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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
R. Markley Dennis, Jr., Judge of the South Carolina Business Court

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Appellate Case No. 2021-000767

C. Barry Dykes and Barbara Eisenhardt, Individually and Derivatively On Behalf Of The Wild Wing Plantation Property Owners' Association, Inc.,..... Appellants,

v.

Wild Wing Company, LLC; Sunstar, LLC; Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development Holdings, LLC; Wild Wing Residential Development, LLC; Stratford Land Manager, L.P. d/b/a Stratford Land; Stratford Land Fund IV, L.P.; SB Investments LLC; Realstar Management, LLC; Graeme T. Black; H. Gilford Edwards; Founders Wild Wing, LLC; Founders Group International, LLC; Dan Liu; Xian "Nick" Dou; Rick Schultz; Rick Taylor And Thomas Plankers .....Respondents,

Wild Wing Plantation Owners' Association, Inc.,..... Nominal Defendant.

RECORD ON APPEAL
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Robert T. Lyles, Jr. (SC Bar # 10299)
Lyles & Associates, LLC
1037 Chuck Dawley Blvd., Suite G-100
Mt. Pleasant, SC 29464
843.577.7730
rtl@lylesfirm.com
Attorneys for Appellants

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DYKES DEPOSITION EXCERPTS

Q. -- you wouldn't contest that's what -- the bylaws say what the bylaws say?
A. That's correct.
Q. Okay, fair enough. Have to do something -- when you're not relying on exhibits sometimes, you have to do extra talking to -- all right.
A. I understand.
Q. Thank you for bearing with me. Would you dispute, based on your knowledge of the bylaws and the covenants, that they specifically authorize the board to prepare and adopt an annual budget?
A. That is one of their responsibilities.
Q. And it would also authorize them to make assessments and establish means and methods to collect assessments?
A. Correct.
Q. And it would authorize them to provide for upkeep and care of common areas?
A. Correct.
Q. It would also authorize them to designate and hire and fire personnel as necessary for maintenance and operation and repair of the association and its common areas?
A. That's my understanding.

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Q. And that it would also authorize in making and amending of rules and regulations for the development?

A. They have that authority within -- within their responsibilities.

Q. Okay. So you would agree with me or you would not contest that section 19 of the bylaws authorizes the board to employ professional management agents to assist them in carrying out their administration duties?

A. I agree they can employ them. That doesn't relieve them of their own responsibilities though.

Q. If the covenants or bylaws specifically prohibit a board member or the board itself from taking a specific action or doing a specific thing, then would you -- would you believe that a board member who nonetheless did that prohibited thing was acting outside of his or her authority?

A. I think most people would assume that.

Q. Well, you know, you talk about the concept of fiduciary duty. If a board member believed that his fiduciary duty required him to do something that was not specifically permitted by the governing documents, would you expect the board

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member to take that action?

A. I expect that the fiduciary duty trumps everything else.

Q. Okay. And you don't contest in this case, if I understand correctly, you don't contest that article six of the covenants authorize through December 21 of 2010 that the declarant had the option to exempt lots owned by the declarant from assessments if the declarant paid a sum equal to the actual amount of actual operating expenses incurred by the association less the amount of total assessments collected from other members?

A. Plus -- plus reserves as an expense.

Q. Well, that's -- okay. So you're saying the article specifically references reserves to be include as part of that calculation?

A. Correct.

Q. Okay. So would you agree that the covenants generally provide a mechanism for their own amendment?

A. Yes.

Q. And is there anything in the bylaws or the covenants, again keeping in mind your thoughts about fiduciary duty, is there anything in the bylaws or the covenants themselves that you

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originally written or is that an amendment to the bylaws?

A. I believe that's the original.

Q. Now, you have -- you as a plaintiff have named Tom Plankers, Rich Schultz and Rick Taylor -- I'm sorry, let me mute that. You have named Tom Plankers, Rick Schultz and Rick Taylor as defendants in this litigation. Do you contend that they acted, during the time they served as board members, they acted outside their authority?

A. I contend that they violated their fiduciary duty to the membership.

Q. Okay. So would it be fair for me to turn your answer around and fire it back at you for -- for review as you do not contend that they violated or act -- that they acted outside their authority as board members but you believe by operation of the principles of fiduciary duty they did something they should not have done?

A. Well, yes and no. You're asking me a more, I think a more legal question in terms of what constitutes being outside of their responsibilities. From a legal standpoint, I don't know the answer to that. What I can tell

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those governing documents or constitutes a violation of law, I -- I don't - I can't answer that question.

