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Apr 30 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

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.

RESPONDENT’S REBUTIAL BRIEF IN SUPPORT OF MOTION TO LIFT STAY

**Procedural Compliance Under Rule 241(d)(7)**

The Appellants incorrectly assert that Respondent’s motion to lift the stay is procedurally barred under Rule 241(d)(7), SCACR. Appellants argue that Respondent should have immediately sought appellate review of the Circuit Court's initial stay decision dated May 8, 2024, and further contend that Respondent failed to timely or properly seek review of the Court's subsequent order

dated March 12, 2025. Both arguments reflect a fundamental misunderstanding of Rule 241 and its appropriate application.

First, Rule 241(d)(2) states: “After the lower court or administrative tribunal has ruled, any party may petition the appellate court where the appeal is pending for review of this order. An individual judge or justice may grant or deny the relief on a temporary basis, and refer the matter to the full appellate court to hear and determine the matter, or he or she may issue a final order. Upon the issuance of a final order by an individual judge or justice, an aggrieved party may petition the full appellate court for review of that decision.”

Then, Rule 241(d)(7) provides: "Any party aggrieved by the decision of the lower court, the administrative tribunal, or an individual judge or justice may petition under this Rule for a review of that decision."

Importantly, Rule 241(d) imposes no requirement or explicit timeline mandating immediate appeal or review of an initial stay decision to preserve future rights as circumstances evolve. A stay pending appeal inherently remains modifiable, reflecting changes in facts or conditions. The rule does not create a permanent procedural barrier following an initial grant of stay.

Respondent acted correctly and within the procedural framework established by Rule 241(d). Upon observing significant deterioration in Appellants' financial condition and "The Liam" project's leasing performance, Respondent petitioned the lower court on December 10, 2024, to lift the stay or require adequate security. Following the Circuit Court's denial on March 12, 2025, Respondent timely filed the current petition for review within 30 days, aligning prudently with analogous appellate timing requirements under Rule 203(b)(1), SCACR.

Respondent's petition, filed on April 11, 2025, appropriately sought review of the Circuit Court's most recent denial. Contrary to Appellants' assertions, Respondent had no obligation to challenge the initial stay immediately upon issuance in 2024. When deteriorating conditions warranted it, Respondent correctly sought relief initially in the trial court, as mandated by Rule 241(d)(1), and subsequently petitioned this appellate court pursuant to Rule 241(d)(2) and (7).

### **Submission of Verified Petition**

Respondent acknowledges Rule 241(d)(3)'s verification requirement by submitting the verified petition concurrently with this brief. Respondent's oversight in not initially including the verification was inadvertent, causing no delay or prejudice to Appellants or the Court. Respondent respectfully requests that the Court accept this verification, remedying any procedural defect.

### **Expert Qualifications Clarified**

Regarding Appellants' challenge to Respondent's qualifications, Respondent emphasizes that the information presented is derived from objective sources, including market reports, public records, and straightforward arithmetic—none of which inherently requires specialized expert certification. Respondent's assertions—that occupancy at approximately 16% coupled with significant negative equity evidences severe financial distress—require no specialized real estate credentials. Importantly, Appellants have offered no countervailing expert analysis or contradictory evidence.

Moreover, Appellants misleadingly portray Respondent's qualifications, ignoring Respondent's extensive real estate experience. Appellants compelled Respondent during discovery to produce detailed documentation of nearly fifty years of substantial real estate development experience spanning multiple states and diverse markets. This comprehensive real estate history, attached to Respondent's

supplemental affidavit and incorporated herein by reference, clearly demonstrates Respondent's extensive relevant expertise. Appellants' omission of these critical facts, despite full awareness, misrepresents Respondent's credentials.

### **Unrebutted Evidence of Risk**

Appellants notably failed to address critical factual allegations concerning "The Liam" project's declining financial condition and their worsening financial stability. Appellants' silence constitutes tacit admission, highlighting the real and substantial risk to Respondent's judgment. The purpose of a supersedeas bond—to protect judgment creditors from precisely this risk—underscores the inequity and peril in continuing an unsecured stay given Appellants' evident financial instability.

### **Significant New Developments**

Crucially, since the Circuit Court's denial on March 12, 2025, two significant developments materially alter this case's landscape:

- The South Carolina Court of Appeals has affirmed the arbitration award in Respondent's favor, solidifying Respondent's judgment's validity.
- Contradicting their prior assurances to the Circuit Court of expediting appellate proceedings, Appellants have now filed a Petition for Rehearing, clearly signaling their intent to further delay resolution. These contradictory actions underscore Appellants' tactical manipulation, significantly heightening the risk to Respondent. Such extraordinary circumstances clearly justify lifting or conditioning the stay under Rule 241(d).

### **Supplemental Factual Affidavit**

Respondent is concurrently submitting a supplemental affidavit detailing the progressive deterioration of the Huntsville apartment market and "The Liam" project's increasingly severe leasing incentives required to achieve minimal occupancy. This affidavit specifically chronicles:

- September 2024: Initial offering of one-month free rent, attracting virtually no tenants.
- Late Fall/Winter 2024–2025: Incentives increased to eight weeks free rent, again yielding minimal leasing.
- Late March 2025: Further escalation to twelve weeks free rent plus additional monetary incentives, resulting only in modest occupancy gains (~16%), far below sustainable operational levels.

These undisputed facts directly rebut Appellants' claims of no significant developments since the initial stay grant, compelling the Court to lift or condition the stay to protect Respondent's affirmed judgment from irreparable harm.

### **Conclusion**

Respondent seeks solely to protect his affirmed judgment from substantial and demonstrated risk, which is now compounded by Appellants' recent actions and deteriorating financial circumstances. Maintaining an unsecured stay under these extraordinary conditions is inequitable and contrary to the protective intent of Rule 241.

Respectfully Submitted,

**AUSTEN & GOWDER, LLC**

/s/ W. Andrew Gowder, Jr.  
W. Andrew Gowder, Jr.  
1629 Meeting Street, Suite A  
Charleston, SC 29405  
(843) 727-0060  
[andy@austengowder.com](mailto:andy@austengowder.com)

*COUNSEL FOR RESPONDENT*

April 30, 2025  
Charleston, South Carolina

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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.

RESPONDENT’S VERIFICATION FOR THE INITIAL MOTION TO LIFT STAY

Respondent, sworn, verifies the Motion to Lift Stay is truthful to the best of his information and knowledge.

  
Thomas H. Morgan

Subscribed and sworn to before me  
this 30 day of April, 2025

s/ Alex Galdamez   
Notary Public, State of Florida  
My commission expires: March 24, 2028



Alex Galdamez  
Comm.: HH 506385  
Expires: Mar. 24, 2028  
Notary Public - State of Florida



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SUPPLEMENTAL AFFIDAVIT OF THOMAS H. MORGAN IN SUPPORT OF MOTION TO  
LIFT STAY

PERSONALLY appeared before me, the undersigned officer duly authorized by law to  
administer oaths, THOMAS H. MORGAN, who, after being duly sworn, deposes and says as  
follows:

## **INTRODUCTION**

1. My name is Thomas H. Morgan. I am the Respondent in the above-captioned matter. I provide this supplemental affidavit to clarify and expand on several critical issues pertinent to my pending motion to lift the stay.

## **REAL ESTATE QUALIFICATIONS**

2. I possess over 50 years of extensive experience in real estate development, ownership, and management. This experience encompasses numerous significant and successful real estate projects across various markets and states. My detailed real estate history, previously provided in response to Appellants' interrogatories, is attached hereto as **Exhibit A**. The Appellants' assertions implying that I lack real estate qualifications are misleading and inaccurate. The Appellants are fully aware of my extensive background.
3. The Appellants' claim that my analysis lacks credibility because I am not a licensed appraiser is also misleading. I have never claimed to be an appraiser, nor does evaluating the economic viability of a real estate investment require such licensure. Notably, John Gilbert, presented as a credible real estate expert by the Appellants, possesses only a bachelor's degree in biology and similarly lacks formal appraisal qualifications.
4. My evaluation of "The Liam" project relies on straightforward market data, public records, and basic arithmetic—methods commonly utilized in real estate investment and development and which do not require formal appraisal certification.

## **DETERIORATION OF THE HUNTSVILLE MARKET**

5. Since the Circuit Court issued the initial stay in May 2024, the Huntsville apartment market has continued to significantly deteriorate. Effective rents and occupancy rates have

consistently declined, as documented in the RealPage market report for Q2 2024 (**Exhibit B**), [Apartments.com](#) leasing information for "The Liam" project (**Exhibits C, D, E**), and the latest RealPage quarterly rent data (**Exhibit F**). As of March 30, 2025, occupancy in Huntsville stands at 88%, reflecting a substantial decline from the previous year. Effective rents also continue to drop significantly, as evidenced by recent market data summarized in **Exhibit G**. This recent information directly contradicts opposing counsel's characterization of my evidence as "old data," clearly representing substantial new evidence.

### **SPECIFIC CONDITIONS AT "THE LIAM" PROJECT**

6. The progressive deterioration at "The Liam" is clearly evident:
  - o September 2024: Initial incentive offering of one month of free rent attracted virtually no tenants (**Exhibit C**).
  - o October 2024: Incentives increased to eight weeks of free rent, still failing to generate meaningful leasing activity (**Exhibit D**).
  - o Currently: Offering twelve weeks of free rent plus additional monetary incentives, achieving only approximately 16% occupancy—critically below sustainable operational thresholds (**Exhibit E**).
7. The escalation of incentives from one month to twelve weeks of free rent, accompanied by persistently low occupancy rates, unmistakably indicates "The Liam's" dire financial condition. These extreme incentives severely erode revenue potential and significantly elevate financial risk for all stakeholders dependent on this project's viability.

### **TACIT ADMISSION BY APPELLANTS**

8. Appellants' failure to respond to or refute these substantial risks and documented market deterioration effectively amounts to tacit admission of the validity of my concerns regarding the deteriorating financial stability and value of their primary real estate asset.

### **NEW DEVELOPMENTS SINCE MARCH 12, 2025**

9. Two crucial developments since the Circuit Court's denial on March 12, 2025, substantially alter the current circumstances:
  - o The South Carolina Court of Appeals affirmed my arbitration award. (**Exhibit H**).
  - o Appellants subsequently filed a Petition for Rehearing (**Exhibit I**), directly contradicting prior representations made to the Circuit Court about expediting the appellate process (**Exhibit J**). This reveals Appellants' intent to prolong litigation, increasing the risk of asset dissipation and impeding collection efforts.

### **CONCLUSION**

10. Given these extraordinary developments and the continued deterioration of Appellants' financial position, maintaining an unsecured stay significantly jeopardizes my affirmed judgment. Equity strongly favors lifting the stay to allow me to protect my legitimate interests effectively.

Further affiant sayeth not.

Thomas H. Morgan  
Thomas H. Morgan

SWORN before me this 29 day of April, 2025

Jerry Johnson  
s/ Jerry Johnson

Notary Public for the State of Florida.

My Commission Expires: 4-10-2028,



Jerry Johnson L  
Comm.: HH 513829  
Expires: Apr. 10, 2028  
Notary Public - State of Florida

# EXHIBIT A

During the late 1970's and through the early 1980's Morgan purchased and renovated over 35 properties in the Metro Denver area. These ranged from single family homes up to small multifamily properties in older neighborhoods. The lenders on each property are unknown at this time but were commercial banks such as United Bank of Denver, which is now part of Wells Fargo. Morgan did not retain documentation from 40 years ago. Morgan believes that he made a profit on every project.

Sometime in the 1980's Morgan purchased a large strip shopping center in Pueblo, Colorado called the Midtown Center which he renovated and sold for a large profit using investor funding. No records are available, but the profit is believed to have been in the \$2-5 Million range. The size of the center was around 200,000 square feet. Morgan does not recall the lender. Morgan did not retain any records on this transaction from almost 40 years ago.

Morgan purchased a strip center in Aurora, Colorado sometime in the mid to late 1980's called the Sixth Avenue Car Care Center with partner David Richardson. The address is 15551 E 6th Ave #10, Aurora, CO 80011. No records have been retained on this project. There was a large amount of vacancy when Morgan purchased the center, and he leased it up and sold it a number of years later for a large profit. No records are currently in the possession of Morgan for this property.

In 1991, Morgan purchased the Gateway Place Apartments, a 210-unit apartment complex in Greeley, Colorado for \$6 million. The address is 3750 W. 24<sup>th</sup> Street Greeley, Colorado 80634.

Morgan's entity THM Properties Inc., which is 100% owned by Morgan, is the managing general partner. Morgan through several entities owns a 58.333% interest in the property. Two investors, the Schneider Family and the Wolf Family own the remaining 41.67%.

Financing for the purchase was provided through Fannie Mae. Morgan and investors put up \$1,200,000 in equity. The property has been refinanced several times over the past 30 years of ownership; the most recent in 2019 through Fannie Mae. Morgan is currently overseeing a \$3,500,000 renovation of this property. The renovation is 85% complete.

The property was appraised on May 28, 2019 for \$40,700,000.

Morgan has been the General Partner, supervising the property manager of this property for almost 30 years. Morgan is currently distributing around \$100,000 per month to himself and his investor group from the project.

The unrealized gain based on the recent appraised value, and considering the cost of the recent renovation, is \$31,200,000. Morgan's portion of the unrealized gain for this project is \$19,200,000.

