IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
The Honorable Thomas L. Hughston, Jr.

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Case No.: 2020-CP-18-01856

Ct. App No.: 2024-001547

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Joseph R. Davis and Jennifer Davis, individually
and as representative of all those similarly situated……Appellants-Respondents,

v.

River Oaks Homeowners Association, Inc……Respondent-Appellant

Halcyon Real Estate Services, LLC, and
Dorchester Real Estate Services, Inc……Respondents.

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# RESPONDENT-APPELLANT'S FINAL BRIEF OF RESPONDENT

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## STATEMENT OF THE CASE

### A. Summary of the Facts

Between 2014 and 2016, Appellant-Respondents Joseph R. Davis and Jennifer Davis ("Appellants") did not pay annual dues to Respondent-Appellant River Oaks Homeowners Association ("River Oaks"). After a balance accrued on their account, River Oaks' property managers filed a lien against their property in 2014. In 2016, River Oaks' property manager hired a law firm to pursue collections against the Appellants. Appellants paid the balance owed but the law firm nonetheless filed a lien against Appellants' property. Appellants sued the law firm and then sued River Oaks. In their lawsuit against River Oaks, Appellants argue that not only were the liens improper, but also that River Oaks itself is improper and should not exist at all. Appellants sought a declaratory judgment invalidating River Oaks as the homeowners association for its member neighborhoods.

#### 1. River Oaks and its formation.

Along the banks of the Ashley River in Dorchester County at the intersection of Dorchester Road and Ashley Phosphate Road, there are nine neighborhoods unified under a single homeowners association: the River Oaks Homeowners Association. (R. p. 2715.)[1] These neighborhoods are known individually as Appian Landing I, II, and III; Ashley Point; Palmetto Plantation, River Chase; and Woodington I, II, and III. (R. 2716.)[2] Each of these individual neighborhoods were developed and established subject to individual sets of covenants and

[1] The exhibits involved in this matter have been submitted to the record and filed on multiple occasions. In an effort to consolidate the exhibits, the parties filed a number of the exhibits in a collective filing on August 9, 2022. The parties each referenced and relied upon these exhibits at the summary judgment hearing conducted by the Trial Court. Where possible, River Oaks cites to that filing throughout this brief in the interest of uniformity and clarity. Other exhibits which are not included in that filing but which were nonetheless part of the record are cited separately.

[2] Today, River Oaks consists of eleven neighborhoods. The neighborhoods of Marsh Hall and Marsh Side joined in the years after River Oaks formed, and the Appellants do not contest the validity of River Oaks as to these neighborhoods. This appeal, and the underlying lawsuit, concern only the nine original neighborhoods.

restrictions; however, none of these covenants established homeowners associations. (R. p. 2716.) Thus, the neighborhoods had no governing body to enforce the covenants. (*See gen.* R. pp. 633-651 "(Smith Affidavit")). By the 1990s, the developers of these neighborhoods had ceased to exercise control over the neighborhoods and the residents of these neighborhoods lacked a mechanism for enforcing their covenants and restrictions. *Id.* Due to the lack of any governing body for their community, homeowners from the individual neighborhoods organized and filed articles of incorporation for the River Oaks Homeowners Association in 1996. (R. pp. 3576-80; *see also* R. pp. 1974-75.)

According to its Bylaws, River Oaks was formed:

- To provide a venue for preservation and enhancement of the value of the property of members;
- To promote and protect the civic welfare of the River Oaks Community, and particularly of the members of the association;
- To carry out its purposes without engaging in any business activities or pursuits, and without taking any action for pecuniary profit.
- To provide for the enhancement and maintenance of entryways to the River Oaks community from Dorchester Road, the entryways to the individual subdivisions, the roadside areas along Park Forest Parkway and Appian Way, and of existing roadway islands, and the improvement of street lighting and other safety enhancing measures, and may enter into necessary agreements and obligations needed to address those concerns, upon approval of the membership, by majority vote. of a budget sufficient for the purposes.
- To assist subdivision organizations regarding violations of covenants and restrictions, providing it is feasible to do so.

(R. p. 1055 at Art. II.) To establish River Oaks as the homeowners association for its neighborhood, the homeowners retained an attorney to advise them and prepare the necessary paperwork. (R. pp. 633-34 at ¶¶ 6-8.) River Oaks' attorney drafted a document titled the "River Oaks Declaration" which publicly stated the purpose of the organization. (*Id.; see also* R. p. 2716.) The River Oaks Declaration identified its members as "those persons owning real property in the

residential subdivisions which are served by the association." (R. p. 2715.)[3] The residential subdivisions are likewise identified by name and geographical location. (R. pp, 2715-16.) The River Oaks Declaration further states that the purpose of River Oaks was to preserve and enhance the property values of its member neighborhoods, enhance and maintain community entryways and roadsides, improve street lighting, assist with the enforcement of covenants, and establish a funding mechanism for its operations. *Id.* The River Oaks Declaration specifically states that it:

> affects the lots which compromise these subdivisions, and the terms and provisions of this Declaration apply to all such lots, running with the title to them and binding their present owners and all subsequent owners without regard to whether this Declaration is referred to in any deeds or other instruments of conveyance.

(R. p. 2717.) River Oaks' attorney reviewed the covenants of each neighborhood and determined that their terms allowed for change by majority vote. (R. pp. 634-35 at ¶¶10-11.) The covenants of Woodington I and II each contained an identical clause stating that the covenant terms may be changed if "an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part." (R. p. 3007 at § R; R. p. 3017 at § R.) Utilizing this language and the number of homes within each neighborhood, the attorney determined that adopting River Oaks as the homeowners association for Woodington I and II required a simple majority vote of the 51 and 79 homeowners, respectively. (R. pp. 634-35 at ¶ 11.) River Oaks' attorney then prepared signature pages to accompany the Declaration and advised the homeowners to collect signatures from the residents of the member neighborhoods in support of River Oaks. (R. p. 635 at ¶¶ 12-14.) Each signature page contained the statement:

[3] River Oaks' Bylaws likewise make similar provisions, identifying its members as owners of lots within its member neighborhoods. (*See* R. 1055 at Art. III).

> The undersigned . . . in order to establish a funding mechanism for the Association's operation, hereby impress the attached Declaration upon our property, to run with the land, and agree for ourselves and our successors and assigns to be bound by this Declaration.

((R. p. 635 at ¶ 14.) Beneath the statement on each signature page are spaces for homeowners to identify themselves by printed name, home address, and the Lot/Block number of their home as it appears on their neighborhood plat. (*e.g.,* R. pp. 2715-2756.)

On May 26, 2000, River Oaks' attorney filed the River Oaks Declaration with the Office of the Dorchester County Register of Deeds. (R. p. 635 at ¶ 16.) The River Oaks Declaration contained signature pages from homeowners stating their intention to impress the River Oaks Declaration upon their property. *Id*. Among these were the signatures of two homeowners from the Woodington I neighborhood and three from the Woodington II neighborhood. (R. pp. 2742-47.)[4] This included the signatures of Henry and Betty Black, who previously owned Appellants' home and sold their property to Appellants in 2005.[5] River Oaks filed additional signatures in supplemental filings on September 25, 2001, and April 24, 2002. (R. pp. 2757-3001; R. p. 635 at ¶ 16.) Upon obtaining sufficient signatures from homeowners within each of its member neighborhoods, River Oaks held itself out as a binding organization beginning in 2002. (*See* R. pp. 3565-69; *see also* Brief of Appellant-Respondent, p. 4. n. 4.) Since then, River Oaks has operated as the homeowners association for its member neighborhoods as a non-profit organization whose officers and directors are unpaid volunteers. (R. p. 1055 at Art. II § 3.)

[4] As Appellants may note, an additional signature of a homeowner from Woodington II was included in this filing; however, this homeowner sold his home before the Declaration was filed. River Oaks does not count his signature nor does it hold it out as one of the valid 42 signatures that constitute a neighborhood majority. (*See* R. pp. 2625 at 43:3-8, 2668 at 86:8-16.) River Oaks' list of valid signatories which make up the majority owners was listed in its motion and presented to the Trial Court.

