the date of this Agreement, upon the reasonable request of a Member, the other Members shall do and perform, or cause to be done and performed, all such additional acts and deeds, and shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all such additional instruments and documents, as are reasonably required to best effectuate the purposes and intent of this Agreement.

14.03 Notices. Any notices or other communications required or permitted by this Agreement shall be in writing and shall be deemed to have been duly given and delivered when delivered in person, when sent via electronic mail ("email") to the recipient at its respective email address set forth in Exhibit A, when sent via overnight courier to the recipient at its respective address set forth in Exhibit A, or when mailed postage prepaid, by certified or registered mail with return receipt requested, to the recipient at its respective address set forth in Exhibit A. The Company and any Member may change his, her or its physical address or email address by giving notice to the Company and the other Members in accordance with this Section 14.03.

14.04 Applicable Law. This Agreement shall be governed by, construed under, and enforced and interpreted in accordance with the laws of the State of South Carolina.

14.05 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior understanding or agreement among them respecting the subject matter hereof. There are no representations, arrangements, understandings or agreements, oral or written, among the parties hereto relating to the subject matter of this Agreement, except those fully expressed herein. No waiver of any provision hereof shall be valid or binding on the parties hereto, unless such waiver is in writing and signed by or on behalf of the parties hereto, and no waiver on one occasion shall be deemed to be a waiver of the same or any other provision hereof in the future.

14.06 Severability. . If any term or provision of this Agreement is held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of the remainder of this Agreement.

14.07 Successors. Subject to the provisions hereof imposing limitations and conditions upon the transfer, sale or other disposition of Company Interests, of the provisions hereof shall inure to the benefit of and be binding upon the successors, legal representatives and assigns of the parties hereto.

14.08 Counterparts. This Agreement may be executed in counterparts, each of which shall for all purposes be deemed an original, and all of such counterparts will together constitute one and the same agreement.

14.09 Headings. Section and other headings contained in this Agreement are for reference purposes only and are in no way intended to define, interpret, describe or limit the scope, extent or intent of this Agreement or any provision hereof.

14.10 Company Property. The title to all real or personal property (or interests therein) now or hereafter acquired by the Company shall be held by and vested in the Company, and not by or in any Member, individually.

14.11 Meetings of Members; Voting. On any matter described in this Agreement with respect to which any Member is entitled to grant (or deny) his or her consent or cast his or her vote, such Member may accomplish the same by attending any meeting convened for the Members entitled to vote on the matter or he or she may grant to any person a proxy to vote for him or her at such meeting or he or she may grant (or deny) his or her consent in writing. Any Member may waive notice of a meeting, in writing, before, at or after the meeting. The attendance of a Member at a meeting of the Members shall constitute a waiver of notice of such meeting, except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not properly called or convened. Members may participate in a meeting of the Members by means of conference telephone or similar communications equipment through which all persons participating in the meeting can communicate with each other at all times, and such participation in a meeting shall constitute presence in person at such meeting. The Managing Members may in their discretion convene a meeting for any purpose, and the Managing Members shall call a meeting of the Members upon the written request of Members owning at least 51% of the Interests owned by all Members. Written notice of each meeting of the Members shall be given not less than five (5) days prior to the meeting. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by the necessary Members entitled to vote and required to approve such action. If action is taken pursuant to the preceding sentence by less than all of the Members entitled to vote thereon, the Managing Members shall give all Members who did not participate in taking the action written notice of such action.

14.12 Gender and Number. Where the context requires, the use of a pronoun of one gender is to be deemed to include a pronoun of the appropriate gender or the neuter, and singular words are to be deemed to include the plural and vice versa.

14.13 Securities Representations. Each Member hereby represents and warrants to, and agrees with, the other Members and the Company, as follows:

(a) That he or she is acquiring his or her Company Interest with the intent of holding the same for investment for his or her own account and without the intent or a view to participating directly or indirectly in, or for resale in connection with, any distribution of such Interest within the meaning of the Securities Act of 1933, as amended (the "Federal Act"), or any applicable state securities laws or regulations.

(b) That he or she acknowledges and agrees that the Company Interests are being issued and sold in reliance upon the exemptions from registration set forth in Section 4(2) of the Federal Act and Section 35-1-20 of the South Carolina Uniform Securities Act and that they cannot and will not be offered for sale, pledged, hypothecated, sold or transferred except in compliance with the terms and conditions of this Agreement and in a transaction which is either exempt from registration under such acts or pursuant to an effective registration statement under such acts.