See appraisal information below:



## Apartment Appraisers & Consultants

900 East Louisiana Avenue, Suite 110 • Denver, Colorado 80210 • Tel 303.722.4222 • Fax 303.744.3759  
www.ApartmentAppraisers.com

May 28, 2019

Mr. David W. Gallanis  
Managing Director, Senior Underwriter  
ORIX Real Estate Capital, LLC  
10 W. Broad Street, 8th Floor  
Columbus, OH 43215

Re: Gateway Place Apartments  
3750 W. 24th Street  
Greeley, Colorado 80634  
Our File No. 219027

Dear Mr. Gallanis:

At your request, we have completed an appraisal of the real property named above. The purpose of this appraisal assignment was to estimate the market value of the fee simple interest in the property. The market value estimate is subject to the Assumptions and Limiting Conditions described in the accompanying Appraisal Report. You should not rely on this report unless you accept these conditions. The appraisal analyses, opinions, and conclusions were developed, and this appraisal report has been prepared in conformance with ORIX Real Estate Capital, LLC's instructions for real estate appraisers, Fannie Mae DUS guidelines, FIRREA Title XI, the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by The Appraisal Foundation, and with the requirements of the State of Colorado for State Certified Appraisers.

This Appraisal Report contains a total of 140 pages and Exhibits A through E. All pertinent data we have gathered and our methods of estimating value are summarized in the report.

This appraisal assignment did not require a minimum valuation or a specific valuation. We certify that we have no present or contemplated future interest in the property beyond this estimate of value. While this appraisal estimates value, it does not guarantee the value, or warrant that the property can be sold at the estimated value. The appraisers have performed no services, as appraisers or in any other capacity, regarding the property that is the subject of this report within the 3-year period immediately preceding acceptance of this assignment.

This appraisal is not an engineering or physical needs inspection report, and cannot be relied upon to determine the physical condition of the property components. Our assessment of the condition of the property is restricted by the scope of our work, which included only a visual inspection of selected portions of the property, and by the appraisers' limited knowledge of engineering systems. A property condition assessment by a licensed engineer is recommended to precisely identify any potential deferred maintenance. Per Fannie Mae DUS Guidelines, no

adjustment has been made to our value estimate for deferred maintenance since funds for correcting these items will be escrowed. Our value estimate assumes that deferred maintenance has been cured.

The intended use of this appraisal is for new loan underwriting purposes. No other use is intended or permitted. This appraisal may not be used or relied upon by anyone other than the client and others involved with underwriting the new loan, for any purpose whatsoever, without the express written consent of the appraiser.

In our opinion, the market values of the subject property are as follows:

<b>CONCLUSIONS OF MARKET VALUE</b>		
<b><u>Appraisal Premise</u></b>	<b><u>Date of Value</u></b>	<b><u>Value Conclusion</u></b>
"As Is" Market Value	April 15, 2019	\$38,400,000
Current Value As If Renovated/Stabilized	April 15, 2019	\$40,700,000

The total value estimates include personal property with an estimated value of approximately \$443,000. The Insurable Replacement Cost is estimated to be \$25,500,000. It was reported to us that the cost of renovation materials stored on the site is \$47,787, which appears reasonable based on the number of units currently being renovated.

The "As Is" Value includes a total deduction of \$2,300,000 for renovation work not yet performed, excess vacancy prior to completion of the renovations, and minor rent losses from non-renovated units being leased at lower rents. The values As If Renovated and As If Stabilized are the same because they would differ only by minor vacancy losses from the final renovated units before they were absorbed, which would not be significant enough to change the rounded conclusion.

The reasonable exposure time and marketing period are each estimated at approximately 6 months. Please refer to the end of the report for further information.

Respectfully submitted,  
**Apartment Appraisers & Consultants, Inc.**

**DRAFT**

Cary W. Bruteig, MAI  
Colorado State Certified General Appraiser  
License No. CG001313164

**DRAFT**

Stephen W. Cole, MAI  
Colorado State Certified General Appraiser  
License No. CG001313502

In 1993, Morgan and the investors in Gateway Place, purchased approximately 7 acres contiguous to Gateway Place Apartments at a cost of \$70,000. When Morgan purchased the property there a natural gas well in the middle of the property. With a gas well on the property, the site could not be developed according to city of Greeley zoning laws. Gateway Apartments used the property for additional parking and a dog park for Gateway Place 210 units. The gas well was plugged several years ago, and the property became developable.

Currently, Morgan is building an additional 144 units on the 7-acre site called Gateway Place Phase II. The Project is currently budgeted to cost approximately \$35,000,000. Wells Fargo provided Gateway Place Phase II a \$21,800,000 construction loan at an interest rate of one-month LIBOR plus 2.00%.

Construction commenced in September 2019 and is projected to take 16 months to complete. ARCO Murray is the design-build contractor for the Project. THM Properties Inc. is the developer.



In the early 1990's an entity owned 100% by Morgan acted as co-general partner for the purchase of 816 apartment units in Colorado Springs, Colorado which his investor group purchased for around \$17 million. Equity raised was around \$5 million, with Morgan being the largest equity owner in the group. The properties were the Dove Tree, Lark Haven and Tanager Meadows Apartments.

In 2007 the group received an offer to purchase the properties and they were sold for \$46,250,000 to Maxim Real Estate Investments, a profit of almost \$30 Million dollars for Morgan and his investors. Neal and Elizabeth Baker were investors in this project.

In the mid 1990's Morgan acted as co-general partner on four additional projects with the same co-general partners as in the Dove Tree properties in Colorado Springs, the Sevo-Miller Group. Neal Baker and Elizabeth Baker were investors in all four properties.

The four apartment complexes that were purchased using funds from Morgan and his investor group were:

Woodhill Apartments  
240 Garden Style Units  
Fort Worth Texas

Galleria Apartments  
250 Garden Style Units  
Tulsa, Oklahoma

Gleneagles Apartments  
424 Garden Style Units  
Tulsa, Oklahoma

Park Westwood Apartments  
126 Garden Style Unit  
Houston, Texas

Sevo-Miller maintained the records for all of these projects, and Morgan is not in possession of the actual costs and sales numbers.

All projects were sold at a large profit, totaling millions of dollars.

Starting in 1991 Morgan began designing and building super luxury multimillion-dollar homes on the oceanfront and bayfront in Newport Beach and Laguna Beach, California. On most projects, Morgan partnered with well-known local developers. He built homes in the subdivisions of Irvine Cove, Balboa Island, Lido Island, Balboa Peninsula Point, and other high-end residential neighborhoods.

In all, Morgan was involved in over 15 developments of single-family luxury homes in Southern California. Profits ranged in the mid to high six figures for the smaller homes. For the medium size homes on more expensive lots, profits ranged in the \$1-2 million-dollar range per home. On the larger homes on bigger lots, profits were up to \$4 million per home. Morgan is not in possession of any records for these developments, as all of them have been sold, the last one in 2001. Neal Baker was an investor with Morgan on many of these properties.

On February 1, 1999 Morgan purchased a home on the water in Miami Beach on Sunset Island for \$1,900,000. The address was 1525 N. View Drive. The architect was Chris Craven. Morgan

spent approximately \$300,000 renovating the property and sold it on February 1, 2000 for \$4,200,000 without ever listing the property for sale, a profit of \$2,000,000. Morgan has retained no records from this property. Morgan believe that either Bank of America or Wachovia financed the property. For confirmation of sale price contact the Miami Dade Property Appraiser.

On November 1, 2000, Morgan purchased a home with 400 feet of waterfront in Gables Estate subdivision of Coral Gables for \$5,200,000. Morgan then subdivided the property in half and made it two properties, 555 Arvida Parkway and 531 Arvida Parkway. The east half of the property 531 Arvida Parkway was a vacant lot with a tennis court. Morgan believes that either Bank of America or Wachovia financed this property. Morgan did not retain records for this property. Morgan then sold the vacant lot for \$3,900,000.

Morgan renovated the home on 550 Arvida Parkway for about \$300,000 and then sold the home for over \$6,000,000. Profit on the total transaction was \$4,400,000. Morgan allowed Neal Baker to participate in this development for a 25% interest. For confirmation of the sale price contact the Miami Dade Property Appraiser.

On July 1, 1998 Morgan purchased a one-acre lot on prestigious Star Island in Miami Beach, Florida for \$1,600,000 and then sold the property on February 1, 2000 undeveloped for \$3,450,000. Morgan's profit was \$1,850,000 less sales commissions. The address is 35 Star Island Drive, Miami Beach, Florida. For confirmation of the sale price contact the Miami Dade Property Appraiser.

On February 1, 2000 Morgan purchased another vacant lot on Star Island at a cost of \$3,700,000. The address was 13 Star Island Drive Miami Beach, Florida. Morgan designed and built a 15,000 square foot estate on the property. Chris Craven was the architect. A video of the estate is below:

<https://www.chriscraven.com?wix-vod-video-id=6a42e7fca76141a58eedf12d22efebc7&wix-vod-comp-id=comp-jziwxy6l>

Morgan spent approximately \$6 Million to construct the home. Bank America provided the financing. During the holding period Morgan occupied the home himself and at times also rented it out for short term and long-term occupancy.

Morgan marketed the property himself and it was sold on April 28, 2011 for a record price in Miami Beach, of \$25,500,000. The profit on this development was over \$15,800,000. For confirmation of the sale price contact the Miami Dade Property Appraiser.

On March 1, 2004 Morgan purchased a vacant lot on prestigious Indian Creek Island in Miami Beach for a price of \$7,666,666. Morgan marketed the property himself and resold the lot on July 1, 2005, after a 16-month holding period for \$11,400,000, a profit of \$3,733,334 less sales commissions. For confirmation of the sale price contact the Miami Dade Property Appraiser.

On February 2, 1998 Morgan and Baker formed an entity named BAMOZA LLC. Morgan and Baker each owned 25% of BAMOZA. ZAVAKOS Enterprises owned 50%. ZAVAKOS transferred 100% of the title to the East Cooper River Plaza Shopping Center into BAMOZA LLC. Morgan and Baker were the Managing Members of BAMOZA. Morgan and Baker paid \$1,213,000 for their 50% interest in BAMOZA. The property is a 103,000 square foot strip center in Mt. Pleasant, SC. Sometime after the death of Baker, Morgan and Baker's Trust, purchased the 50% owned by Zavakos, for \$7,000,000, an implied purchase price of \$14,000,000.

While Baker was alive, he managed the shopping center, and after his death Morgan took over. The estimated value of the center based on current rental income is approximately \$30,000,000. Morgan and the Estate of Neal Baker are currently in the design process with the City of Mt. Pleasant to add an additional 10,000 square foot out pad building in the front of the center on Hwy 17. The unrealized gain for Morgan and the Estate of Neal Baker is estimated at more than \$20,000,000 including the price paid for Zavakos 50% interest.

On September 1, 2000 Morgan purchased a 50% interest in Old Post Office LLC, that owned a building and vacant lot in downtown Miami, Florida. The purchase price for the 50% interest was \$1,650,000. Morgan allowed Baker to participate for 25% of Morgan's interest. The other 50% was owned by Scott Robbins a well-known Miami developer who was one of the first people to redevelop Ocean Drive, in Miami Beach.

Morgan and Robbins initially planned to convert the historical building on the site to condominiums. The building was the original Post Office for Miami built in the early 1900's. As the market for new condo construction boomed in Miami, Morgan and Robbins explored building a condo tower on the vacant parcel. They designed a 30-story condo tower for the site and entered into a letter of intent with one of the largest condo developers in the United States, to join venture the construction, the Related Group. As the condo market deteriorated in 2007, Morgan and Robbins decided not to go forward on the project. They leased out the building to the American Institute of Architects.

Upon the advice of Defendant Stuart Fred, Baker refused to pay a capital call from Morgan due to the LLC, and Baker gave back his interest to Morgan at no cost. Morgan and Robbins sold the property on June 11, 2014 at a price of \$11,000,000 and realized a capital gain of over \$7,000,000. Bank financing for the property during the holding period was provided by Wachovia Bank (Wells Fargo) and Citibank. For confirmation of the sale price contact the Miami Dade Property Appraiser and the news article below.

<https://therealdeal.com/miami/2019/10/28/developers-of-historic-downtown-miami-post-office-building-get-ok-to-open-multiple-bars/>

# EXHIBIT B



## MARKET PERFORMANCE SUMMARY

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Huntsville, AL  
*Second Quarter 2024*



## Apartment Performance

Effective rent increased 0.2% from \$1,171 in 1Q24 to \$1,172 in 2Q24, which resulted in an annual growth rate of -2.8%. Annual effective rent growth has averaged 2.9% since 2Q96.

The market's annual rent growth rate was below the national average of 0.2%. Out of the 150 markets ranked by RealPage nationally, Huntsville, AL was 126th for quarterly effective rent growth, and 128th for annual effective rent growth for 2Q24.

The market's occupancy rate increased from 93.6% in 1Q24 to 94.0% in 2Q24, but was down from 94.7% a year ago. The market's occupancy rate was below the national average of 94.4% in 2Q24. The market's occupancy rate has averaged 93.7% since 2Q96.

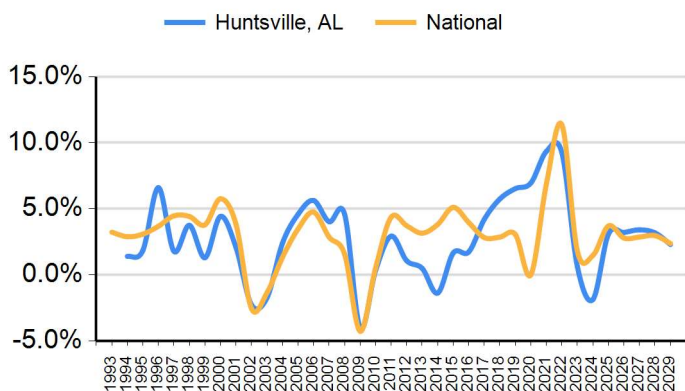
### Market Survey Results and Forecasts

	Sequential				Month	Annual						
	3Q23	4Q23	1Q24	2Q24	Jun-24	2022	2023	2024F	2025F	2026F	2027F	2028F
<b>Effective Rent Per Unit</b>	\$1,195	\$1,184	\$1,170	<b>\$1,172</b>	\$1,180	\$1,189	\$1,197	<b>\$1,174</b>	\$1,210	\$1,249	\$1,292	\$1,333
<i>Per Sq. Ft</i>	\$1.23	\$1.21	\$1.20	<b>\$1.20</b>	\$1.20	\$1.23	\$1.23	<b>\$1.20</b>	\$1.24	\$1.28	\$1.32	\$1.37
<i>Effective Rent Growth - Annually</i>	<b>-1.0%</b>	<b>-0.8%</b>	<b>-2.7%</b>	<b>-2.8%</b>	<b>-2.3%</b>	<b>5.5%</b>	<b>-0.8%</b>	<b>-0.3%</b>	<b>3.3%</b>	<b>3.6%</b>	<b>3.4%</b>	<b>3.1%</b>
<i>Effective Rent Growth - Quarterly</i>	-0.9%	-0.8%	-1.2%	<b>0.2%</b>								
<b>Occupancy Rate</b>	<b>94.5%</b>	<b>94.2%</b>	<b>93.6%</b>	<b>94.0%</b>	<b>93.8%</b>	<b>95.5%</b>	<b>94.3%</b>	<b>94.1%</b>	<b>93.4%</b>	<b>93.2%</b>	<b>93.1%</b>	<b>93.0%</b>
<i>Occupancy Change - Annually</i>	<b>-0.5%</b>	<b>-0.2%</b>	<b>-0.5%</b>	<b>-0.5%</b>	<b>-0.5%</b>	<b>-2.8%</b>	<b>-0.2%</b>	<b>-0.2%</b>	<b>-0.9%</b>	<b>-0.3%</b>	<b>0.0%</b>	<b>0.0%</b>
<i>Occupancy Change - Quarterly</i>	0.2%	-0.4%	-0.7%	<b>0.4%</b>								
<b>Economic Concessions</b>												
<i>Concession Value</i>	<b>\$58.00</b>	<b>\$62.00</b>	<b>\$70.00</b>	<b>\$87.00</b>	<b>\$144.00</b>	<b>\$43.50</b>	<b>\$60.00</b>					
<i>As a % of Asking Rent</i>	4.8%	5.1%	5.8%	<b>7.3%</b>	11.9%	3.7%	5.0%					

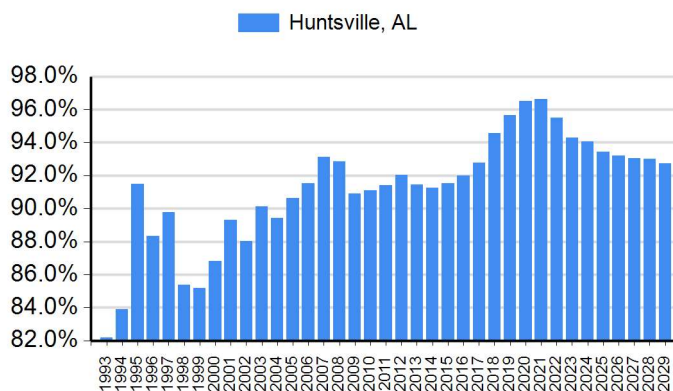
### Market Rank

2Q24	Market	National	Rank	2Q24 Annual Results						
<b>Effective Rent Per Unit</b>	<b>\$1,172</b>	<b>\$1,829</b>	<b>128</b>	<b>By Bedroom Type</b>	<b>%</b>	<b>Area</b>	<b>Occ</b>	<b>ERG</b>	<b>Erent</b>	<b>ERSF</b>
<i>Effective Rent Growth - Annually</i>	<b>-2.8%</b>	<b>0.2%</b>	<b>130</b>	Studio/One bedroom	42.0%	742	93.9%	-3.6%	\$1,021	\$1.38
<i>Effective Rent Growth - Quarterly</i>	<b>0.2%</b>	<b>1.1%</b>	<b>125</b>	Two bedroom	47.1%	1,082	94.1%	-2.3%	\$1,229	\$1.14
<b>Occupancy Rate</b>	<b>94.0%</b>	<b>94.3%</b>	<b>100</b>	Three + bedrooms	10.9%	1,365	93.9%	-2.4%	\$1,479	\$1.08
<i>Occupancy change - Annually</i>	<b>-0.4%</b>	<b>-0.4%</b>	<b>72</b>	<b>By Year Built</b>						
<i>Occupancy change - Quarterly</i>	<b>0.4%</b>	<b>0.1%</b>	<b>17</b>	<= 1980	10.4%	816	94.7%	4.1%	\$893	\$1.09
<b>Concession Value</b>	<b>\$87.00</b>	<b>\$88.00</b>	<b>43</b>	1981-1990	13.9%	871	96.3%	2.1%	\$986	\$1.13
<b>Build Average</b>	<b>2000</b>	<b>1995</b>	<b>41</b>	1991-2000	13.7%	1,039	94.0%	-3.2%	\$1,097	\$1.06
<i>*Ranking based on Top 150 Markets</i>				2001-2010	31.7%	1,006	93.8%	-2.0%	\$1,189	\$1.18
				2011-Current	30.4%	1,000	93.0%	-6.1%	\$1,359	\$1.36

#### Annual Effective Rent Growth



#### Annual Occupancy Rate



## Demand and Supply

According to the Bureau of Labor Statistics, job growth in Huntsville, AL was 2.4% in May 2024, reflecting 6,700 jobs added during a 12-month period. The metro job growth figure was above the national number of 1.8%.

RealPage forecasts Huntsville, AL's job growth to be 0.7% in 2025, with 2,105 jobs added. Job growth is expected to average 0.3% from 2026 to 2028, with an average of 735 jobs added each year.

On the supply side, permits for 1,128 multifamily units were issued in the 12 months ending in May 2024, down -810 units from the prior year's sum. In terms of total residential housing, 5,336 units were permitted in the 12 months ending May 2024, a decrease of -607 units from the prior year's total.

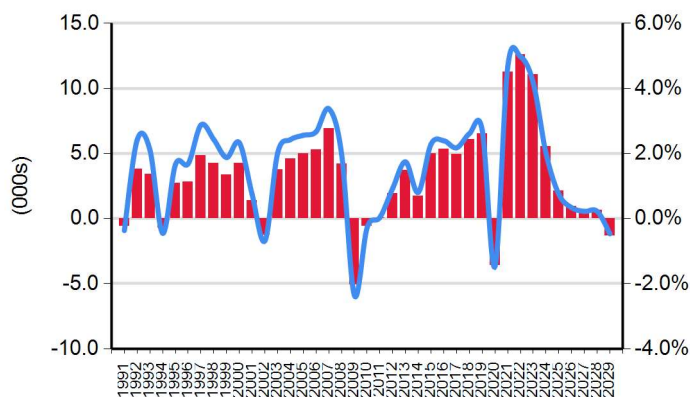
### Market Employment and Permitting

	Annual			May-24		Annual Forecast				
	2021	2022	2023	Market	National	2024F	2025F	2026F	2027F	2028F
<b>Employment (000s)</b>	252.9	265.4	276.5	<b>282.1</b>	<b>158,918.0</b>	282.0	284.1	285.1	285.7	286.4
Job Gain (000s)	11.2	12.6	11.1	<b>6.7</b>	<b>2,786.0</b>	5.5	2.1	0.9	0.6	0.6
Job Growth (%)	4.7%	5.0%	4.2%	<b>2.4%</b>	<b>1.8%</b>	2.0%	0.7%	0.3%	0.2%	0.2%
<b>Total Residential Permitting</b>	6,218	4,036	5,943	<b>4,719</b>	<b>1,054,105</b>	5,073	4,975	5,152	5,233	5,187
Relative Change	43.2%	-35.1%	47.2%	<b>4.6%</b>	<b>-1.1%</b>	-14.6%	-1.9%	3.6%	1.6%	-0.9%
Single Family Units Permitted	4,267	3,618	3,911	<b>3,746</b>	<b>669,459</b>					
Relative Change	1.3%	-15.2%	8.1%	<b>28.6%</b>	<b>18.8%</b>					
Multifamily Units Permitted	1,917	412	1,938	<b>959</b>	<b>352,160</b>					
Relative Change	2030.0%	-78.5%	370.4%	<b>-38.1%</b>	<b>-25.1%</b>					
Multifamily as a % of Total	30.8%	10.2%	32.6%	<b>20.3%</b>	<b>33.4%</b>					
<b>Demand/Supply Ratio</b>										
Job Gain / Total Residential Units Permitted	2.6	2.0	2.7	<b>1.5</b>	<b>2.6</b>	0.9	0.4	0.2	0.1	0.1
Job Gain / Single Family Units Permitted	2.7	2.9	3.1	<b>2.3</b>	<b>4.9</b>					
Job Gain / Multifamily Units Permitted	125.0	6.6	26.9	<b>4.3</b>	<b>5.9</b>					

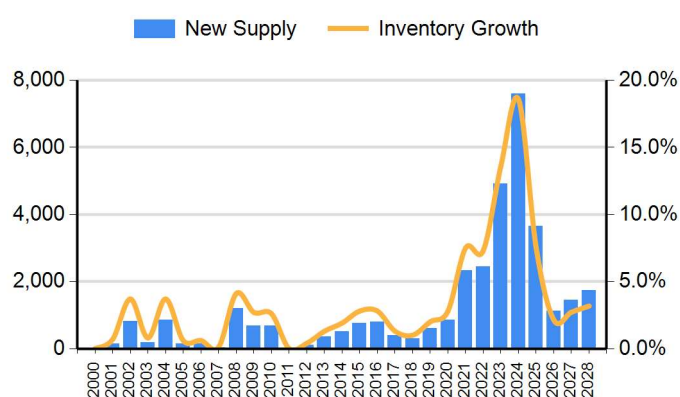
### Multifamily Absorption and Supply

	Annual			2Q24		Annual Forecast				
	2021	2022	2023	Market	National	2024F	2025F	2026F	2027F	2028F
<b>Total Units Absorbed</b>	2,246	1,292	4,491	<b>5,895</b>	<b>455,986</b>	6,773	3,305	878	1,291	1,614
<b>New Supply</b>	2,332	2,444	4,913	<b>6,408</b>	<b>531,458</b>	7,594	3,646	1,112	1,447	1,737
<b>Inventory Growth</b>	7.5%	7.3%	13.6%	<b>16.6%</b>	<b>2.8%</b>	18.6%	7.5%	2.1%	2.7%	3.2%

Annual Employment Growth



MF Supply and Inventory Growth



## Demand and Supply

Huntsville, AL's two largest job sectors are the Professional and Business Services sector (24.5% of employment), followed by the Government sector (20.5% of employment). The Professional and Business Services sector gained 2,200 jobs during the 12 months ending May 2024, constituting job growth of 3.3%. The Government sector grew 2,000 jobs during the same period; a 3.6% growth rate.

### Market Employment by Industry

Employment (000s)	Total Employment				Annual		Percent of		
	2021	2022	May23	May24	Absolute	%Change	Metro	US	LQ
<i>Mining, Logging, and/or Construction*</i>	10.5	10.7	10.1	10.7	0.60	5.9%	3.8%		
<i>Manufacturing</i>	29.3	32.4	34.6	35.6	1.00	2.9%	12.6%	8.1%	1.55
<i>Trade, Transportation, and Utilities</i>	35.7	39.0	39.7	39.3	(0.40)	-1.0%	13.9%	18.2%	0.77
<i>Information</i>	2.3	2.6	2.6	2.8	0.20	7.7%	1.0%	1.9%	0.53
<i>Financial Activities</i>	7.7	8.4	8.7	8.9	0.20	2.3%	3.2%	5.8%	0.54
<i>Professional and Business Services</i>	63.7	65.5	67.0	69.2	2.20	3.3%	24.5%	14.5%	1.70
<i>Education &amp; Health Services</i>	22.0	22.5	24.0	24.6	0.60	2.5%	8.7%	16.5%	0.53
<i>Leisure and Hospitality</i>	20.3	21.6	23.5	23.7	0.20	0.9%	8.4%	10.8%	0.78
<i>Other Services</i>	8.5	8.8	9.3	9.4	0.10	1.1%	3.3%	3.7%	0.89
<i>Government</i>	52.8	54.0	55.9	57.9	2.00	3.6%	20.5%	14.9%	1.38
<b>Nonfarm</b>	<b>252.9</b>	<b>265.4</b>	<b>275.4</b>	<b>282.1</b>	<b>6.70</b>	<b>2.4%</b>			

\* Employment may be duplicated due to BLS grouping

Huntsville, AL's 2021 population of 502,728 was an increase of 21,047, 4.4% from the previous year, above the national population change of 0.7%, according to the U.S. Census Bureau.

The median price for existing single family homes in Huntsville, AL was \$313,900 in 1Q24, according to the National Association of Realtors, 0.1% more than the previous year. According to the U.S. Department of Housing and Urban Development, the market's median family income was \$113,600, an increase of 5.0% from the prior year.

When combining median home price, median family income, interest rate, and the loan-to-price ratio into the housing affordability index, Huntsville, AL ranks as the 123rd most affordable single family market out of the 169 markets measured nationwide.

### Housing Affordability

	Annual			Population	Annual			
	2023	2024	1Q24		2018	2019	2020	2021
<i>Housing Affordability Index</i>	131		147	<b>Total Population (000s)</b>	463	472	482	503
<i>Median Existing Home Price (000s)</i>	\$333.5		\$313.9	<i>Relative Change</i>	1.6%	1.9%	2.1%	4.4%
<i>Relative Change</i>	-0.4%		0.1%	<i>Absolute Change</i>	7,289	8,643	9,857	21,047
<i>Median Family Income (HUD,000s)</i>	\$108.2		\$113.6	<i>US Relative Change</i>	0.5%	0.5%	0.4%	0.7%
<i>Relative Change</i>	16.7%		5.0%	<b>Metro &gt; US Ratio</b>	3.1	3.9	5.5	6.0
<i>Effective Mortgage Rate (%)</i>	6.7		6.7					
<i>Loan to Price Ratio</i>	80.0		80.0					

	2013			Population	Annual			
	Metro	US	Metro>US		2018	2019	2020	2021
<b>Total Household Income</b>	\$55,857	\$52,250	1.07	<b>Total Migration</b>	6,184	7,528	9,202	8,832
<i>Householder under 25 years</i>	\$16,860	\$25,391	0.66	<i>As % of pop growth</i>	84.8%	87.1%	93.4%	42.0%
<i>Householder 25 to 44 years</i>	\$53,011	\$56,987	0.93	<i>International Migration</i>	512	262	238	109
<i>Householder 45 to 64 years</i>	\$74,241	\$63,474	1.17	<i>% of change</i>	7.0%	3.0%	2.4%	0.5%
<i>Householder 65 years and older</i>	\$42,391	\$37,847	1.12	<i>Domestic Migration</i>	5,672	7,266	8,964	8,723
				<i>% of change</i>	77.8%	84.1%	90.9%	41.4%

## Glossary

### Concessions

Rent reductions, calculated by using a weighted average of concessions given for units in a particular property and then rolling that up to the submarket, market or national level.

*Note: Concessions are updated monthly.*

### Effective Rent

The price at which a unit is placed for rent after factoring in all concessions and discounts, calculated over the lease period. Same-store effective rents are used, and rent growth is calculated in three ways in this report:

1. Sequential Quarterly: Compares the most recent quarterly average to the one before.
2. Annual Monthly: Compares the most recent monthly rent level to the same period the year before.
3. Annual Full Year: Averages the annual rent growth rates for each quarter in the year.

*Note: Rents are updated monthly.*

### Housing Affordability Index (HAI)

The Housing Affordability Index (computed by RealPage) is a measure of whether a family in an MSA earning the median family income can qualify for a mortgage loan on a median-priced, existing single-family home. An HAI value of 100 means that a family with median income has exactly enough income to qualify for a mortgage on a median-priced home. An HAI of more than 100 means housing is more affordable.

*Note: The Housing Affordability Index is updated quarterly.*

### Occupancy Rate

How many property units are occupied (physical occupancy) expressed as a percentage of total inventory.

*Note: Occupancy rates are updated monthly.*

### Supply

#### Identified Supply:

The number of apartment units that RealPage' Pipeline team has identified for delivery. The units are strictly conventional, market-rate apartments that are planned, under construction or in lease-up. Included in the Pipeline Delivery Schedule on page 5.

*Note: Identified supply numbers are updated weekly.*

#### New Supply (Modeled):

The number of apartment units expected to come to market, calculated based on Census' multifamily units permitted (5+ units per building). Permitting numbers are lagged one year and multiplied by 85-90% to account for obsolescence, permit fallout and condos. Forecast new supply numbers are calculated through the use of economic indicators and RealPage' identified supply. New supply numbers are included in the Multifamily Absorption and Supply table on page 3.

*Note: New supply numbers are updated quarterly.*

*Data may be rolled up to a different frequency (monthly data converted into quarterly or annual, e.g.)*

Alabama / Madison County / Huntsville / Liam at Hays Farm



## Liam at Hays Farm



10012 Memorial Pky SW, Huntsville, AL 35803


Huntsville

★★★★★ (0 reviews) ▾

✓ Verified Listing

Monthly Rent <b>\$1,207 - \$2,699</b>	Bedrooms <b>1 - 3 bd</b>	Bathrooms <b>1 - 3.5 ba</b>	Square Feet <b>688 - 2,465 sq ft</b>
--	-----------------------------	--------------------------------	---


ON



**Move-in Special**  
One month FREE!

## Pricing & Floor Plans

**A -1x1**  
\$1,207 - \$1,307  
1 bed, 1 bath, 688 sq ft

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[Show Floor Plan Details ▾](#)

**3 Available Units**

Unit	Price	Sq Ft	Availability	
475	\$1,282	688	Now	▾
479	\$1,282	688	Now	▾
441	\$1,307	688	Dec. 6	▾

### D-1x1

\$1,262 – \$1,337

1 bed, 1 bath, 738 sq ft

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[Floor Plan](#)

[Show Floor Plan Details](#) ▼

#### 3 Available Units

Unit	Price	Sq Ft	Availability
<a href="#">478</a>	\$1,337	738	Now
<a href="#">477</a>	\$1,337	738	Now
<a href="#">377</a>	\$1,262	738	Nov. 8

### E- 1x1

\$1,318 – \$1,418

1 bed, 1 bath, 738 sq ft

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[Floor Plan](#)

[Show Floor Plan Details](#) ▼

#### 3 Available Units

Unit	Price	Sq Ft	Availability
<a href="#">163</a>	\$1,368	738	Now
<a href="#">366</a>	\$1,393	738	Now
<a href="#">164</a>	\$1,418	738	Now

### G-1x1

\$1,384 – \$1,484

1 bed, 1 bath, 758 sq ft

[Tour This Floor Plan](#) [Floor Plan](#)

[Show Floor Plan Details](#) ▼

### 3 Available Units

Unit	Price	Sq Ft	Availability
<a href="#">172</a>	\$1,434	758	Now <span>▼</span>
<a href="#">402</a>	\$1,459	758	Now <span>▼</span>
<a href="#">170</a>	\$1,484	758	Now <span>▼</span>

H-1x1

\$1,417 – \$1,492

1 bed, 1 bath, 830 sq ft

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### 3 Available Units

Unit	Price	Sq Ft	Availability
<a href="#">435</a>	\$1,417	830	Now <span>▼</span>
<a href="#">405</a>	\$1,492	830	Now <span>▼</span>
<a href="#">407</a>	\$1,492	830	Now <span>▼</span>

I-1x1

\$1,473 – \$1,573

1 bed, 1 bath, 830 sq ft

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### 3 Available Units

Unit	Price	Sq Ft	Availability
467	\$1,548	830	Now <span>▼</span>
469	\$1,548	830	Now <span>▼</span>
468	\$1,573	830	Now <span>▼</span>

### J-1x1

\$1,484

1 bed, 1 bath, 841 sq ft

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 [Floor Plan](#)

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### 2 Available Units

Unit	Price	Sq Ft	Availability
202	\$1,484	841	Now <span>▼</span>
272	\$1,484	841	Now <span>▼</span>

### K-1x1

\$1,517

1 bed, 1 bath, 870 sq ft

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 [Floor Plan](#)

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### 3 Available Units

Unit	Price	Sq Ft	Availability
------	-------	-------	--------------

322	\$1,517	870	Now	▼
118	\$1,517	870	Now	▼
422	\$1,517	870	Now	▼

### L-1x1

\$1,628

1 bed, 1 bath, 950 sq ft

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### 3 Available Units

Unit	Price	Sq Ft	Availability	
223	\$1,628	950	Now	▼
323	\$1,628	950	Now	▼
423	\$1,628	950	Now	▼

### F-1x1

\$1,329 – \$1,379

1 bed, 1 bath, 758 sq ft

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[Floor Plan](#)

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### 3 Available Units

Unit	Price	Sq Ft	Availability	
227	\$1,329	758	Nov. 1	▼
229	\$1,329	758	Nov. 1	▼

427

\$1,379

758

Nov. 1



### B- 1x1

\$1,279 – \$1,329

1 bed, 1 bath, 708 sq ft

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[Floor Plan](#)

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#### 3 Available Units

Unit	Price	Sq Ft	Availability
<a href="#">214</a>	\$1,279	708	Nov. 8
<a href="#">314</a>	\$1,279	708	Nov. 8
<a href="#">414</a>	\$1,329	708	Nov. 8

### C- 1x1

\$1,229 – \$1,279

1 bed, 1 bath, 709 sq ft

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[Floor Plan](#)

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#### 3 Available Units

Unit	Price	Sq Ft	Availability
<a href="#">246</a>	\$1,229	709	Jan. 10, 2025
<a href="#">346</a>	\$1,229	709	Jan. 10, 2025
<a href="#">446</a>	\$1,279	709	Jan. 10, 2025

### M- 2x2

\$1,721 - \$1,796

2 beds, 2 baths, 1,203 sq ft

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#### 3 Available Units

Unit	Price	Sq Ft	Availability
<a href="#">173</a>	\$1,771	1,203	Now <span>▼</span>
<a href="#">401</a>	\$1,796	1,203	Now <span>▼</span>
<a href="#">473</a>	\$1,796	1,203	Now <span>▼</span>

### N- 2x2

\$1,771 - \$1,896

2 beds, 2 baths, 1,203 sq ft

[Tour This Floor Plan](#) [Floor Plan](#)

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#### 3 Available Units

Unit	Price	Sq Ft	Availability
<a href="#">262</a>	\$1,846	1,203	Now <span>▼</span>
<a href="#">362</a>	\$1,846	1,203	Now <span>▼</span>
<a href="#">462</a>	\$1,896	1,203	Now <span>▼</span>

### O-2x2

\$1,825 - \$1,925

2 beds, 2 baths, 1,308 sq ft

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[Floor Plan](#)

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### 3 Available Units

Unit	Price	Sq Ft	Availability	
<a href="#">374</a>	\$1,825	1,308	Now	<span>▼</span>
<a href="#">476</a>	\$1,925	1,308	Now	<span>▼</span>
<a href="#">474</a>	\$1,925	1,308	Now	<span>▼</span>

P- 2x2

\$1,925 - \$1,975

2 beds, 2 baths, 1,426 sq ft

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### 3 Available Units

Unit	Price	Sq Ft	Availability	
<a href="#">403</a>	\$1,975	1,426	Now	<span>▼</span>
<a href="#">171</a>	\$1,975	1,426	Now	<span>▼</span>
<a href="#">471</a>	\$1,975	1,426	Now	<span>▼</span>

Q- 3x2

\$2,699

3 beds, 3.5 baths, 2,465 sq ft

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[Floor Plans](#)

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### 3 Available Units

Unit	Price	Sq Ft	Availability	
21	\$2,699	2,465	Now	▼
12	\$2,699	2,465	Oct. 1	▼
28	\$2,699	2,465	Oct. 1	▼

## About Liam at Hays Farm

Liam at Hays Farm is an upscale multifamily community that offers an extensive menu of the most coveted premium and resource-rich amenities to suit your every need. Each residence is designed with custom detail and tailored for your comfort. The fusion of modern design, location and technology make Liam the ideal destination to call home. Liam is situated in South Huntsville in the heart of the Hays Farm development, a community with a variety of homes, restaurants, shops, trails, water features and more. Liam is a perfect fit for this revitalized masterplan that is creating a place to live, work, and play that will leave a legacy for the city of Huntsville. Living at Liam offers an idyllic lifestyle with all the advantages of a vibrant dynamic address - where luxury is at your fingertips and the best of Huntsville is just outside your door.

Liam at Hays Farm is an apartment community managed by [Greystar](#), located in [Madison County](#) and the [35803](#) ZIP Code. This area is served by the [Huntsville City](#) attendance zone.

#### Unique Features

- Private resort-style pool with plush lounge seating
- Controlled access bike storage and repair room
- Ingoing/outgoing mail equipped with private package
- Pet Park and pet spa areas
- Climate-controlled corridors
- Lofty 9 and 10 foot ceilings in select units
- Spacious closets
- Fitness studio with stretch and sweat areas
- Private conference boardroom with Comcast hotspot
- Spa-like showers with custom showerheads
- Oversized windows with ample natural light
- Resident social room with TV's, catering kitchen,
- LED lighting in all units
- Zen courtyard with seating, chic fireside lounge area

#### Amenities

Controlled Access  
 Maintenance on site  
 24 Hour Access  
 Pet Play Area  
 Courtyard  
 Fitness Center  
 Spa  
 Pool  
 Playground  
 Private resort-style pool with plush lounge seating  
 Controlled access bike storage and repair room  
 Ingoing/outgoing mail equipped with private package  
 Pet Park and pet spa areas  
 Climate-controlled corridors  
 Lofty 9 and 10 foot ceilings in select units  
 Spacious closets  
 Fitness studio with stretch and sweat areas  
 Private conference boardroom with Comcast hotspot  
 Spa-like showers with custom showerheads  
 Oversized windows with ample natural light  
 Resident social room with TV's, catering kitchen,  
 LED lighting in all units  
 Zen courtyard with seating, chic fireside lounge area  
 Air Conditioning

- Heating
- Tub/Shower
- Kitchen
- Oven
- Refrigerator
- Freezer
- Balcony

Expenses

- Recurring**  
 Cat Rent \$25  
 Dog Rent \$25  
**One-Time**  
 Cat Fee \$350 - \$500  
 Dog Fee \$350 - \$500  
**Office Hours**

Monday	9am - 6pm
Tuesday	9am - 6pm
Wednesday	9am - 6pm
Thursday	9am - 6pm
Friday	9am - 6pm
Saturday	10am - 5pm
Sunday	1pm - 5pm

938-777-3732

# Education

Colleges & Universities	Distance
<a href="#">Univ. of Ala. Huntsville</a>	Drive: 16 min 8.9 mi
<a href="#">Calhoun C.C., Huntsville</a>	Drive: 17 min 9.0 mi
<a href="#">Alabama A&amp;M University</a>	Drive: 20 min 11.1 mi
<a href="#">Oakwood University</a>	Drive: 21 min 11.2 mi

Liam at Hays Farm is within 16 minutes or 8.9 miles from Univ. of Ala. Huntsville. It is also near Calhoun C.C., Huntsville and Alabama A&M University.

# Schools

Public Schools      Private Schools

**Roger B Chaffee Elementary School**  
 Public Elementary School  
 Grades PK-5  
 374 Students  
 Attendance Zone

**4**  
Out of 10

**Whitesburg Middle School**  
 Public Middle School  
 Grades 6-8  
 604 Students  
 Attendance Zone

**3**  
Out of 10

**Virgil Grissom High School**

Public High School

Grades 9-12  
1,902 Students

5

Out of 10

 Attendance Zone

School data provided by [GreatSchools](#) 

Car-Dependent

23

Walk Score® Out of 100

This area is considered a car-dependent area and most errands will require a car.

Minimal Transit

0

Transit Score® Out of 100

Somewhat Bikeable

36

Bike Score® Out of 100

You might be able to find places to ride your bike in this area, but you'll most likely want your car for most errands.

- -  
Soundscore™ Out of 100

Traffic: - Airport: - Businesses: -

Score provided by [Walk Score](#) 

[Report an Issue](#) / [Print](#) / [Get Directions](#)



**GREYSTAR**™

The Global Leader in Rental Housing



# EXHIBIT D

## Spacious Floor Plans



(256) 242-6234

CONTACT US

LEASE NOW

MENU

PRICE  
ANY

MOVE-IN DATE  
ANY

BEDROOMS  
ANY

FLOOR PLAN  
ANY

SQUARE FOOTAGE  
ANY

RESET

**PROJECT IN DEEP TROUBLE**

FLOOR  
UNITS

1 88 UNITS

2 67 UNITS

3 75 UNITS

4 68 UNITS

No leases signed in almost one month. 298 units still need to be leased.

SEARCH

SEARCH UNITS

**88 MATCHES**  
FLOOR 1

**UNIT 1** Q- 3X2  
3 Bed / 3.5 Bath / 2,465 sq. ft.  
\$3,200  
Available Now

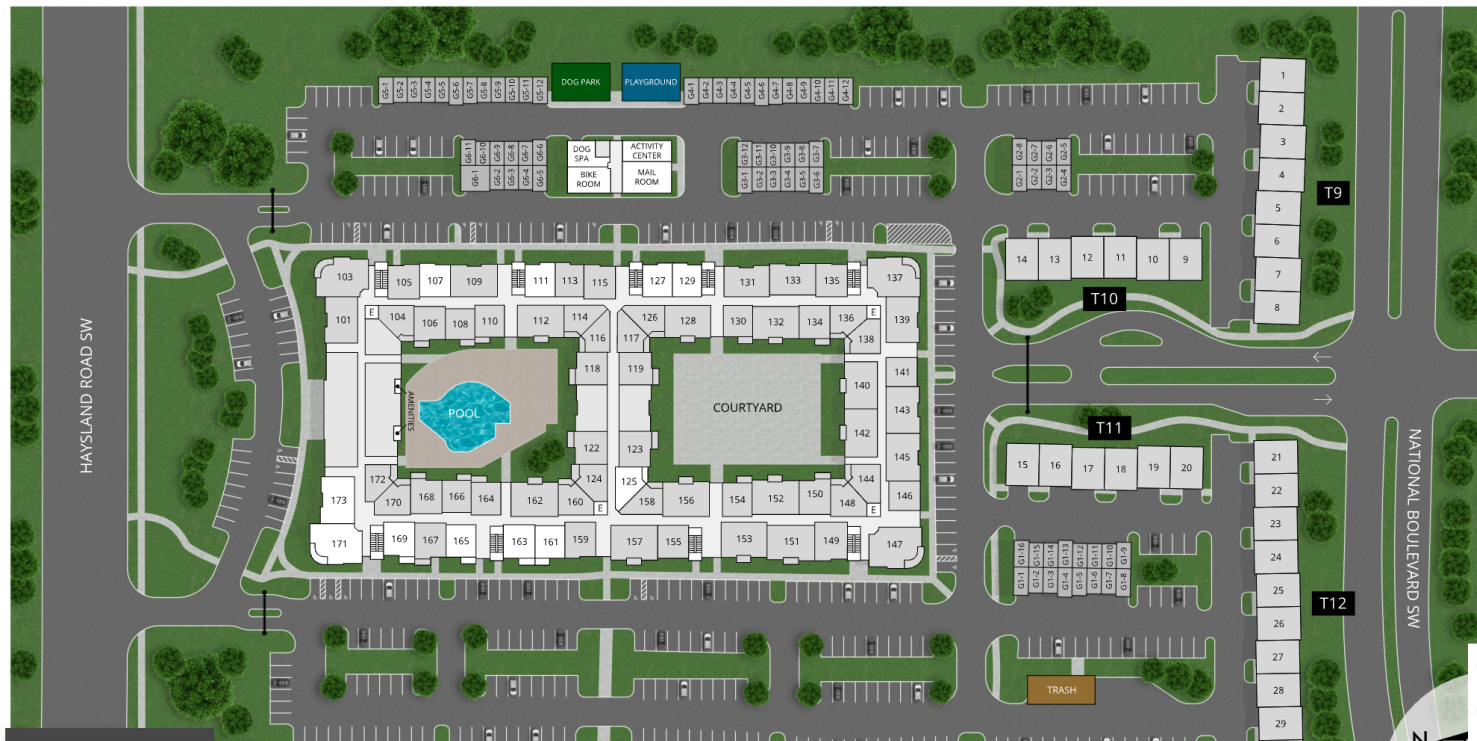
**UNIT 10** Q- 3X2  
3 Bed / 3.5 Bath / 2,465 sq. ft.  
\$3,200  
Available Now

**UNIT 101** M- 2X2  
2 Bed / 2 Bath / 1,203 sq. ft.  
\$1,771  
Available Now

**UNIT 103** P- 2X2  
2 Bed / 2 Bath / 1,4  
\$1,975  
Available Now

**UNIT 104** G-1X1  
1 Bed / 1 Bath / 758 sq. ft.  
\$1,434  
Available Now

Hi! Want to schedule a X  
tour or check  
availability?



Alabama / Madison County / Huntsville / Liam at Hays Farm



# Liam at Hays Farm



401 Haysland Rd SW, Huntsville, AL 35802

[Property Website](#)

★★★★★ 5.0 (2 reviews) Verified Listing Today

Monthly Rent <b>\$1,207 - \$3,200</b>	Bedrooms <b>1 - 3 bd</b>	Bathrooms <b>1 - 3.5 ba</b>	Square Feet <b>688 - 2,465 sq ft</b>
--	-----------------------------	--------------------------------	---

**Move-in Special**  
 Rent Special! Receive 8-weeks free when you sign a 14-month lease term + \$500 Gift Card \*Restrictions Apply. Contact for Details\*

## Pricing & Floor Plans

A -1x1  
**\$1,207 - \$1,257**  
 1 Bed • 1 Bath • 688 Sq Ft  
[Floor Plan Details](#) • [Tour Floor Plan](#)

**3 Available Units**

Unit	Base Price	Sq Ft	Availability	Unit Details
375	\$1,207	688	Now	<a href="#">View More</a>
341	\$1,207	688	Now	<a href="#">View More</a>
475	\$1,257	688	Now	<a href="#">View More</a>

# EXHIBIT E

76 Photos | 6 Matterport 3D Tours | Property Site Map

Alabama / Madison County / Huntsville / Liam at Hays Farm

## Liam at Hays Farm

401 Haysland Rd SW, Huntsville, AL 35802

[Property Website](#)

★★★★★ 5.0 (2 reviews) ✓ Verified Listing 🕒 Today



Monthly Rent <b>\$1,207 - \$2,699</b>	Bedrooms <b>1 - 3 bd</b>	Bathrooms <b>1 - 3.5 ba</b>	Square Feet <b>688 - 2,465 sq ft</b>
--	-----------------------------	--------------------------------	---

**Move-in Special**  
Rent Special! Receive 12-weeks free when you sign a 15-month lease term + \$500 Gift Card \*Restrictions Apply. Contact for Details\*

### Pricing & Floor Plans

All	1 Bedroom	2 Bedrooms	3 Bedrooms
-----	-----------	------------	------------

### Contact This Property

Tour Options: In-Person, Video ⓘ

[Schedule Tour](#)

[Send Message](#)

📞 (938) 777-3732

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🌐 Language: English

🕒 Open 8:30am - 5:30pm Today

[View All Hours](#)

# EXHIBIT F

MARCH 30, 2025 REAL PAGE DATA

MSA	Occupancy%	vs Previous Week	vs Previous Year	Leased %	vs Previous Week	vs Previous Year	Traffic per Week	vs Previous Week	vs Previous Year	Leases per Week	vs Previous Week	vs Previous Year	NER	vs Previous Week	vs Previous Year	RevPau	vs Previous Week	vs Previous Year
Albuquerque, NM	93.21%	↓ -0.40%	↑ 1.79%	94.81%	↓ -0.11%	↑ 0.48%	2.0	↓ -0.2	↓ -2.2	1.1	↓ 0.0	↓ -0.3	\$1,156	↓ -0.2%	↑ 4.2%	\$1,077	↓ -0.7%	↑ 6.3%
Atlanta, GA	92.53%	↑ 0.01%	↑ 0.50%	94.48%	↑ 0.05%	↑ 0.99%	5.6	↓ 0.0	↓ -6.1	2.6	↓ 0.0	↓ -0.7	\$1,584	↑ 0.1%	↑ 1.5%	\$1,466	↑ 0.1%	↑ 2.1%
Austin, TX	90.88%	↓ -0.04%	↓ -0.59%	92.86%	↓ -0.20%	↑ 0.61%	3.5	↑ 0.2	↓ -3.4	2.6	↑ 0.1	↓ -0.2	\$1,340	↓ 0.0%	↓ -7.8%	\$1,218	↓ -0.1%	↓ -8.3%
Baltimore, MD	93.46%	↓ -0.11%	↓ -0.21%	94.86%	↑ 0.00%	↓ -1.30%	3.3	↑ 0.2	↓ -6.6	1.3	↑ 0.3	↓ -0.7	\$1,771	↓ 0.0%	↑ 8.3%	\$1,655	↓ -0.1%	↑ 6.9%
Boston, MA	94.58%	↑ 0.10%	↑ 0.86%	95.97%	↑ 0.11%	↑ 0.67%	5.5	↑ 0.4	↓ -1.1	2.0	↑ 0.2	↑ 0.5	\$2,771	↑ 0.1%	↑ 0.9%	\$2,621	↑ 0.2%	↑ 2.1%
Charleston, SC	93.79%	↑ 0.66%	↑ 2.05%	94.81%	↑ 0.24%	↑ 1.13%	3.8	↓ -0.4	↓ -4.7	1.9	↓ -0.1	↓ -0.5	\$1,994	↑ 0.8%	↑ 5.6%	\$1,870	↑ 1.5%	↑ 8.2%
Charlotte, NC	92.63%	↓ -0.25%	↑ 1.30%	94.59%	↓ -0.04%	↑ 3.71%	6.6	↓ -0.4	↓ -2.6	2.3	↓ -0.1	↓ -0.4	\$1,680	↑ 0.2%	↑ 1.9%	\$1,556	↓ -0.1%	↑ 3.8%
Chattanooga, TN	92.77%	↑ 0.87%	↑ 1.73%	94.94%	↓ -0.02%	↓ -0.22%	2.7	↑ 0.2	↓ -4.3	1.5	↓ 0.0	↓ -2.1	\$1,581	↑ 0.3%	↓ -6.6%	\$1,467	↑ 1.2%	↓ -4.9%
Chicago, IL	95.22%	↑ 0.04%	↑ 1.18%	96.40%	↓ -0.01%	↑ 1.04%	7.7	↑ 0.1	↓ -4.0	2.5	↑ 0.1	↓ -0.9	\$2,451	↑ 0.3%	↑ 3.9%	\$2,333	↑ 0.4%	↑ 5.3%
Colorado Springs, CO	93.55%	↑ 0.74%	↑ 3.11%	95.37%	↑ 0.17%	↑ 1.82%	1.8	↑ 0.1	↓ -3.6	2.5	↑ 0.4	↓ -0.1	\$1,379	↓ 0.0%	↓ -1.5%	\$1,290	↑ 0.8%	↑ 2.3%
Columbia, SC	95.92%	↑ 0.07%	↑ 2.46%	97.09%	↓ -0.09%	↑ 2.69%	4.5	↑ 0.3	↓ -1.1	1.5	↓ -0.1	↓ -0.3	\$1,761	↓ -0.3%	↑ 2.1%	\$1,689	↓ -0.2%	↑ 4.8%
Columbus, OH	94.01%	↑ 0.56%	↑ 0.50%	95.83%	↑ 0.18%	↑ 2.28%	6.8	↑ 0.3	↑ 0.5	2.9	↑ 0.1	↑ 0.6	\$1,468	↓ -3.0%	↑ 5.8%	\$1,380	↓ -2.4%	↑ 6.1%
Dallas, TX	91.64%	↑ 0.15%	↓ -0.81%	93.98%	↑ 0.21%	↑ 0.31%	8.3	↓ 0.0	↓ -2.3	3.7	↓ -0.1	↓ 0.0	\$1,446	↑ 0.2%	↓ -2.7%	\$1,325	↑ 0.3%	↓ -3.6%
Denver, CO	92.55%	↓ -0.09%	↓ -1.13%	94.86%	↑ 0.00%	↓ -0.52%	3.1	↓ -0.5	↓ -4.9	2.2	↓ 0.0	↓ -0.4	\$1,818	↓ 0.0%	↓ -4.9%	\$1,682	↓ -0.1%	↓ -5.9%
Detroit, MI	92.53%	↑ 0.33%	↓ -2.44%	94.75%	↑ 0.28%	↓ -2.15%	15.6	↑ 0.4	↑ 0.8	3.8	↑ 0.2	↑ 0.7	\$1,516	↑ 0.2%	↑ 2.8%	\$1,403	↑ 0.6%	↓ 0.1%
Greenville, SC	92.20%	↓ -0.15%	↑ 0.47%	94.97%	↑ 0.95%	↑ 3.50%	7.5	↓ -1.5	↑ 0.6	2.3	↓ -0.4	↑ 0.1	\$1,554	↑ 1.2%	↑ 8.3%	\$1,433	↑ 1.0%	↑ 9.3%
Houston, TX	93.20%	↑ 0.12%	↑ 0.33%	94.91%	↑ 0.01%	↑ 0.61%	7.3	↑ 0.3	↓ -2.8	3.2	↑ 0.1	↓ -0.4	\$1,398	↑ 0.4%	↓ -0.2%	\$1,303	↑ 0.6%	↑ 0.4%
Huntsville, AL	88.08%	↓ -0.5%	↓ -2.53%	89.26%	↓ -0.23%	↓ -4.23%	8.9	↑ 0.2	↑ 0.8	2.1	↓ -0.2	↓ -0.6	\$1,327	↓ -0.4%	↑ 0.9%	\$1,168	↓ -0.4%	↓ -7.6%
Jacksonville, FL	91.64%	↑ 0.11%	↓ -0.35%	94.14%	↓ -0.09%	↑ 0.10%	4.6	↓ -0.2	↓ -3.6	1.8	↓ -0.1	↓ -1.5	\$1,601	↑ 0.6%	↓ -2.4%	\$1,467	↑ 0.7%	↓ -2.2%
Las Vegas, NV	94.38%	↑ 0.32%	↓ -0.03%	95.83%	↑ 0.19%	↑ 0.30%	5.3	↑ 0.3	↓ -2.6	2.7	↓ 0.0	↓ -0.2	\$1,556	↑ 0.2%	↓ -0.8%	\$1,468	↑ 0.5%	↓ -0.9%
Los Angeles, CA	94.31%	↓ -0.02%	↑ 0.78%	96.20%	↓ -0.11%	↑ 1.42%	3.4	↓ -0.1	↓ -4.0	2.3	↓ -0.1	↑ 0.4	\$2,929	↑ 0.2%	↑ 2.3%	\$2,762	↑ 0.1%	↑ 3.3%
Memphis, TN	93.74%	↓ -0.04%	↓ -0.20%	94.71%	↓ -0.08%	↓ -1.72%	3.0	↑ 0.3	↑ 0.2	2.3	↓ 0.0	↑ 0.4	\$1,213	↑ 0.3%	↑ 2.6%	\$1,137	↑ 0.3%	↑ 4.2%
Miami, FL	94.18%	↓ -0.06%	↓ -0.33%	95.75%	↑ 0.00%	↑ 0.21%	5.0	↓ -0.3	↓ -2.4	1.8	↓ -0.2	↓ -0.5	\$2,424	↑ 0.1%	↑ 0.8%	\$2,283	↑ 0.0%	↑ 0.4%
Midland, TX	86.04%	↑ 0.14%	↑ 0.74%	92.08%	↑ 0.90%	↑ 0.27%	6.5	↑ 0.3	↑ 4.8	6.5	↓ -6.3	↓ 0.0	\$1,523	↓ 0.0%	↓ -8.4%	\$1,311	↑ 0.1%	↓ -7.6%
Minneapolis, MN	93.66%	↑ 0.22%	↑ 0.38%	94.88%	↑ 0.22%	↑ 1.97%	3.8	↓ -0.3	↓ -3.6	1.5	↑ 0.2	↓ -0.9	\$1,646	↓ -0.2%	↑ 3.4%	\$1,541	↑ 0.0%	↑ 3.9%
Nashville, TN	91.83%	↑ 0.09%	↓ -1.48%	93.52%	↑ 0.16%	↓ -1.45%	7.5	↑ 1.1	↓ -0.5	2.4	↓ -0.1	↓ -0.1	\$1,614	↓ 0.0%	↓ -1.1%	\$1,482	↑ 0.1%	↓ -2.2%
New York, NY	92.14%	↑ 0.04%	↓ -0.21%	92.60%	↑ 0.08%	↓ -0.68%	0.2	↓ -0.1	↓ -3.0	0.3	↓ -0.7	↓ -0.7	\$3,185	↓ -0.3%	↑ 0.6%	\$2,935	↓ -0.2%	↓ -0.1%
Orlando, FL	93.07%	↑ 0.11%	↓ -0.42%	94.85%	↓ -0.11%	↓ -1.13%	4.0	↑ 0.3	↓ -6.6	2.0	↑ 0.1	↓ -1.4	\$1,726	↓ -0.1%	↓ -0.7%	\$1,606	↑ 0.0%	↓ -1.1%
Phoenix, AZ	93.16%	↑ 0.01%	↓ -0.22%	94.80%	↑ 0.09%	↑ 0.55%	5.1	↓ -0.3	↓ -3.4	2.2	↑ 0.1	↓ -0.9	\$1,587	↑ 0.2%	↓ -2.2%	\$1,478	↑ 0.2%	↓ -2.5%
Portland, OR	93.94%	↑ 0.26%	↓ -1.08%	95.31%	↑ 0.04%	↓ -0.69%	3.1	↑ 0.1	↓ -4.8	1.2	↓ -0.2	↓ -1.0	\$1,881	↓ 0.0%	↑ 3.3%	\$1,767	↑ 0.2%	↑ 2.1%
Raleigh, NC	92.00%	↑ 0.23%	↓ -1.20%	94.39%	↑ 0.26%	↓ -0.98%	7.6	↑ 1.6	↓ -6.0	3.7	↓ 0.0	↑ 0.1	\$1,527	↓ -0.7%	↑ 5.5%	\$1,405	↓ -0.5%	↑ 4.8%
Reno, NV	95.94%	↑ 0.12%	↑ 0.75%	97.92%	↑ 0.10%	↑ 1.84%	8.1	↑ 0.1	↓ -0.1	2.7	↑ 0.0	↑ 0.1	\$1,836	↑ 1.4%	↑ 2.5%	\$1,761	↑ 1.6%	↑ 3.4%
Riverside, CA	95.26%	↑ 0.04%	↑ 1.64%	95.72%	↓ -0.12%	↑ 1.55%	7.5	↑ 0.4	↓ -4.5	1.1	↓ -0.1	↓ -1.4	\$2,641	↑ 0.2%	↑ 3.3%	\$2,516	↑ 0.2%	↑ 5.1%
Sacramento, CA	94.65%	↓ -0.04%	↓ -0.25%	96.36%	↑ 0.00%	↑ 0.54%	6.3	↓ -0.5	↓ -0.2	3.6	↓ -0.1	↑ 0.9	\$2,045	↑ 0.1%	↑ 3.0%	\$1,936	↑ 0.1%	↑ 2.5%
Salt Lake City, UT	94.86%	↓ -0.02%	↑ 2.26%	96.23%	↑ 0.04%	↑ 1.96%	3.0	↑ 0.6	↓ -6.0	1.3	↑ 0.2	↓ -1.3	\$1,506	↑ 0.2%	↓ -2.4%	\$1,429	↑ 0.2%	↓ -0.4%
San Antonio, TX	91.83%	↑ 0.19%	↓ -0.61%	93.27%	↑ 0.05%	↓ -1.08%	5.6	↑ 0.5	↓ -2.4	2.8	↑ 0.2	↑ 0.3	\$1,175	↓ -0.4%	↑ 0.9%	\$1,079	↓ -0.1%	↓ -0.0%
San Diego, CA	95.17%	↑ 0.12%	↓ -0.36%	96.70%	↑ 0.07%	↑ 0.75%	4.6	↓ -0.6	↓ -1.2	2.5	↓ -0.3	↑ 0.2	\$2,547	↓ 0.0%	↑ 2.2%	\$2,424	↑ 0.2%	↑ 2.1%
San Francisco, CA	93.97%	↓ -0.02%	↑ 0.68%	96.27%	↓ -0.11%	↑ 0.94%	3.8	↓ -0.1	↓ -3.4	1.8	↓ 0.0	↓ 0.0	\$2,910	↓ -0.1%	↑ 5.8%	\$2,735	↓ -0.1%	↑ 6.9%
San Jose, CA	95.24%	↑ 0.07%	↓ -0.14%	95.91%	↑ 0.00%	↑ 0.00%	3.4	↑ 0.5	↓ -8.6	0.7	↓ 0.0	↓ -1.7	\$3,198	↓ -0.4%	↑ 2.6%	\$3,046	↓ -0.3%	↑ 2.6%
Seattle, WA	94.18%	↑ 0.02%	↓ -0.45%	95.70%	↑ 0.10%	↓ -0.34%	2.8	↓ -0.4	↓ -3.7	1.3	↓ 0.0	↓ -0.3	\$2,263	↑ 0.2%	↑ 3.2%	\$2,131	↑ 0.3%	↑ 2.7%
Tampa, FL	93.33%	↓ -0.02%	↑ 0.32%	94.68%	↑ 0.11%	↑ 0.99%	7.1	↓ -0.5	↓ -5.9	3.2	↑ 0.4	↑ 0.7	\$1,854	↑ 0.2%	↑ 1.8%	\$1,730	↑ 0.2%	↑ 2.2%
Tucson, AZ	92.85%	↓ -0.03%	↓ -2.46%	93.03%	↑ 0.00%	↓ -1.40%	6.0	↑ 0.4	↑ 2.5	2.4	↑ 0.3	↑ 0.4	\$1,431	↑ 0.5%	↓ -5.7%	\$1,329	↑ 0.5%	↓ -8.4%
Virginia Beach, VA	95.64%	↑ 0.12%	↑ 0.34%	96.38%	↑ 0.09%	↑ 0.10%	6.2	↑ 0.8	↓ -4.4	2.1	↑ 0.2	↓ -0.9	\$1,721	↓ 0.0%	↑ 3.3%	\$1,646	↑ 0.1%	↑ 3.7%
Washington, DC	95.00%	↑ 0.06%	↓ -0.23%	96.50%	↑ 0.08%	↓ -0.35%	5.6	↓ -0.1	↓ -2.8	2.0	↑ 0.1	↓ -0.4	\$2,103	↑ 0.2%	↑ 3.8%	\$1,998	↑ 0.2%	↑ 3.7%
Wilmington, NC	90.49%	↑ 0.45%	↓ -0.22%	92.49%	↑ 0.20%	↑ 0.10%	8.3	↑ 0.8	↑ 0.8	3.2	↑ 0.1	↑ 0.3	\$1,528	↑ 0.4%	↓ -2.9%	\$1,383	↑ 1.0%	↓ -0.9%
<b>National Averages</b>	<b>93.60%</b>	<b>0.04%</b>	<b>-0.11%</b>	<b>95.14%</b>	<b>0.07%</b>	<b>0.36%</b>	<b>5.3</b>	<b>0.1</b>	<b>-3.0</b>	<b>2.5</b>	<b>0.1</b>	<b>-0.2</b>	<b>\$1,737</b>	<b>0.0%</b>	<b>0.7%</b>	<b>\$1,625</b>	<b>0.1%</b>	<b>0.7%</b>

# EXHIBIT G

	Q1'23	Q2'23	Q3'23	Q4'23	Q1'24	Q2'24	Q3'24	Q4'24	Q1'25
RealPage Survey Data									
Effective Rent Change	0.80%	0.34%	-0.94%	-0.85%	-1.26%	0.24%	-1.96%	-1.20%	-1.56%
Huntsville, AL	0.80%	0.34%	-0.94%	-0.85%	-1.26%	0.24%	-1.96%	-1.20%	-1.56%
<b>YOY Effective Rent Change</b>	<b>3.49%</b>	<b>1.09%</b>	<b>-1.00%</b>	<b>-0.80%</b>	<b>-2.71%</b>	<b>-2.75%</b>	<b>-3.82%</b>	<b>-4.20%</b>	<b>-3.10%</b>
Huntsville, AL	3.49%	1.09%	-1.00%	-0.80%	-2.71%	-2.75%	-3.82%	-4.20%	-3.10%
<b>Effective Rent</b>	<b>\$1,186</b>	<b>\$1,201</b>	<b>\$1,194</b>	<b>\$1,187</b>	<b>\$1,170</b>	<b>\$1,180</b>	<b>\$1,162</b>	<b>\$1,152</b>	<b>\$1,134</b>
Huntsville, AL	\$1,186	\$1,201	\$1,194	\$1,187	\$1,170	\$1,180	\$1,162	\$1,152	\$1,134
Effective RPSF	\$1.22	\$1.24	\$1.22	\$1.22	\$1.20	\$1.20	\$1.19	\$1.18	N/A
Huntsville, AL	\$1.22	\$1.24	\$1.22	\$1.22	\$1.20	\$1.20	\$1.19	\$1.18	N/A

Sales Volume and Sales PPU/Cap Rate are Calculations by RealPage with underlying data provided by Real Capital Analytics, Inc.

# EXHIBIT H

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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.

Appellate Case No. 2024-000322

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Appeal From Charleston County  
Bentley Price, Circuit Court Judge

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Unpublished Opinion No. 2025-UP-098  
Submitted March 1, 2025 – Filed March 26, 2025

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**AFFIRMED**

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Henry E. Grimbball, Matthew Tillman, Morris Arthur Ellison, and Michael Rhett DeHart, all of Womble Bond Dickinson (US) LLP, of Charleston, for Appellants.

Michael T. Rose, of Mike Rose Law Firm, PC, of Summerville; W. Andrew Gowder, Jr., of Austen & Gowder LLC, of Charleston; and Christopher Blohme Staubes, III, of Staubes Law Firm, LLC, of Charleston, all for Respondent.

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**PER CURIAM:** 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 (collectively, Appellants) appeal the circuit court's order denying their motion to vacate or modify an arbitration panel's final arbitration award and confirming the arbitration award. On appeal, Appellants argue the circuit court erred in (1) failing to find that neither the arbitration panel nor the circuit court had subject matter jurisdiction and (2) failing to find the action was barred by the applicable statute of limitations. We affirm pursuant to Rule 220(b), SCACR.

1. We hold both the circuit court and arbitration panel had subject matter jurisdiction over this matter. *See Pierce v. State*, 338 S.C. 139, 150, 526 S.E.2d 222, 227 (2000) ("Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong."). First, the circuit court had subject matter jurisdiction because this is a derivative action and the circuit court has the power to hear such cases. *See Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 120, 678 S.E.2d 430, 433 (2009) ("South Carolina trial courts are vested with general original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts."); *see generally* Rule 23(b)(1), SCRCF (providing a shareholder may bring a derivative action to enforce the right of a corporation when the corporation has failed to enforce its own right). Further, the failure to include a party does not automatically deprive the court of subject matter jurisdiction; rather, when there has been a failure to join an indispensable party, the result is to join the party, not to dismiss for a lack of subject matter jurisdiction, and here, the arbitration panel permitted the addition of the party. *See Charleston Cnty. Parents for Pub. Sch., Inc. v. Moseley*, 343 S.C. 509, 514, 541

S.E.2d 533, 535 (2001) ("[T]he remedy under Rule 19, SCRCP is for the Court to make the Charleston Delegation a party, not to dismiss the action."). Second, the arbitration panel had subject matter jurisdiction because the consent order provided the parties agreed to arbitrate "[a]ll claims, both compulsory and non-compulsory, specifically including all claims, counter-claims, and/or third-party claims" relating to the subject matter of this case, and agreed that "all of the parties submit themselves to the jurisdiction of this court and the arbitration panel." See e.g. *Trident Tech. Coll. v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 106, 333 S.E.2d 781, 786 (1985) ("An arbitrator exceeds his powers and authority when he attempts to resolve an issue that is not arbitrable because it is outside the scope of the arbitration agreement.").

2. We hold the circuit court did not err in denying Appellants' motion to vacate the arbitration award on the basis of the statute of limitations barring Morgan's claim and confirming the final arbitration award. See *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) ("Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award. An award will be vacated only under narrow, limited circumstances."); *id.* ("An arbitrator's award may only be vacated when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law."). The determination of when the statute of limitations began to run as well as whether the doctrine of equitable estoppel applied was a question of fact for the arbitration panel to decide. See *Moore v. Benson*, 390 S.C. 153, 161, 700 S.E.2d 273, 277 (Ct. App. 2010) ("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."); *Allwin v. Russ Cooper Assocs., Inc.*, 426 S.C. 1, 13, 825 S.E.2d 707, 713 (Ct. App. 2019) ("[W]hen the parties present conflicting evidence, application of the discovery rule and the determination of the date the statute began to run in a particular case are questions of fact . . . ."); *Regions Bank v. Schmauch*, 354 S.C. 648, 675, 582 S.E.2d 432, 446 (Ct. App. 2003) (holding that as to the application of the doctrine of equitable estoppel, "[w]hether the actions lulled the plaintiff into 'a false sense of security' is usually a question of fact" (quoting *Dillon Cnty. Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 218, 332 S.E.2d 555, 561 (Ct. App. 1985), *overruled on other grounds by Atlas Food Sys. v. Crane Nat'l Vendors*, 319 S.C. 556, 462 S.E.2d 858 (1995))). Although Appellants argued to the panel that the date Morgan threatened to sue was the date the statute of limitations began to run, Morgan contended he did not know he had grounds for a suit until he visited Bomasada's headquarters in 2011 due to Appellants' deception and obfuscation of financial records. Appellants failed to show the arbitration panel, in deciding this question of fact, knowingly ignored well-defined,

and clearly applicable law; likewise, the final award can be reconciled with at least barely colorable factual inferences from the record. *See Gissel*, 382 S.C. at 241, 676 S.E.2d at 323 ("[F]or 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."); *Waldo v. Cousins*, 442 S.C. 662, 665, 901 S.E.2d 276, 278 (2024) ("This standard is met only when the award is the product of an intentional or reckless flouting of the law, not a mere error in interpreting it."); *id.* ("This complements the well-known rule that the form of the award need not be accompanied by any reasoning, so long as the award can be reconciled with factual inferences and legal conclusions that are at least 'barely colorable.'" (quoting *Trident Tech. Coll.*, 286 S.C. at 111, 333 S.E.2d at 789)).

**AFFIRMED.**<sup>1</sup>

**THOMAS, HEWITT, and CURTIS, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

# EXHIBIT I

RECEIVED

Apr 04 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2012-CP-10-00580

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.

APPELLANTS' PETITION FOR REHEARING

WOMBLE BOND DICKINSON (US) LLP

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April 4, 2025

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**POINTS OVERLOOKED OR MISAPPREHENDED BY THE COURT**

1. Did the Court of Appeals overlook or misapprehend applicable law governing subject matter jurisdiction in this derivative action where the Plaintiff failed to name an indispensable party?
2. Did the Court of Appeals overlook or misapprehend applicable law governing the application of the three-year statute of limitations in this case where the Plaintiff undeniably threatened to file suit against the Appellants more than three years prior to filing the instant proceeding ?

**STATEMENT OF THE CASE**

**(TIMELINE)**

The following is an undisputed timeline of the facts of this case.

- 1) February, 2000 – 150 Bee Street, LLC, (the “**Company**”) was organized and acquired the property located at 150 Bee Street at its intersection with Lockwood Blvd in Charleston (the “**Property**”)
- 2) February/March, 2005 -- The Company’s members adopted a Second Amended and Restated Operating Agreement, which has remained in place. (the “**150 Bee Street, LLC Second Amended Operating Agreement**”) (R. pp. 882-913)

As of February, 2005, the four (4) members of the Company and their percentages of ownership were:

Neal Baker (“ <b>Baker</b> ”).....	26.67%
Bella Vista.....	26.67%
Thomas Morgan (“ <b>Morgan</b> ”) [Plaintiff/Respondent]....	26.66%
Edwin Pearlstine (“ <b>Pearlstine</b> ”).....	20.00%

Defendants John Gilbert (“**Gilbert**”) and Stuart Fred (“**Fred**”) were the principals in Defendant Bella Vista.

Until Baker’s death in August, 2011, Baker and Fred of Bella Vista were the Company’s Managing Members, collectively owning 53.34% of the Company membership interests. They could therefore exercise “**Majority Consent**” as defined in the Second Amended Operating Agreement.

The Company’s purpose was to construct a residential building on the Property.

- 3) March/April, 2005 – Construction of the building began.
- 4) April, 2007 – Morgan became increasingly concerned about how Fred and Baker, who was Morgan’s brother-in-law, were managing the Company as well as concerned about the possibility of an economic downturn. (Morgan Tr. pp. 520-522) (R. pp. 834-836)
- 5) April 27, 2007 – Morgan emailed Fred: “Please address your comments to my lawyer from this point forward. I will no longer communicate with you or your staff. ...From now on you can deal through my lawyer! Mr. Joel Goldman.” (R. p. 923). Within days, Goldman and the Company’s general counsel, John Hagerty, exchanged letters. (Hagerty to Goldman, 4/30/07) (R. p. 925); (Goldman to Hagerty, 5/15/07) (R. p. 927)
- 6) July 6, 2008 – Morgan emailed all other Company members:  
“I am turning all my correspondence on this project over to my lawyer 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." (R. p. 951)

Morgan had in fact involved his accountant, Rich Merg, in May, 2008, to begin investigating the Company's financial records. (R. p. 947)

- 7) August 23, 2008 -- Morgan emailed Company Managing Member Baker (R. pp. 959-960):

"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 this."

All three of these emails from Morgan were undeniably sent by him well beyond three (3) years before he finally filed the instant suit on January 26, 2012.

- 8) July 13, 2011 – Morgan retained new counsel, Chris Staubes of Clawson and Staubes of Mt. Pleasant, SC.
- 9) August, 2011 -- Baker died. His interest became non-voting, and Morgan, with the involvement and vote of Pearlstine, could control the Company. (Morgan Tr. 374) (R. pp. 829-833)
- 10) December 7, 2011 -- Defendants agreed to a tolling agreement (R. pp. 964-969) drafted by Morgan's counsel. Morgan's counsel drafted the Tolling Agreement (the "**Tolling Agreement**") with a Court of Common Pleas caption showing Morgan as plaintiff and naming multiple defendants, including 150 Bee Street, LLC, Gilbert, and Fred. It was signed by Morgan in his individual capacity and by Henry E. Grimball as attorney for all of the "defendant" parties named in the caption except 150 Bee Street, LLC.

- 11) January 26, 2012 – The Tolling Agreement having expired 10 days earlier, Morgan filed his **verified** Complaint in this case (the 2012 “**Original Complaint**”) (R. pp. 139-163).

The case caption is identical to that in the Tolling Agreement except that the case caption of the Summons and of the Complaint as well as the text of the Complaint did not name 150 Bee Street, LLC as a party plaintiff or defendant. No affidavit of service of the Complaint on 150 Bee Street, LLC was ever filed with the Clerk of Court as required by Rule 4(g), SCRCF.

[It is undeniable that Morgan at that time did not include 150 Bee Street, LLC as a party in his derivative suit.]

- 12) March 13, 2012 -- Defendants served their Answer, which in paragraph 79 expressly asserted “this Court lacks subject matter jurisdiction.” (R. pp. 164-178)
- 13) July 9, 2012 – By order of Judge Thomas L. Hughston and with the consent of the parties, this case was sent to arbitration as required by the Company’s Second Amended Operating Agreement. (R. pp. 6-9) The Order expressly provided that the Court retained jurisdiction to enforce it and to enter any Order it found appropriate. The parties entered the arbitration process based on their pre-July 2012 pleadings (Order of Judge Hughston 7/9/12).
- 14) February 26, 2018 – More than six (6) years after Morgan filed the 2012 Original Complaint on January 26, 2012, Morgan filed a motion with the Arbitration Panel (the “**Panel**”) to amend his January 26, 2012, Original Complaint to name 150 Bee Street, LLC as a party. (R. pp. 381-417) On June 5, 2018, the Defendants filed their Memorandum Opposing Motion to Amend Answer. (R. 418-435) On January 7,

2019, Panel Chair Cooke granted Morgan's motion without prejudice to the Defendants' objections to the amendment based on both the Court's and Panel's lack of subject matter jurisdiction and the three-year statute of limitations bar. (R. pp. 10-11)

## POINTS OF LAW AND FACT OVERLOOKED

### OR MISAPPREHEND BY THIS COURT

1. THIS COURT MISAPPREHENDED BOTH THE FACTS OF THIS CASE AND SOUTH CAROLINA LAW WHEN IT HELD THAT "BOTH THE CIRCUIT COURT AND ARBITRATION PANEL HAD SUBJECT MATTER JURISDICTION OVER THIS MATTER"

#### A. FACTS

On January 26, 2012, Morgan filed his 2012 Original Complaint (R. pp 139-163). He brought this suit as a derivative action on behalf of 150 Bee Street LLC. In his complaint, Morgan did not name the Company as plaintiff or defendant.

Morgan did nothing to correct his failure to name the Company as a party until six (6) years later, when he served his motion on February 26, 2018 (Morgan "**2018 Motion to Amend**") (R. pp. 381-417) seeking to amend his 2012 Original Complaint to add the Company as a party. Over Appellants' objection, the Panel chair allowed the amendment (Order of Arbitration Chair Cooke 1/7/19) (R. pp. 10-11)

#### B. LAW

The Company was a necessary and "indispensable" party to Morgan's derivative action because any right of recovery belonged to the Company. Without the Company as a party, if the Defendants prevailed, the verdict would not be *res judicata* as to the Company. See, e.g., *Koster v. American Lumbermens Mut. Cas. Co.*, 330 U.S. 518 (1947); *Gabriel v. Preble*, 396 F.3d 10 (1st

Cir. 2005); *Agostino v. Hicks*, 845 A.2d 1110 (Del. Ch. 2004); *Schuler v. Feder*, 184 N.Y.S.2d 933 (Supp. 1959).

The failure of Morgan to make the Company a party in his 2012 Original Complaint was not a mere defect of parties but left Morgan without a cause of action and the Panel and courts without subject matter jurisdiction. See, e.g., *Smyly v. Smith*, 216 Ga. 529, 118 S.E.2d 188 (1961); *Daniels v. Vann*, 396 So.2d 723 (D.Ct. App. Fl. 4th Dist.) (1981); *Fitzpatrick v. Shay*, 314 Pa. Super 450, 461 A.2d 243 (1983); *In re McCoy*, 157 B.R. 705 (Bankr. M.D. Fla. 1993). Morgan has never cited any case contrary to these principles of law. To cure this otherwise fatal mistake, Morgan asserts two arguments, which this court has accepted because of its misapprehension of both the facts of this case and applicable South Carolina law.

I. First, this Court has agreed with Morgan's argument that pursuant to Rule 19, SCRCF, the arbitration panel properly permitted the addition of the Company as a party. This ruling misapprehends both the facts of this case and applicable South Carolina law.

This court has ignored the fact that Morgan did nothing to add the Company as a party until six (6) years after he filed his 2012 Original Complaint.

Morgan's untimely effort to join the Company well beyond the applicable three (3) year statute of limitations does not cure this fatal defect as suggested by this Court. It was entirely improper for the Panel to permit Morgan under Rule 19, SCRCF, or for any other reason to join the Company as an indispensable party well beyond the applicable three (3) year statute of limitations. See *Gillman v. City of Beaufort*, 368 S.C. 24, 627 S.E.2d 746 (Ct. App. 2006).

This Court suggested that attempted joinder of a new party, the Company, relates back to the original filing of Morgan's 2012 Original Complaint. Well-established case law rejects the Court's position.

As the plaintiff in the *McCoy* case, *supra*, unsuccessfully attempted, Morgan claimed in 2019 that the addition of 150 Bee Street, LLC as a party should relate back to Morgan's 2012 Original Complaint so as to avoid the three (3) year statute of limitations. This position likewise misapprehends the clear legal principle that the addition of a party differs from a substitution or change of a party governed by Rule 15(c), SCRCP. Substitutions relate back; additions do not. See *Jackson v. Doe*, 342 S.C. 552, 537 S.E.2d 567 (Ct. App. 2000). And with the 2012 Original Complaint effectively a nullity, Morgan had no pleading to amend and the Panel had no jurisdiction to consider it.

II. Second, this Court has agreed with Morgan's argument that the Panel had subject matter jurisdiction because of the consent order by which the parties agreed to arbitrate all claims relating to the subject matter of the case and agreed to submit themselves to the jurisdiction of the court and the arbitration Panel. Even if this Court accepts Morgan's argument (which Petitioners argue it should not), it is undeniable that 150 Bee Street, LLC never agreed to submit itself to the Panel's and the Court's jurisdiction. To suggest otherwise is a manifest disregard of the law.

Further, this Court has misapprehended the South Carolina "black letter law" dealing with waiver of objections to subject matter jurisdiction. Despite this Court's ruling to the contrary, subject matter jurisdiction cannot be waived, even with the consent of the parties. *Hunter v. Boyd*, 203 S.C. 518, 525, 28 S.E.2d 412, 416 (1943); *Bluffton Town Council Election v. Fulgham*, 385 S.C. 632, 637, 686 S.E.2d 683, 685 (2009) ("The lack of subject matter jurisdiction may not be waived, even by consent of the parties and should be taken notice of by this Court.") And without subject matter jurisdiction, anything that a court does is void *ab initio*. See, e.g. *Coon v. Coon*, 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005) (A judgment without subject-matter jurisdiction is void.")

This Court, having misapprehended the facts of this case and law dealing with both 1) Morgan's Rule 19 amendment to add the Company as a party and 2) the of lack of subject matter jurisdiction for either reason should hold that neither the circuit court nor the arbitration Panel had subject matter jurisdiction over this case, thereby voiding the judgment.

2. THIS COURT MISAPPREHENDED THE FACTS OF THIS CASE AND SOUTH CAROLINA LAW (AND THE ARBITRATION PANEL MANIFESTLY DISREGARDED APPLICABLE SOUTH CAROLINA LAW) WHEN THIS COURT HELD THAT MORGAN'S CLAIM WAS NOT BARRED BY THE THREE-YEAR STATUTE OF LIMITATIONS.

#### FACTS AND LAW

In ruling as it did on the issue of when the statute of limitations began to run, this Court has made a “straw man” argument by asserting that because the parties presented “conflicting evidence,” the issue became a “question of fact for the arbitration panel to decide,” with its determination conclusive, which must be upheld on appeal. Morgan’s own language in his July and August, 2008, emails is undeniable and not debatable as an issue of fact. To ignore the legal effect of these emails would be to manifestly disregard the law.

The argument accepted by this Court is a straw man argument because this Court has decided to respond to an argument of its choosing and not the one actually presented. See *State v. Bagley*, 2022 WL 496800 (Ct.App. Ka. 2/18/22, 503 P.3d 1082).

In explanation, Appellants assert there was no “conflicting evidence” in what they presented on this issue. All of the following facts are incontrovertible:

1. May, 2008 – Morgan involved his accountant, Rich Merg, to begin investigating the Company’s financial records.
2. July 6 2008 – Morgan emailed all other Company members:

“I am turning all my correspondence over to my lawyer and accountants. Stewart [sic., “Stuart”], you have taken 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 ... I am going to sue your ass and get our money back.” (R. p. 951)

3. August 23, 2008 – Morgan emailed his brother-in-law, Company Managing Member Neal Baker:

“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 this.” (R. p. 959-960)

4. November 2, 2022 – In the trial of the case, when Morgan was questioned about his not filing suit until January 26, 2012, he testified:

“I wanted to see the expenses, what they were, a backup of it. ... I was trying to get the backup to see what these construction travel expenses were, and they wouldn’t give them to me.” (Tr. p. 584; R. p. 0855)

Appellants accept all of this evidence as true. This evidence does not present a conflict and thus does not present a “question of fact” for either the arbitration Panel or the Court to decide.

It is instructive that in ruling against the Appellants on this issue, this Court in its opinion cited in support of its opinion *Moore v. Benson*, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010).

However, the *Moore* decision instead demonstrates clearly not only that this Court misapprehended South Carolina law governing the statute of limitations issue but also that the Panel manifestly disregarded South Carolina law. In *Moore*, the respondent, an elderly father, sued his daughter and son-in-law for breach of fiduciary duty and fraud in connection with the transfer of the father’s retirement funds and real property. The respondent’s daughter and son-in-law asserted that because the property transfer was made in March, 2001, and the father did not

file suit until October, 2006, the master-in-equity erred in denying their motion to dismiss based on the applicable three-year statute of limitations. The Court of Appeals considered the facts before it and found the master was correct in his finding that the statute of limitations began to run when the respondent father first had “**suspicious** that something was amiss.” (Emphasis added)

In reaching this conclusion, the Court of Appeals wrote:

“The discovery rule applies to this action. ... The date on which discovery of the cause of action should have been made is an **objective 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.” (Citations omitted) *Id.* at S.E.2d 277. (Emphasis added)

The facts of Morgan’s conduct set forth above and accepted as true in full by the Appellants show more than a mere suspicion on his part of alleged misconduct by the Appellants in July, 2008. The Panel and this Court manifestly disregarded Morgan’s own undeniable language when he unambiguously threatened to file a lawsuit against the Respondents in 2008.

In *Hine v. McCrory*, 2023 WL 3994467 (Unpublished Opinion, S.C. Ct. Ap. 6/14/25) this Court recently confronted a similar straw man argument of the appellants that “conflicting evidence” as to when the statute of limitations began to run presented questions of fact for a jury rather than dismissal of their case by summary judgment.

This Court disagreed:

“The undisputed evidence in the record demonstrates that when Appellants learned there was [a relatively minor amount of] unrepaired termite damage on the Property in 2012, they promptly notified Respondents of their claim in the May 14, 2012 letter. Although Appellants did

not realize then the [extensive] magnitude of problem until 2018, we agree with the circuit court that the 2012 discovery triggered the running of the statute of limitations.”

“... [T]here is no conflicting evidence here as to when Appellants first discovered unrepaired termite damage at the Property.”

“[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial.” Similarly, the fact that Morgan did not comprehend the full extent of his claim for damages until long after 2008 when he had threatened suit is likewise immaterial.

This Court in *Hine* also considered the Appellants argument that the court should set aside the statute of limitations “as a matter of equity,” an issue also raised by Morgan.

This Court in *Hine* noted first that the party claiming that the statute of limitations should be tolled bears the burden of establishing **sufficient facts** to justify its use.

The Appellants in *Hine* argued that the Respondents, who sold them the house, “covered up” more extreme termite damage and that the only way the Appellants could have discovered the fraudulent conduct would have been through destructive testing. This Court found that the sellers’ arguably deceptive acts were not the type of “extraordinary event” that would justify equitable tolling.

Morgan raised this equitable defense as well as equitable estoppel in his briefs. Here again, this Court raised the straw man argument of “conflicting evidence” in this case which presented questions of fact decided by the Panel.

“The touchstone of equitable estoppel is that some conduct or representation by the defendant has induced the plaintiff to delay filing suit... An inducement for delay may consist of either an express representation that the claim will be settled without litigation or other conduct

that suggests a lawsuit is not necessary...” *Hedgepath v. American Tel & Tel. Co.*, 348 S.C. 340, 359, 559 S.E.2d 327, 338 (Ct. App. 2001).

In this case, the parties took several thousand pages of deposition testimony, collectively produced 300,000+ documents, and presented evidence to the panel for a week of trial.

In all of its orders, there is no mention by the Panel of the application of the doctrines of equitable tolling or equitable estoppel.

More importantly, in the entire record, there is no evidence that justifies or supports the application of either equitable doctrine, nor did Morgan offer any such evidence in any record in this case and/or appeal.

### **CONCLUSION**

The Panel manifestly disregarded the law and facts in this case dealing with subject matter jurisdiction in derivative actions and the three year statute of limitations.

Likewise, this Court ignored the undeniable facts in this case and South Carolina law governing these two issues.

On either or both of these grounds, this Court should reverse its opinion and dismiss the Panel’s award.

WOMBLE BOND DICKINSON (US) LLP

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[Except 150 Bee Street, LLC]

April 4, 2025

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Apr 04 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Bentley D. Price, Circuit Court Judge

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Case No, 2012-CP-10-00580

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.

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PROOF OF SERVICE

APPELLANTS' PETITION FOR REHEARING

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I do hereby certify that on April 4, 2025, a copy of the **Petition for Rehearing** was emailed to and also deposited with the United States Postal Service, as first class mail, in an envelope addressed to:

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April 4, 2025

# EXHIBIT J

MR. GOWDER

19

1 THE COURT: Okay.

2 MR. GOWDER: And we would --

3 THE COURT: All right.

4 MR. GOWDER: -- ask the Court for some security.

5 Thank you.

6 THE COURT: And then --

7 sure.

8 And then, of course, I'm in receipt -- I guess, via you--

9 all, of the letter yesterday from our Court of Appeals --

10 MR. GOWDER: Yes.

11 THE COURT: -- indicating that they will not have oral  
12 argument, but they will submit this case from its -- month --  
13 this time -- this month.

14 MR. GOWDER: This month. Yes, Your Honor.

15 THE COURT: Okay. And does that change anything with  
16 respect to your argument today?

17 MR. GOWDER: Well, we're encouraged that we're going to  
18 get a decision sooner rather than later. But no matter how it  
19 turns out, I would expect, given as hard as this has been  
20 litigated over the last 12-plus years, the disappointed party  
21 will probably ask for a rehearing. Then, inevitably, there  
22 will be a petition for Writ of Certiorari of the Supreme  
23 Court. Depending on what the Supreme Court does with that,  
24 this matter could be over in 6 to 8 months or it might be  
25 another year or so.

1           So I think that it doesn't change things that much, Your  
2 Honor, because we think no matter what happens, we are months  
3 if not years away from a resolution. And we -- in the mean  
4 time, we are very concerned --

5           THE COURT: Okay.

6           MR. GOWDER: -- that the assets are going to be  
7 dissipated.

8           THE COURT: Okay. All right. I appreciate it.

9           All right. Happy to hear from the other side, Mr.  
10 Ellison. Just hit unmute and get started. I'll see if I can  
11 hear you. And I'll mute myself.

12           (Pause.)

13           MR. ELLISON: Okay. Thank you, Your Honor.

14           Good morning. May it please the Court.

15           Judge, I think you hit the nail on the head with your two  
16 questions. And I've got more to it. I'm not here to  
17 relitigate 12-years' worth of litigation like Mr. Gowder seems  
18 to want to do.

19           I think the probative questions are: Number 1, what's  
20 transpired since the issuance of the Court's order last May?  
21 If anything, despite -- I can argue the national economy  
22 pretty well if you want me to. I don't intend to. I can also  
23 argue the state of Huntsville economy pretty well if I want  
24 to. I could point out that the new administrative is moving  
25 assets, including, perhaps, I think it's 500 or 1000 FBI

1 agents to Huntsville. I could talk about the movement of the  
2 headquarters of Space Force -- I mean, there's all sorts of  
3 things.

4 But the other thing that was really probative to me is  
5 that Mr. Gowder never once mentioned -- until you asked --  
6 anything about the Court of Appeals letter yesterday. If my  
7 clients are trying to hide assets, they've done a really bad  
8 job of it because my clients has -- it's pointed out in some  
9 of the materials that we have filed with the Court -- it is  
10 our -- it is my clients who sought to expedite the appeal with  
11 the Court of Appeals. We filed the motion prior to Mr. Gowder  
12 filing instant motion, asking the Court to expedite the  
13 appeal.

14 And when one talks about the state of the economy -- you  
15 know, I don't pretend to be an expert like Mr. Morgan pretends  
16 to be, on the state of the Class A multi-family market in  
17 Huntsville, Alabama.

18 I think it is worth noting -- I mean, I can point out to  
19 the Court that if we want to talk about national economic  
20 conditions, that since the Court issued its order, the S&P500  
21 is up nearly 20 percent. I don't think whether the S&P500 is  
22 going up or down is particularly probative as to whether the  
23 defendants who have filed the appeal are trying to hide  
24 assets. There's been nothing shown that the defendants have  
25 done anything to try to assets since the Court issued its

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**Apr 30 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

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Case No. 2024-000322

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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.

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that a true copy of the Respondent's Rebuttal Brief in Support of the Motion to Lift Stay, Verification for the Motion to Lift Stay, and Supplemental Affidavit and Exhibits in Support of the Motion to Lift Stay have been served upon opposing counsel by emailing a copy on April 30, 2025, to:

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