Q. Well, I think -- I think you can because you've indicated you've got a knowledge, a general knowledge, of the covenants and the declarations. And you've -- you've indicated to me you believe they did something wrong. And I'm -- I'm asking you to tell me -- I'm not asking for your legal opinion about the covenants. I'm simply asking you to tell me is the thing they did wrong, can you point to a section of the covenants or the declarations and say, see, it says right here they should not do this and they did this?

A. No, I can't point to a specific --

Q. Okay.

A. -- area that I recall right now.

Q. Or vice versa, that the covenants and the bylaws and the declarations require them to take this specific action and they failed to take such an action; could you do that?

A. Well, I would go back, again, to that bylaws clause of 2015 which essentially says that the Class B membership ends at the end of 2015 so they are in violation of the bylaws by even

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specific -- that they were entitled to make expenditures in general, you have a disagreement with some of the individual expenditures that they made?

A. Correct.

Q. And you believe that they --

A. (Inaudible).

Q. I'm sorry. I'm sorry to talk over you. Would you repeat that?

A. I would say expenditures and/or decisions. I'm not -- I'm not disputing that as the board they have the right to make the decision, I am disputing that the decision was made in the best interest of the membership which is what their duty is.

Q. Okay. And so would it be fair to say that -- is it fair for me to say that any expenditures that they made that you take exception to you take expectation to them on the basis of the concept of fiduciary duty?

A. Correct.

Q. Because you believe that those expenditures were not in the best interest of the membership as a whole?

A. Yes, it would be either a fiduciary duty or

property managers or attorneys, on how to discharge their duties as board members?

A. I think that's fine. They should be doing that, yes.

Q. All right. Do you contend that my clients had any corrupt motives or acted in bad faith with regards to any actions they took as board members?

A. I can't answer as to what their motivations are for their decisions.

Q. Okay. So that's -- that's a no? Your answer to that question is no?

A. No, it's not a no. It's a -- it's a -- you're asking me what their motivations are. I can't say what their motivations are. I can say that their actions were such that they were not in the best interest of the membership and the motivations for why they did that I can -- I can guess but I don't know.

Q. Okay. Do you believe that my clients acted in bad faith in regards to any actions they took as board members?

A. Yes, I believe that they acted to benefit their employer at the --

Q. Okay.

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A. -- expense of the membership.
Q. Well, can you act to benefit your employer without -- that seems to be a little broader to me. Can you act to the benefit of your employer without acting in bad faith?
A. I don't understand your question.
Q. Well, you're answer was they acted to benefit their employer. Does that automatically mean they acted in bad faith?
A. No, my answer was they acted to benefit their employer at the expense of the membership.
Q. Okay.
A. That's where the bad faith comes in. Not -- you can act in the best interest of your employer and also the best interest of the membership which is essentially what your job is as a board member has been. I've been that situation myself many times.
Q. Okay. I want to get pretty specific about some of this stuff, as specific as I can. And this is my opportunity to talk to you about it. But my question initially was if you believe they acted with corrupt motives or with bad faith and we followed up a little bit about that and you've said you believe that they did act in bad faith.

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distinction.

Q. Do you have any evidence that the -- I'll just use that term then, "the employer," and you'll understand what I'm referring to when I say their employer. Do you have any evidence that their employer had any evidence that their employer directed them to make particular decisions or take particular actions as board members?

A. I don't have -- I can't specifically say what the process was. I can tell you I believe there was collaboration there.

Q. And I understand. My question is do you have any evidence to support your belief?

A. Not that I'm aware of.

Q. Okay. Do you have any evidence that would indicate that my clients would lose their jobs? You said they acted -- they had a conflict of interest because they were helping maintain their employment or their job. Do you have any evidence that my clients would lose their jobs if they didn't take a particular action?

A. I don't have specific evidence. I am aware that Rick Schultz tried to resign from the board at one point and was told he couldn't.

Q. Well, that's not losing his job; that's keeping

his job, right?

A. Well, if he didn't -- didn't do what they wanted, I assumed he lose -- he would lose his job. But I don't -- I don't have evidence of that. I can just tell you what I'm aware of.

Q. And in fact, I think a couple of my clients no longer work for their employer as you use that term, any of the corporate defendants at this point. Is that your understanding?

A. That's my understanding as well.

Q. Okay.

A. My understanding is they were both terminated.

Q. And so if they were taking -- if they were doing what their employer wanted in order to keep their jobs, it didn't really work out, did it?