14.14 Mediation and Arbitration.

(a) Mediation. All of the Members expressly agree that they shall seek mediation as their preferred method of handling claims, disputes or other matters in question that may arise between them. The mediation process may be initiated by the Company or any Member at such times as the parties have been unable to reach a mutually agreed upon resolution to a problem within a reasonable period of time, and at such time as it appears that such a resolution is not likely to be attainable.

(b) Arbitration. Any issues that remain unresolved following such mediation shall be submitted to binding arbitration pursuant to the Uniform Arbitration Act (S. C. Code Section 15-48-10 et. seq.) and, to the extent that the Act may be supplemented by agreement, the arbitration rules of the National Lawyers Association Alternative Dispute Resolution Service or a comparable nationally recognized dispute resolution body that is agreed upon by the parties, shall apply. Arbitration shall take place in Charleston County, South Carolina. Each of the parties shall use all reasonable efforts to insure that any arbitration proceeding is completed with in sixty (60) days following notice of a request for arbitration hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on March ___, 2005, effective as of March ____, 2005.

WITNESSES:

MEMBERS:

Neal I. Baker

Thomas H. Morgan

Edwin S. Pearlstine, Jr.

BELLA VISTA PARTNERSHIP,
a Texas general partnership

By: _____
John L. Gilbert
Managing Partner

AS TO SECTION 8.02(B):

Stuart L. Fred

John L. Gilbert

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on March 4, 2005, effective as of March ____, 2005.

WITNESSES:

MEMBERS:

Neal I. Baker

Thomas H. Morgan

Edwin S. Pearlstine, Jr.

BELLA VISTA PARTNERSHIP,
a Texas general partnership

By: _____
John L. Gilbert
Managing Partner

AS TO SECTION 8.02(B):

Stuart L. Fred

John L. Gilbert

EXHIBIT A

EXHIBIT A
MEMBER NAMES, ADDRESSES FOR NOTICE CONTRIBUTIONS
AND COMPANY INTERESTS

[Adjust these numbers]

Member	Initial Capital Contribution	Company Interest
Neal I. Baker P.O. Box 1870 Charleston, SC 29402	$334,801.85	26.67%
Bella Vista Partnership 8980 Lakes at 610 Drive Suite 200 Houston, Texas 77054	$334,801.86	26.67%
Thomas H. Morgan Morgan Energy Company 1999 Broadway, Suite 2450 Denver, CO 80202	$334,792.29	26.66%
Edwin S. Pearlstine, Jr. Pearlstine Properties, LLC 5900 Core Road, Suite 5300 North Charleston, SC 29406	$251,099.00	20.00%

EXHIBIT B
[BUDGET]

BELLA VISTA

DEVELOPMENT BUDGET

COST ITEM	BUDGET
Land	$4,325,000
Hard Costs - GC contract	$25,000,000
Architects	$450,000
Engineers	$250,000
Fees (Tap/Impact/Permit)	$300,000
Title Policy	$60,000
Clubhouse & Model Furnish	$247,000
Building Signage	$60,000
Brochures & Marketing	$350,000
AECC	$35,000
Appraisal	$15,000
Southwest Bank Loan Fee	$243,789
Soft Cost Contingency	$350,000
Legal / Accounting	$195,000
Developer Fee	$750,000
Developer Overhead	$304,000
Interim Property Operations	$300,000
Interest Reserve	$1,865,211
Total	$35,100,000

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EXHIBIT A

CLAWSON AND STAUBES LLC

G. P. Diminich
gdiminich@clawsonandstaubes.com
LL.M. in Taxation
Certified Specialist in Taxation Law
Certified Specialist in Estate Planning & Probate Law
SC Certified Circuit Court Mediator

November 16, 2011

File No.: 2011-0182 cs

Henry E. Grimball, Esquire
Womble Carlyle Sandridge & Rice, PLLC
5 Exchange Street
Charleston, SC 29401

RE: 150 Bee Street, LLC/Thomas H. Morgan's Demand to Commence an Action Pursuant to South Carolina Ann. Section 33-44-1101.

