THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Thomas W. McGee, III, Circuit Court Judge
Civil Action No. 2021-CP-10-01215

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SC Court of Appeals

Appellate Case No. 2024-001813

Mansfield at Park West, Inc. ..... Respondent,

v.

D.R. Horton, Inc. ..... Appellant.

BRIEF OF RESPONDENT MANSFIELD AT PARK WEST, INC.

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II. Whether the circuit court correctly rejected Appellant's argument that it was forced to arbitrate class action claims when Appellant agreed to arbitrate all of the claims in this case, the Association has never asserted any class action claims, and there was no showing the Arbitrator exceeded his powers or manifestly disregarded the law.

III. Whether the circuit court correctly rejected Appellant's argument that the Arbitrator's decision was not sufficiently reasoned when the parties agreed the Arbitrator would have sole discretion over the form of the award, the award included the Arbitrator's grounds for the award, and there has been no showing the Arbitrator exceeded his authority or manifestly disregarded the law.

STATEMENT OF THE CASE

This litigation arises out of construction defects at Mansfield at Park West, a twenty-eight-unit townhome community developed by D.R. Horton, Inc. ("D.R. Horton") in Mount Pleasant, South Carolina. The homeowners' association, Respondent Mansfield at Park West., Inc. (hereinafter, the "Association"), initiated suit against D.R. Horton on March 12, 2021, alleging negligence, gross negligence, breach of express and implied warranties, breach of fiduciary duty, and violation of the South Carolina Unfair Trade Practices Act with respect to construction of the exterior elements and exterior building components of the subject townhomes. **(R. pp. 28-36)**. The Association demanded that its claims against the developer be resolved through final and binding arbitration in its Complaint and contemporaneously filed a Motion to Compel Arbitration. **(R. pp. 28, 36, 37-38)**.

D.R. Horton filed a Memorandum in Opposition to Plaintiff's Motion to Compel

Arbitration. See **(R. pp. 54-74)**. However, before the court issued any decision on the Association's Motion to Compel Arbitration, D.R. Horton consented to submitting all claims to arbitration. **(R. pp. 1-3)**. The parties memorialized this agreement by way of a Consent Order that was accepted and entered by the Honorable R. Ferrell Cothran, Jr. on July 28, 2021 (hereinafter referred to as the "Consent Order for Arbitration"). **(R. pp. 1-3)**. The Consent Order for Arbitration states that the parties agreed to resolve all claims between them by way of binding arbitration. **(R. p. 1)**. All issues in dispute were referred to and to be decided by the arbitrator. **(R. p. 1)**. Per the Consent Order for Arbitration, the parties were to agree upon a sole arbitrator and, if they could not agree on one, the court would select an arbitrator. **(R. p. 1)**. The arbitrator was also to determine all procedural and scheduling matters in the arbitration. **(R. p. 1)**. The court stayed the case while the matter was arbitrated. **(R. p. 2)**.

The parties subsequently agreed on an arbitrator, Thomas J. Wills, IV (hereinafter referred to as the "Arbitrator"). **(App. Initial Br. at p. 2)**. The Arbitrator heard arguments and testimony regarding the construction defects over two non-consecutive days (July 26 and 31, 2023). **(R. pp. 1093, 1113-1166)**.

The Arbitrator issued an Award finding D.R. Horton was grossly negligent in its construction of the cementitious siding, roof shingles, and J-channel windows, and awarded the Association $3,057,112.48 in actual damages. **(R. pp. 18-22)**. D.R. Horton submitted a Motion to Clarify to the Arbitrator on September 11, 2023. **(R. pp. 657-659)**. The Arbitrator denied the Motion to Clarify by way of an Order entered September 26, 2023. **(R. p. 4)**. No substitute arbitration Award was issued, nor was the Award amended. **(R. pp. 5-13)**.

Thereafter, D.R. Horton filed a Motion to Vacate the Arbitrator's Award with the circuit court on November 20, 2023. **(R. pp. 265-98)**. The Association opposed the Motion to Vacate. **(R.**

pp. 997-1018). The matter came before the Honorable Thomas W. McGee, III, on July 12, 2024. **(R. p. 5)**. Judge McGee entered a ten-page Order denying Dr. Horton's Motion to Vacate and Confirming the Arbitration Award on September 4, 2024. **(R. pp. 5-14)**. On September 16, 2024, D.R. Horton filed a Motion for Reconsideration of Judge McGee's Order, which was denied by way of a Form 4 Order entered on October 3, 2024. **(R. pp. 15-17, 1045-1054)**. D.R. Horton filed a Notice of Appeal on October 24, 2024, as to both of Judge McGee's Orders. **(R. p. 1057-1081)**. This appeal followed.

STATEMENT OF FACTS[1]

I. Mansfield at Park West.

The Association is comprised of the owners in the townhome community known as Mansfield at Park West, which is located in Mount Pleasant, South Carolina. **(R. pp. 311, 344)**. There are twenty-eight townhomes situated across six buildings in the community. **(R. p. 889)**. D.R. Horton developed and constructed the community between 2009 and 2011, completing construction on September 1, 2011. See generally **(R. pp. 662-706)**. D.R. Horton then sold the townhomes they developed to members of the public. **(R. pp. 9, 227:13-16, 827, 999)**.

The Association is governed by the Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West, as amended (hereinafter, the "Covenants"). **(R. pp. 299-301, 307-381)**. The Covenants were originally recorded in the Charleston County Register of Deeds in Book P 638, Page 409 on September 13, 2007. **(R. p. 373)**. Pursuant to Article 18.2 of the Covenants, D.R. Horton, as developer and declarant, amended the Covenants on January 23, 2009 (hereinafter the "First Amendment"). **(R. pp. 374-381)**. The First Amendment was recorded in Book 0032

[1] D.R. Horton's opening Brief does not discuss certain facts in the record that are relevant to the issues presented for review and lacks specific citation to portions of the records in accord with appellate rules. The Association therefore sets out the facts that follow with citation to the record.

Page 997 and was effective immediately upon its recording. **(R. pp. 381)**. The Association later amended the Covenants a second time, which is discussed in detail below in Section III.

II. The Association's Investigation of Construction Defects and Required Repairs.

Following visible deterioration of the exterior of the townhome buildings and other structures, complaints of water intrusion into the townhome units, and general concerns regarding the structural soundness of the community's buildings, the Association hired Russell T. Mease, P.E., of RTM Engineering, LLC, to perform an investigation of the exterior elements of all six buildings. **(R. pp. 245:3-25, 848-51, 862-63, 878, 899-900)**. Mease's investigation revealed serious deficiencies. See generally **(R. pp. 899-900, 1094, 1095, 1098-1099)**. First, the siding was not installed properly according to the applicable building code and the manufacturer's instructions, which both require siding fasteners to be installed into the stud framing. **(R. pp. 1094:13-25, 1095:1-21)**. In fact, 87% of the fasteners observed were not nailed into the stud framing. **(R. pp. 1094:13-25, 1095:7-11)**. Additionally, against the manufacturer's instructions, 70% of the fasteners were "overdriven," causing the bond between the siding and building to fail. See generally **(R. pp. 293-294, 550:1-10, 563, 1109)**. Second, the J-channel windows[2] did not allow for a required engineered sealant joint due to their configuration. **(R. pp. 1098:7-25, 1100:5-20, 1107:9-13**. Third, the roof shingles were not fastened properly. **(R. pp. 1099:1-25, 1100:21-25, 1109:5-25)**. An overwhelming majority of the fasteners were angle-driven or overdriven in violation of the building code and manufacturer's installation requirements. **(R. p.900)**. Fourth, the fences were significantly deteriorated. See generally **(R. pp. 21, 146, 249:8-14, 900)**.

Mr. Mease recommended the Association remove and replace the windows, siding, and

[2] "J-channel windows" are windows that have a J-shaped channel that allows for siding or trim to slide into it; these windows are typically used in vinyl siding installations. See generally **(R. pp. 262:11-23 870, 1098:7-16)**.

roof shingles, and that the fences be replaced. **(R. pp. 146, 1100:5-25, p. 1107:1-5)**. The Association subsequently notified D.R. Horton of the defects it discovered and amended its Covenants as it relates to exterior elements and dispute resolution procedures, as further detailed in the section that follows.

III. The Second Amendment to the Covenants.

The Association amended two sections of its Covenants on March 1, 2021, in what was the Second Amendment to the Covenants. **(R. pp. 299-301)**. Sections 1.3 and 18.1 of the Covenants outline the procedure for the Association to amend the Covenants after the period of time in which D.R. Horton, the Declarant, no longer owns property in the community. **(R. pp. 312-313, 341)**. Section 1.3 of the Covenants provides that after such time, the Association has the right to add additional covenants, conditions, or restrictions affecting the community through a 75% vote by the membership. See **(R. pp. 312-313)**. Section 18.1 of the Covenants similarly provides that the Covenants may be amended "by an instrument signed by Members holding not less than Seventy-five (75%) percent of the votes of the membership." **(R. p. 341)**.

When the Second Amendment to the Covenants was enacted in 2021, D.R. Horton no longer owned any real property in the community.[3] **(R. p. 9)**. Accordingly, the Association proceeded with a vote. **(R. pp. 299)**. More than 75% of the Association's members voted to approve a Second Amendment to the Covenants; in fact, no owners voted against it. See generally **(R. pp. 8, 299)**.

The Second Amendment changed two sections of the Covenants. First, the following

[3] The property situated in the community is described in Exhibits "A" and "B" to the Covenants. **(R. pp. 344-345)**. It is undisputed that D.R. Horton did not own any property described in Exhibits "A" or "B" to the Covenants since 2011. See **(R. p. 9)**.

language was inserted into Section 5.1:

> The Association at its sole discretion shall have the right and obligation to pursue claims for faulty design and construction of the townhome exteriors and exterior building components and installation thereof. Any and all funds recovered and received by the Association after expenses of the claim shall be placed in a separate interest-bearing account and used for the sole purpose of making repairs to the townhome exteriors and exterior building components. Any such repairs made with these collected funds shall be prioritized and made at the sole discretion of the Association.

(R. p. 299).[4] The Second Amendment also deleted Sections 17.1 through 17.6 of the Covenants, titled "Dispute Resolution and Limitation on Litigation," and replaced it with the following language:

> Any dispute between the Association and the Declarant shall be submitted to binding arbitration with a single arbitrator agreed to by the parties or appointed by the Court. The arbitrator shall have the sole discretion to determine the rules and procedures of the arbitration and any law applicable thereto. The award of the arbitrator shall be final and binding.

(R. pp. 299-300).

The Second Amendment was signed by the Association's President, Michael Frappier, on March 1, 2021, and recorded in the Charleston Register of Deeds on March 9, 2021, in Book 0968 page 950. **(R. pp. 299-301)**.

IV. Notice to D.R. Horton of Construction Defects.

The Association notified D.R. Horton on March 2, 2021, of its discovery of the various defects in the exterior components of the subject buildings and fences and requested that D.R. Horton inspect the condition of the buildings and make the required repairs. **(R. pp. 303-304)**. D.R. Horton refused to inspect the buildings and refused to commit to undertaking any repairs. **(R. p. 305)**. Mr. Frappier, the President of the Association, asked D.R. Horton to reconsider its

[4] The Association initiated this construction defect suit as to the exterior elements and exterior components of the buildings on March 12, 2021. **(R. pp. 28-36)**.

position, and further offered to meet with D.R. Horton and to send pictures. **(R. pp. 305-306)**. D.R. Horton refused and encouraged the Association to "take the appropriate actions to resolve this [dispute]." **(R. pp. 306)**.

Accordingly, the Association filed suit on March 12, 2021. **(R. pp. 28-36)**.

V. The Association's Claims.

The Association asserted claims in its name. It did not name any putative class representatives or otherwise allege that the action was being brought as a potential class action. **(R. pp. 28-36)**. No motion to certify class action was ever submitted, nor was any decision on class certification ever taken up by the Arbitrator or circuit court. As stated above, the case was referred to binding arbitration by agreement of the parties. **(R. pp. 1-3)**.

STANDARD OF REVIEW

When a dispute is adjudicated through binding arbitration, the arbitrator has authority to "determine[] questions of both law and fact." Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009); (quoting S.C. Code § 15-48-180). "Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award." Gissel, 382 S.C. at 241, 676 S.E.2d at 323. "An award will be vacated only under narrow, limited circumstances" and courts view "any attempt to convert arbitration into a trial-like judicial proceeding . . . with disfavor." Id. (citing Pittman Mortgage Co. v. Edwards, 327 S.C. 72, 75–76, 488 S.E.2d 335, 337 (1997)); Lauro v. Visnapuu, 351 S.C. 507, 516, 570 S.E.2d 551, 555 (Ct. App. 2002).

"An arbitrator's award may be vacated when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law." Gissel, 382 S.C. at 241, 676 S.E.2d at 323; S.C. Code § 15-48-130(a). "Factual and legal errors by arbitrators do not constitute an abuse of powers, and a court is not required to review the merits of a decision so long as the arbitrators

do not exceed their powers." Gissel, 382 S.C. at 242, 676 S.E.2d at 324. "Manifest disregard of law" requires that an arbitrator "knew of a governing legal principle yet refused to apply it." Id. at 241. The "governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable." Id. "Case law presupposes something beyond a mere error in construing or applying the law. Even a clearly erroneous interpretation of [a] contract cannot be disturbed." Id. (citation and internal quotation omitted). In fact, an arbitrator need not outline the basis of an award, so long as the "factual inferences and legal conclusions supporting the award are 'barely colorable'". TCC of Charleston, Inc. v. Concord & Cumberland, LLC, Op. No. 6106 (S.C. Ct. App. filed Mar. 19, 2025) (Howard Adv. Sh. No. 12 at 39), reh'g pending (citation, internal quotation, and emphasis omitted). If these inferences are present, "the award should be confirmed." Id. (internal citation and quotation omitted). "This circumscribed scope of review means that 'in reviewing [an arbitration] award, a district or appellate court is limited to determine whether the arbitrators did the job they were told to do—not whether they did it well, or correctly, or reasonably, but simply whether they did it." Grp. III Mgmt., Inc. v. Suncrete of Carolina, Inc., 425 S.C. 141, 150, 819 S.E.2d 781, 786 (Ct. App. 2018) (citations omitted).

ARGUMENT

D.R. Horton's arguments on appeal are all in the nature of a Monday morning quarterback, nitpicking the Arbitrator's Award. As described above, the purpose of arbitration is finality; it is not meant to be the first step in the litigation process, but the last. Here, D.R. Horton agreed that the Association's claims against it should be arbitrated, agreed to the Arbitrator, and agreed the arbitrator would have broad powers to determine the claims. Then, after losing, D.R. Horton sought to unwind the Award it previously agreed the Arbitrator would render. The circuit court recognized the deferential standard of review and confirmed the Award. As detailed below, the

circuit court and the Arbitrator should be affirmed because there is no showing the Arbitrator exceeded his powers and/or manifestly disregarded or perversely misconstrued the law. In fact, the opposite is true, the Arbitrator heard the evidence, ruled on the claims the parties agreed to submit to binding arbitration, and correctly ruled.

I. THE CIRCUIT COURT CORRECTLY AFFIRMED THE ARBITRATOR'S FINDING THAT THE ASSOCIATION HAD STANDING BECAUSE THE SECOND AMENDMENT TO THE COVENANTS IS A VALIDLY ENACTED AMENDMENT, EFFECTIVE AT ALL PERTINENT TIMES HERETO, THAT VESTED THE ASSOCIATION WITH THE RIGHT AND OBLIGATION TO PURSUE CLAIMS FOR CONSTRUCTION DEFECTS AFFECTING THE EXTERIOR ELEMENTS AND EXTERIOR BUILDING COMPONENTS AT THE PROPERTY. IT WAS NOT NECESSARY FOR D.R. HORTON TO CONSENT OR APPROVE THE AMENDMENT SINCE D.R. HORTON NO LONGER OWNED ANY PROPERTY IN THE COMMUNITY.

The circuit court's order should be affirmed because the Second Amendment to the Covenants vests the Association with both the obligation and right to pursue claims for faulty construction of the exterior elements, the exterior building components, and repairs relating thereto. The Second Amendment was validly enacted through a vote of the membership, to which no one objected. The Second Amendment to the Covenants became effective upon recordation of the amendment, which occurred prior to the initiation of the suit and demand for arbitration.

The circuit court's orders should be affirmed because there was no showing the Arbitrator disregarded the law or exceeded his authority in rending his decision that the Association had standing in this case. Further, the decision was correct because the Association is the real party in interest and possessed standing to pursue construction defect claims against D.R. Horton relating to the exterior elements and exterior building components at Mansfield at Park West. Further, D.R. Horton's challenges the Second Amendment should be rejected on their face because it has long sold all of its interests in the subject development, and the Association did not need D.R. Horton's consent to amend the Covenants, nor was D.R. Horton entitled to a vote.

a. The Second Amendment to the Covenants was validly enacted pursuant to a vote of the membership. The Association did not need D.R. Horton's consent to amend its Covenants, nor was D.R. Horton entitled to a vote on the amendment.

D.R. Horton asserts the Second Amendment to the Covenants is ineffective because the amendment was enacted without its consent. **(App. Initial Br. at pp. 4, 7, 21)**. The Arbitrator and circuit court properly rejected this argument, and D.R. Horton cannot show the Arbitrator disregarded the law or exceeded his powers by ruling that the Association had standing. D.R. Horton's historical relationship as the developer-declarant in and of itself does not give it rights to object to an amendment of the Covenants, nor does it retain in D.R. Horton the right to enforce the amendment process.

The circuit court's orders should be affirmed because the Covenants plainly establish that D.R. Horton had no vote on issues at the time the Second Amendment was put to the membership. The Covenants provide that only property owners are members of the Association. See **(R. pp. 316-317, §4.1)** (members are the record owners of fee interest of a townhome unit). Unit owners are known as "Class I" members. See **(R. p. 317, §4.2(a))**. Class I members are entitled to "one (1) vote for each Unit in which they hold the interest required for membership" for all issues. **(R. 317, §4.2(a))**.

D.R. Horton, as declarant, was the sole Class II member for a period of time (which had terminated 10 years prior to the enactment of the Second Amendment). **(R. p. 317, §4.2(b))** ("The sole Class II Member shall be the Declarant, its successor or assign."). This status gave D.R. Horton effective control of the Association during this limited period of time. **(R. p. 317, §4.2(b))** ("As to all matters with respect to which Members are given the right to vote under the Governing Documents, the Declarant shall be entitled to ten (10) votes per Unit owned and in addition, shall be entitled to appoint all of the members of the Board until termination of the Class II

Membership."). D.R. Horton set out in the Covenants that its Class II Membership "shall cease to exist" and, to the extent it still owned any property in the community, shall be converted to Class I membership, upon the earlier of the following:

> (1) One Hundred Twenty (120) days after the conveyance by Declarant of all of ninety (90%) percent of the Units within the real property described in Exhibit "A" or "B" or made subject to this Declaration pursuant to Section 10.1 hereof; or
>
> (2) A date selected by Declarant as evidenced by a recorded instrument, but not later than (10) years after the recording of this Declaration.

(R. p. 317, §4.2(b)). As such, D.R. Horton's Class II membership automatically was to expire on September 13, 2017—10 years after the Covenants were recorded—if not terminated earlier under subsection one. However, Class II membership extinguished much earlier, in or around 2011, when D.R. Horton sold 90% of the townhome units. **(R. p. 9)**.

When D.R. Horton sold 90% of the townhome units, it became a "Class I" member. **(R. p. 317, §4.2(a))**. Then, once D.R. Horton sold its final unit in 2011, D.R. Horton was no longer a "Class I" member because "[m]embership shall be appurtenant to and may not be separated from such ownership." **(R. p. 316, §4.1)**. Class I members consist of unit owners. **(R. p. 317, §4.2(a))**. As such, D.R. Horton has not possessed any class of membership status since 2011.

D.R. Horton's non-membership status dictates that D.R. Horton has no voting power. Section 4.2 of the Covenants clearly establishes that only Class I and Class II members have a vote. **(R. p. 317, §4.2)**. D.R. Horton did not possess a right to vote on the Second Amendment to the Covenants pursuant to plain reference to Section 4.2 of the Covenants and the undisputed fact that it has not possessed ownership and, therefore, any membership status since 2011.

b. <u>The Second Amendment to the Covenants became effective upon recording</u>.

D.R. Horton attempts to avoid the Arbitrator's $3M+ award by asserting that the Second Amendment to the Covenants is not effective until September 30, 2027, which would be

approximately five and half years after it was approved by the membership and recorded in the Register of Deeds Office. This Court should follow the Arbitrator and circuit court in rejecting this argument, which is merely a contortion of the language relating to the ***duration*** of the Covenants.

The cherry-picked language that D.R. Horton latches onto is contained in one portion of Section 18.1 of the Covenants, which is fully excerpted below:

> **18.1 Duration and Amendment**. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Townhome Association, any Member, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, until September 30, 2027, unless otherwise expressly limited herein, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by Seventy-five (75%) percent of the Unit Owners has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken. Notwithstanding the foregoing, the easements, licenses, rights and privileges established and created with respect to the Properties shall be perpetual, run with the land and shall survive any destruction, reconstruction and relocation of the physical structures, unless said provision is abrogated by the unanimous written consent of all the Unit Owners. Unless specifically prohibited herein, the Declaration may be amended by an instrument signed by Members holding not less than Seventy-five (75%) percent of the votes of the membership. Any amendment must b[e] properly recorded to be effective.

(R. p. 341, §18.1).

The foregoing language is boilerplate, standard in real property restrictive covenants, and does not present anything puzzling. It provides that the Covenants continue in existence until a fixed date (September 30, 2027) and then auto-renew for ten-year intervals unless either of those timeframes is modified by way of an amendment or the Covenants are revoked in whole.

The interpretation of a restrictive covenant is a matter of contract law. Seabrook Island Prop. Owners Ass'n v. Pelzer, 292 S.C. 343, 347, 356 S.E.2d 411, 414 (Ct. App. 1987). The fact

finder must construe the covenants and give them effect. Palmetto Dunes Resort, Div. of Greenwood Dev. Corp. v. Brown, 287 S.C. 1, 6, 336 S.E.2d 15, 18 (Ct. App. 1985). Where the fact finder is an arbitrator, significant deference is given to the arbitrator's interpretation of the contract. Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323-24 (2009).

The cardinal rule of contract construction is to give effect to the intent of the parties, and this is done by giving the language of the provision its plain and ordinary meaning if the provision is not ambiguous. Retreat at Charleston Nat'l Country Club Home Owners Association, Inc. v. Winston Carlyle Charleston Nat'l, LLC, Opinion No. 6099, 2025 WL 1455807 at *12 (Ct. App. May 21, 2025), cert. pending. A provision is ambiguous if it is reasonably susceptible to more than one meaning, but the parties' disagreement about the correct meaning of the provision alone does not render the provision ambiguous. S.C. Dep't of Nat. Res. v. Town of McClellanville, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001).

The Arbitrator correctly interpreted the Covenants because there is nothing in Section 18.1—or any other area of the Covenants—that precludes or delays effectiveness of any amendments to the Covenants until after the initial term expires on September 30, 2027. That is made clear by the last sentence of Section 18.1, as well as Sections 1.2, 1.3, and 18.2 of the Covenants. **(R. pp. 312-313, §§1.2-1.3)**; **(R. p. 341, §§18.1-18.2)**.

Pursuant to the language of Section 18.1 itself, specifically the last sentence, amendments to any other provision of the Covenants apart from a change to the duration of the Covenants can be made at *any time*, so long as an instrument is signed by Members holding seventy-five percent or more of the votes. **(R. p. 341, §18.1)** ("Unless specifically prohibited herein, the Declaration may be amended by an instrument signed by Members holding not less than Seventy-five (75%) percent of the votes of the membership."). Such an amendment is effective upon recording. **(R. p.**

341, §18.1) ("Any amendment must b[e] (sic.) properly recorded to be effective.").

Amendments and supplementations to the Covenants were contemplated at the time the Covenants were made. Section 1.2 of the Covenants state as follows: "This Declaration, as it may be amended and supplemented from time to time. . . ." **(R. p. 312, §1.2)**. The next section, Section 1.3, further expands on the notion of amendments, changes or additions to the Covenants during the initial term, providing as follows:

> No Person shall record additional covenants, conditions, or restrictions affecting any portion of Mansfield at Park West without Declarant's written consent, so long as Declarant owns any portion of the real property described in Exhibit "A" or "B". *Thereafter*[5]*, Owners representing at least Seventy-Five (75%) percent of the Townhome Association's total votes must consent to such additions. Any instrument Recorded without the required consent is void and of no force and effect.*

(R. pp. 312-313, §1.3) (emphasis added). Both of these provisions belie D.R. Horton's current contention that the Covenants could not be amended in any way during the initial 20-year term.

Reference to amendments and supplements in Section 1.2 indicates the parties contemplated that amendments may be made to the Covenants during the initial 20-year period. Section 1.3 expressly establishes D.R. Horton, as the Declarant, intended for the Covenants to be amendable and potentially supplemented during the initial 20-year term. The only conditions for such amendments or supplementations were the Declarant providing consent, for such portion of the initial term that it possessed ownership of real property described in Exhibits "A" or "B" to the Covenants,[6] or a 75% vote of the membership after such time as the Declarant no longer owned

[5] It is undisputed that D.R. Horton did not own any property described in Exhibit "A" or "B" at the time the Second Amendment to the Covenants was enacted. (**R. pp. 9)**.

[6] The Covenants also granted D.R. Horton the right to unilaterally amend the Covenants during the time it maintained Class II membership status, provided that the amendment did not materially alter or change any Owner's right to use and enjoy the Owner's Unit. **(R. p. 341, §18.2)**. Pursuant to Section 4.2(b) of the Covenants, D.R. Horton could only maintain Class II membership, depending on its ownership holdings, for the first 10 years of the term of the Covenants. **(R. p.**

any property. **(R. pp. 312-313, §1.3)**.

These provisions, paired with the last sentence of Section 18.1 relating to amendment by the members, unambiguously provide that the members of the Association may amend the Covenants during the initial term. This is the correct interpretation of the language of the Covenants and harmonizes the various provisions of the Covenants concerning amendments and supplementation.

The meaning and intent of language in restrictive covenants should be determined from the document as a whole, not from cherry-picking fragments of a sentence that do not harmonize with the remainder of the same clause or other provisions of the document. Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863-64 (1998). "A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause." Retreat at Charleston Nat'l Country Club Home Owners Association, Inc. v. Winston Carlyle Charleston Nat'l, LLC, 445 S.C. 566, 592-93 (Ct. App. 2025), cert. pending (internal quotations omitted); Williams v. Gov't Emps. Ins. Co. (GEICO), 409 S.C. 586, 595, 762 S.E.2d 705, 710 (2014); McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009).

This Court should reject D.R. Horton's request for an unnatural, illogical, and strained construction of the Covenants with reference to one clause of Section 18.1 in isolation. At a minimum, D.R. Horton's desired interpretation of Section 18.1 creates ambiguity, within the language of Section 18.1 itself, and within the document as a whole, given the language of Sections

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317, §4.2(b)). Accordingly, any amendment by D.R. Horton pursuant to Section 18.2 of the Covenants would have necessarily been within the initial 20-year term.

D.R. Horton exercised its right to amend the Covenants in 2009. **(R. pp. 374-381)**. That amendment was made immediately effective. **(Id.)**. D.R. Horton should be estopped from arguing that no amendments may be made during the initial term when it exercised its rights to amend the Covenants under Section 18.2, five years into the initial term.

1.2, 1.3, and 18.2, as discussed above. The ambiguities created by this interpretation must be resolved in the Association's favor because while restrictive covenants are contractual in nature and should be interpreted in accord with contractual principals, they give rise to additional presumptions, all of which favor the Arbitrator's interpretation of the Covenants. As a matter of law, any ambiguity must be interpreted in favor of the amendment process and free use of property. Taylor v. Lindsey, 332 S.C. at 4, 498 S.E.2d at 864 ("The court may not limit a restriction in a deed, nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written.") (internal quotations and citations omitted). Further, "[w]here the language of the restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property." S.C. Dep't of Nat. Res. v. Town of McClellanville, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). "A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." Taylor, 332 S.C. at 5, 498 S.E.2d at 864 (citation omitted). D.R. Horton did not restrict the members' ability to amend or supplement the Covenants during the initial term and with years delay in express, plain, and unmistakable terms.

The Arbitrator's interpretation of the amendment provision of the Covenants was reasonable, correct as a matter of law, and did not amount to an abuse of discretion or conscious disregard of the law. The circuit court properly affirmed the Arbitrator's award in this respect based upon the applicable standard of review. Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323-24 (2009) (internal quotation omitted) ("Even a clearly erroneous interpretation of [a] contract

[by an arbitrator] cannot be disturbed.") (internal quotations omitted). The circuit court's orders should be affirmed for these reasons.

c. D.R. Horton does not have the right to challenge the amendment process of the non-profit Association because it was not a member or director of the Association at the time the process was undertaken.

The Second Amendment to the Covenants was permitted pursuant to the express language of the Covenants as analyzed above. The circuit court's orders should be affirmed on those grounds alone; however, the circuit court's orders should be affirmed on the additional ground that D.R. Horton does not have the right or standing to challenge the Association's amendment process or the efficacy of the Second Amendment to the Covenants as a matter of law. Pursuant to Section 33-31-304(b) of the South Carolina Code of Laws, only the members or directors[7] of a nonprofit corporation, like the Association, can challenge its internal actions. See S.C. Code § 33-31-304(b). D.R. Horton is not part of the limited class of people who can challenge the Association's process and enactment of the Second Amendment to the Covenants. The Arbitrator's award and circuit court's orders should be affirmed because D.R. Horton at all pertinent times hereto has lacked statutory standing to challenge the actions of the nonprofit Association.

D.R. Horton lacks statutory standing to challenge the Association's amendment process or the amendment itself because it was not a member or director of the Association at any time relevant hereto. As set out above, it is undisputed that D.R. Horton did not own any townhome units at the time the Association enacted the Second Amendment to the Covenants, and, therefore, was not a member of the Association. D.R. Horton was no longer a director either.

[7] It is also noted that the Attorney General also possesses authority to challenge the internal actions of a nonprofit corporation, but that is irrelevant here.

The business and affairs of the Association are governed by a Board of Directors, who must be members or residents of the community. **(R. pp. 357-368, at Bylaws Art. III)**. Similar to voting rights, the Association's Bylaws vested D.R. Horton with special rights during the period of its Class II membership. **(R. pp. 357-359, at Bylaws §3.4(a))**. D.R. Horton had the sole and exclusive right to appoint and remove directors of the Association until its Class II membership terminated. **(Id.)**. Thereafter, "directors" were to be elected by the members of the Association, subject to the requirement that all directors must be members or residents of the community. **(Id.)**. D.R. Horton was not a director of the Association at the time the Second Amendment was enacted because it was no longer a member of the Association. It does not possess rights to object to or challenge the amendment on this basis either.

Standing is statutorily conferred by S.C. Code § 33-31-304(b). The fact that D.R. Horton claims to have been affected by the amendment does not provide D.R. Horton with standing to challenge the amendment or the process of enactment. In DeBorde v. St. Michael & All Angels Episcopal Church, a non-parishioner of a church tried to dispute the church's construction of a cemetery on the grounds that the church's charter did not grant it with the power to create a cemetery and the restrictive covenants on the church's property prevented the church from building a cemetery. 272 S.C. 490, 492, 252 S.E.2d 876, 877 (1979). The court found that even though the non-parishioner may be affected by this construction, they did not have standing to challenge the church's actions as a non-parishioner because they lacked an interest in the church. DeBorde, 272 S.C. at 501, 252 S.E.2d at 881; compare with Chandelle Prop. Owners Ass'n v. Armstrong, 444 S.C. 292, 311, 906 S.E.2d 599, 609 (Ct. App. 2024) (finding members of a subdivision had

standing to challenge an action of their own governing property owners association because they were members of the subdivision).[8]

"The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute." Preservation Society of Charleston v. S.C. Dep't of Health & Env. Control, 430 S.C. 200, 845 S.E.2d 481 (2020) (quoting Freemantle v. Preston, 389 S.C. 186, 194, 728 S.E.2d 40, 44 (2012)). "Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation." Youngblood v. S.C. Dep't of Soc. Servs., 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013).

D.R. Horton was not a member or director of the Association at the time the Second Amendment was processed or enacted. It has no standing to challenge the Association's actions with respect to the amendment process or the efficacy of the Second Amendment to the Covenants.

d. The Association had (and has) standing to bring the claims it asserted against D.R. Horton.

D.R. Horton's arguments hinge on a finding totally barring amendment of the Covenants during the first 20 years after their making. Seeing that such argument fails for the reasons set out above, the analyses of the Association's standing and status as a real party in interest are very simple. The Association is the real party in interest and has standing to pursue the claims against D.R. Horton because the members of the Association and owners agreed the Association had the right and responsibility to pursue such claims when they passed and enacted the Second Amendment to the Covenants. **(R. pp. 299-301)**.

Standing requires that one have a personal stake in the subject of the underlying suit and

[8] The challenger to the association's action in that case was within the class of permitted plaintiffs under S.C. Code § 33-31-304(b), as a member of the nonprofit Association.

that they are a "real party in interest." Sloan v. Greenville Cnty., 356 S.C. 531, 547, 590 S.E.2d 338, 347 (Ct. App. 2003) (quotation omitted). "A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." Id. (internal citation and quotation omitted). "In its most basic sense, '[s]tanding refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right.'" Preservation Soc'y of Charleston v. S.C. Dep't of Health & Env't Control, 430 S.C. 200, 209, 845 S.E.2d 481, 486 (2020) (internal quotation and citation omitted).

The legal claims that the Association asserted are within the scope of Section 5.1 of the Covenants, as amended. **(R. p. 299)**. (providing that the Association ". . . shall have the right and obligation to pursue claims for faulty design and construction of the townhome exteriors and exterior building components. . . ."). The language of Section 5.1 not only provides for the Association to have the *right* to pursue claims for defective design or construction of the exterior building components and to marshal any funds recovered from such claims for their repair, but it also imposes the *obligation* upon the Association to do so. **(R. p. 299)** ("The Association at its sole discretion shall have the right and obligation to pursue claims for faulty design and construction of the townhome exteriors and exterior building components and installation thereof."). D.R. Horton's contention that the Association "even with the amendments, still had no stake in the case because it had no obligations, responsibilities, or rights regarding any ownership, repairs, or financial obligations to the townhomes or the townhome owners," is patently wrong. **(App. Initial Br. at p. 4)**.[9] After the enactment of the Second Amendment, the Association has the obligation,

[9] D.R. Horton repeats this contention throughout its Brief, without any reference. See, e.g., **(App. Initial Br. at p. 14)** ("Notably, the Respondent HOA has no right, obligation or responsibility to do any of the above, and the amendments do not change that.").

responsibility, and financial responsibility to pursue construction defect claims relating to the exterior elements and exterior building components, prioritize the repairs that needed to be made, and use the funds collected for that purpose. **(R. p. 299)**.

At all times pertinent hereto, the Association had the obligation and "right to make a legal claim" and the duty to "seek judicial enforcement of a duty or right" to carry-out its duties related to the funds recovered and repair process. Preservation Soc'y, 430 S.C. at 209, 845 S.E.2d at 486 (internal citation and quotation omitted). As such, the Arbitrator properly found that the Association had standing to bring this suit because the Second Amendment to the Covenants vested the Association with these specific legal rights.

Furthermore, D.R. Horton has failed to show the Arbitrator disregarded the law, exceeded his powers or abused his discretion. Therefore, the Arbitrator and circuit court should be affirmed on these grounds.

II. D.R. HORTON WAS NOT FORCED TO ARBITRATE THIS CASE. D.R. HORTON CONSENTED TO SUBMITTING ALL CLAIMS TO BINDING ARBITRATION. FURTHER, THIS IS NOT AND HAS NEVER BEEN A CLASS ACTION.

D.R. Horton asserts that this case is a class action, and it did not agree to submitting a class action to arbitration. **(App. Initial Br. at pp. 4-13)**. It is worth noting at the outset that D.R. Horton's argument that it was forced to arbitrate class action claims was never presented to and ruled upon by the Arbitrator. D.R. Horton's burden (both at the circuit court and on appeal here) is to show that the Arbitrator abused its discretion. That requires showing that the Arbitrator knew of a governing legal principle yet refused to apply it. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (citing Creech v. South Carolina Wildlife & Marine Resources Dep't, 328 S.C. 24, 491

S.E.2d 571 (1997)). Here, because D.R. Horton only began to conjure up this argument late in the game, there is no way it could show that the Arbitrator knew of any legal principle and refused to apply it.

D.R. Horton devotes a significant portion of its briefing to discussing federal cases involving forced arbitration of class actions. See **(App. Initial Br. at pp. 4-15)**. However, it never addresses two critical flaws in its argument: (1) this matter was not brought as a class action, nor has it ever been certified as such; and (2) D.R. Horton explicitly consented to the arbitration of the claims asserted by the Association.

This action is not a class action within the South Carolina Rules of Civil Procedure, because the Association, as master of its Complaint, did not bring it as a class action. Rule 23 of the South Carolina Rules of Civil Procedure provides the requirements for when a class action may be brought:

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

SCRCP 23(a). The Rule requires that one or more members sue as a putative class representative. That has never happened here. Further, a putative class representative(s) must move for certification from the circuit court, which has also never happened here. Additionally, if this case had been filed as a putative class action, a trial court would have had to have found the case met the requirements for class action certification. See generally, King v. Am. Gen. Fin., Inc., 386 S.C. 82, 88, 687 S.E.2d 321, 324 (2009) ("It is within a trial court's discretion whether a class should

be certified."); Robinson v. S.C. Dep't of Emp. & Workforce, 443 S.C. 63, 70, 902 S.E.2d 41, 45 (Ct. App. 2024), reh'g denied (June 24, 2024), cert. denied (Nov. 14, 2024) ("In its May 5, 2016 order, the circuit court granted Claimants' earlier motion to certify the class, concluding Claimants met the five prerequisites for class certification pursuant to Rule 23, SCRCP. . ."). Simply put, no class claims have been asserted or certified and those cases cited by D.R. Horton concerning arbitration of class claims are inapposite.

Further, D.R. Horton voluntarily consented to arbitrate these claims. **(R. pp. 1-3)**. The cases that D.R. Horton cites, Lamps Plus. Inc. v. Varela, 587 U.S. 176 (2019) and Epic Systems Corp. v. Lewis, 584 U.S. 497 (2018), are about nonconsensual or forced class action arbitrations. The arbitration here was consensual. D.R. Horton expressly and voluntarily consented to arbitrating the claims the Association brought against it. **(R. pp. 1-3)**. The Association filed its Complaint and demand for arbitration on March 12, 2021, alleging the same claims, in the same capacity, as were ultimately adjudicated by the Arbitrator. **(R. pp. 28-38)**. There was no mistake, ambiguity, or surprise as to what claims the Association was asserting and what claims D.R. Horton was agreeing to adjudicate via binding arbitration. D.R. Horton voluntarily agreed to stay the case and submit all of the claims the Associated asserted against it by way of arbitration. **(R. pp. 1-3)**.

Therefore, for this additional reason the Arbitrator and circuit court should be affirmed.

III. THE AGREEMENT RELATING TO THE SUBMISSION OF THE CLAIMS TO ARBITRATION IS MEMORIALIZED BY AND CONFINED TO THE TERMS OF THE CONSENT ORDER FOR ARBITRATION AND THE ARBITRATOR'S AWARD CONTAINS SUFFICIENT DETAIL SUPPORTING ITS RATIONALE.

D.R. Horton argued after the Arbitrator issued his award that the Arbitrator was required to issue a reasoned award based upon an agreement of the parties. Presumably, to fill the void of any provision to that effect in the underlying Record or operative Consent Order for Arbitration,

D.R. Horton submitted new post-award evidence, the Affidavit of John Crawford, one of D.R. Horton's lawyers. **(R. pp. 1055-1056)**.

As an initial matter, it is inappropriate, at any stage of a proceeding, to enter evidence of the parties' intentions where there is a written agreement governing the subject matter that is unambiguous. McGill v. Moore, 381 S.C. 179, 188, 672 S.E.2d 571, 576 (2009) ("The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or explain the written instrument."); Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 592, 658 S.E.2d 539, 543 (Ct. App. 2008) ("Because we find this contract is clear, explicit, unambiguous, and capable of only one reasonable interpretation, the court does not look beyond the four corners to discern the parties intentions."). Beyond that, agreements among counsel affecting the proceedings in an action, as is alleged here, are subject to the particular requirements of Rule 43(k), SCRCP, which provides:

> **(k) Agreements of Counsel.** No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. However, where the parties reach a settlement agreement during a mediation governed by the South Carolina Court-Annexed Alternative Dispute Resolution Rules and the settlement agreement involves payment by an insurer, the signature of counsel retained by an insurer on behalf of the Defendant(s) or third party administrator shall suffice in place of the signature of the insured party. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

The agreement that Mr. Crawford alleges existed and describes his Affidavit was not made part of the Consent Order for Arbitration, any other consent order, or written stipulation signed by all counsel and entered into the Record, or a writing signed by counsel and their respective clients, nor was it ever made in open court and noted on the Record. SCRCP 43(k). The affidavit is

insufficient to prove any specific agreement on the form of the award. SCRCP 43(k).

Any such agreement would have been subject to the Arbitrator's consent and agreement, as the Consent Order referring the case to arbitration gave the Arbitrator full authority to determine the format of the award:

> D.R. Horton contends that the parties had an agreement for a reasoned award and that the reasoning in the award was insufficient. The Plaintiff contends that the award was reasoned, but that there was no requirement for a reasoned award because the arbitrator had the sole discretion as to the format of the award. **The Consent Order for Arbitration gives the arbitrator sole discretion over all scheduling and procedural issues of the arbitration. This includes the format of the Award.**

(R. p. 7) (bold added).

"Arbitration is designed to be the end, not the beginning, of legal wrangling". Waldo v. Cousins, 442 S.C. 662, 668, 901 S.E.2d 276, 279 (2024). The only requirements for an arbitration award are that the award is in writing, signed by the arbitrator, and delivered to the parties within the time agreed to or ordered by the court. S.C. Code § 15-48-90. As noted above, "[a]n arbitrator's award may be vacated when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law." Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009); S.C. Code § 15-48-130(a). "This circumscribed scope of review means that 'in reviewing [an arbitration] award, a district or appellate court is limited to determine whether the arbitrators did the job they were told to do—not whether they did it well, or correctly, or reasonably, but simply whether they did it." Grp. III Mgmt., Inc. v. Suncrete of Carolina, Inc., 425 S.C. 141, 150, 819 S.E.2d 781, 786 (Ct. App. 2018) (citations omitted). Here, it is undisputed that the Arbitration award complies with S.C. Code § 15-48-90 because the award is in writing, signed by the arbitrator, and timely delivered to the parties.

Further, even if D.R. Horton's late-filed purported evidence of an alleged agreement for a

reasoned award be considered, the circuit court's orders should still be affirmed because D.R. Horton has not satisfied its burden of proof to show the award issued was not reasoned, or that the award must be vacated because the Arbitrator either exceeded the scope of his authority or disregarded the law. Gissel, 382 S.C. at 241, 676 S.E.2d at 323. In order to meet that standard, D.R. Horton must show that the "governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable." Id. Only one case in South Carolina mentions the concept of a "reasoned award" in the context of arbitration, and it notes failure to issue a "reasoned award" is not the standard for vacating awards in this State. See TCC of Charleston, Inc. v. Concord & Cumberland, LLC, Op. No. 6106 (S.C. Ct. App. filed Mar. 19, 2025) (Howard Adv. Sh. No. 12 at 18), reh'g pending.

In TCC, a condominium and a contractor arbitrated pursuant to an agreement between the parties after a dispute arose regarding a repair project at the condominium. Id. at 20-21. There was no dispute in that case that a reasoned award was agreed to and required. The arbitrators found that the developer "performed additional work outside the scope of the work which was not approved and was not paid," and that contractor was entitled to payment. Id. The condominium "filed a motion for reconsideration, arguing that the form of the award was improper because the panel failed to issue a reasoned award." Id. The condominium alleged the award was not reasoned because it contained a miscalculation, which contractor did not dispute, and "disregarded the law as to the enforceability of sworn signed lien waivers." Id. at 21-22. After the contractor moved to lift the stay on the case, the condominium moved to correct the award or vacate the award to preserve the condominium's right to judicial review. Id. at 22. The arbitration panel then issued a corrected award with an explanation of how the award was reached. Id. The condominium moved in the circuit court to alter or vacate the award. Id. at 22-23. The circuit court denied the motion

finding the "award was a reasoned award because the factual inference and legal conclusions . . . were sufficient to support the panel's findings" and the court "found no technical issue with the arbitration award to make it subject to modification or correction under [S.C. Code Section 15-48-140]." Id. at 23. The condominium appealed.

This Court acknowledged that other courts have defined a "reasoned award" and in those jurisdictions, "the arbitrator is obligated to present 'something short of findings [of fact] and conclusions [of law] but more than a simple result.'" Id. at 39 (internal citation and quotation omitted). As explained by the Court:

> It is well settled that arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable' and if a ground for the award can be inferred from the facts, the award should be confirmed.

Id. at 39 (internal citation and quotation omitted).This Court affirmed the award in TCC because "the arbitration panel made such findings rather than simply stating a result" providing more than "a barely colorable factual and legal basis for the award." Id. at 39-40.

In this matter, D.R. Horton moved to clarify the award pursuant to S.C. Code § 15-48-100, but did not claim that there was a mistake/miscalculation in the award or that the award's form lacked sufficient reasoning. Rather, D.R. Horton only disputed the award's form because it was not allocated, which is not a statutorily defined ground to change, modify, or alter the award. **See** S.C. Code § 15-48-100; § 15-48-140(a)(1), (3); **(R. pp. 657-659)**. Further, the allocation requested building components. See **(R. p. 657)** (seeking a "clarified" award allocating damages between Cement Fiber Siding, Roofs, and Windows). D.R. Horton has never articulated a legal basis for such an allocation between types of damages and has failed to show the Arbitrator abused his discretion in not allocating the award between those building components.

Prior to the denial of their Motion to Clarify the Award, D.R. Horton did not dispute the

award's damages or the rationale behind the award as they do now. Now, taking a different stance than in their Motion to Clarify, D.R. Horton asserts that the entire award is invalid because it was not a "reasoned award." That argument fails. The award here is valid because there is a colorable rationale for the award. TCC of Charleston, Inc. v. Concord & Cumberland, LLC, Op. No. 6106 (S.C. Ct. App. filed Mar. 19, 2025) (Howard Adv. Sh. No. 12 at 39-40), reh'g pending.

Regarding standing, as mentioned above and as acknowledged by the circuit court, the Arbitrator applied basic principles of contract law and found that in light of the Covenants and live testimony at the arbitration, the Association had standing to bring this suit. **(R. p. 19)**. Regarding gross negligence, D.R. Horton does not dispute this part of the Award was supported by the reasoning of the Arbitrator. **(App. Initial Br. at p. 8)** ("Respondents assert that the Award was reasoned. It was not, except as to gross negligence."). D.R. Horton's new claim that the Award is not reasoned arises from the absence of an equation illustrating the calculation of damages and the absence of an allocated Award.

D.R. Horton claims "the [A]rbitrator obviously performed some sort of calculation to reach the award" but contrarily also states the Award is speculative and arbitrary. **(App. Initial Br. at p. 32)**. The damages in the Award, which are based on gross negligence, illustrate how this amount was determined. In the Award, the Arbitrator specifically says the "[Association] is awarded actual damages in the amount of $3,057,112.48 against [D.R. HORTON], for its claims of gross negligence related to the cementitious siding, roof shingles and J channel windows. With respect to the claims relating to fencing I find in favor of [D.R. HORTON] and award no damages." **(R. p. 22)**. From the language in the Award, the "ground for the award can be inferred"; the Arbitrator formulated the Award based on his determination of where D.R. Horton was grossly negligent and the repair estimates associated with such repairs. TCC, Op. No. 6106 (S.C. Ct. App. filed Mary

19, 2025) (Howard Adv. Sh. No. 12 at 39-40). Gissel indicates that factual matters like this should not be disturbed even if they are based in error. 382 S.C. at 242, 676 S.E.2d at 324. Additionally, both the Arbitrator and the circuit court rejected D.R. Horton's arguments regarding the specificity of the damages in the award. **(R. pp. 10-11)**. Specifically, the circuit court emphasized that Mr. Mease and Scott Dow, the Association's expert regarding damages, testified "to a reasonable degree of certainty" the extent of the damages. **(R. pp. 5-14, 18-22 11)**.

Next, D.R. Horton takes issue with the format of the Arbitrator's award, but it was congruent with the proposed awards submitted to him – including D.R. Horton's proposed award. D.R. Horton submitted two proposed awards to the Arbitrator, one where it prevailed, and alternatively one where the Association prevailed. The alternative proposed award D.R. Horton submitted to the Arbitrator was titled "D.R. HORTON PROPOSED #2" (hereinafter referred to as "Proposed Award #2"). **(R. pp. 1041-1044)**. Notably, D.R. Horton said nothing about a "reasoned award" in the Consent Order for Arbitration, at the Arbitration hearing, or in their Motion to Clarify. In the case that the Association prevailed, D.R. Horton told the Arbitrator exactly how they wanted the award to look through their Proposed Award #2. That proposed award, as noted by the circuit court "is essentially identical" to the standing section issued in the Arbitrator's Award and "[t]he reasoning and findings contained in the Statute of Repose/Gross Negligence Section of the Award determining D.R. Horton's gross negligence and support[ing] the damage award is far more extensive than … DRH PROPOSED #2", which "contains no reasoning to support any awarded damages for which it now complains." **(R. p. 8)**. Ultimately, the Arbitrator crafted his own award, which was a hybrid of the Association's proposed award and D.R. Horton's Proposed Award #2. The similarities in the format of D.R. Horton's second proposed order and the award further illustrate that D.R. Horton could readily discern the rationale and inferences

behind the award. This Court should find, as the circuit court did, that D.R. Horton has failed to demonstrate how the crafting of an award with substantial similarities to their own illustrates that the Arbitrator exceeded his authority or disregarded the law. The Arbitrator's discretion specifically extended to the procedures in the arbitration, which includes the format of the award. **(R. p. 7)**; Harris v. Bennett, 332 S.C. 238, 243, 503 S.E.2d 782, 785 (Ct. App. 1998) ("If an issue is within the scope of the arbitration agreement, the court need not review the merits of the decision.").

The circuit court put it succinctly in denying D.R. Horton's Motion to Vacate the Award: "Given the content of the Award, the arbitrator's findings, and the evidence on which he based his rulings, DRH has not met its burden of proving a manifest disregard of the law." **(R. p. 10)**. D.R. Horton's attempt to vacate this award is no more than an "attempt to relitigate the merits of the [A]rbitrator['s] resolution of the arbitrable issues under the guise of questioning the [A]rbitrator['s] power," which is impermissible at this stage. Pittman Mortgage Co. v. Edwards, 327 S.C. 72, 76-77, 488 S.E.2d 335, 338 (1997). Simply stated, the award is a reasoned award discernable from its clear terms. To the extent the award lacks the precise epistemological clarity D.R. Horton argues is required, any questions may be cleared up from the inferences in the Arbitrator's analysis of gross negligence. The Arbitrator based the amount of damages on his analysis in the gross negligence section of the award, and as D.R. Horton notes, that section contains sufficient information to outline the rationale of the Arbitrator.

Additionally, "even if the court were to find that the arbitrator was required to issue a reasoned award, courts have not recognized a failure to do so as a ground for vacating an arbitrator's award." U.S. ex rel. Coastal Roofing Co. v. P. Browne & Assocs., Inc., 771 F. Supp. 2d 576, 583 (D.S.C. 2010). In the alternative that this Court does not find this approach persuasive

or chooses to apply another forum's law, the "proper remedy" would not be to vacate the award entirely, but to remand the award to the Arbitrator for further clarification. In re Romanzi, 31 F.4th 367, 375 (6th Cir. 2022) ("The proper remedy for falling short of the level of explanation agreed to by the parties is remanding back to the panel, rather than starting from scratch.") (citing Glass, Molders, Pottery, Plastics & Allied Workers Int'l Union, Local 182B v. Excelsior Foundry Co., 56 F.3d 844, 847 (7th Cir. 1995)). To do otherwise would contravene the purpose of arbitration. Folkways Music Publishers, Inc. v. Weiss, 989 F.2d 108, 111 (2d Cir. 1993) ("Arbitration awards are subject to very limited review in order to avoid undermining the twin goals of arbitration, namely, settling disputes efficiently and avoiding long and expensive litigation.").

Therefore, under the required standard for arbitration awards in this State and absent a clear agreement from the parties stating that the Arbitrator needed to issue a highly detailed award outlining all of his facts and legal conclusions, the award issued sufficiently states the reasoning for the award and/or allows the reasoning to be inferred from the facts contained therein.

CONCLUSION

For the reasons stated above and for any other reason stated in the record, to the extent not inconsistent with the argument set out herein, the circuit court's Order Denying D.R. Horton's Motion to Vacate and Confirming the Arbitration Award and Form 4 Order Denying D.R. Horton's Motion to Alter or Amend should be **AFFIRMED**.

Respectfully submitted,

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November 10, 2025
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Thomas W. McGee, III, Circuit Court Judge
Civil Action No. 2021-CP-10-01215

Appellate Case No. 2024-001813

Mansfield at Park West, Inc. ..... Respondent,

v.

D.R. Horton, Inc. ..... Appellant.

CERTIFICATE OF COUNSEL

I, the undersigned counsel for Respondent Mansfield at Park West, Inc., certify that the Brief of Respondent Mansfield at Park West, Inc. complies with the requirements of SCACR Rule 211(b).

Respectfully submitted,

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