A. I can't answer that. There is -- I believe there is litigation around the way that they exited from their employer that wasn't involved directly with Wild Wing to the best of my knowledge.

Q. Do you have any evidence that their exit from their employer was the result of them failing to do anything they were directed to do as board members?

A. Not to my knowledge.

Q. You -- I believe I think -- I believe you were

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present for the depositions of all three of my clients; is that right?

A. I believe I was.

Q. I'll represent sort of the general flavor of their testimony was that all of them testified they believe the actions they were taking as board members were intended to increase the chances that this development would be a successful development by getting additional rooftops in the development. Do you recall them saying/testifying to that effect?

A. In general.

Q. Did you ever hear any of my clients -- did they ever tell you that anything they were doing was intended to be a disadvantage to the membership as a whole?

A. They never said that to me, no.

Q. And so your belief that they acted with bad faith is an inference on your part, is it not?

A. Again, you're talking a motive, so yes, I'm -- I'm inferring from their actions what their motives might be.

Q. Okay. And your belief is that their actions were not in the best interest -- let me be more specific. That question is too general. Your

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belief is that some discreet actions they took, those being extending the provision which allowed the developer to avoid paying assessments on its individual lots -- well, let me just stop with that one. You -- that's one of the things in broad brush strokes that you think they were involved in which was wrong and was to the disadvantage of the general membership, right?

A. Absolutely.

Q. And so the -- and the other one, would the other be the calculation or determination of what the developer contribution was to be?

A. That -- yes.

Q. Okay. So that's one and two. Are there other major things or actions that you believe they were involved in that were not to the benefit of the general membership?

A. The contention -- we're not going after the -- other than those major item. But I believe there is a pattern of behavior that was demonstrated by your clients as board members that were a lot of little things that was a pattern of behavior. Around things like the way certain expenses were done, the way the rules were enforced or not enforced, a whole pattern of behavior that is

A. It may be recorded in some of the finance committee minutes or it may also be in board minutes.
Q. It may or may not, you don't know at this point?
A. I don't recall specifically.
Q. Okay.
A. I -- there were so many discussions, you don't remember every place that each discussion took place.
Q. Okay. And the tree that fell, you say the tree fell in the lake, the second incident?
A. It fell -- there is a -- there are portions of the lake that are on Founders' property. So it fell in a lake area on the Founders' property.
Q. Did it actually fall in the water or it fell --
A. In the water.
Q. -- on the shoreline?
A. In the water is my understanding.
Q. Okay. All right. And your perception was that portion of the lake was owned by Founders?
A. Correct.
Q. And what about the property on which the tree was growing, do you know whose property that was?
A. I believe that was also Founders'.
Q. And you said the HOA paid for the removal of that

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tree?

A. That's my understanding.

Q. What's that understanding based on?

A. You asked me if I can recall anything. That's my recollection. I haven't gone back to look at documents, so. You know, if I was --

Q. That's fine.

A. -- aware you were going to ask me this, I would have -- I would have looked through and see if I have any -- any documents.

Q. All right. And part of -- that's part of what we want to know is what the extent of your knowledge is. And I would like to know if this is based on personal knowledge or not. Were you personally involved in this incident at the time the tree fell and there was discussion going on about who would pay to clean it up?

A. Yes, I was involved in the discussion, yes.

Q. Was that during your time as a member of the finance committee?

A. Correct.

Q. All right. And so that's why you were -- you were involved in a discussion about who would pay for it?

A. Correct.

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Q. Did you take the position as a member of the finance committee that that was an expense that should be borne by the corporate defendant?
A. Yes.
Q. What was the response of my clients, if anything, when you made that assertion?
A. I don't recall the specific response. I believe that that expense was paid for by the association, so generally I would review expenses after they had already been incurred unless they were larger projects which the finance committee would review beforehand.
Q. Okay. Those are the two incidents' specific examples of the way certain expenses were treated that you can recall off the top of your head, right?
A. Right, correct.
Q. All right. Where would you -- if you -- if you wanted to refresh your memory about other incidents, if there were other similar incidents, how would you go about doing that?
A. I would probably review the finance committee minutes.
Q. All of which are documents you've already produced to your attorney?

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declarant?
A. Yes, that they had a conflict of interest and held the benefit of the declarant above the benefit to the membership, yes.
Q. So you would -- your position would be if you're appointed to the board and you're also an employee of the declarant, you have an inherent conflict of interest?
A. You have a potential conflict of interest that needs to be managed either by acting in the best interest of the membership, i.e., filling your fiduciary duty or recusing yourself from making decisions that would negatively impact the membership at the -- to the benefit of your employer.
Q. Do you believe that my clients had any sort of financial incentive, other than maintaining their jobs, with regards to any of the decisions they made as board members?
A. I don't know.
Q. You don't know if you contend that or not?
A. I don't know whether they had that. I'm not necessarily contending that. I'm saying that what they did was a violation of their fiduciary duty.

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worked with accountants and auditors, and so over the course of my career I think I've developed a reasonably good understanding of accounting practices.

Q. And one of the things you do is you teach a personal finance course at CCU; is that right?

A. That is correct.

Q. Is -- and you still -- you still do that?

A. Yeah, as a -- I taught this spring. What's going to happen with Coronavirus, who knows.

Q. Sure, understood. And is an understanding of GAAP, teaching your students an understanding of GAAP, part of that -- part of that course?

A. No, it's not an accounting course. It's a personal finance course. I do talk about accrual accounting and I do talk about income statements and balance sheets and those kind of things to a student, but we don't go into the details of GAAP. That would be more of an accounting course.

Q. Is it your position that somebody has to have an understanding of GAAP in order to serve on the development's finance committee?

A. No.

Q. What about on the HOA's board?

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A. Not to my knowledge.
Q. Not aware of anywhere in the -- although the covenants and bylaws make a reference to GAAP, there's nothing in the bylaws to say that's a requirement for a board member to have an understanding of those principles?
A. Correct, it's a requirement that the -- that the accounting be done in accordance with GAAP. But like you said, I'm not aware of any requirement that any board member or committee member needs to have that kind of expertise.
Q. So if you don't believe it's a requirement that you as a putative board member have to really understand GAAP but you believe there is a requirement that they abide by the principles of GAAP, would it in your judgment be reasonable for a board member who didn't have your understanding of GAAP to approach other professionals for help in understanding that concept and how to apply it?
A. Yes, that would be reasonable
Q. Okay. Is it your position that the concept of fiduciary duty would prevent a declarant from including any provisions in the covenants that accrued to the benefit of the declarant as

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How were the covenants amended?
A. I can only speak for as a member what I saw on that, which was essentially a notice going out to the membership that the board had -- is proposing an amendment and that they are asking for either an in-person or a proxy vote for or against it. Typically those amendments were done in association with the annual meeting but not always. That particular amendment, I believe, there wasn't even a meeting. I believe it was a -- I believe it was just a mail-in vote.
Q. So the board sent out a notice that there was going to be a vote on the amendment and then the POA would vote whether or not to pass the amendment; is that correct?
A. The membership would vote. Although that vote was -- was irrelevant because the declarant had sufficient votes in an of themselves to pass the amendment. The way the documents are written, the declarant carries -- it carries two times plus one the number of votes that the membership has.
Q. But there was a vote of the membership anyway, correct?
A. There was a vote, yeah. It was perfunctory but

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ownership interest in any of the lots at the development?

A. I am not aware of -- we're talking about Schultz, Taylor and Plankers?

Q. That's right.

A. I am not aware of any of them owning any lots here.

Q. Okay. And is there any -- any way that you believe that my clients personally were unjustly enriched as a result of their roles as members of the board of the HOA?

A. As I said before, I don't know how their compensation or other arrangements worked with Founders, but I have no knowledge of how they were compensated.

Q. So the answer to my question would be no, you don't have any knowledge of my clients being unjustly enriched?

A. I do not, no.

Q. Let me ask you, I want to make sure I understand your position with regards to some of the concepts we've already talked about. And I've sort of reformulated a couple of things into a few sentences I want to run by you and see if I've captured your position accurately, okay?

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PLANKERS DEPOSITION EXCERPTS

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covenants so you could make it more attractive for a developer to come in and make it a better community. People could buy, build homes, pay their dues, pay their assessments, pay everything, and make it a community.

Q. And so was one of the ways the covenants were going to be amended was to extend the time when the developer was exempt from paying per assessments -- per lot assessments?

A. Yes. That's what he recommended.

Q. That's what who recommended?

A. Waccamaw.

Q. Waccamaw recommended that you -- you being Founders -- amend the covenants to extend the time that the developer was exempt from paying per lot assessments?

A. Yes. And we needed to get legal advice to do it properly.

Q. You needed to get legal advice as to how to amend the covenant?

A. Correct.

Q. How was it that extending the time that the developer was exempt from paying per lot assessments going to help sell lots?

A. It's very easy to -- to answer that

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question 'cause you can sell lots for a little cheaper. You get the person to come in there to buy it; and then they buy it, they have to pay. Everybody was a win on this one.

The reason I say that is because they purchased the property, the developer. They built the house. Someone came and bought the house. They had to pay their fees, the property owner fees, their assessments, and all that.

Also that developer came in and built other homes for people; and when those people built, got the lot, then they had to pay architectural fees to Wild Wing -- to the homeowners association. So they won that.

Then when the house was completed, then they had to do their bill -- their assessments, their property owner dues, and that. So it was a win-win for everybody, and the community started because the community was not going anywhere.

Q. In 2015 the community wasn't going anywhere?

A. No, ma'am.

Q. How many lots at the time were owned by the developer?

A. I do not recall the exact number.

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Q. I'm still struggling with how you see that it was a benefit to the Property Owners Association to have that amendment passed.

A. Well, every lot that was sold and every home that was built was purchased by somebody, which then they had to pay their dues. They had to pay their homeowners assessments. They had to pay the other fees that were charged by the homeowners association, and they became a community.

When you get rooftops built, then more people come in and build more because there's activity. And before that, there was no activity.

Q. How many homes were built out in 2015?

A. I can't answer that. I do not know. I know that there was lots sold to developers, and then they started building homes; but the exact amount, I do not know.

Q. So what's the advantage to the Property Owners Association financially if in 2016, the developer was going to have to start paying the per lot assessments?

A. Well, the developer who bought the property had to pay the assessments.

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advantage to having -- selling a lot and getting a homeowner to buy it and pay an assessment if the assessments are already being paid by the current developer, which was Founders?

A. They say the best way to get a community going is getting rooftops up, and that was the way to do it; and that's what we were told by Waccamaw Management and advised by legal.

Q. And you were advised by legal. Who was that?

A. Bellamy Law Firm.

Q. And that was what attorney?

A. Edwin --

Q. Edwin Hinds?

A. Right. Thank you.

Q. And you were -- you met with Mr. Hinds?

A. Yes, I did.

Q. You and who else?

A. Rick and I, I believe, met with him. Rick Schultz.

Q. And you didn't meet with Mr. Hinds as to whether or not to implement an amendment. You --

MR. ROLLINS: I'm going to instruct the witness not to answer questions about the purpose of his meeting with Mr. Hinds pursuant to

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tell the homeowners about the amendment?

A. I didn't tell them anything myself. We left that up to Waccamaw Management. They send out all the letters. They send out all the meeting minutes. They send everything for us.

Q. So you're telling me that Waccamaw did everything --

A. Yes.

Q. -- for the board; correct?

A. Yes.

Q. What was your understanding of your obligation as a board member when you began serving on the board?

A. To represent Founders Group International and Wild Wing.

Q. What is "and Wild Wing"?

A. Wild Wing Plantation. Do the best job we could to make that place the best we could make it, that it was golf and a community. They paid a lot of money for that -- that and that was what -- what they wanted to do was make it one of the best plantations, especially on 501.

Q. That is what Founders Group wanted to do?

A. We wanted to make it a fantastic place

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to live.

Q. So did you do anything further to educate yourself about your duties and responsibilities as a board member?

A. I'm not sure I understand the question.

Q. Well, it's my understanding that you were instructed to be a board member by the owners of Founders Group; correct?

A. Correct.

Q. So you began serving on the board in 2016.

A. Correct. 2014. Whatever it was. '15.

Q. May 2015; correct?

A. Okay.

Q. And at the time you understood your responsibility as a board member to be what? I believe that you testified part of your responsibility was to serve as a representative for Founders Group.

A. For Founders and, like I said, for Founders and to make Wild Wing Plantation a nice community.

Q. Do you agree with me that you had a duty as a board member to the Property Owners Association?

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A. I got -- like I said before, I got all my -- my intelligence and my knowledge from Waccamaw Management. I was a golf professional. I am a golf professional. I'm not a person that manages property. So I rely on the best people that I can find, and we found them. They were being the best people that we knew could do it, and that's what we -- who we relied on.

Q. Was Waccamaw the property manager before you -- before you began serving on the board?

A. I'm not sure.

Q. Mr. Plankers, is it your understanding that when there was a vote held, that there were votes possibly cast by homeowners and also that there were votes that could be cast by the declarant?

A. Yes.

Q. As to the declarant votes, who made the decision on how to vote?

A. How to vote? It was recommended by Waccamaw.

Q. And who made the decision?

A. To vote that way?

Q. Uh-huh.

A. It was recommended by Waccamaw; and then

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informed you that Founders Group was going to have to start paying per lot assessments on this group of unsold lots. And you also told Nick, "Here's how we change that"?

A. No. I told him that Waccamaw recommended that if we wanted to start a community and start people building, that we make it very reasonable to them and let them defer the cost and they pay for it.

To do that, we went to legal counsel to see if this is the way it should be done or could be done; and they advised us that, yes, it was. And I told Nick that it was legal, that to start a community and get roofs up, this was the best way to do it.

Q. And so what do you mean by that "we defer the cost"?

A. What I said was that Paul recommended to get things going, that we take it to legal counsel. Legal counsel told us how to do it. And that way we would end up making it more attractive for the builders to build, and that way whoever the person who bought the land or the homes would end up paying the assessments and the dues and the property owner fees; and they would

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EISENHARDT DEPOSITION EXCERPTS

A. Yes.
Q. Did you disagree -- do you recall any disagreement with any of his testimony, any significant points of his testimony?
A. No.
Q. Do you recall disagreeing in any way with anything he said this morning?
A. No.
Q. Between the two of you -- you're both plaintiffs in this litigation. Between the two of you, do you believe that one of you is overall more knowledgeable about the facts underlying your claims than the other?
A. I would say that Mr. Dykes is the numbers person and he's better able to distinguish and testify to that part of it. And I think, because I lived here before he did, I could maybe clarify our understanding as owners from pre-Barry Dykes time here.
Q. Okay. So you would -- you would be able to perhaps fill in or provide information about things that happened prior to his service on the financial committee, correct?
A. To a certain extent, yes.
Q. And -- but to the extent there would be any

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conflict between the two of you about sort of explaining how those facts relate to your claims in this case, you would -- you would defer to him; is --

A. Correct.

Q. -- that fair?

A. Yes.

Q. Okay. All right. At any point this morning -- and a number of occasions this morning I or some of the other attorneys might have asked Mr. Dykes after he made a statement, "Do you have any -- you know, do you have any evidence to support that claim," or, "Do you have any evidence to support that position?" At any point when we said that, did you find yourself saying to yourself, "Hey, I've got -- I've got evidence that he didn't mention," or, "I've got evidence that evidently he doesn't know about"? Do you recall anything like that?

A. The only thing I can think of is that the one exhibit that was left for me to review, when you were asking questions of Mr. Dykes relative to which specific people were part of which group and the corporate names and stuff.

Q. Okay.

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know, my attorney would be the best person to be able to clarify that.

Q. Okay. Do you contend that my clients were unjustly enriched by their service as board members?

A. Yes.

Q. In what way?

A. Because I think that they made decisions that were what the declarant wanted, not what was in the best interest of the members.

Q. Do you think that resulted in my clients being paid any monies, my clients as individuals being paid any monies that would otherwise have gone to the HOA?

A. I don't know have any way to know that. I don't know what monies they may have received from the declarants for making the decisions they made.

Q. Okay. So I -- if I repeat -- if I rephrase your answer and state it as you have no evidence that my clients were personally enriched unjustly in return for their services as board members, you don't have that evidence?

A. Well, I don't have any evidence that they weren't.

Q. Right. And that's a different question. My

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question is do you have any evidence that they were?

A. No.

Q. Okay. Do you have any evidence that my clients as board members took a certain action or voted a certain way because of a threat to their employment by one of the corporate defendants?

A. I have -- I think I have reasonable suspicions that decisions were made that had -- could have had a negative impact on them if it weren't for the declarants instructing them to do certain things.

Q. Okay. And, you know, I'm -- I'm interested in knowing what the proof is that fuels those reasonable suspicions.

A. I can give you some examples. When I was on the finance committee in the beginning and we would have the board meetings at Graeme Black's office, the finance committee was asked to leave the room when they talked about financial information they didn't want us to know anything about.

Q. Let me break in right here and say were my clients on the board at the same time as Mr. Black?

A. I believe that they were but I don't know the

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LIU DEPOSITION EXCERPTS

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companies. Is that a true statement?

A. Yes.

Q. And that would include Founders Wild Wing; is that correct?

A. Yes.

Q. Mr. Liu, when you came to South Carolina and you purchased a number of golf courses in the 2014-2015 timeframe, that included Founders -- that included Wild Wing Plantation; is that correct?

A. Yes.

MR. MILLER: Can we agree that when you say you, you mean under the corporate structure that you already discussed. When you say you purchased, you don't mean Mr. Liu individually?

MS. WALTERS: Well, I'm going to ask him questions that get to that. So let me just try to clarify.

Q. Mr. Liu, you decided at some point in the 2014-2015 timeframe that you were going to invest in -- you and some other people who were providing capital, and we'll get to that -- were going to invest in some golf courses in Myrtle Beach; is that correct?

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A. So let me -- your question so you are asking me if I and other people made a decision or -- so what's the point of your question? You asked me who or why.

Q. Why don't we just start with -- why don't we just do it this way. I'll let you tell me. When did you first come to South Carolina?

A. 2014.

Q. And why did you come to South Carolina?

A. Because my partner, Mr. Xian Dou, suggested to me to come to South Carolina because there are -- there were several good business opportunities.

Q. What type of business opportunities?

A. Some golf courses and land, real estate.

Q. Did you end up purchasing some golf courses here in South Carolina?

A. Would you repeat your question?

Q. Did you purchase golf courses here in South Carolina?

A. I never -- I never purchased golf course before I came to -- before I did that in South Carolina.

Q. Did you purchase golf courses in South Carolina?

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A. Yes.
Q. How many?
A. 19.
Q. And did you set up various entities to purchase those golf courses?
THE INTERPRETER: What do you mean set up entities?
Q. Did you purchase those golf courses through United States companies?
A. I don't understand your question.
Q. When you bought the courses, was it in your name, Dan Liu's name?
A. No. I used it under the name of the Chinese company.
Q. Okay. So the Chinese company being Jiangsu; is that correct?
A. Jiangsu was one of the three companies.
Q. And is Jiangsu the one that you used to purchase Founders Wild Wing? To purchase Wild Wing Plantation?
A. Yes.
Q. And when you made the purchase of Wild Wing Plantation, who provided the funds for the $19 million that was used to purchase the property?

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A. My Chinese company. My company, China.

Q. So at the closing, Jiangsu wired money from that company here to this country to pay for the course; is that right?

A. So the Chinese company wired money into Founders Group International, LLC, and then we used -- I used the money in that group to purchase these courses.

Q. And was the money that came from Jiangsu, was that cash?

A. Yes.

Q. And for all of the companies, how much money are we talking about did it cost for all 19 golf courses?

A. More than 100 million. I don't remember the exact number.

Q. So your company or the company, Jiangsu, that is owned by you and one other person whose name is Mr. Xian Dou.

A. Yes.

Q. I believe that you have testified that Jiangsu is owned -- is a company -- a Chinese company that is owned by you and Mr. Dou; is that correct?

A. That's correct.

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STATE OF SOUTH CAROLINA)) COUNTY OF HORRY)) C. Barry Dykes And Barbara Eisenhardt, Individually And Derivatively On Behalf Of The Wild Wing Plantation Property Owners' Association, Inc.,)) Plaintiffs,)) vs.)) Wild Wing Company, LLC; Sunstar, LLC; Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development Holdings, LLC; Wild Wing Residential Development, LLC; Stratford Land Manager, L.P. d/b/a Stratford Land; Stratford Land Fund IV, L.P.; SB Investments LLC; Realstar Management, LLC; Graeme T. Black; H. Gilford Edwards; Founders Wild Wing, LLC; Founders Group International, LLC; Dan Liu; Xian "Nick" Dou; Rick Schultz; Rick Taylor And Thomas Plankers,)) Defendants.)) Wild Wing Plantation Owners' Association, Inc.,)) Normal Defendant.)	IN THE COURT OF COMMON PLEAS THE FIFTEENTH JUDICIAL CIRCUIT C/A NUMBER: 2017-CP-26-04187 **MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS STRATFORD LAND MANAGER, LP and STRATFORD LAND FUND IV, LP**

YOU WILL PLEASE TAKE NOTICE that the Defendants Stratford Land Manager, LP d/b/a Stratford Land and Stratford Land Fund IV, LP ("Stratford Defendants") by and through their undersigned attorneys, will move on the tenth (10th) day after service hereof or as soon thereafter as counsel can be heard before the presiding Judge for an order granting

summary judgment in favor of the Stratford Defendants as to Plaintiff's Complaint (hereinafter the "Complaint") pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

In the Amended Shareholder Derivative Complaint filed March 19, 2020, the Plaintiffs allege that Stratford Land Fund IV, LP was a member of a JV formed November 29, 2010. (see paragraph 44 of Complaint). The Plaintiffs also allege that the JV, of which Stratford Land Fund IV, LP was a member, somehow owned, controlled and directed the operations of the Wild Wing Association. However, it is undisputed that on or about December 22, 2010, the initial Declarant/Developer One assigned all its rights to another entity, SFL IV/SBI Wild Wing, LLC, which Plaintiff refers to as Developer Two. (see paragraph 47 of Complaint). Neither of the Stratford Defendants were involved in this matter in anyway after December 22, 2010. Other than failure to use GAAP, all allegations and causes of action brought by Plaintiff are based on actions/omissions, as alleged, after January 1, 2011.

In his deposition taken December 5, 2018, when asked who Plaintiff Dykes believed Stratford Land Manager was, he replied "I believe they were involved with the second developer." P. 65, ln. 4-7, 12/5/18 deposition of Dykes. This is simply not true and even differs from the allegations in the Complaint. Dykes further testified that his intent in naming entity Defendants was to sue "anyone who was involved in the decision-making" for Wild Wing Plantation. P. 68, ln16-17, 12/5/18 deposition of Dykes. Dykes was later asked what role Stratford Land Fund IV played in appointing the board members of the property owners association. He answered, "I don't know specifically." P. 79, ln 6, 12/5/18 deposition of Dykes.

Based on the foregoing, and the common and statutory law, the pleadings, discovery, depositions, affidavits or additional memoranda which may be hereinafter filed with the Court, the Stratford Defendants respectfully assert that they are entitled to judgment as a matter of law

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with regard to each of the causes of action asserted against them in the Complaint.

:

/s/ Scott F. Talley
Scott F. Talley
TALLEY LAW FIRM, P.A.
134 Oakland Avenue
Spartanburg, South Carolina 29302
864-595-2966
scott@talleylawfirm.com

/s/ William Douglas Smith
William Douglas Smith
Johnson, Smith, Hibbard & Wildman Law Firm, L.L.P.
220 N. Church Street, Suite 4 (29306)
Post Office Drawer 5587
Spartanburg, South Carolina 29304
Telephone: (864) 582-8121
dsmith@jshwlaw.com

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STATE OF SOUTH CAROLINA COUNTY OF HORRY C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., PLAINTIFFS, VS. WILD WING COMPANY, LLC; SUNSTAR, LLC; RALPH R. TEAL, JR.; SLF IV/SBI WILD WING, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI PROPERTIES MM, LLC; SLF IV/SBI DEVELOPMENT HOLDINGS, LLC; WILD WING RESIDENTIAL DEVELOPMENT, LLC; STRATFORD LAND MANAGER, L.P. D/B/A STRATFORD LAND; STRATFORD LAND FUND IV, L.P.; SB INVESTMENTS LLC; REALSTAR MANAGEMENT, LLC; GRAEME T. BLACK; H. GILFORD EDWARDS; FOUNDERS WILD WING, LLC; FOUNDERS GROUP INTERNATIONAL, LLC; DAN LIU; XIAN "NICK" DOU; RICK SCHULTZ; RICK TAYLOR AND THOMAS PLANKERS, DEFENDANTS. WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., NOMINAL DEFENDANT.	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT C/A NUMBER: 2017-CP-26-04187 **C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT**

The Court is scheduled to hear multiple Motions for Summary Judgment in the above referenced matter on March 5, 2021. The following is a list of these Motions for Summary Judgment that have been filed by the parties to this action:

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Motion	Issue
Plaintiffs' MSJ Motions to Founders	a. Fiduciary Duty, and b. Underfunding.
Plaintiffs' Motions to Pre-Founders	a. Fiduciary Duty, and b. Underfunding
Wild Wing Company, LLC; Sunstar, LLC; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development Holdings, LLC; Wild Wing Residential Development LLC; SB Investments, LLC; Realstar Management, LLC; Founders Wild Wing, LLC; Founders Group International, LLC; and Dan Liu's MSJ Motions to Plaintiff	a. Business Judgment Rule, b. Declarant's Liability, c. Derivative Capacity, d. Liability of Secondary Defendants, e. SCUPTA, f. Standing of POA, g. SOL, h. Validity of Amendments, and
Stratford Land Manager, L.P. to Plaintiff	Plaintiff's Complaint
Ralph R. Teal, Jr., Graeme T. