

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
Oct 15 2025

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
R. Ferrell Cothran, Jr., Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2024-002098

315 Corley CW LLC; 368 Mount Pelia LLC; Bridge Charleston Investments B LLC; Bridge Charleston Investments C LLC; Bridge Charleston Investments E LLC; Bridge Charleston Investments H LLC; Anne Bosler and Dylan Hart as Trustees of the Bosler-Hart Trust; Geoffrey J. Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Jennifer Albero; Live Oak Assets LLC; Matthew N. Lynch and Barbara A. Lynch; MKM 22 West LLC; One Rumford Lane LLC; Salt Works LLC; and TTJR LLC; individually, derivatively, and as class representatives, as set forth herein, Respondents,

v.

Palmetto Bluff Development, LLC; Palmetto Bluff Club, LLC; Palmetto Bluff Real Estate Company, LLC; PBLH, LLC; Montage Palmetto Bluff, LLC; Palmetto Bluff Preservation Trust, Inc.; Palmetto Bluff Preservation Trust Board of Stewards: Jordan Phillips; Mark Polites; Gray Ferguson; Henry Armistead; South Street Partners LLC; John Does 1-25, Petitioners.

PETITIONERS' REPLY BRIEF

Counsel listed inside front cover

Val H. Stieglitz, SC Bar No. 5356
Maynard Nexsen, PC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, SC 29202
Telephone: 803.771.8900
Email: VStieglitz@maynardnexsen.com

Bruce Wallace, SC Bar No. 11653
Maynard Nexsen, PC
205 King Street, Suite 400
Charleston, SC 29401
Telephone: 843.720.1760
Email: BUWallace@maynardnexsen.com

Kirsten Small, SC Bar No. 75681
Maynard Nexsen, PC
104 S. Main Street, 9th Floor
Greenville, SC 29601
Telephone: 843.370.2211
Email: KSmall@maynardnexsen.com

Of Counsel:

Donald Falk, *admitted pro hac vice*
Schaerr Jaffe, LLP
Four Embarcadero Center, Suite 140
San Francisco, CA 94111
Telephone: 415.562.4942
Email: DFalk@schaerr-jaffe.com

Attorneys for Petitioners

Douglas W. MacKelcan, III SC Bar No. 76332
Copeland, Stair, Valz & Lovell, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
Telephone: (843) 727-0307
Email: dmackelcan@csvl.law

*Attorney for Petitioners Palmetto Bluff Preservation
Trust, Inc.; Palmetto Bluff Preservation Trust Board of
Stewards*

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
ARGUMENT	1
I. Palmetto Bluff Made No “False” or “False and Misleading” Statements.....	1
A. Supposed “Guesswork” Regarding the Principals of the Entity Respondents	2
B. Supposed “Guesswork” About Respondents’ Investment Purposes	4
C. Supposedly “False and Misleading” Statement that all of Respondents’ Properties Are in the Short-Term Rental Zone	5
D. Supposedly “False and Misleading” Statement that “all” of Respondents’ Properties Are Second Homes	5
E. Supposedly “False and Misleading” Statement that Respondents’ Claims Focus on the Club	6
F. Supposedly “False and Misleading” Statement that Some Respondents Market Their Properties for Short-Term Rentals.....	6
II. This Court’s Review Is <i>De Novo</i>	7
III. The Arbitration Agreements Are Governed by the FAA	9
A. The Transactions Involved Interstate Commerce	9
B. The Parties Did Not Agree to Arbitrate Under the SCUAA.....	11
1. An Arbitration Notice Is Not an Arbitration Agreement	12
2. The SCUAA Is Not the “Substantive Law of South Carolina”	12
IV. The Arbitration Agreement Is Not Unconscionable.....	13
A. Respondents Did Not Lack Meaningful Choice	13
B. The Arbitration Agreements’ Terms Are Neither Oppressive Nor One- sided	15
C. Any Unconscionable Terms Should Be Severed	17
V. Nonsignatory Respondents Are Bound by the Arbitration Agreements	18
A. Nonsignatory Respondents Are Bound by the Arbitration Agreements Under Agency Law	20
B. Nonsignatory Respondents’ Assignee Status Is Effectively Undisputed	21
C. The Nonsignatory Respondents Are Bound by Equitable Estoppel	22
VI. Nonsignatory Petitioners Are Entitled to Enforce the Arbitration Agreements.....	23
VII. The Arbitration Agreements Delegate Arbitrability to the Arbitrator	24

A. Incorporation of the AAA Commercial Arbitration Rules Clearly and Unmistakably Delegates Arbitrability to the Arbitrator	24
B. Respondents Did Not Challenge the Delegation Clause.....	27
VIII. There Are No Independent Sustaining Grounds	28
A. The Arbitration Agreement Is Broad and Covers Respondents’ Claims	28
B. Although Preempted, the SCUAA’s Notice Requirement Is Satisfied.....	29
C. The Arbitration Agreement’s Limitations Period Does Not Bar Arbitration.....	30
D. The Community Charter Does Not “Override” the Arbitration Agreement.....	30
CONCLUSION.....	31

TABLE OF AUTHORITIES

Cases

<i>Ajamian v. CantorCO2e, L.P.</i> , 137 Cal. Rptr. 3d 773 (Cal. Ct. App. 2012).....	25
<i>Am. Bankers Ins. Grp., Inc. v. Long</i> , 453 F.3d 623 (4th Cir. 2006)	22
<i>Blanton v. Domino’s Pizza Franchising LLC</i> , 962 F.3d 842 (6th Cir. 2020)	24
<i>Bradley v. Brentwood Homes, Inc.</i> , 398 S.C. 447, 730 S.E.2d 312 (2012)	11
<i>Brouwer v. Sisters of Charity Providence Hosps.</i> , 409 S.C. 514, 763 S.E.2d 200 (2014)	27
<i>Cape Romain Contractors, Inc. v. Wando E., LLC</i> , 405 S.C. 115, 747 S.E.2d 461 (2013)	9, 31
<i>Carolina Chloride, Inc. v. Richland Cnty.</i> , 394 S.C. 154, 714 S.E.2d 869 (2011)	19
<i>Chesapeake Appalachia, LLC v. Scout Petroleum, LLC</i> , 809 F.3d 746 (3d Cir. 2016)	25, 26
<i>Clark v. Goldline Int’l, Inc.</i> , No. 6:10-cv-1884-JMC, 2010 WL 4929438 (D.S.C. Nov. 30, 2010).....	16
<i>Damico v. Lennar Carolinas, LLC</i> , 437 S.C. 596, 879 S.E.2d 746 (2022)	passim
<i>Damico v. Lennar Carolinas, LLC</i> , No. 2014CP0802424, 2015 WL 13780350 (S.C. Com. Pl. Nov. 23, 2015).....	14
<i>Dean v. Heritage Healthcare of Ridgeway LLC</i> , 408 S.C. 371, 759 S.E.2d 727 (2014)	9
<i>Doctor’s Assocs., Inc. v. Casarotto</i> , 517 U.S. 681 (1996).....	29
<i>Doe v. TCSC, LLC</i> , 430 S.C. 602, 846 S.E.2d 874 (Ct. App. 2020).....	27, 31
<i>Edgar v. MITE Corp.</i> , 457 U.S. 624 (1982).....	10
<i>Fernander v. Thigpen</i> , 278 S.C. 140, 293 S.E.2d 424 (1982)	21
<i>Fesmire v. Digh</i> , 385 S.C. 296, 683 S.E.2d 803 (Ct. App. 2009).....	8
<i>Goer v. Jasco Indus., Inc.</i> , 395 F. Supp. 2d 308 (D.S.C. 2005).....	23

<i>Grant v. Magnolia Manor-Greenwood, Inc.</i> , 383 S.C. 125, 678 S.E.2d 435 (2009)	12
<i>Henry Schein, Inc. v. Archer & White Sales, Inc.</i> , 586 U.S. 63 (2019).....	26, 27
<i>Hooters of Am., Inc. v. Phillips</i> , 173 F.3d 933 (4th Cir. 1999)).....	15
<i>Housing Authority v. Cornerstone Housing, LLC</i> , 356 S.C. 328, 588 S.E.2d 617 (Ct. App. 2003).....	26
<i>Huskins v. Mungo Homes, LLC</i> , 444 S.C. 592, 910 S.E.2d 474 (2024)	18
<i>Jackson Mills, Inc. v. BT Capital Corp.</i> , 312 S.C. 400, 440 S.E.2d 877 (1994)	17
<i>James & Jackson, LLC v. Willie Gary, LLC</i> , 906 A.2d 76 (Del. 2006)	25
<i>Lackey v. Green Tree Fin. Corp.</i> , 330 S.C. 388, 498 S.E.2d 898 (Ct. App. 1998).....	8
<i>Landers v. FDIC</i> , 402 S.C. 100, 739 S.E.2d 209 (2013)	30, 31
<i>Lincoln v. Aetna Cas. & Sur. Co.</i> , 300 S.C. 188, 386 S.E.2d 801 (Ct. App. 1989).....	21
<i>Long v. Silver</i> , 248 F.3d 309 (4th Cir. 2001)	23
<i>M & M Group, Inc. v. Holmes</i> , 379 S.C. 468, 666 S.E.2d 262 (Ct. App. 2008).....	31
<i>Mathews v. Fluor Corp.</i> , 312 S.C. 404, 440 S.E.2d 880 (1994)	9
<i>Matter of Estate of Kay</i> , 423 S.C. 476, 816 S.E.2d 542 (2018)	8
<i>Mey v. DIRECTV, LLC</i> , 971 F.3d 284 (4th Cir. 2020)	28
<i>Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.</i> , 473 U.S. 614 (1985).....	30
<i>Munoz v. Green Tree Fin. Corp.</i> , 343 S.C. 531, 542 S.E.2d 360 (2001)	9, 11, 13
<i>New Hope Missionary Baptist Church v. Paragon Builders</i> , 379 S.C. 620, 667 S.E.2d 1 (Ct. App. 2008).....	17
<i>Osteen v. T.E. Cuttino Constr. Co.</i> , 315 S.C. 422, 434 S.E.2d 281 (1993)	12

<i>Pacificare Health Sys., Inc. v. Book</i> , 538 U.S. 401 (2003).....	16
<i>Partain v. Upstate Auto. Grp.</i> , 386 S.C. 488, 689 S.E.2d 602 (2010)	24
<i>Pearson v. Hilton Head Hosp.</i> , 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012).....	19, 22
<i>Prima Paint Corp. v. Flood & Conklin Mfg. Co.</i> , 388 U.S. 395 (1967).....	13
<i>Regions Bank v. Schmauch</i> , 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003).....	29
<i>Rent-A-Center, West v. Jackson</i> , 561 U.S. 63 (2010).....	26, 27
<i>Rowe v. AT&T, Inc.</i> , No. 6:13-cv-1206-GRA, 2014 WL 172510 (D.S.C. Jan. 15, 2014)	16
<i>Russell v. United States</i> , 471 U.S. 858 (1985).....	10
<i>Sanders v. Savannah Highway Auto. Co.</i> , 440 S.C. 377, 892 S.E.2d 112 (2023)	13
<i>Simpson v. MSA of Myrtle Beach, Inc.</i> , 373 S.C. 14, 644 S.E.2d 663 (2007)	15, 17, 26
<i>Smith v. D.R. Horton, Inc.</i> , 417 S.C. 42, 790 S.E.2d 1 (2016)	8, 13
<i>Soil Remediation Co. v. Nu-Way Envtl., Inc.</i> , 317 S.C. 274, 453 S.E.2d 253 (Ct. App. 1994).....	12
<i>Timmons v. Starkey</i> , 380 S.C. 590, 671 S.E.2d 101 (Ct. App. 2008).....	24
<i>Townes Assocs., Ltd. v. City of Greenville</i> , 266 S.C. 81, 221 S.E.2d 773 (1976)	8
<i>U.S. Home Corp. v. Michael Ballesteros Trust</i> , 415 P.3d 32 (Nev. 2018).....	11
<i>Uber Techs., Inc. v. Royz</i> , 517 P.3d 905 (Nev. 2022).....	24
<i>United States v. Lopez</i> , 514 U.S. 549 (1995).....	9
<i>United States v. Medeiros</i> , 897 F.2d 13 (1st Cir. 1990).....	11
<i>United States v. Romer</i> , 148 F.3d 359 (4th Cir. 1998)	10

<i>Warrior v. Gulf Navigation Co.</i> , 363 U.S. 574 (1960).....	28
<i>Wilson v. Willis</i> , 426 S.C. 326, 827 S.E.2d 167 (2019)	8, 19
<i>York v. Dodgeland of Columbia, Inc.</i> , 406 S.C. 67, 749 S.E.2d 139 (Ct. App. 2013).....	28
<i>Zabinski v. Bright Acres Assocs.</i> , 346 S.C. 580, 553 S.E.2d 110 (2001)	27
<u>Statutes</u>	
S.C. Code Ann. § 15-3-140.....	15
S.C. Code Ann. § 15-48-10(a)	29
S.C. Code Ann. § 36-2-302.....	17
<u>Constitutional Provisions</u>	
S.C. CONST. art. V, § 9.....	26

ARGUMENT

Respondents try to distract this Court from the purely legal issues before it, mixing overheated rhetoric with demonstrably false claims. But once the underbrush is cleared away, the bottom line is the same: despite Respondents' outdated screed against a "hidden, secret arbitration" (Resps.' Br. at 47), these sophisticated individuals and investment entities agreed to arbitrate their claims, all of which directly or indirectly relate to or arise from the Club Membership Agreement or Club Membership Plan.

In affirming the circuit court's refusal to compel arbitration, the Court of Appeals made multiple reversible errors, undermining longstanding rules governing the enforcement of arbitration agreements in this State. If allowed to stand, the Court of Appeals' decision is likely to cause needless uncertainty and confusion in an area of the law where clarity and consistency are critical to contracting parties' expectations in the ordering of their business relationships.

Petitioners (collectively, "Palmetto Bluff"), no less than Respondents, are entitled to the benefit of their bargain. Among the Court of Appeals' errors in holding otherwise, it:

- refused to apply the Federal Arbitration Act (FAA) and instead applying the South Carolina Arbitration Act (SCUAA), even though the parties' transaction involved interstate commerce and the parties did not agree to opt out of federal arbitration law;
- held the arbitration agreement unconscionable, even though Respondents are sophisticated investors with no lack of choice and the terms of the agreement are not one-sided or oppressive (and in any event are severable);
- failed to hold that nonsignatories can be bound by, and can enforce, the arbitration agreement under settled principles of contract law; and
- rejected, in conflict with precedents of this Court and the U.S. Supreme Court, the parties' clear and unmistakable agreement to delegate to the arbitrator all questions of arbitrability.

For those and the additional reasons explained below, the Court of Appeals should be reversed.

I. Palmetto Bluff Made No "False" or "False and Misleading" Statements

Respondents accuse Palmetto Bluff of making "false" and/or "false and misleading"

statements. (Resps.’ Br. at 3-4 & nn.3-7.) Each accusation is baseless.

A. Supposed “Guesswork” Regarding the Principals of the Entity Respondents

Respondents contend that Petitioners are merely guessing when it comes to the connection between the entity Respondents and individuals who signed Membership Agreements. (Resps.’ Br. at 3.) But it is easily inferable from the allegations of the verified Complaint that each Respondent either signed the Membership Agreement or is an agent, successor, or assignee of someone who did. Otherwise, there would be no legal or factual basis for them to assert claims against Palmetto Bluff.

The Complaint alleges that all Respondents, including the entity Respondents, own property in Palmetto Bluff and that “every Owner of residential property in Palmetto Bluff” (1) is a member of the Club, and (2) must execute a Membership Agreement “at the time of purchase” of a Palmetto Bluff property. (App. 315-316 (Complaint ¶¶ 108-109).) The Complaint further alleges that all Respondents, including the entity Respondents, have been required to pay dues and fees to the Club, including “a ‘joining fee’ as a condition of the conveyance of [Respondents’] property.” (App. 316 (Complaint ¶ 112.2); *see* App. 319 (Complaint ¶ 123 (Club charges “all residential Owners the same joining fee and dues”)).) According to Respondents, such fees include a \$30,000 transfer fee charged when ownership of a property changes.¹ (App. 235 (Complaint p. 12).)

And, the Complaint’s 16 causes of action seek remedies based on the Membership Agreement, Membership Plan, and the Club:

- **1st COA** seeks a declaratory judgment that the Membership Agreement is “unlawful,

¹ To state the obvious, this is hardly pocket change. It strains credulity for Respondents to suggest that they would pay such a substantial amount without being fully cognizant of the related contracts, *i.e.*, the Membership Agreement and Membership Plan.

invalid, unconscionable, and void” (App. 336 (Complaint ¶ 166.4));

- **2d COA** alleges that failure to record the Membership Agreement and Membership Plan violates the SC Homeowners Association Act (App. 338 (Complaint ¶¶ 173-175));
- **3d COA** alleges that mandatory Club membership and the joining fee violate the SC Unfair and Deceptive Trade Practices Act (App. 339-340 (Complaint ¶¶ 179.1, 181.6));
- **4th COA** alleges that imposing mandatory Club membership is a breach of fiduciary duty (App. 342 (Complaint ¶ 187.1));
- **5th COA** alleges tortious interference with contract based on restricting STR access to Club facilities (App. 343 (Complaint ¶ 193));
- **6th COA** alleges a civil conspiracy to unlawfully impose mandatory Club membership (App. 344 (Complaint ¶ 198.1));
- **7th COA** alleges false representations about required Club membership (App. 345 (Complaint ¶¶ 201.1-201.3));
- **8th COA** seeks disgorgement of Club dues and fees (App. 346 (Complaint ¶¶ 208-210));
- **9th COA** alleges reasonable reliance on representations related to Club dues and fees as “amounts represented ... to be lawfully requested” (App. 347 (Complaint ¶ 213));
- **10th COA** seeks equitable title to “Club property and amenities” based on the Membership Plan and payment of dues and fees (App. 348-349 (Complaint ¶¶ 218, 220));
- **11th COA** seeks an equitable common interest in the Club based on the Membership Plan and payment of dues and fees (App. 350 (Complaint ¶ 225));
- **12th COA** seeks an equitable easement over Club property (App. 351 (Complaint ¶¶ 228-229));
- **13th COA** seeks return of amounts paid based on the false representation of required Club membership (App. 351 (Complaint ¶¶ 231-232));
- **14th COA** alleges constructive fraud based on the false representation of required Club membership (App. 352 (Complaint ¶ 237));
- **15th COA** seeks damages caused by false representations of required Club membership and obligation to pay assessments, dues, and fees (App. 353 (Complaint ¶ 242)); and
- **16th COA** seeks damages or rescission of the Membership Agreement (App. 354 (Complaint ¶¶ 251-252)).

To assert any of these claims, the entity Respondents must be members of the Club. Therefore,

each Respondent either signed the Membership Agreement or is an agent, successor, or assignee of someone who signed the Membership Agreement.

What appears on the face of the Complaint is further confirmed by the affidavit of Gray Ferguson, who has personal knowledge of the Club's operations. (App. 724.) Mr. Ferguson reviewed the Club's membership records and set forth, under oath, the relationships between individuals who signed Membership Agreements and the entity Respondents. (App. 726.) There is nothing "speculative" about Mr. Ferguson's affidavit, and Respondents fail to explain how it is "contrary to the Verified Complaint." (Resps.' Br. at 4 n.7.) Notably, Respondents never dispute the accuracy of Mr. Ferguson's statements.

B. Supposed "Guesswork" About Respondents' Investment Purposes

Respondents next accuse Palmetto Bluff of making the "false" assertion that some Respondents "bought their properties for investment purposes." (Pets.' Br. at 3 (citing App. 728-729).) But that is what *Respondents themselves* allege in their Complaint:

- "Purchasers invested in homes in the community because of [Palmetto Bluff's] promoted design." (App. 276 (Complaint p. 3).)
- Palmetto Bluff's alleged actions resulted in "long-term loss of business costs." (App. 276 (Complaint p. 3).)
- "[Palmetto Bluff] has wrongly pocketed tens of millions of dollars from its ostensibly captive audience, while denying them the value of their investment." (App. 292 (Complaint p. 19).)
- Four Respondents' names include the word "Investments." (App. 274 (Case Caption).)

The commercial aspects of Respondents' ownership of Palmetto Bluff properties are at the core of this dispute. The Complaint's lengthy preamble frames the dispute in terms of short-term renters' rights. (App. 280, 288-291.) As detailed above, a central theme of the Complaint is that Palmetto Bluff is trying to stop Respondents from using their properties to earn money from short-term rentals, including by restricting access to Club amenities and through the effects of Club

governance and policies. Additionally, five causes of action (the 1st, 3rd, 5th, 6th, and 9th) specifically refer to short-term rental issues and/or are asserted by a putative class of short-term renters (the “STR Class,” of which all Respondents are members, *see infra*). Other causes of action, as described above, attack Club ownership, operations, and policies, particularly with respect to access limitations and fees imposed on short-term renters’ use of Club facilities. In short, the allegations of the Complaint make clear that Respondents’ purchases of property in Palmetto Bluff were motivated, at least in part, by a desire to earn money from them.

C. Supposedly “False and Misleading” Statement that all of Respondents’ Properties Are in the Short-Term Rental Zone

Palmetto Bluff’s opening brief states, “All of Respondents’ properties are located in the area of Palmetto Bluff designated for short-term rentals.” (Pets.’ Br. at 3.) Respondents contend that this statement is both “false” and “false and misleading” (Resps.’ Br. at 3 & n.5), but according to the verified Complaint:

- Each and every Respondent is a representative the STR Class, defined as “Owners of residential property units within Palmetto Bluff whose Unit is located within a designated ‘Rental Area’”;
- The representatives’ (*i.e.*, all Respondents’) claims “are typical of the claims or defenses of the class, including (*inter alia*) because ***they all own property in the designated Rental Area of Palmetto Bluff***”; and
- The representatives (*i.e.*, all Respondents) “will fairly and adequately protect the interests of the class, including because ... ***they all own property in the designated Rental Area of Palmetto Bluff***.”

(App. 330-331 (Complaint ¶¶ 141, 146, 147 (emphasis added)).) Respondents should not be allowed to avoid arbitration by disavowing the verified allegations of their own Complaint.

D. Supposedly “False and Misleading” Statement that “all” of Respondents’ Properties Are Second Homes

Misquoting Palmetto Bluff’s opening brief, Respondents accuse Palmetto Bluff of falsely claiming that the Respondents’ properties—all in the STR Area—“are ‘second homes’ for *all*

Respondents.” (Resps.’ Br. at 3 (emphasis added).) To begin, nothing whatsoever turns on whether all, or only some, of Respondents’ properties are second homes. Additionally, the Complaint’s allegations regarding the Palmetto Bluff community, the importance of short-term renters having access to Club amenities, and the fact that all Respondents are members of the putative STR Class, *see supra*, readily support an inference that for many if not most Respondents, their Palmetto Bluff properties are not their primary residences. This inference is further supported by the multiple Membership Agreements in the record listing primary addresses that are not in Palmetto Bluff (and often are not in South Carolina). (*E.g.*, App.574, 582, 590, 599, 618, 627, 669; *see also* App. 654 (Membership Agreement with checked boxes for “Part Time Residence” and “Vacation Home”), 676 (Membership Agreement with checked box for “Vacation Home”).)

E. Supposedly “False and Misleading” Statement that Respondents’ Claims Focus on the Club

Next, Respondents assert that it is “false and misleading” for Palmetto Bluff to state that the 16 causes of action alleged in the Complaint focus on the management and operation of the Club. (Resps.’ Br. at 4.) But as explained above, every cause of action concerns either Club membership, the Membership Agreement and/or the Membership Plan, joining fees and Club dues, and legal or equitable title to Club property and assets. *See* Part I(A), *supra*.

F. Supposedly “False and Misleading” Statement that Some Respondents Market Their Properties for Short-Term Rentals

Last, Respondents claim it is “false and misleading” for Palmetto Bluff to state that Respondents market their properties for short-term rentals through various websites. (Resps.’ Br. at 4 & n.7.) But the allegations of the Complaint make clear that Respondents market their properties for short-term rentals. To begin, and as discussed in Part I(C), *supra*, the Complaint alleges that each and every Respondent’s property is located in a designated STR area. (App. 331

(Complaint ¶¶ 146, 147).) Further, the Complaint is replete with allegations about Palmetto Bluff’s purported attempts to deprive Respondents of their “vested right” to market their properties for short-term rental. (App. 280, 288, 343 (Complaint pp. 8, 15, 70).) The Complaint also alleges that Palmetto Bluff seeks to increase its profits by denying STR guests access to neighborhood amenities, damaging the STR Class through lost customers, revenue, and profits. (App. 327 (Complaint ¶¶ 132.11.1, 132.11.2, 132.11.3); App. 334-354 (Complaint ¶¶ 160-253 (asserting claims on behalf of the STR Class)).) And the Complaint’s multiple causes of action attack Club ownership, operations, and policies, with specific reference to access limitations and fees imposed on STR use of Club facilities. (*See supra* Part I(A); *see also, e.g.*, App. 337-338 (challenging Club “rules regulations, guidelines (including purported ‘access guidelines’), and fee schedules”); App. 346, 351 (seeking refund of Club dues and fees); App. 347 (claiming Club dues and fees as damages); App. 348-350 (seeking ownership of Club); App. 351 (seeking equitable easement over Club property); App. 354 (seeking damages or rescission of Club membership contracts).)

Moreover, Palmetto Bluff supported its motion to compel arbitration with Mr. Ferguson’s affidavit—sworn and based on personal knowledge (App. 723)—stating that Respondents market their properties for short-term rentals on websites like VRBO.com, stayinpalmettobluff.com, airbnb.com, luxurysimplifiedretreats.com, palmettobluffluxuryrental.com, hometogo.com and propertyconciergeofbluffton.net. (App. 729.) Respondents have never offered anything to counter this affidavit.

II. This Court’s Review Is *De Novo*

In a new argument, Respondents claim that the circuit court conducted an “evidentiary hearing” on Palmetto Bluff’s motion to compel arbitration and Respondents’ motion for summary judgment. (Resps.’ Br. at 9.) But regardless of what occurred at the hearing, the circuit court did

not make any factual findings, as its order clearly states:

Because the motions currently before the Court present questions of law,
the Court is not making findings of fact in this Order.

(App. 204 (emphasis added).) Accordingly, the references to purported factual findings peppered throughout Respondents' brief must be disregarded.

Based on their erroneous claim that the circuit court made factual findings, Respondents try to escape the *de novo* review applicable to orders denying motions to compel arbitration.² *See Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 47, 790 S.E.2d 1, 3 (2016) (“Arbitrability determinations are subject to *de novo* review.”); *see also Wilson v. Willis*, 426 S.C. 326, 335, 827 S.E.2d 167, 172 (2019) (“Whether an arbitration agreement may be enforced against a nonsignatory to the agreement is a matter subject to *de novo* review by an appellate court.”). In light of the circuit court's clear statement that it was “not making findings of fact,” there is no basis for application of the “any evidence” standard urged by Respondents. (Resps.' Br. at 12.) There was no trial here, so Respondents' authorities are inapposite—and, in any event, have been abrogated by this Court.³ Because the circuit court ruled as a matter of law, this Court's review is *de novo*. *See, e.g., Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009).

² Respondents deny that they ever filed an arbitration demand (Resps.' Br. at 8), but this is mere semantics. The document Respondents filed with the AAA on April 14, 2022 is captioned “**Palmetto Bluff Club, LLC—Filed Written Demand**,” and the very first sentence states, “Enclosed, please find an executed AAA ‘Demand for Arbitration.’” (App. 557 (emphasis in original).)

³ Respondents rely on *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976), which this Court abrogated in *Matter of Estate of Kay*, 423 S.C. 476, 816 S.E.2d 542 (2018). Respondents' other authority, *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 498 S.E.2d 898 (Ct. App. 1998), applied *Townes* before its abrogation.

III. The Arbitration Agreements Are Governed by the FAA

A. The Transactions Involved Interstate Commerce

Respondents contend that the “contracts at issue” consist of nothing more than “real property covenants.” (Resps.’ Br. at 42; *see id.* at 43 n.32.) But determining whether a transaction involves interstate commerce requires consideration of “the agreement, the complaint, and the surrounding facts, focusing particularly on what the terms of the contract specifically require for performance.” *Dean v. Heritage Healthcare of Ridgeway LLC*, 408 S.C. 371, 380, 759 S.E.2d 727, 732 (2014) (internal quotation marks omitted). The transactions at issue are not merely the imposition of real property covenants, as can be seen from even a cursory review of the verified Complaint and the surrounding (and undisputed) facts. *See*

“Unless the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538-39, 542 S.E.2d 360, 363 (2001) (footnote omitted). As this Court has explained, the question is not whether the contract “on its face” reflects a transaction involving interstate commerce. *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 123, 747 S.E.2d 461, 465 (2013). Rather, “the proper analysis involves consideration of all three broad categories of activity within the purview of Congress’s commerce power—use of the channels of interstate commerce; regulation of persons, things or instrumentalities in interstate commerce; and regulation of activities having a substantial relation to interstate commerce.” *Id.* (citing *United States v. Lopez*, 514 U.S. 549, 558–59 (1995)). Indeed, this Court explicitly held that the circuit court in *Cape Romain* erred in relying—as Respondents do here—on *Mathews v. Fluor Corp.*, 312 S.C. 404, 407, 440 S.E.2d 880, 882 (1994), for the proposition that only the fact of the contract matters. *See Cape Romain*, 405 S.C. at 122-23, 747 S.E.2d at 464-65.

Considering the contracts, the allegations of the verified Complaint, and the undisputed surrounding facts, the transactions at issue here obviously involved interstate commerce. First, it is undisputed that eight Respondents hail from out of state. (App. 728-729.) Therefore, even if the circuit court were correct that this case involves the development of real property, the FAA would still apply because a purchase of property by an out-of-state buyer occurs in interstate commerce. *See Edgar v. MITE Corp.*, 457 U.S. 624, 641–42 (1982) (recognizing that “transactions occurring across state lines” are “interstate commerce”). In addition to these actual interstate transactions, the creation of the Palmetto Bluff community, and the advertising and sale of property in it, are activities involving interstate commerce. *See United States v. Romer*, 148 F.3d 359, 367 (4th Cir. 1998) (“Although a piece of real estate being sold in interstate commerce does not itself pass across state lines, title certificates, advertising, financing, and other goods and services generated by the transaction pass from state to state as readily as automobiles.”).

Second, there is nothing “hypothetical” about the short-term rentals at the core of this case. (Resps.’ Br. at 45.) As set forth in detail in Parts I(A) and I(F), *supra*, the allegations of the Complaint and the causes of action are premised on Respondents exercising, or being prevented from exercising, their “vested right” to use their properties for short-term rentals. “The rental of real estate is unquestionably ... an activity [affecting interstate commerce].” *Russell v. United States*, 471 U.S. 858, 862 (1985).⁴ In so holding, the *Russell* Court did “not rely on the connection between the market for residential units and ‘the interstate movement of people,’” but instead “recognize[d] that the local rental of an apartment unit is merely an element of a much broader commercial market in rental properties.” *Id.* at 862; *see also United States v. Medeiros*, 897 F.2d

⁴ Respondents try to distinguish *Russell*’s clear holding by pointing out that the Court was deciding a jurisdictional prerequisite to the application of federal criminal law, but they cannot explain why a different test for interstate commerce would apply in the context of arbitration.

13, 16 (1st Cir. 1990) (“*Russell* ... holds that rental property is *per se* property used in an activity affecting interstate commerce.”). The interstate character of the online vacation rental market merely underscores that the transactions here involve interstate commerce.

Respondents ignore the verified allegations of their own Complaint in their attempt to shoehorn this case into the narrow holding of *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 458, 730 S.E.2d 312, 318 (2012), that the sale of a “completed residential dwelling” is an intrastate transaction. But this Court has recognized that *Bradley* applies only when the transaction is solely for purchase of a completed residence. *See Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 608, 879 S.E.2d 746, 753 (2022) (holding that “[t]he transactions here manifestly involve interstate commerce, as they involved the construction of new homes ... rather than the purchase of pre-existing homes,” as in *Bradley*); *see also U.S. Home Corp. v. Michael Ballesteros Trust*, 415 P.3d 32, 39 (Nev. 2018) (distinguishing *Bradley* as involving only the purchase of a single residence). That is not the case here; the verified Complaint alleges transactions involving not merely the purchase of a residence but also the purchase of membership in a for-profit entity (the Club), including its operations and management; the collection of dues and fees; and online marketing of properties for short-term rental, *see supra* Parts I(A), (F). Thus, the transactions involved interstate commerce.

B. The Parties Did Not Agree to Arbitrate Under the SCUAA

“Parties are free to enter into a contract providing for arbitration under rules established by state law rather than rules established by the FAA,” but such an intention must be expressed in the contractual language. *Munoz*, 343 S.C. at 538 n.2, 542 S.E.2d at 363 n.2. There is no such expression here, and accordingly the FAA, not the SCUAA, governs.

1. *An Arbitration Notice Is Not an Arbitration Agreement*

Echoing the Court of Appeals, Respondents insist that the statutory notice that appears on the first page of the Membership Agreement specifically chooses the SCUAA over the FAA. (Resps.’ Br. at 35-36.) Respondents and the Court of Appeals are both incorrect.

“The purpose of the notice requirement of section 15–48–10(a) is to alert the contracting parties that the contract requires arbitration of disputes arising under the contract.” *Soil Remediation Co. v. Nu-Way Env’tl., Inc.*, 317 S.C. 274, 279, 453 S.E.2d 253, 257 (Ct. App. 1994). An arbitration agreement, like any other contract, must reflect “a meeting of the minds between the parties with regard to all essential and material terms.” *Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 130, 678 S.E.2d 435, 438 (2009). The required meeting of the minds is expressed in the arbitration agreement itself, in the section of the Membership Agreement titled “ARBITRATION.” (App. 578.)

2. *The SCUAA Is Not the “Substantive Law of South Carolina”*

Respondents attempt to resurrect the view, expressed in the Court of Appeals’ initial decision but rejected in its substituted opinion on denial of rehearing, that the arbitration agreement’s reference to “the substantive law of South Carolina” requires application of the SCUAA. (Resps.’ Br. at 37-38.) But as this Court has recognized, there is a distinction between “state substantive law and arbitration law.” *Osteen v. T.E. Cuttino Constr. Co.*, 315 S.C. 422, 427, 434 S.E.2d 281, 284 (1993). Here, the parties’ arbitration agreement clearly incorporates *only* South Carolina *substantive* law, establishing that South Carolina procedural rules (including the SCUAA), do not apply.

Attempting to bolster their argument, Respondents combine the arbitration agreement’s choice of “the substantive laws of South Carolina” with language from a different part of the Membership Agreement. (Resps.’ Br. at 35.) This is disingenuous and improper. Because “the

FAA requires courts to separate the validity of an arbitration clause from the validity of the contract in which it is embedded ... ‘in conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract.’” *Damico*, 437 S.C. at 608–09, 879 S.E.2d at 753 (quoting *D.R. Horton*, 417 S.C. at 48, 790 S.E.2d at 4); *see also Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403 (1967). Under the separability (or *Prima Paint*) doctrine, in determining whether the parties agreed to arbitrate pursuant to the SCUAA, the Court may consider only the arbitration agreement’s choice of South Carolina *substantive* law.⁵

IV. The Arbitration Agreement Is Not Unconscionable

A. Respondents Did Not Lack Meaningful Choice

Unconscionability requires the “absence of meaningful choice” by one party “*together* with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them” *Munoz*, 343 S.C. at 541, 542 S.E.2d at 365 (emphasis added). Under established South Carolina law, “adhesion contracts are not unconscionable *per se*.” *D.R. Horton*, 417 S.C. at 49, 790 S.E.2d at 4. Rather, a “take-it-or-leave-it contract” at most “*may* indicate one party lacked meaningful choice.” *Damico*, 437 S.C. at 612, 879 S.E.2d at 755 (emphasis added). Because the form nature of the contract is all Respondents offer about choice, their argument fails at the threshold.

Respondents argue that their sophistication is not relevant to the unconscionability analysis, but the very case on which they rely, *Damico*, says otherwise. This Court in *Damico*

⁵ Respondents claim that separating the arbitration agreement from the rest of the Membership Agreement is a “false dichotomy” invented by Palmetto Bluff. (Resps.’ Br. at 36.) To the contrary, the separability doctrine is long-settled law that is binding on this Court. As this Court has recently acknowledged, “we must apply the *Prima Paint* doctrine in cases governed by the FAA.” *Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 385, 892 S.E.2d 112, 116 (2023).

“emphasize[d] the importance of a case-by-case analysis in order to address the unique circumstances inherent in the various types of consumer transactions.” *Damico*, 437 S.C. at 611, 879 S.E.2d at 755. Indeed, “in determining whether an absence of meaningful choice taints a contract term, such as an arbitration provision, courts must consider, among all facts and circumstances ... *the parties’ relative sophistication.*” *Id.* at 613, 879 S.E.2d at 755 (emphasis added).

Respondents here are nothing like the “innocent, inexperienced homebuyer” in *Damico*. *Id.* at 622, 879 S.E.2d at 761. *Damico* involved individual plaintiffs purchasing primary residences. See First Am. Compl., *Damico v. Lennar Carolinas, LLC*, No. 2014CP0802424, 2015 WL 13780350 (S.C. Com. Pl. Nov. 23, 2015). In contrast, Respondents here are (often out-of-state) purchasers of luxury homes, many held by limited liability companies, and often used for rental business. Indeed, Respondents have not disputed their own sophistication or the supporting evidence in the record.

The allegations of the Complaint demonstrate that Respondents had a meaningful degree of choice. Among other things, the Complaint alleges that Respondents “invested” in Palmetto Bluff residences only after considering the overall plan of the community. (App. 276 (Complaint p. 3).) The Complaint never alleges that Respondents’ properties are their primary residences; in fact, as discussed *supra*, Respondents are seeking damages for lost short-term rental income. Under the facts of *this* case, Respondents’ undisputed sophistication—along with the undeniable facts that vacation homes are not necessities, and that there are many competing sources of luxury homes in the Lowcountry and elsewhere—compels the conclusion that Respondents did not lack meaningful choice in the transactions.

B. The Arbitration Agreements' Terms Are Neither Oppressive Nor One-sided

Because Respondents had ample, meaningful choice, the Court need not address the allegedly oppressive terms of the arbitration agreements. In any event, the terms of the arbitration agreements are not oppressive or one-sided. Rather, they are “geared towards achieving an unbiased decision by a neutral decision-maker,” *Damico*, 437 S.C. at 612, 759 S.E.2d at 755 (citing *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 668-69 (2007), and *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 938–40 (4th Cir. 1999)), including by providing for arbitration before the American Arbitration Association (“AAA”) under its Commercial Rules.

In contending that the arbitration agreement is unconscionable, Respondents point to the provision requiring that arbitration be commenced within 60 days after a contractually required mediation; a remedies limitation; a unilateral amendment provision that is not part of the arbitration agreement; the irrelevant fact that some disputes between Palmetto Bluff and other owners were litigated in court; and the supposed preclusion of arbitration by the South Carolina Declaratory Judgment Act. None of these, whether considered individually or together, makes the arbitration agreement unconscionable.

As an initial matter, the circuit court ruled that these items rendered the arbitration agreements unconscionable without ever considering whether any of them *in fact* affected Respondents' rights. (App. 226-227.) For example, the circuit court recognized that it was unclear whether the limitations period would bar a different potential claimant from bringing a claim. (*Id.*) And it is difficult to see how a bar could apply. The 60-day period runs from the conclusion of the contractual mediation, not from the accrual of a cause of action. Any potential claimant who began and completed a mediation should have no difficulty initiating an arbitration 60 days later. And one who somehow missed that deadline could still argue to the arbitrator (to whom the parties delegated these issues, *see infra*) that the limit was invalid under S.C. Code Ann. § 15-3-140.

In any event, any complaint as to the remedial limitation is not ripe, and should not be considered unless and until the arbitrator (to whom the parties have delegated this issue) determines that Respondents are entitled to prevail on a claim to which the remedial limitation might apply. “[W]here it is uncertain how the arbitrator will construe remedial limitations, the proper course is to compel arbitration.” *Rowe v. AT&T, Inc.*, No. 6:13-cv-1206-GRA, 2014 WL 172510, at *11 (D.S.C. Jan. 15, 2014) (citing *Pacificare Health Sys., Inc. v. Book*, 538 U.S. 401 (2003)); see also *Clark v. Goldline Int’l, Inc.*, No. 6:10-cv-1884-JMC, 2010 WL 4929438, at *7 (D.S.C. Nov. 30, 2010); *Anderson v. Comcast Corp.*, 500 F.3d 66, 72-75 (1st Cir. 2007).

With respect to unilateral amendment, the best Respondents can do is cite a case for the elementary—and irrelevant—proposition that one party cannot unilaterally modify a contract where there is no contractual provision allowing it to do so. (Resps.’ Br. at 21-22.) But they have no counter to the *Prima Paint* doctrine, under which an arbitration agreement cannot be invalidated by a unilateral amendment provision outside of the arbitration agreement. See *supra* Part III(B)(2). Indeed, *Damico* confirms that “in conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement and not those of the whole contract.” 437 S.C. at 609, 879 S.E.2d at 753 (citation and internal quotation marks omitted). And there is no evidence that the unilateral amendment provision has been exercised at all with respect to the arbitration clause, let alone in an unfair or oppressive manner.⁶

Respondents’ claim that the Club pursued some disputes with other members outside of arbitration is a red herring. (Resps.’ Br. at 23-24.) If other disputes were resolved through litigation,

⁶ Respondents claim that Palmetto Bluff used the unilateral modification provision to impose the arbitration agreement retroactively on Palmetto Bluff property owners. (Resps.’ Br. at 7.) But the arbitration agreement belies that claim, stating it “shall apply only to members who acquire their membership on or after June 19, 2017,” not to those who joined earlier. (App.486.)

it was because *both* sides decided not to arbitrate. (App. 578 (providing for arbitration unless Palmetto Bluff and the Club member “mutually agree otherwise”).) By allowing the parties to mutually opt out of arbitration, the arbitration agreement explicitly contemplates that some disputes will be resolved through arbitration and others through litigation.

Respondents also maintain, again without citing any authority, that the arbitration agreement is oppressive because it deprives them of their “statutory right” to a declaratory judgment rendered by a court. (Resps.’ Br. at 24.) But declaratory judgment claims are just as arbitrable as other types of claims. *See, e.g., Jackson Mills, Inc. v. BT Capital Corp.*, 312 S.C. 400, 402, 440 S.E.2d 877, 879 (1994) (compelling arbitration of declaratory judgment claim); *New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 631, 667 S.E.2d 1, 6 (Ct. App. 2008) (same).

C. Any Unconscionable Terms Should Be Severed

Finally, even if a provision of the arbitration agreement could be found unenforceable, the proper remedy is to sever the unenforceable provision and enforce the balance of the agreement. As this Court has observed, “many courts view severing the offending provision and otherwise proceeding with arbitration to be the preferred remedy for an unconscionable provision in an arbitration clause.” *Simpson*, 373 S.C. at 35 n.9, 644 S.E.2d at 674 n.9. A similar policy governs the South Carolina Commercial Code, which permits a court finding unconscionability to “enforce the remainder of the contract without the unconscionable clause,” or to “limit the application of any unconscionable clause as to avoid any unconscionable result.” S.C. Code Ann. § 36-2-302.

Respondents do not argue that severability is not feasible, but merely contend that the arbitration agreement does not contain a severability clause. (Resps.’ Br. at 26-27.) But it is settled law that courts have the authority and discretion to sever unenforceable contract provisions even

in the absence of a severability clause. *See Huskins v. Mungo Homes, LLC*, 444 S.C. 592, 594, 910 S.E.2d 474, 476 (2024).

Respondents cite *Damico* for the proposition that a court should not sever unconscionable provisions from an arbitration agreement as a matter of policy. (Resps.’ Br. at 26-27.) *Damico* does not support Respondents’ position. To the contrary, this Court in *Damico* recognized that an unenforceable provision may be severed from an arbitration agreement. *Damico*, 437 S.C. at 604, 879 S.E.2d at 751. There, however, the Court found the unconscionable provisions to be so pervasive and objectionable that the contract would remain one-sided and fragmented after severance and would require the Court to blue-pencil material terms of the agreement. *Id.*

Here, in contrast, any actually offending term is isolated, not pervasive throughout the agreement. Therefore, any single term of the arbitration agreements can be easily severed by simply striking through it, without undermining the essence of the parties’ bargain or requiring the Court to revise or add to the remaining text. The kind of overreach and unconscionability that undermines an entire arbitration agreement and can only be fixed by blue-penciling is not present here. Under these circumstances, the appropriate remedy is to sever any provisions found to be unconscionable and enforce the remainder of the parties’ arbitration agreement.

V. Nonsignatory Respondents Are Bound by the Arbitration Agreements

Respondents repeatedly contend that there is “no arbitration agreement” between Palmetto Bluff and any nonsignatory Respondent.⁷ But it is settled law that a nonsignatory can be bound by

⁷ Making new arguments, Respondents contend that (1) this Court should affirm on the basis that “no arbitration agreement exists between [Palmetto Bluff and] the vast majority of [Respondents],” and (2) Palmetto Bluff “do[es] not seem to have preserved [this argument] for appeal.” (Resps.’ Br. at 14.) The Court should reject these arguments. To begin, Respondents failed to assert the first argument to the circuit court, and they failed to assert both arguments to the Court of Appeals. Therefore, the arguments were not preserved “since an issue cannot be raised for the

an arbitration agreement “under general principles of contract and agency law,” including agency, assignment, and estoppel. *Wilson*, 426 S.C. at 338, 827 S.E.2d at 174. Each theory applies here.

At its core, this case is about Respondents’ complaints that they were forced to become Club members when they bought their properties, and that the Club is mistreating them by limiting short-term renters’ access to Club amenities and charging improper fees for Club access. As discussed *supra*, Respondents, both signatories and nonsignatories, can only assert their claims if they are members of the Club and subject to the Membership Agreement and the Membership Plan. Yet to avoid arbitration, the nonsignatory Respondents contend that they are not members at all and thus are not bound by the arbitration agreements their individual principals signed when buying Palmetto Bluff property. Respondents cannot have it both ways. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 295, 733 S.E.2d 597, 604 (Ct. App. 2012) (“A party may not rely on the contract when it works to its advantage, and repudiate it when it works to its disadvantage.”) (cleaned up). They are members, and therefore they are bound by the arbitration agreements that cover all disputes relating to the Club.

Notably, the Membership Plan expressly provides that a membership may be held in the name of an entity. (App. 479.) Entity property owners must identify one user of Club facilities—a “primary member” or “designated user”—who must execute a Membership Agreement. (*Id.*; *see* App. 736 (Membership Agreement showing RLB Squared LLC as “Business Entity Owner/LLC”

first time on appeal.” *Carolina Chloride, Inc. v. Richland Cnty.*, 394 S.C. 154, 174, 714 S.E.2d 869, 879 (2011).

The arguments are also wrong. Throughout this litigation, it has been undisputed that some Respondents signed arbitration agreements and others, including the entity Respondents, did not. As to the latter group, Palmetto Bluff has always argued—before the circuit court, the Court of Appeals, and now this Court—that even without a signed arbitration agreement, the nonsignatory Respondents should be compelled to arbitrate on theories of agency, assignment, and/or equitable estoppel. (App. 83-87, 708-714; Pets.’ Br. at 28-32.)

and Geoffrey Block as “Designated Owner”).) Further, the Plan expressly provides that the entity and designated user “are jointly and severally liable” under the Agreement. (App. 479.)

Moreover, the arbitration agreements in the Membership Agreement and Plan expressly apply both to members and to those exercising the members’ rights. (App. 487, 578 (providing that any and all disputes arising directly or indirectly from the Agreement or Plan “shall be resolved by mandatory arbitration ... (unless the member [and/or any person exercising such member’s membership rights] and Palmetto Bluff Club, LLC mutually agree otherwise”).) Thus, the arbitration agreements expressly apply to anyone exercising the membership rights. Having exercised their membership rights pursuant to the Agreement and Plan, the nonsignatory Respondents cannot now disclaim the arbitration provisions in those very same agreements.

A. Nonsignatory Respondents Are Bound by the Arbitration Agreements Under Agency Law

Respondents contend that arguments based on agency and assignment were not preserved for appeal. (Resps.’ Br. at 29-30.) They are mistaken. Palmetto Bluff’s initial briefing to the circuit court argued that the nonsignatory Respondents “are ... agents, beneficiaries, and/or successors or assigns of the individuals who signed the agreements.” (App. 713.) Palmetto Bluff provided supporting argument and legal citation, submitted Mr. Ferguson’s affidavit and supporting public records, and again argued on reconsideration that the arbitration agreements were signed by agents of the nonsignatory Respondents. (App. 713, 726-730, 1087-1091.) That is enough for preservation, and Respondents provide no contrary authority.

Respondents are also wrong to contend that Palmetto Bluff did not preserve its argument as to ratification. (Resps.’ Br. at 30.) “Ratification, as it relates to the law of agency, means the express or implied adoption and confirmation by one person of an act or contract performed or entered into in his behalf by another who at the time assumed to act as his agent.” *Lincoln v. Aetna*

Cas. & Sur. Co., 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989). Palmetto Bluff argued to the circuit court that the nonsignatory Respondents retained the benefits of the Club documents containing the arbitration agreements and bring claims pursuant to those documents. (App. 711-713, 1086-1087.) That preserved the ratification argument.

As to Respondents' contention that Palmetto Bluff failed to offer facts sufficient to establish an agency relationship between the nonsignatory Respondents and the individuals who signed the arbitration agreements,⁸ the record reflects ample support for that relationship. *See supra* Part I(A), (F). Indeed, Respondents do not dispute that the signatories were the members of the nonsignatory entity Respondents. It is well-established that "agency may be implied or inferred and may be circumstantially proved by the conduct of the purported agent exhibiting a pretense of authority with the knowledge of the alleged principal." *Fernander v. Thigpen*, 278 S.C. 140, 143, 293 S.E.2d 424, 426 (1982). Here, the signatories at issue executed agreements as purported "legal owner[s]" pursuant to "[their] acceptance of a deed for property within Palmetto Bluff." (*E.g.*, App. 577.) The nonsignatory Respondents received benefits and performed obligations under those agreements, using Club amenities, spending money at the Club, and paying Club dues. That is enough to bind them to arbitrate.

B. Nonsignatory Respondents' Assignee Status Is Effectively Undisputed

Respondents' sole counter to Palmetto Bluff's demonstration that the nonsignatory Respondents are bound to the arbitration agreements as assignees is that the argument was not

⁸ Respondents assert that the circuit court found that Defendants "entirely failed" to prove that the nonsignatories are bound to the arbitration agreements under agency principles. (Resps.' Br. at 27-28.) But as noted above, the circuit court made no factual findings, and held only that Defendants had not offered "proof sufficient to pierce a corporate veil." (App. 229.) Although Palmetto Bluff pointed out that the court had not addressed agency (App. 1088-1089), the circuit court never explicitly ruled on Palmetto Bluff's agency arguments.

preserved for appeal. (Resps.’ Br. at 30.) Again, they are wrong. Palmetto Bluff’s initial circuit court briefing argued that the nonsignatory Respondents “are ... assigns of the individuals who signed the agreements,” and it argued this again on reconsideration. (App. 713, 1088-1089.) For the reasons explained in the opening brief (Pets.’ Br. at 30-31), the nonsignatory Respondents are bound by the arbitration agreements as the assignees of the signatory individuals.

C. The Nonsignatory Respondents Are Bound by Equitable Estoppel

Respondents contend that nonsignatories should not be bound by principles of equitable estoppel because the Membership Agreement and Plan are the direct basis of only some of their claims. (Resps.’ Br. at 31.) Of course, equitable estoppel may apply even if a plaintiff’s claims do not arise solely from the documents containing the arbitration provisions. *Cf. Am. Bankers Ins. Grp., Inc. v. Long*, 453 F.3d 623, 630 (4th Cir. 2006) (holding that whether a plaintiff is equitably estopped from avoiding arbitration and whether a plaintiff’s claims fall within the scope of the arbitration agreement are separate issues). But more importantly, it is clear from the Complaint that *all* of Respondents’ claims involve the Club, and thus arise from or relate directly or indirectly to Club membership. *See supra* Part I(A). Indeed, Respondents do not dispute that they bring claims pursuant to the Agreement and Plan, and they even attached the Plan as an exhibit to the Complaint. (App. 466-487.) Those claims thus arise from and relate to contracts containing mandatory arbitration agreements. Because the nonsignatory Respondents, equally with signatory Respondents, received direct benefits from the contracts containing arbitration provisions, equitable estoppel principles bind them to those provisions to the same extent as the signatory Respondents. *See Pearson*, 400 S.C. at 290-97, 733 S.E.2d at 601-05.

Respondents further contend, citing only the circuit court’s erroneous order, that application of equitable estoppel should be limited to instances where there are a small number of

parties. (Resps.’ Br. at 32.) But they neither articulate a reason why equitable estoppel should come with a headcount nor cite any authority for this claim. Application of equitable estoppel does not depend on the *number* of nonsignatories, but on the *claims* they assert. Here, the nonsignatory Respondents make all of the same factual allegations, and assert most of the same claims, as the signatory Respondents. Since there is no daylight between either group, it does not matter how many nonsignatory Respondents there are.

VI. Nonsignatory Petitioners Are Entitled to Enforce the Arbitration Agreements

The nature of Respondents’ claims also determines whether the nonsignatory Petitioners can enforce the arbitration agreements. A nonsignatory defendant may compel arbitration when the claims against it are “closely intertwined” with the claims against the signatory defendants, and where the claims against the nonsignatory defendant are “similar to and dependent upon” the arbitrable claims. *Long v. Silver*, 248 F.3d 309, 320 (4th Cir. 2001); *Goer v. Jasco Indus., Inc.*, 395 F. Supp. 2d 308, 313-15 (D.S.C. 2005). This standard is plainly met here. The Complaint alleges that Petitioners “are a single business enterprise and/or are amalgamated” and refers to them in the singular as the “Developer.” (App. 299 (Complaint ¶ 25).) The Complaint further alleges that any legal distinctions between Petitioners have been blurred to the extent that “justice, equity, and fundamental fairness” require that Petitioners be held liable as a “single business enterprise.” (App. 299-300 (Complaint ¶¶ 25.1-25.3).)

Having made those allegations, Respondents are stuck with them. They cannot avoid their own pleading with the fatuous contention that, as to this issue alone, the Court should disregard the allegations of the verified complaint and instead require Palmetto Bluff to prove *Respondents’* allegation that Petitioners are a single business enterprise. (Resps.’ Br. at 33-34.) Rather, it is the allegations and claims in the Complaint that determine who can enforce the arbitration agreements.

See Partain v. Upstate Auto. Grp., 386 S.C. 488, 492-93, 689 S.E.2d 602, 604 (2010); *Timmons v. Starkey*, 380 S.C. 590, 596, 671 S.E.2d 101, 105 (Ct. App. 2008). Respondents cannot allege that Petitioners are a single unit, and pursue claims against them in that capacity, and then avoid arbitration by disavowing their own Complaint.

VII. The Arbitration Agreements Delegate Arbitrability to the Arbitrator

A. Incorporation of the AAA Commercial Arbitration Rules Clearly and Unmistakably Delegates Arbitrability to the Arbitrator

Respondents contend that the arbitration agreement contains only a “vague and ambiguous” reference to the AAA Commercial Arbitration rules, which they argue is insufficient to clearly and unmistakably delegate arbitrability to the arbitrator. (Resps.’ Br. at 48.) First, there is no vagueness or ambiguity; the arbitration agreement clearly states that arbitration “shall be . . . in accordance with the Commercial Arbitration Rules of the American Arbitration Association.” (App. 578.) Second, state and federal courts have uniformly recognized that incorporation of these rules in an arbitration agreement constitutes precisely the kind of “clear and unmistakable” statement that establishes the parties’ agreement to have the arbitrator, rather than the court, decide issues of arbitrability. Indeed, as the Sixth Circuit recently noted, “every one of our sister circuits to address the question—eleven out of twelve by our count—has found that the incorporation of the AAA Rules (or similarly worded arbitral rules) provides ‘clear and unmistakable’ evidence that the parties agreed to arbitrate ‘arbitrability.’” *Blanton v. Domino’s Pizza Franchising LLC*, 962 F.3d 842, 846 (6th Cir. 2020). State courts agree. *See, e.g., Uber Techs., Inc. v. Royz*, 517 P.3d 905, 910 (Nev. 2022) (“[A]s many courts have found, incorporating the AAA’s rules, even without more, constitutes clear and unmistakable evidence of intent to submit the question of arbitrability

to the arbitrator.”);⁹ *James & Jackson, LLC v. Willie Gary, LLC*, 906 A.2d 76, 80 (Del. 2006) (“As a matter of policy, we adopt the majority federal view that reference to the AAA rules evidences a clear and unmistakable intent to submit arbitrability issues to an arbitrator.”).¹⁰

Against this overwhelming weight of authority, Respondents claim that “[n]umerous cases hold that mere reference to AAA rules is not sufficiently specific to constitute a delegation clause.” (Resps.’ Br. at 49 n.37.) But they can muster only two cases, both of which are inapposite. (*Id.* (citing *Chesapeake Appalachia, LLC v. Scout Petroleum, LLC*, 809 F.3d 746, 749 (3d Cir. 2016), and *Ajamian v. CantorCO2e, L.P.*, 137 Cal. Rptr. 3d 773, 780 (2012)).) In *Chesapeake Appalachia*, the question was whether incorporation of the AAA rules clearly indicated the parties’ intent to have the arbitrator decide the particular question of *class* arbitrability. In considering this question, the court recognized that “[v]irtually every circuit to have considered the issue has determined that incorporation of the [AAA] arbitration rules constitutes clear and unmistakable evidence that the parties agreed to arbitrate arbitrability.” 809 F.3d at 763-64. The court did not reject this general rule. Instead, it held that class arbitration presented unique concerns, such that

⁹ The Court should reject Respondents’ misguided attempts to distinguish *Blanton* and *Uber Technologies*. (Resps.’ Br. at 49 n.37.) Respondents suggest that *Blanton* found ambiguity in the AAA Rules, but it did not. The sentence fragment quoted by Respondents appears in the Sixth Circuit’s *rejection* of the argument that incorporation of the AAA rules gave the arbitrator authority, but not *exclusive* authority, to decide issues of arbitrability. *See Blanton*, 962 F.3d at 849-50. But the Sixth Circuit unambiguously held that incorporation of the AAA rules is a clear and unmistakable manifestation of the parties’ agreement to delegate arbitrability to the arbitrator.

As to *Uber Technologies*, Respondents correctly note that the arbitration agreement at issue contained an express delegation clause. *See Uber Techs.*, 517 P.3d at 907. But the agreement *also* provided that “arbitration will be in accordance with the [AAA’s] rules.” *Id.* The Nevada Supreme Court that the agreement’s express delegation clause and its incorporation of the AAA rules constituted clear and unmistakable evidence of the parties’ agreement to delegate arbitrability to the arbitrator.

¹⁰ In addition to Delaware and Nevada, at least 20 other states have recognized the same rule. Citations to these cases are set out in Palmetto Bluff’s Reply in Support of Petition for Writ of Certiorari, at p. 7 n.2.

the general rule should not apply. *See id.* at 764-65. Thus, *Chesapeake Appalachia* is of no help to Respondents. *Ajamian* is equally unhelpful. There, the court explicitly declined to decide whether incorporation of the AAA rules established a clear and unmistakable delegation because the agreement at issue did not require application of the AAA rules. *See* 137 Cal. Rptr. 3d at 789.

Respondents' reliance on *Housing Authority v. Cornerstone Housing, LLC*, 356 S.C. 328, 588 S.E.2d 617 (Ct. App. 2003), is also misplaced. Although the arbitration agreement in that case did incorporate the AAA Commercial Arbitration rules, nothing in the opinion suggests that either party raised the issue of who, as between the arbitrator and the court, should decide questions of arbitrability. Thus, *Housing Authority* does not undermine the principle that incorporation of the AAA Commercial Arbitration Rules is a clear and unmistakable indication of the parties' intent to have the arbitrator decide arbitrability.

In its substituted opinion on denial of rehearing, the Court of Appeals recognized that incorporation of the AAA Commercial Arbitration Rules constitutes an agreement between the parties that questions of arbitrability will be decided by the arbitrator. (App. 39.) And the Court of Appeals further admitted that, under the U.S. Supreme Court's decisions in *Rent-A-Center, West v. Jackson*, 561 U.S. 63 (2010), and *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63 (2019), it was required to apply the terms of the arbitration agreements as written—*i.e.*, as delegating arbitrability to the arbitrator. (App. 39.) The Court of Appeals nevertheless refused to follow the decisions in *Rent-A-Center* and *Henry Schein*, contending that under the South Carolina Constitution's supremacy clause, S.C. CONST. art. V, § 9, it had no choice but to follow this Court's *earlier* decision in *Simpson*, which the Court of Appeals erroneously construed as establishing a categorical rule that questions of arbitrability must *always* be decided by the court. (App. 39-40 & n.3.)) On the contrary, *Simpson* clearly recognizes that arbitrability is a question for the court

only if the parties have not provided otherwise, as they did here. *See id.* at at 23, 644 S.E.2d at 667 (quoting *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)). *Simpson* thus does not squarely conflict with *Rent-A-Center* and *Henry Schein*. Yet if in fact *Simpson* holds that questions of arbitrability must always be decided by the court, Respondents do not dispute that holding is contrary to the U.S. Supreme Court’s subsequent decisions in *Rent-A-Center* (2010) and *Henry Schein* (2019).

Respondents suggest that *Rent-A-Center* establishes a rule that a valid delegation clause must explicitly state that the arbitrator has “exclusive” authority over questions of arbitrability. (Resps.’ Br. at 48-49.) But that is not the law in South Carolina. Rather, consistent with *Rent-A-Center*, South Carolina law recognizes that when a delegation clause clearly and unmistakably commits certain types of disputes to the arbitrator a court must leave resolution of those issues to the arbitrator—even if the delegation clause does not use the magic word “exclusive.” *See Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020).

B. Respondents Did Not Challenge the Delegation Clause

Respondents contend they specifically challenged the delegation provision (Resps.’ Br. at 48), but in fact they did not. Respondents point to a footnote in their memorandum arguing that arbitration should be stayed. (*Id.* (citing App. 963).) But while the memorandum devotes substantial space to Respondents’ arguments for why the arbitration agreement is unconscionable (App. 974-983), *none* of these arguments addresses the delegation clause. A passing reference to the delegation clause in a footnote, without any argument or citation of authority, is insufficient. *Cf. Brouwer v. Sisters of Charity Providence Hosps.*, 409 S.C. 514, 520 n.4, 763 S.E.2d 200, 203 n.4 (2014) (recognizing that an argument is not preserved when it is simply a conclusory statement without citation of supporting authority).

VIII. There Are No Independent Sustaining Grounds

Finally, Respondents contend that even if all their other arguments fail, there are independent sustaining grounds for affirming. Respondents' arguments are meritless.

A. The Arbitration Agreement Is Broad and Covers Respondents' Claims

Respondents devote a scant two paragraphs to arguing that certain claims do not fall within the scope of the arbitration agreement. (Resps.' Br. at 51-52.) They do not specify which claims, nor do they explain why the arbitration agreement doesn't cover them.

First, Respondents' argument ignores that the parties have agreed that the arbitrator will decide which issues are subject to arbitration; it is not a matter for this Court.

Second, the arbitration agreement here applies broadly to "any and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from," the Membership Agreement or Membership Plan. (App. 578.) "A clause which provides for arbitration of all disputes 'arising out of or relating to' the contract is construed broadly and is capable of an expansive reach." *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 95, 749 S.E.2d 139, 153-54 (Ct. App. 2013). "Thus, a claim is within the scope of an arbitration clause that purports to cover all related disputes, so long as a significant relationship exists between the claim and the contract containing the arbitration agreement." *Id.* at 95, 749 S.E.2d at 154. The agreement here is even broader, as it encompasses all indirectly related disputes and claims. And as discussed in Part I(A), *supra*, all of Respondents' claims relate directly or indirectly to the Membership Agreement and/or Membership Plan. In short, the Palmetto Bluff Club is at the core of Respondents' claims. And, any doubt about the scope of an arbitration agreement must be resolved in favor of arbitration, "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *Mey v. DIRECTV, LLC*, 971 F.3d 284, 292 (4th Cir. 2020) (quoting *Warrior v. Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960)).

Finally, even if not all of Respondents' are subject to arbitration, the arbitration agreements must nonetheless be enforced as to claims within their scope.

B. Although Preempted, the SCUAA's Notice Requirement Is Satisfied

There is no dispute that, if the FAA applies, the SCUAA's conspicuous notice requirement is preempted. *See Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996); *see also Soil Remediation Co. v. Nu-Way Env'tl., Inc.*, 323 S.C. 454, 459, 476 S.E.2d 149, 152 (1996) (recognizing that the FAA preempts the SCUAA's notice requirement). But even if the SCUAA applied, the Membership Agreement, which specifically refers to and incorporates the Membership Plan, complies with the requirement. The circuit court acknowledged that the "Membership Agreements [have] this Notice on the first page" (App. 219), but nonetheless held that the notice did not comply with the SCUAA because the Membership Agreement was supposedly "buried within hundreds of pages of real estate closing documents." (*Id.*)

In so holding, the circuit court improperly imposed requirements beyond those in the SCUAA. Nothing in the SCUAA requires that the notice appear on the *first* page of the *first* document in a transaction; the statutory requirement is for the notice to appear on "the first page of the contract" containing the arbitration agreement. S.C. Code Ann. § 15-48-10(a). Moreover, this spurious additional requirement is nonsensical, given that the Membership Agreements signed by Respondents had the notice on the first page.

Moreover, Respondents cannot escape their agreement to arbitrate by complaining that there were too many documents for them to read. "Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it." *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003). The Membership Agreement is a separate document and is the contract by which Respondents acquired

membership in the Club, for which they paid thousands of dollars in addition to the purchase price of their properties. (App. 285 (Complaint p.12).) And the Complaint alleges that membership in the Club and access to its amenities were important considerations in Respondents' decisions to purchase properties in Palmetto Bluff. (App. 276 (Complaint p.3).)

C. The Arbitration Agreement's Limitations Period Does Not Bar Arbitration

Respondents next urge the Court to affirm on the basis of the circuit court's erroneous holding that Palmetto Bluff waived arbitration by not asserting its counterclaims within the 60-day period—even though the court acknowledged that “the record does not support a conclusion that a potential claimant would be barred from bringing a claim after sixty days.” (App. 226.) In any event, Respondents had already commenced arbitration between the parties by filing their demand for arbitration within 60 days of mediation. (App. 557.) Nothing required Palmetto Bluff to make a like demand where a demand had already been made.

Moreover, whether arbitration was timely demanded arbitration is an issue for the arbitrator, not the circuit court. And because “arbitration agreements are liberally construed in favor of arbitrability,” *Landers v. FDIC*, 402 S.C. 100, 108, 739 S.E.2d 209, 213 (2013), any doubt as to whether arbitration would be barred after the 60-day period, or as to whether Respondents' arbitration demand satisfied the 60-day limitations period, must be resolved in favor of arbitration. *See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985).

D. The Community Charter Does Not “Override” the Arbitration Agreement

The Community Charter's dispute resolution provision provides that, if the parties are unable to settle a claim at mediation, “[t]he Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, *as appropriate*.” (App. 418.) The circuit court held that this provision conflicted with and thus nullified the arbitration agreements in the

Membership Agreements and Membership Plan. (App. 214-216.) But there is no conflict.

Under established rules of contract interpretation, provisions in related documents should be read so as to give effect to all of their provisions and to be consistent with each other, such that none is rendered meaningless. *See, e.g., M & M Group, Inc. v. Holmes*, 379 S.C. 468, 476, 666 S.E.2d 262, 266 (Ct. App. 2008). That principle has added force in the arbitration context, where arbitration agreements are presumptively valid and enforceable, and arbitration should generally be ordered unless no interpretation of the arbitration clause covers the asserted dispute. *See Landers*, 402 S.C. at 109, 739 S.E.2d at 213; *Cape Romain*, 405 S.C. at 125, 747 S.E.2d at 466.

The dispute resolution provisions of the Community Charter are easily harmonized with the arbitration agreement. The Community Charter authorizes litigation in court “as appropriate,” but it does not *require* litigation. The Membership Agreement and Plan carve out a defined subset of disputes—those related directly or indirectly to the Membership Agreement, Membership Plan, or the Club—for resolution by arbitration. Under the Membership Agreement and Plan, therefore, litigation in court is not “appropriate.”

CONCLUSION

Reversal is necessary here because the Court of Appeals’ reasoning and decision evince precisely the kind of hostility to, and suspicion of, arbitration that the FAA was meant to overcome and that South Carolina courts have long since abandoned. *See, e.g., Doe*, 430 S.C. at 616, 846 S.E.2d at 881 (recognizing that the purpose of the FAA was to “revers[e] the judicial hostility against arbitration”). Respondents purchased their Palmetto Bluff properties and joined the Palmetto Bluff Club with their eyes wide open and of their own free choice. Respondents, who paid separately to join the Club, had every incentive to review and understand the terms of Club membership, including the arbitration agreement. And, it cannot be seriously disputed that

Respondents are wealthy individuals with much greater sophistication than the typical buyer of a primary residence.

This Court should reverse the Court of Appeals and enforce the parties' arbitration agreement.

Signatures on following page.

October 15, 2025
Columbia, South Carolina

Respectfully submitted,

MAYNARD NEXSEN, PC

s/Val H. Stieglitz

Val H. Stieglitz, SC Bar No. 5356
MAYNARD NEXSEN, PC
1230 Main Street, Suite 700
Columbia, SC 29201
Telephone: 803.771.8900
Email: VStieglitz@nexsenpruet.com

Bruce Wallace, SC Bar No. 11653
MAYNARD NEXSEN, PC
205 King Street, Suite 400
Charleston, SC 29401
Telephone: 843-720-1760
Email: BUWallace@nexsenpruet.com

Kirsten Small, SC Bar No. 75681
MAYNARD NEXSEN, PC
104 S. Main Street, 9th Floor
Greenville, SC 29601
Telephone: 864.370.2211
Email: KSmall@nexsenpruet.com

Donald Falk, *admitted pro hac vice*
SCHAERR JAFFE, LLP
Four Embarcadero Center, Suite 140
San Francisco, CA 94111
Telephone: 415.562.4942
Email: DFalk@schaerr-jaffe.com

Attorneys for Petitioners

Douglas W. MacKelcan, III, SC Bar No. 76332
COPELAND, STAIR, VALZ & LOVELL, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
Telephone: (843) 727-0307
Email: dmackelcan@csvg.law

*Attorney for Petitioners Palmetto Bluff
Preservation Trust, Inc.; Palmetto Bluff
Preservation Trust Board of Stewards*