[5] As noted *infra*, it is undisputed that (1) Henry and Betty Black individually bound their home to the River Oaks Homeowners Association, (2) the Appellants purchased the property from the Blacks, and (3) the Appellants had actual notice of River Oaks' existence and operations a prior to purchasing the property from the Blacks.

### 2. The Appellants Move to Woodington I.

Appellant Joseph Davis purchased the home located at 3213 Wynnefield Drive in 2005. (R. p. 3197 at 31:18-32:1; *see also* R. pp. 492-94.) It is undisputed that 3213 Wynnefield Drive is located within the Woodington I neighborhood. (Brief of Appellant-Respondent, p. 5.) Appellants further concede that they were aware that the neighborhood was subject to a homeowners association before purchasing the home. (R. p. 3205 at 64:5-13.) Appellants specifically concede that they were aware that River Oaks was the organization serving as Woodington I's homeowners association:

> When we were looking at the home, we knew about River Oaks; and when we closed, we knew there was a homeowners' association.

(R. p. 3202 at 50:4-17; R. p. 3137 at 34:17-21.) In sum, it is undisputed that Appellants agreed and acknowledged that they took title to their home with notice of River Oaks' existence and involvement in the community.

Appellants lived at 3213 Wynnefield Drive for eight (8) years from 2005 until 2013. (R. p. 3157 at 35:1-11.) It is undisputed that Appellants paid association dues to River Oaks without any objection each year from 2005 until 2013. (R. pp. 3142-43 at 55:24-25, 56:1-25, 57:1-25, and 58:1-23; R. p. 3205 at 63:16-23.) Appellant Jennifer Davis served as a member of the River Oaks Board of Directors and Appellant Joseph Davis performed a complimentary financial audit for the Board of Directors. (R. p. 3145 at 66:24-25 and 67:1-1-4; R. p. 3206 at 67:14-25, 68:1-25, and 69:1-17.) Appellant Jennifer Davis acknowledges that as a member of the Board of Directors she voted to place liens on homeowners' property for failure to pay HOA dues. (R. p. 3158 at 118:5-14).

### 3. The Appellants Leave Woodington I and Fail to Pay their Association Dues.

In November 2013, Appellants moved to Walterboro, South Carolina, and entered into an installment sale contract for their home in Woodington I. (R. p. 1611; R. 3137 at 34:23-35:7.) The agreement allowed a tenant to live at the home on a rent-to-own basis. (R. 1611.) Appellants drafted the agreement themselves, and the terms required the tenant to pay annual homeowners association dues to River Oaks. (R. p. 3200 at 46:2-14.) The Davises stopped paying dues directly because they expected their tenant to assume responsibility. (R. p. 3143 at 58:4-23.) Despite this requirement, the tenant failed to pay association dues for three consecutive years, from 2014 through 2016. (R. pp. 3218-19 at 117:19-118:13.)

In 2014, River Oaks' property manager, Dorchester Real Estate Services, filed a lien against the Subject Property in the amount of $170. (*Id.*; *see also* R. pp. 3475-79.)[6] In 2015, River Oaks switched property managers and contracted with Halcyon Real Estate Services. In turn, Halcyon retained the legal services of McCabe Trotter & Beverly, P.C. ("MTC") to pursue collections on overdue account balances. (*See* R. pp. 79-80 at ¶ 104-109.)[7] By 2016, the balance outstanding on Appellants' account had not been paid and totaled $480. (R. p. 81 at ¶ 116.) Halcyon informed Appellants of the outstanding balance via email in March 2016. In April 2016, MTC informed Appellants that the balance owed had increased to $1,035.28. Appellants paid this amount to MTC, but MTC nonetheless proceeded with filing a lien against the Subject Property. Appellants filed a lawsuit against McCabe Trotter Beverly in 2017. (R. pp. 404-50; p. 369 at 16:7-16.) After that matter was settled, Appellants then filed the instant lawsuit against River Oaks.

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[6] River Oaks had two different property managers during the relevant time period. River Oaks contracted with Dorchester Real Estate Services prior to August 1, 2015. It contracted with Halcyon Real Estate Services in August 2015 before terminating that contract in 2017 and returning to Dorchester Real Estate Services.

[7] River Oaks did not retain McCabe Trotter & Beverly directly. (R. p. 80 at ¶ 109.) nor did it authorize Halcyon to retain the law firm as River Oaks' Counsel. (*Id.* at p. 79 ¶¶ 106-107.) It is undisputed, however, that MTC filed a lien against Appellants' property.

## B. Summary of the Procedural History

On October 11, 2017, Appellants filed the underlying lawsuit in the Dorchester County Court of Common Pleas challenging the validity of River Oaks and its authority to act as the homeowners association for nine neighborhoods located in Dorchester County. (*See* R. p. 60.) Appellants asserted claims against River Oaks, Dorchester Real Estate Services, and Halcyon Real Estate Services. *Id.* Appellants asserted a claim for unfair trade practices in Appellants' individual capacities and nine class-wide claims with Appellants as alleged class representatives.[8]

Appellants moved for certification of a class action for homeowners in all nine (9) River Oaks neighborhoods on December 14, 2018. (R. p. 142.) The Parties then filed cross-motions for summary judgment on December 23, 2020, and March 10, 2021. Hearings on all motions were conducted on March 24, 2021; June 4, 2021, and July 7, 2022, before the Hon. Diane Goodstein. (*See gen* R. pp. 2362-2676.)[9] On August 16, 2022, Judge Goodstein entered orders denying all motions for summary judgment and partially granting Appellants' motion for class certification. With respect to class certification, Judge Goodstein certified a class of plaintiffs from two (2) of the nine (9) neighborhoods – Woodington I and Woodington II. (R. p. 19 ("Class Cert. Order").) Judge Goodstein's Order approved Appellant-Respondent Joseph Davis as a class representative[10] and certified a class defined as:

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

[8] The class-wide claims included a claim for unjust enrichment, money had and received, negligent misrepresentation, constructive fraud, slander of title, declaratory and injunctive relief, abuse of process, aiding and abetting, and conversion. (*See* R. pp. 60-105.)

[9] The case was stricken from the docket on November 6, 2019, pursuant Rule 40(j), SCRCP, and restored on November 20, 2020.

[10] Appellant-Respondent Jennifer Davis withdrew her request to serve as a class representative. (R. p. 28 n. 21.)

*Id.* Following Judge Goodstein's order, River Oaks then filed a motion for reconsideration pursuant to Rule 59(e), SCRCP. Judge Goodstein denied that motion by Form 4 Order. (R. p. 33.)

In the summer of 2024, the parties filed new cross-motions for summary judgment and on July 24, 2024, the case proceeded to a bench trial before Hon. Thomas L. Hughston ("Trial Court"). During pre-trial procedures, the parties argued the renewed cross-motions for summary judgment. Ultimately, the Trial Court granted summary judgment to River Oaks and denied Appellants' motion for summary judgment as to all Appellants' claims. (R. p. 36., Order on Mot. for Summ. J., filed July 24, 2024 ("Trial Court Order".)) Appellants moved for reconsideration, (R. p. 2274), and the Trial Court denied the motion holding that "[t]his is a unique case and both sides asked for Summary Judgment. After again considering everything, I deny the Motion to Reconsider." (R. p. 58.) Appellants then filed a notice of appeal of the Trial Court's Order and also of the Class Cert. Order.[11] (Appellants' Notice of Appeal, filed September 13, 2024).

[11] The primary issue of this appeal is Appellant's attempt to overturn summary judgment; however, Appellants have raised issues as to class certification. To maintain its objections to class certification, River Oaks filed its own appeal. (Appellants' Notice of Appeal, filed September 13, 2024; River Oaks Notice of Appeal, filed September 16, 2024.) Despite raising the issues, Appellants now take the position that any appeal of class certification is improper at this stage. (Appellants' Initial Response Brief, filed May 12, 2025, pp. 5-6.) River Oaks filed a motion to dismiss Appellant's appeal of the August 16, 2022, order, on May 27, 2025. Appellants did not file any motion in response to the motion and may therefore be deemed a consent motion to dismiss all appeals of the Class Cert. Order. Rule 240(c), SCACR. To the extent that the Court does not dismiss those appeals, however, River Oaks has outlined its arguments as to the matter in its Brief of Appellant, filed March 10, 2025.

## ARGUMENT

### I. The Trial Court properly held that equity requires granting summary judgment in favor of River Oaks because it has been established as the neighborhood homeowners association for more than twenty years and the benefits conferred on the neighborhoods it serves outweigh any alleged harm asserted by Appellants.

The Trial Court properly granted summary judgment in favor of River Oaks. This Court, upon its review of the Record, should affirm that ruling because equity requires it.[12] The Trial Court correctly noted that, notwithstanding Appellants' alleged harm, River Oaks was voluntarily organized and has become engrained into the fabric of the community over time. (R. pp. 53-55.) The Trial Court's ruling preserves the River Oaks Community and maintains the homeowners association that has served its member-residents for more than two decades. Conversely, the Appellants sought a declaration that would remove River Oaks from the Woodington I and II neighborhoods and effectively deprive current and future residents of the services that a homeowners association provides. The Appellants brought this case despite living in and voluntarily participating in its operations for eight (8) years. (R. p. 55 n. 9.) During that time, at least one of the Appellants participated in, and carried out, the very same acts for which she has now alleged River Oaks lacks the authority to do. (*See* R. p. 3144 at 62:5-24; R. p. 3147 at 75:15-19.)[13] Further, as the Trial Court accurately noted, the Appellants do not even live in River Oaks today and have no continuing interest in its ongoing operations. (*See gen*. R. 53-56.) The removal

[12] The Trial Court noted that this ruling served as a separate and alternative basis for granting summary judgment. Affirming this ruling would be dispositive of the entire appeal and, therefore, this Court need not reach the other issues if it were to affirm this ruling. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

[13] It has been said that "bad facts make bad law." *See, e.g.*, *Doggett v. United States*, 505 U.S. 647, 659, 112 S. Ct. 2686, 2694, (1992) (Thomas, J., dissenting); *United States v. Clark*, 96 U.S. 37, 49, 24 L. Ed. 696 (1877) (Harlan, J., dissenting). Equity serves as a mechanism for preventing bad law. The case before the Court might be different if they were current homeowners or residents of River Oaks, if they had not themselves participated in River Oaks' operations, or if the entity that actually filed the 2016 lien against their property were a party to this case. But those are not before the Court, and simply too many of the actual facts before this Court weigh against Appellants' claims.

of River Oaks would not affect Appellants but it would necessarily affect the homeowners actually living in Woodington I and II. (*See gen*. R. 53-56.)

Appellants assert two (2) grounds to seek reversal of the Trial Court's proper order on equity. First, Appellants attack the Trial Court's findings that River Oaks improved and benefited the neighborhoods. (Brief of Appellant-Respondent, p. 38.) Second, Appellants claim that River Oaks acted "illegally" and that those alleged and unidentified illegal acts contravene the policy that a party seeking equity must have clean hands. (Brief of Appellant-Respondent, pp. 37-39.) Appellants' arguments fail on both grounds. As to the Appellants' first claim, the record is replete with examples of improvements and benefits conferred on the neighborhoods by River Oaks and this Court's review of the record will lead the Court to the same and independent conclusion. As to the second claim, Appellants do not, and cannot, cite to any illegal act committed by ROHA. The only "illegal act" upon which Appellants rely stems from a law that did not even exist at the time of the events which give rise to Appellants' claims, and Appellants have no standing to invoke it. Accordingly, the Trial Court's order on equity must remain.

### A. The record is replete with evidence to support the Trial Court's findings that River Oaks improved and conferred a benefit on the River Oaks neighborhoods.

Appellants' brief repeats their argument that River Oaks does not benefit its members or the community. (Brief of Appellant-Respondent, p. 38.) To the contrary, River Oaks has been directly responsible for beneficial changes in the community. Just one example can be seen from River Oaks' efforts early on secured the installation of bike racks in new commercial developments around River Oaks. (R. p. 3568.) Other evidence shows that River Oaks is responsible for the installation and maintenance of landscaping and street lighting along the two neighborhood

entryways.[14] (R. pp. 3572-73; R. p. 3204 at 59:25-60:4.) Appellants argue in their brief that River Oaks' maintenance of landscaping and lighting along its entryways should not count because they are within the public right of way, yet Appellants themselves acknowledge that the efforts were beneficial. (R. p. 3024 at 59:25-60:4.) It should not be forgotten, either, that Appellants were aware that their association dues went toward these efforts and Appellants paid these dues for eight (8) years without objection. (*Id.* at 58:21-24 (acknowledging the purpose and use of assessment funds for landscaping, insurance, and electricity.)) Further, River Oaks' influence has also led to both a church and a school – two things which are commonly recognized as foundational pillars of a community – to be named after River Oaks. (R. p. 2670 at 21-24.)

Appellants may argue that they do not consider River Oaks to be a beneficial and necessary entity, but that is because Appellants no longer live in River Oaks – and haven't for more than a decade. (R. p. 3157 at 34:23-35:7.) Glaring in the face of their argument is the simple fact that they haven't even taken steps to speak to anyone in the community about whether or not they enjoy having a homeowners association:

> 17 Q. You think anyone in the River Oaks
> 18 community benefited from anything they did?
> 19 A. I cannot say at this time.
> 20 Q. Is that because you haven't spoken to
> 21 anybody about it?
> 22 A. Correct.

(R. p. 3142 at 55:17-22.) The record is clear that River Oaks has operated in the community for more than two (2) decades and is now engrained into the fabric of the community. To undo River Oaks and eliminate the improvements and benefits conferred on the neighborhoods for the past twenty (20) years would go against demonstrable evidence that a community has formed around

[14] There are two roads which connect River Oaks' neighborhoods to Dorchester Road: Park Forrest Parkway and Appian Way. There is no other way to access any of River Oaks' neighborhoods by vehicle. (*See, e.g.*, R. p. 3459-60.)

River Oaks. Appellants have plainly stated that their goal is to remove River Oaks, but to find in favor of former residents, with no current or future interest in Woodington I or any River Oaks neighborhood for that matter, would be ignoring the wishes and needs of current residents who both pay for, and are beneficiaries, of River Oaks' HOA services.

### B. River Oaks did not commit any "illegal acts" because the acts upon which the Appellants base their claims occurred before the enactment of the South Carolina Homeowners Association Act.

In a second attempt to quash summary judgment, Appellants reference the South Carolina Homeowners' Association Act and claim that River Oaks is operating "illegally." (Brief of Appellant-Respondent, pp. 36 and 43.) The Appellants have no standing to make this argument because none of their claims are subject to the Homeowners Association Act. As this Court is aware, the South Carolina Homeowners Association Act was not enacted until 2018 and did not take effect until January 1, 2019. S.C. Code Ann. 27-30-130. Appellants did not pay association dues, receive fines or fees from a homeowners association, or live in the Woodington I neighborhood at any point in time when the Act was enacted and effective as law. Appellants have made clear that, "[t]his case is about the actions in 2016 that were made against us . . ." (R. p. 3152 at 14:2-4.) The only events that Appellants allege give rise to liability occurred in 2014, 2015, and 2016 – several years prior to the enactment of the Act. (*See* Brief of Appellant-Respondent, pp. 5-6; *see also* R. pp. 76-87 at ¶¶ 94-155.) In fact, Appellants filed their original lawsuit in 2017, an entire year before the Act was even signed into law. Moreover, Appellants have previously acknowledged in open court that their claims are not subject to the Act. (R. p. 2446 at 85:16-21.) Nevertheless, Appellants may attempt to argue that their class members have claims which are subject to the Act, but a class action is defined by the claims of the *class representative*, not the class members themselves. As the *Broussard* court points out, "[a]s goes

the claim of the named plaintiff, so go the claims of the class." *Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 340 (4th Cir. 1998).

### C. Further evidence exists in the record to support that equity favors River Oaks.

The Trial Court properly considered evidence from both sides in making its ruling, including the claims of Appellants, the history of River Oaks, all facts relating to Appellants' notice of River Oaks' existence, Appellants' involvement in the community, the development of the community over time since River Oaks was established, and the future impact of Appellants' request to remove River Oaks from the community. (R. p. 39.) Simply put, equity requires the enforcement of restrictive covenants that have a substantial value even when a hardship results. *Circle Square Co. v. Atlantis Dev. Co.*, 267 S.C. 618, 630, 230 S.E.2d 704, 709 (1976). Appellants claimed harm resulted from the lien that an entity other than River Oaks filed against the Subject Property. Their goal in this case was not to recover for that harm, but to remove River Oaks entirely. [15] When asked directly if it were possible for him to get what he wants in this lawsuit while also allowing River Oaks to continue its operations as a homeowners association, Appellant Joseph Davis replied, "It is not possible." (R. p. 3217 at 112:1 – 113:14.) Equity does not support that goal, no matter how the losses Appellants claim to have suffered.

Moreover, the Trial Court correctly noted that equity looks to substance rather than form. *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 253, 715 S.E.2d 348, 354 (Ct. App. 2011). Putting aside Appellants' claimed harms, the entirety of Appellants' argument as to formation rested upon technical aspects of the method in which River Oaks formed. Appellants overlook the

[15] Appellants have already sued MTC and reached a settlement of "a couple thousand dollars." (R. p. 3193 at 16:7-16.) Given that South Carolina law does not permit double recovery, Appellants' claimed harms in this action cannot include the actual payment of $1,035 relating to unpaid assessments from 2014-2016. *Gipson v. Coffey & McKenzie, P.A.*, 445 S.C. 395, 399, 914 S.E.2d 842, 844 (2025).

actual efforts that homeowners took to form River Oaks, from retaining the advice of counsel to grassroots efforts to collect approval and consent from *majority* of the homeowners. Appellants have never identified witnesses or homeowners who support Appellants' case.[16] In response to all of River Oaks' evidence and the Trial Court's Order, Appellants argue only that it isn't good enough. "If River Oaks did not properly establish itself, it was not for lack of trying." (R. p. 54.)

It was not lost on the Trial Court that Appellants purchased their home in Woodington I with full knowledge of River Oaks' existence and that Appellants voluntarily participated in River Oaks' activities for multiple years. (R. pp. 54-56.) Additionally, the Trial Court noted that the very basis for Appellants' lawsuit and claims against River Oaks arose from unpaid association dues which Appellants had previously paid for eight (8) years and had contractually obligated a third-party to pay. (R. p. 55 n. 9.) Appellants took title to the Subject Property in 2005. They were aware then that River Oaks existed and required mandatory payment of dues. (R. p. 3203 at 50:4-17; R. p. 3137 at 34:17-21, p. 3142 at 56:1-10.) Appellants participated in River Oaks for years and did not raise any objections to its existence until after they were no longer residents of its community. If there was a time to raise objections to the legality of River Oaks' existence, it was when Appellants joined the neighborhood.

South Carolina precedent also supports rulings against purchasers who take title with notice of restrictions on land. *See Buffington v. T.O.E. Enterprises* 383 S.C. 388, 680 S.E.2d 289 (2009). In *Buffington*, the Supreme Court of South Carolina affirmed a trial court order enforcing restrictive covenants as a matter of equity where a petitioner had notice of restrictive covenants prohibiting commercial use when they purchased property yet developed the land for commercial

[16] This is underscored by the fact that the Appellants have never identified a single homeowner, current or former, that supports their lawsuit. The Appellants conceded in their deposition that they do not know of anyone that supports their lawsuit or shares their opinions of River Oaks. (R. p. 3197 at 30:21 – 31:10.)

use anyway. *Id.* While recognizing that the petitioners would suffer financial harm from enforcement of the covenants, the Supreme Court held that it would be inequitable to consider the petitioner's harm given that they were on notice of the restrictions when they purchased it. *Id*. "[T]o ignore the restriction, in the absence of evidence to support lifting the restriction based on equitable doctrines, 'would eliminate a homeowner's justified reliance on property restrictions.'" *SPUR at Williams Brice Owners Ass'n, Inc. v. Lalla*, 415 S.C. 72, 91, 781 S.E.2d 115, 125 (Ct. App. 2015) (citing *Buffington*).

## II. The Trial Court correctly held that the homeowners of Woodington I and Woodington II properly adopted the River Oaks Declaration because the homeowners complied with the terms of their respective covenants in effectuating a change.

Equally compelling as the basis to affirm the Trial Court Order on equity is the sound reasoning of the rulings applying the undisputed material facts to the law. This Court should affirm the Trial Court's Order because the governing documents of River Oaks' member neighborhoods allow for the homeowners themselves to change the governing documents of their neighborhoods and the homeowners of Woodington I and II complied with those terms in adopting the River Oaks Declaration. (*See gen.* R. pp. 2715-3021; *see also* R. pp. 635-651.) Appellants' argument against the creation of River Oaks is two-fold: first, they argue that no homeowners association could ever be created; second, they argue that even if one could be created, the homeowners who formed River Oaks failed to do so correctly. (Brief of Appellant-Respondent, pp. 11-26.) The facts of what these homeowners did are not in dispute and, in fact, the only issue before the Trial Court was the application of those facts to the law.[17] The Trial Court correctly found as a matter of law that the homeowners of Woodington I and II complied with the requirements of their covenants in

[17] Each side filed cross-motions for summary judgment, asking the Trial Court to apply the same facts to the same documents and interpret them in their favor.

order to change and adopt the River Oaks Declaration. (*See* R. p. 36.) Here, as they did before, Appellants arguments must fail because of the plain language of the Woodington Covenants and the acts of the homeowners permit the formation of River Oaks, permit the assessment of dues, the levy of fines, and the filing of liens.

### A. The Woodington I and Woodington II covenants allow for a change by a simple majority.

Restrictive covenants are contractual in nature. *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App. 2006). Like any other contract, the terms and scope of restrictive covenants may be changed. *Id.*, at 362, 628 S.E.2d at 913-914 (recognizing developer's right to amend covenants); *Arnoti v. Lukie*, 350 S.C. 177, 564 S.E.2d 691 (Ct. App. 2002) (recognizing that restrictive covenants may authorize owners to change restrictive covenants in whole or in part). "The main guide in contract interpretation is to ascertain and give legal effect to the intentions of the parties as expressed in the language of the [contract]. *Cullen v. McNeal*, 390 S.C. 470, 481, 702 S.E.2d 378, 384 (Ct. App. 2010). Restrictive covenants are subject to the rule of construction in favor of the free use of property; however, the rule cannot "be applied so as to defeat the plain and obvious purpose of the instrument.'" *Kinard v. Richardson*, 407 S.C. 247, 257-58, 754 S.E.2d 888, 893-94 (Ct. App. 2014). The words creating such restrictions must "be given the common, ordinary meaning attributed to them at the time of their execution." *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998).

The Trial Court's Order detailed the mechanism by which the covenants of Woodington I and II may be changed. (R. pp. 43-49.) The process itself is relatively simple; both sets of covenants allow for change when "an instrument, signed by a majority of the then owners of the lots has been recorded, *agreeing to change said covenants in whole or in part*." (emphasis added). (R. p. 3007 at § R, R. p. 3017 at § R.)

Appellants have argued that a change should not be so simple. Arguing against the plain language of the covenants themselves, Appellants implicitly question whether a change could be made at all and expressly advocate for the imposition of a rigid and impractical requirement of simultaneous execution of a detailed document using particular language. (Brief of Appellant-Respondent, p. 25.) The Woodington I and II covenants do not, however, require any magic words nor do they require a simultaneous execution - they simply require an agreement of the majority to change the covenants' terms.

### 1. The plain language of the Woodington I and II Covenants permits change and the creation of a homeowners association.

The plain language of the Woodington Covenants allows for "change" by a "majority." (R. p. 3007 at § R; R. p. 3017 at § R.) While doubts must be construed in favor of free use of property, the rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument. *Kinard v. Richardson*, 407 S.C. 247, 258, 754 S.E.2d 888, 894 (Ct. App. 2014) (citation omitted). In this case, however, there cannot be any doubt because the Woodington I and II covenants expressly contemplate the later creation of a homeowners association. (R. p. 3006 at § O.; R. p. 3016 at § O.) The Covenants each state that an easement for maintenance of subdivision entrance signs may be assigned "to a neighborhood homeowners association or garden club." *Id.*. It is undisputed that River Oaks in fact maintains signs at the entryways of the neighborhoods. The Trial Court was aware of this language within the Woodington Covenants and correctly gave those words their plan meaning in granting summary judgment. (R. pp. 49-50.) Any other holding would have disregarded the principles of the English language and imposed a tortured reading for the sole purpose of prohibiting what both the Woodington developers and its residents desired.

Arguing against this plain language, Appellants argue that even terms expressly referring to a homeowners association are insufficient for actually authorizing a homeowners association

because the covenants lack an "unmistakable intent that a homeowners association should be created . . ." (Brief of Appellant-Respondent at p. 14.)[18] Appellants do not provide an answer to the question of what would have been sufficient and merely argue that the Woodington Covenants only contemplate that a homeowners association might be created. (Brief of Appellant-Respondent at pp. 15-16.) This argument essentially "moves the goalposts" without answering key questions. For example, Appellants have no answer for why a developer who "contemplates" the creation of a homeowners association would not take steps to prohibit it unless it was their intent that an association actually be created. The only sound answer is that a developer who specifically includes language regarding the involvement of a homeowners association within a neighborhood necessarily intends for one to exist either at the time of development or at some later date. Here, the developers made clear that they expected the later creation of a homeowners association and actually intended for one to care for the Woodington I and II neighborhoods. The Trial Court did not lend credence to this argument and neither should this Court.

To be sure, Appellants rely upon *Erkes v. Kasparek,* 303 S.C. 70, 72, 399 S.E.2d 6 (Ct. App. 1990) for the proposition that an "amendment" cannot expand the scope of covenants. (Brief of Appellant-Respondent at pp. 14-15.) *Erkes* is distinguishable and not binding upon this appeal because *Erkes* concerned an attempt by a homeowners association to impose restrictions on undeveloped land still owned by the developer. The sole issue before the Court of Appeals was "whether these amendments are binding on the developers with respect to the balance of the land not yet subdivided." 303 S.C. at 72, 399 S.E.2d at 7. The issue here is not whether the homeowners can override the authority of the developer but rather the scope of the authority granted to the homeowners themselves. The Trial Court correctly noted that Black's Law Dictionary defines

[18] Indeed, the Appellants argue that not only is River Oaks invalid but also that *any* attempts to create a homeowners association in Woodington I or II would be invalid. (Brief of Appellant-Respondent a p. 14.)

"amendment" as a change made by addition, deletion, or correction. (R. p. 45.) Nothing within the Woodington Covenants prohibited the creation of a homeowners association; rather, the covenants expressly anticipated it. Appellants also cite to *The Gates at Williams-Brice Condo. Ass'n v. DDC Constr., Inc*, 418 S.C. 282, 792 S.E.2d 240 (Ct. App. 2016) for the premise that amendments cannot be unlimited in scope. (Brief of Appellant-Respondent at pp. 12-13.) However, that opinion was vacated following a settlement and has no binding authority. *Gates at Williams-Brice Condo. Ass'n v. DDC Constr., Inc.*, 420 S.C. 181, 801 S.E.2d 400 (2017). Nonetheless, the argument fails because River Oaks is not some unreasonable and unintended addition; it is the embodiment of something the developers specifically addressed and intended. Moreover, River Oaks' enforcement is limited to the enforcement of already existing neighborhood covenants and the internal regulation of its members. (*See* R. p. 2715; R. p. 3159 at 125:5-8.)

**2. River Oaks obtained the required majority of signatures.**

The undisputed facts as established by the public records on file Dorchester County Register of Deeds ("ROD") clearly support a finding that the homeowners of Woodington I and II obtained a simple majority of signatures because more than fifty percent (50%) of the lot owners signed the River Oaks Declaration and the signatures were recorded with the ROD. (*See gen.* R. pp. 2715-3001.) Where restrictive covenants allow for change by a majority vote, the majority's vote is binding on the whole community. *In re T 2 Green, LLC*, 364 B.R. 592, 609 (Bankr. D.S.C. 2007) (*See also Cummings v. Noon*). The Trial Court properly noted that each neighborhood obtained a simple majority of signatures. (R. pp. 44-49.) River Oaks presented the Trial Court with the names of 27 signatories from Woodington I and 42 signatories from Woodington II, both of which constitute a majority from each neighborhood. (R. pp. 2715-3001.) River Oaks identified

each of these signatories by name, home address, corresponding lot number, and the book and page number of their Declaration signature. (R. pp. 2718-2756, 2758-2992, and 2994-3001.) Appellants argue that River Oaks failed to comply with the terms of the Woodington I and II covenants because the Declaration was not signed by a majority of the *then owners*. (Brief of Appellant-Respondent at p. 25.) Appellants argue that compliance with the covenants requires "then owners" to sign a single instrument simultaneously. *Id*. River Oaks acknowledges that it did not obtain all of the homeowners signatures on the exact same day at the exact same time; to do so would have been a herculean effort for a volunteer organization. This imposes additional terms and requirements upon the Woodington I homeowners that do not exist within the covenants and is directly in contrast with Appellants' argument that additional restrictions cannot be imposed. Instead, River Oaks submits – and the Trial Court agreed – that a change requires only a majority of the homeowners to sign the River Oaks Declaration and that their signatures be recorded. (R. pp. 44-46.)[19]

Appellants further argue that the timing of the homeowners' signatures makes the Declaration an "evergreen instrument." (Brief of Appellant-Respondent pp. 25-26.) This is simply not the case. River Oaks demonstrated to the Trial Court that it obtained at least 27 signatures from Woodington I residents (a 51% majority) and 42 signatures from Woodington II residents (a

[19] The Appellants raise issues to this Court – some preserved and some which are not – regarding the sufficiency of the number of signatories and their timing. First, the Appellants argue that the Court erred by making a factual finding that each owner identified themselves by address and lot number. The Appellants point to signatures of three homeowners misidentified their lot when signing the River Oaks Declaration. (Brief of Appellant-Respondent, p. 19 n. 11.) This argument ignores all of the evidence actually presented to the Trial Court and upon which the Trial Court relied. Each homeowner signature submitted to the Trial Court contained the owner's name, address, and lot identification. The Appellants themselves demonstrate how this information is within the public record and can be used to identify and verify the ownership of each lot by the signatories. Moreover, the Appellants do not even argue that these owners did not actually own their respective properties. If anything, the Appellants point out only a harmless scrivener's error. *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 558, 658 S.E.2d 80, 87 (2008). Second, the Appellants argue to this Court that summary judgment was inappropriate because the Trial Court did not identify by name the majority owners it found to have signed the River Oaks Declaration. (Brief of Appellant-Respondent, p. 20 n. 13; p. 21.) This argument is disingenuous as the Appellants not only admit in their briefs who the 27 lot owners are, but this issue was never in dispute at the hearing. (Brief of Appellant-Respondent, p. 21 n. 16.)

53% majority). (R. pp. 1213-1219.) For both neighborhoods, at the time that the last of these signatures were filed, all the other signatories held title to their respective lots; thus, the "then owners" were all signed and recorded. Put another way, on the date that the 27th homeowner from Woodington I signed the River Oaks Declaration, all 26 other signatories owned their respective lots. Likewise, on the date that the 42nd homeowner from Woodington II signed the River Oaks Declaration, all 41 other signatories owned their respective lots.

River Oaks spelled out the ownership of each and every signatory in its motion, which the Trial Court read and relied upon in making its ruling. (R. p. 1213-1215.) Of the 27 Woodington I Signatories, the latest that any of them took title to their lot was Christopher Vanhoy in January 2001.[20] River Oaks' attorney recorded the last of these 27 signatures with the Dorchester County Register of Deeds on September 25, 2021. (R. pp. 2757-2992.) On that date, all 27 signatories owned their respective lots within Woodington I. Likewise, of the 42 Woodington II signatures, the latest that any of them took title to their lot was John and Lena Gilley in March 2001. River Oaks' attorney recorded the last of these 42 signatures with the Dorchester County Register of Deeds on September 25, 2021. (R. pp. 2757-2992.) On that date, all 42 signatories owned their respective lots within Woodington II.

Appellants emphasize the fact that on the date that the first of these signatures were obtained some later signatories had not yet taken title to their lots; however, this argument fails to address the indisputable fact that the first of these signatories still owned their lots when the remaining signatures were added. (Brief of Appellant-Respondent at pp. 17-27.) For example, Appellants argue that the signature of homeowners Yvonne Reynolds and Henry and Betty Black

[20] In their brief, the Appellants identify Robert and Tracy Marsh as a signatory who took title after executing the Declaration. The Appellants state that the Marshes took title in December 2001; however, this omits their period as equitable owners from 1995 until 2001.

are invalid because they signed the River Oaks Declaration in 1999 and seven other signatories did not take title until a later date. *Id.*, p. 22. There is no evidence – and Appellants do not assert – that Ms. Reynolds or the Blacks revoked their consent, and it is undisputed that these homeowners still owned their homes when the remaining signatories affixed their names to the River Oaks Declaration. In other words, the Trial Court, the law, and even logic look to the final signature and not the first to determine whether the River Oaks Declaration was "signed by a majority of the then owners of the lots."

Secondarily, Appellants argue to this Court that there is no evidence that certain lot owners had equitable ownership of their lots. (Brief of Appellant-Respondent at p. 23.) To be sure, the parties disputed and argued to the Trial Court about whether equitable ownership was sufficient to constitute "ownership," but Appellants never once argued that evidence did not exist to support the argument. (*See, e.g.*, R. pp. 2622-23 at 40:23-41:4.) As this Court is well aware, arguments must be raised to the trial court and ruled upon in order to be preserved for appeal. *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000). Indeed, an issue may not even be raised for the first time on motion to reconsider. *Repko v. County of Georgetown*, 424 S.C. 494, 502, 818 S.E.2d 743, 748 (2018). Further, the Parties had all previously acknowledged and agreed that land records are public record of which the Court can take judicial notice. (R. pp. 2507 at 14:22-24.)

As for the legal significance equitable title itself, the Appellants make no argument on this issue to this Court and thus the issue has been abandoned. *Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006). However, to be sure, the longstanding law of South Carolina is clear that equitable title is one of the "bundle of sticks" that can be owned, conveyed, and encumbered. *S. Pole Bldgs., Inc. v. Williams*, 289 S.C. 521, 523, 347 S.E.2d 121, 122 (Ct. App.

1986); *Ridgeway v. Broadway*, 91 S.C. 544, 75 S.E. 132, 133 (1912). An equitable owner of land has sufficient ownership and rights to bind the property to a homeowners association such as River Oaks and any arguments Appellants make to the contrary must fail as a matter of law.

### 3. The signatures filed with the Register of Deeds as supplements to the original signatures filed with the Declaration are all binding as a single instrument.

Appellants argue that the River Oaks Declaration and its supplements are not a single "instrument" such that the signatures are not binding when taken together. (Brief of Appellant-Respondent at pp. 20-27.) However, Appellants rely on *Bishop Realty & Rentals, Inc. v. Perk, Inc.*, 292 S.C. 1982, 184-184, 355 S.E.2d 298 (Ct. App. 1987) in their own brief at page 27 which states:

> Where instruments entered into by the same parties at different times relate to the same subject matter, the instruments will be construed together to determine the entire agreement between the parties. If the provisions of one instrument limit, explain, or otherwise affect the provisions of the other, they will be given effect to accomplish the entire agreement between the parties….

Moreover, the rule applies even if the parties are not the same if the several instruments were known accomplished an agreed purpose. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004). Here, it is plain that the signatures obtained from "then" owners were all in support of, and supplement to, the River Oaks Declaration. The Declaration Supplement states:

> River Oaks Homeowners Association (subsequently referred to as Association) recorded a Declaration on May 26, 2000, in Book 2433 at page 92 in the office of the RMC of Dorchester County. The Declaration contained 39 pages of signatures of the owners of lots in the nine residential subdivisions served by the Association. **This Supplement #1 is being recorded to add more signature pages for the owners of the other lots in the nine subdivisions**.

(R. p. 2760) (emphasis added). Appellants do not seriously contend that the covenants themselves cannot be changed; instead, they argue that the method in which the Woodington homeowners changed them was inadequate and should therefore be disregarded. (Brief of Appellant-

Respondent at pp. 11-26.) Appellants ask this Court to undo the actions of these homeowners and disregard the clear intent of the community merely because of alleged and unfounded technicalities in the manner that the homeowners conducted the change.[21] The Declaration Supplement, and each and every signature page, makes clear that the document being signed is the River Oaks Declaration. The fact that certain signatures were filed at a later date does not change this.

## III. The Trial Court correctly held that the covenants of Woodington I and Woodington II did not prohibit the creation of homeowners association because the documents specifically contemplated such a scenario.

Appellants argue that the River Oaks Declaration is invalid because the Woodington I and II covenants do not authorize the creation of a homeowners association. (Brief of Appellant-Respondent at p. 14.) Any attempts to do so, Appellants argue, would exceed the scope of the Woodington I and II Covenants and the original intent of the drafters because there is not an "unmistakable intent that a homeowners association should be created . . ." (Brief of Appellant-Respondent at p. 14).[22] Recognizing that the covenants themselves specifically contain the words "homeowners association" and address a scenario in which an association would later serve the neighborhood (Brief of Appellant-Respondent p. 15) the Appellants argue to this Court now that the mere contemplation of a homeowners association within the covenants is not specific enough to authorize the actual creation of one at a later date. (Brief of Appellant-Respondent at pp. 15-16.) The Trial Court did not lend credence to this argument and neither should this Court.

## IV. The Trial Court correctly held that the River Oaks Declaration is a restrictive covenant effective and binding upon the land making up the Woodington I and II Neighborhoods.

### A. The River Oaks Declaration runs with the land.

[21] As noted *supra*, the Trial Court's ruling on equity acknowledges that equity looks to substance over form.
[22] Indeed, the Appellants argue that not only is River Oaks invalid but also that *any* attempts to create a homeowners association in Woodington I or II would be invalid. (Brief of Appellant-Respondent at p. 14.)

Appellants argue that the River Oaks Declaration is invalid because it is merely a "funding mechanism" and not a binding covenant. (Brief of Appellant-Respondent at p. 17.) The Trial Court, however, correctly held in the Order, (R. p. 50), that "[c]ovenants requiring property owners to pay fees for improvements, maintenance or other services to a homeowners association run with the land." *Harbison Cmty. Ass'n, Inc. v. Mueller*, 319 S.C. 99, 102, 459 S.E.2d 860, 862 (Ct. App. 1995). Appellants themselves have acknowledged that the purpose and use of assessment funds was for funding landscaping efforts, providing electricity, and other communal efforts. (R. p. 3204 at 58:21-24*; see also* R. p. 2593 at 11:5-13.) Appellant Jennifer Davis plainly acknowledged:

> 15 Q. So neighborhood cleanup and
> 16 neighborhood landscaping; is that correct?
> 17 A. Yes.
> 18 Q. The dues went to pay for the services
> 19 to the community?
> 20 A. Yes.

(R. p. 3142 at 57:15-20.) The Appellants make it a point to argue that there is no communally owned land, or common areas (Brief of Appellant-Respondent at p. 3, n. 2.) Not only is this factually wrong[23], it ignores the actual efforts of River Oaks to provide landscaping and maintenance for the benefit of the River Oaks Community. (R. p. 3572 (noting the installation of "new landscaping installed on the Park Forest Parkway center islands")). Unconvinced, Appellants argue that these assessments and the maintenance of the entryways "had no beneficial effect on the value of the homeowners' properties." (Brief of Appellant-Respondent at p. 28.) Not only did Appellants fail to provide any support for their opinion-based argument, but their argument is also belied by Appellants' own concession that the efforts provided a benefit. (R. p.

[23] River Oaks is the owner of record of several parcels of land within the community. For example, River Oaks is the owner of the land running along Appian Way where it maintains lighting and landscaping. This parcel of land is TMS number 181-05-02-083.00. This Court may properly take judicial notice of this fact through the public tax and land records of Dorchester County. It is notable that the only way to reach the Subject Property on Wynnefield Drive is to drive on either Appian Way or Park Forrest Parkway.

3204 at 59:25-60:4 (stating that lighting on the parkway was a benefit)). The Trial Court properly ruled that the annual dues for River Oaks served, at least in part, for the improvement and maintenance of the community entryway and greenways. (R. p. 50.)

**B. The River Oaks Declaration contains the necessary formalities.**

Appellants take issue with the sufficiency of the description of the land and argue that the Trial Court's Order "states in error" that the River Oaks Declaration provides the name of the property owner, the property address, the neighborhood in which the property is located, the county in which the property is located and a geographic location of its location within the county. (Brief of Appellant-Respondent at p. 33.) The Appellants argue that the Declaration "is not specific and/or accurate enough to convey an interest in real property." *Id*. This argument fails because it can only be considered Appellants' willful ignorance of the Declaration's plain language. "While a property description need not be perfect, it must allow one examining it to identify the property conveyed; otherwise, the conveyance is void." *Hoyler v. State*, 428 S.C. 279, 295, 833 S.E.2d 845, 853 (Ct. App. 2019). "Generally the rule may be stated to be, that the deed will be sustained, *if it is possible from the whole description, to ascertain and identify the land intended to be conveyed*." *Hoyler v. State*, 428 S.C. 279, 295, 833 S.E.2d 845, 854 (Ct. App. 2019) (citing *Brownlee v. Miller*, 208 S.C. 252, 37 S.E.2d 658 (1946) (emphasis in *Hoyler*).[24]

A simple review of the Declaration itself shows that the Declaration sufficiently identifies the land. (R. pp. 2715-16.) The Declaration begins with an immediate geographic reference that directs the reader to the County of Dorchester and a description of "a number of residential

[24] Our Courts have used descriptions of nature as a basis for identifying property for centuries. *See*, *Wash v. Holmes*, 19 S.C.L. 12, 15 (S.C. App. L. & Eq. 1833) (stating that rocks, mountains, rivers, and creeks may be used to ascertain boundaries). Indeed, the South Carolina State Line and Border with Georgia is marked with a rock. S.C. Code Ann. 1-1-10 (identifying "Commissioners' Rock" as part of the state boundary).

subdivisions on the Ashley River side of Dorchester Road in the vicinity of its intersection with Ashley Phosphate Road . . .” (R. p. 2715.) The Declaration continues to identify the “Property Affected” by the names of the subdivisions that make up the River Oaks Community. *Id*. Finally, and most importantly, each and every signatory to the Declaration signed their names next to the specific property that they owned on a list that identified each property by (1) Neighborhood name, (2) Lot Number, (3) Address. (R. pp. 2718-2756, 2758-2992, and 2994-3001.) Using these undisputed facts, the Trial Court properly found that the Declaration was “more than sufficient for a person to conduct a title examination of the property affected by the River Oaks Declaration.” (R. p. 51.)

The Trial Court also noted that the River Oaks Declaration sufficiently identifies the land that it concerns and the clear intentions of the parties for the Declaration to run with the land. (R. p. 54.) In fact, the Declaration expressly states and the Order cites “This Declaration does, however, affect the lots which comprise these subdivisions, and the terms and provisions of this Declaration apply to all such lots, *running with the title* to them and binding their present owners and all subsequent owners without regard to whether this Declaration is referred to in any deeds or other instruments of conveyance.” (emphasis added) (R. p. 2717.) While Appellants are critical of the manner in which the Declaration was written and filed, criticisms are not enough and their legal arguments fail.

The Appellants argue that *Brown v. Bass* 267 S.C. 211, 277 S.E.2d 480 (1981), is instructive for the case at issue and supports a finding that River Oaks did not properly establish itself. (Brief of Appellant-Respondent at pp. 16-17.) The only legal principle that can be gleaned from *Brown* is that amendments are valid if made in compliance with the terms of the applicable covenants. *Kinard v. Richardson*, 407 S.C. 247, 264, 754 S.E.2d 888, 897 (Ct. App. 2014) (citing

*Brown*). As noted above, the River Oaks Declaration complies with the terms of the Woodington Covenants.

Further, the plain language of the River Oaks Declaration is clear that signatories thereto intended for the Declaration to run with the land and be binding upon successors and assigns (R. p. 2717). "For a covenant to run with the land, there must also be an indication that the parties intended for the covenant to run with the land." *Harbison Cmty. Ass'n, Inc. v. Mueller*, 319 S.C. 99, 102, 459 S.E.2d 860, 862 (Ct. App. 1995). As for the property described in the River Oaks Declaration, the Appellants argue that the lack of reference to a plat renders the Declaration ineffective. (Brief of Appellant-Respondent at p. 33.) "While a property description need not be perfect, it must allow one examining it to identify the property conveyed; otherwise, the conveyance is void." *Hoyler v. State*, 428 S.C. 279, 295, 833 S.E.2d 845, 853 (Ct. App. 2019). The Trial Court properly held the Declaration valid finding that it provides the name of the property owner, the property address, the neighborhood in which the property is located, the county in which the property is located, and a geographic location of its location within the county. (R. p. 51.) This is more than sufficient for a person to conduct a title examination of the property affected by the River Oaks Declaration. The Trial Court, therefore, found as a matter of law that the River Oaks Declaration touches and concerns the land it impacts. *Id.*

## V. The Trial Court properly held that the River Oaks is empowered through its Declaration, Bylaws, and the Woodington covenants.

The Trial Court's Order finds that "River Oaks' authority to act with respect to the Woodington I neighborhood is derived from three (3) things: the Woodington I Covenants, the River Oaks Declaration, and River Oaks' Bylaws. Similarly, River Oaks' authority to act with respect to the Woodington II neighborhood is derived from three (3) things: the Woodington II Covenants, the River Oaks Declaration, and River Oaks' Bylaws." *Id*. The validity of the

Woodington I and II covenants is undisputed. The Trial Court properly held that "actions taken in accordance with those Covenants are binding upon their respective neighborhood. *Id*. The homeowners properly adopted River Oaks, which sets forth its guidelines in its Declaration and Bylaws. These documents authorize River Oaks to establish regular association dues and to impose penalties for failure to pay dues.

River Oaks Declaration states that its purpose, in part, is to establish a funding mechanism for River Oaks. (R. pp. 2715-16.) The Declaration further cites to its Bylaws, which outline the financial administration of the River Oaks Community in Article VII. (R. pp. 1057-58 at Art. VII.) Article VII, Section 2 states that the Board of Directors "shall establish regular dues . . ." and that "any member [that] has failed to pay dues . . . is no longer in good standing . . ." *Id*. As amended, the Bylaws authorize the Board to enforce the collection of these dues by imposing financial penalties. The financial penalties include late fees and collection costs. Additionally, the Bylaws authorize the Board to impose assessments for violations of restrictive covenants. *Id*. Finally, the Woodington I and II covenants allow for "[e]nforcement . . . by proceedings at law or in equity . . .to either restrain violation [of the covenants] or to recover damages." (R. p. 3007 at § P; R. p. 3016 § P.) The Trial Court correctly noted that the foreclosure of a lien for unpaid homeowners association assessments is an action in equity. (R. p. 52 (citing *Wachesaw Plantation E. Cmty. Servs. Ass'n, Inc. v. Alexander*, 420 S.C. 251, 256 n. 1, 802 S.E.2d 635, 638 n. 1 (Ct. App. 2017.))

Of course, River Oaks is a nonprofit organization and is also statutorily authorized to impose dues on its members. S.C. Code Ann. § 33-31-302 (15). All homeowners within River Oaks are members of the association. Additionally, case law supports a significant history of homeowners associations exercising authority over their membership. e.*g._River Hills Prop Owners Ass'n, Inc. v. Amato*, 326 S.C. 255, 487 S.E.2d 179 (1997) (HOA's architectural review

board imposed fines for violating rules); *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 616 S.E.2d 431 (Ct. App. 2005) (noting that HOA's covenants included sanctions for violations).

## VI. The Trial Court correctly held that River Oaks does not conduct trade or commerce because it is a homeowners association not engaged in exterior commerce with the public at large.

Appellants cannot cite this Court to any controlling authority for the notion that a homeowners association conducts "trade" or "commerce." Instead, Appellants take issue with the Trial Court's reference to an unpublished case that, while not binding, directly addresses the issue. (Brief of Appellant-Respondent at p. 41.) True, South Carolina's appellate courts have never squarely addressed whether a homeowners association can be held liable for unfair trade practices a binding opinion[25], but no case law exists to support any arguments that managing the members of an association constitutes "trade or commerce." Additionally, in singling out this citation, Appellants overlook the Trial Court's reliance upon other cases that are binding and also support the Trial Court's ruling. For example, the Trial Court relied upon *Jefferies v. Phillips*, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994) and *Foggie v. CSX Transportation, Inc.*, 313 S.C. 98, 104, 431 S.E.2d 587, 591 (1993), in holding that "levying of association dues is mere regulation of an association's membership and not an act of trade or commerce." (R. p. 43.) The Trial Court also cited statutory authority for the imposition of dues and assessments upon members of a non-profit organization such as a homeowners association. (*Id.* (citing S.C. Code Ann. § 33-31-302 (15.))

[25] The only cases on the issue of which the Undersigned is aware are unpublished opinions affirming dismissal or summary judgment in favor of the homeowners association. *E.g.*, *Sterling Hills Homeowners' Ass'n, Inc. v. Hayes*, 2022 WL 2063661 (Ct. App. June 8, 2022); *Brown v. Spring Valley Homeowners Ass'n, Inc.*, 2016 WL 3595791 (Ct. App. June 29, 2016)

Moreover, River Oaks' own Bylaws prohibit it from engaging in trade or commerce. As a founding principle of the association, River Oaks must "carry out its purposes without engaging in any business activities or pursuits, and without taking any action for pecuniary profit." (R. p. 1055 at Art. § 3.) "Trade or commerce," by its very definition, requires that a person or entity do something "for subsistence or profit." *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 639, 743 S.E.2d 808, 816 (2013). River Oaks operates through volunteer officers and directors, and it makes no profit from its efforts. It appears that Appellants have conflated the operations of property managers and debt collectors with the operations of homeowners associations. River Oaks operations are not business operations and simply beyond the purview of the statute.

Finally, Appellants urge this Court to reverse the Trial Court "because issue (*sic*) of fact existed as to River Oaks activities". (Brief of Appellant-Respondent at p. 41.) However, the Trial Court relied on the undisputed facts and considered all available law to determine that SCUTPA did not apply to the cats of this case. The Appellants did not dispute any facts to the trial court and instead only argued that the agreed upon and undisputed facts constituted "business activities in or affecting commerce." (R. p. 2286 at 9.) This Court need not entertain any arguments regarding disputed facts because the argument is not preserved.

## VII. This Court should further affirm summary judgment on additional sustaining grounds pursuant to Rule 220(c), SCACR, including the statute of limitations and laches.

Under South Carolina's Rule of Appellate Procedure 220(c), a respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). The basis for the sustaining

ground must appear in the record on appeal, but the need not be otherwise "ruled upon." *Id.* Under the authority of Rule 220(c), SCACR, this Court should further affirm summary judgment on the basis of the statute of limitations or laches. As noted throughout the record, the Appellants took title to the Subject in Property with notice of River Oaks' existence and operations. Appellants concede that they formed their current beliefs from reviewing the River Oaks Declaration and covenants. (R. p. 3150 at 82:5-13; R. p. 3194 at 20:17-21:13; *See also* R. p. 69-71 at ¶¶ 50-60.) Each of the Appellants state that these documents were available to them when they first purchased the Subject Property in 2005. Appellants lived in River Oaks for eight years and waited an additional four years before ever raising a complaint regarding River Oaks' authority.

**a. The statute of limitations bars Appellants' claims because they were charged with notice upon purchasing the Property in 2005.**

"Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system." *City of N. Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 231, 599 S.E.2d 462, 465 (Ct. App. 2004). Under the discovery rule, the statute of limitations begins to run from the date the claimant knew or should have known that, by the exercise of reasonable diligence, a cause of action exists." *Holmes v. Nat'l Serv. Indus., Inc.*, 395 S.C. 305, 309, 717 S.E.2d 751, 753 (2011). "Indeed, South Carolina's statute of limitations requires very little to start the clock." *Maher v. Tietex Corp.*, 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998). In the case of land records, the law imputes to a purchaser of real estate notice or properly recorded written instruments. *LoPresti v. Burry*, 364 S.C. 271, 276, 612 S.E.2d 730, 733 (Ct. App. 2005). The recording of a document alerts all future grantees of the rights of the recorder because the law assumes the grantee will search the index and discover the interest or claim. *Spence v. Spence*, 368 S.C. 106, 119, 628 S.E.2d 869, 876 (2006) (citation omitted).

Appellant Joe Davis purchased the Property in 2005. He conceded in his deposition that he was aware of River Oaks in 2005 and that he paid dues to River Oaks every year from 2005 until 2013. During that time, the Davises received newsletters from River Oaks holding itself out as the homeowners association for Woodington I and were subject to River Oaks' enforcement of the Woodington I covenants. (R. pp. 3570-75; R. p. 3203 at 55:16 – 56:21.) During their residency, Appellants received notices of violating the Woodington I covenants. (R. p. 3143 at 63:13-23.) There is no doubt that the Appellants had actual knowledge that an HOA existed and asserted a claim of right to enforce the covenants and restrictions of Woodington I. Likewise, there is no doubt that the Appellants could have, and should have, brought their claims sooner than 2017 because they rely strictly on property records in existence at the time of their purchase of the Property. The Appellants' central claim, and their declaratory judgment cause of action in its entirety, relies upon the undisputed fact that Appellants were on notice and knew of the HOA in 2005 and more than three (3) years prior to filing this lawsuit. Accordingly, Appellants are time barred as a matter of law by their delay of twelve years in filing this action.

**b. The Doctrine of Laches Bars the Appellants' Claims.**

The Appellants filed this suit after eight years of residency and twelve (12) years of homeownership within River Oaks. They have participated in community events and received benefits from River Oaks. *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987) ("The restrictive covenants is a voluntary contract between the parties."). To allow Appellants the benefit of the contract while simultaneously avoiding its burden would disregard equity. *See, e.g., Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012) (holding that a doctor who knowingly accepted benefits from a hospital could not disclaim a provision requiring arbitration) (citation omitted). As noted above, Appellants take issue with

the Trial Court's reference to an instructive, albeit unpublished, case where a plaintiff sued his homeowners association and alleged *inter alia* that the Bylaws were invalid because they were not indexed to any homeowners association. In that case the Special Referee found the claims to be without merit, and specifically noted that the Bylaws had been utilized for over ten years. *Jarmuth v. Intern. Club Homeowners Ass'n, Inc.* 2012 WL 10096357 at *6, *aff'd* 2015 WL 904947 (Ct. App. 2015). Relying upon *Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 393-94, 680 S.E.2d 289, 291-92 (2009), the Special Referee held that "[t]o declare, at this late stage, that these Bylaws are invalid or ineffective when they have been relied upon by all of the homeowners within the Community would be unequitable." *Id.* This case is no different, and the Appellants simply waited too long to lodge any objection to River Oaks' authority. It is undisputed that the Appellants participated in the HOA for the eight years that they lived at the Subject Property and were equally on notice of any errors or inaccuracies that they now allege against River Oaks.

## CONCLUSION

The Trial Court properly granted summary judgment to River Oaks and denied Appellants motion for summary judgment and this Court should affirm the Trial Court's Order on Motions for Summary Judgment.

Respectfully submitted,

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By: ***s/Ford H. Thrift***

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Dated: September 24, 2025
Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas

The Honorable Thomas L. Hughston, Jr.

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Case No.: 2020-CP-18-01856

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Joseph R. Davis and Jennifer Davis, individually
and as representative of all those similarly situated……Appellants-Respondents,

v.

River Oaks Homeowners Association, Inc……Respondent-Appellant

Haylcyon Real Estate Services, LLC, and
Dorchester Real Estate Services, Inc……Respondents.

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**CERTIFICATE OF SERVICE**

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I certify that on this 24th day of September, 2025, I have served the Respondent-Appellant's Final Brief of Respondent upon Appellants-Respondents via U.S. Regular Mail and via electronic transmission addressed to their attorneys of record, D. Conor Keys, Esquire and Mary Leigh Arnold, Esquire and via electronic transmission upon all other counsel of record listed as follows:

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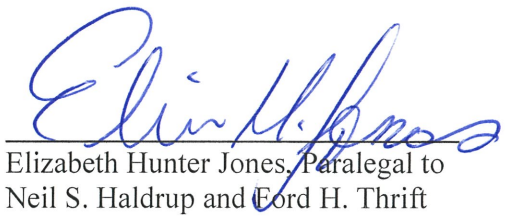

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