Dear Henry:

As Chris Staubes mentioned earlier, Thomas H. Morgan is prepared to file a civil action against John L. Gilbert, Stuart L. Fred, Bella Vista Partnership, a Texas Partnership, Bomasada Group, Inc., a Texas Corporation, Bomasada Investment Group II, LLC, a Texas Limited Liability Company and Lauralis Management, Inc., a Texas Corporation.

Pursuant to South Carolina Code Ann. Section 33-44-1101, Thomas H. Morgan makes a demand on Stuart L. Fred, as Co-Manager of 150 Bee Street, LLC, to consent to and commence an action on behalf of 150 Bee Street, LLC against various parties. These parties shall include, but not be limited to, John L. Gilbert, Stuart L. Fred, Bella Vista Partnership, a Texas Partnership, Bomasada Group, Inc., a Texas Corporation, Bomasada Investment Group II, LLC, a Texas Limited Liability Company, and Lauralis Management, Inc., a Texas Corporation for various causes of action against these parties, including, but not limited to, Arbitration, Breach of Fiduciary Duty, Civil Conspiracy, Conversion, Breach of Contract, Declaratory Judgment, Accounting, Unfair Trade Practices Act violations, Dissolution, and any other relevant or applicable causes of action.

Unless Stuart L. Fred shall consent to this action by **Friday, November 25, 2011**, it shall be deemed that Stuart L. Fred shall have refused to commence the action under South Carolina Code Ann. Section 33-44-1101, and Mr. Thomas H. Morgan shall therefore be entitled to bring a derivative action on behalf of 150 Bee Street, LLC against the aforementioned parties.

EXHIBIT B

With every best wish, we remain

Sincerely yours,

CLAWSON & STAUBES, LLC

G.P. Diminich

cc: Thomas Morgan

EXHIBIT B

CLAWSON STAUBES LLC

G. P. Diminich
gdiminich@clawsonandstaubes.com
LL.M. in Taxation
Certified Specialist in Taxation Law
Certified Specialist in Estate Planning & Probate Law
SC Certified Circuit Court Mediator

November 28, 2011

File No.: 2011-0182 cs

Henry E. Grimball, Esquire
Womble Carlyle Sandridge & Rice, PLLC
5 Exchange Street
Charleston, SC 29401

RE: 150 Bee Street, LLC/Thomas H. Morgan's Second Demand to Commence an Action Pursuant to South Carolina Ann. Section 33-44-1101.

Dear Henry:

In light of the failure of Thomas H. Morgan's repeated attempts to settle this matter amicably and our letter dated November 16, 2011, which has received no response, I wanted to reiterate Mr. Morgan's demand. As Chris Staubes mentioned earlier, Thomas H. Morgan is prepared to file a civil action against John L. Gilbert, Stuart L. Fred, Bella Vista Partnership, a Texas Partnership, Bomasada Group, Inc., a Texas Corporation, Bomasada Investment Group II, LLC, a Texas Limited Liability Company and Lauralis Management, Inc., a Texas Corporation.

Pursuant to South Carolina Code Ann. Section 33-44-1101, Thomas H. Morgan makes a second demand on Stuart L. Fred, as Co-Manager of 150 Bee Street, LLC, to consent to and commence an action on behalf of 150 Bee Street, LLC against various parties, and to put the action to a vote of all the Members. These parties shall include, but not be limited to, John L. Gilbert, Stuart L. Fred, Bella Vista Partnership, a Texas Partnership, Bomasada Group, Inc., a Texas Corporation, Bomasada Investment Group II, LLC, a Texas Limited Liability Company, and Lauralis Management, Inc., a Texas Corporation for various causes of action against these parties, including, but not limited to, Arbitration, Breach of Fiduciary Duty, Civil Conspiracy, Conversion, Breach of Contract, Declaratory Judgment, Accounting, Unfair Trade Practices Act violations, Dissolution, and any other relevant or applicable causes of action.

Unless Stuart L. Fred shall consent and put this aforementioned action to a vote of all the Members by **Friday, December 2, 2011**, it shall be deemed that Stuart L. Fred shall have refused to commence this action on behalf of 150 Bee Street, LLC under South Carolina Code Ann. Section 33-44-1101, and Mr. Thomas H. Morgan shall therefore be entitled to bring a derivative action on behalf of 150 Bee Street, LLC against the aforementioned parties.

EXHIBIT C

With every best wish, we remain

Sincerely yours,

CLAWSON & STAUBES, LLC

G.P. Diminich

cc: Thomas Morgan

EXHIBIT C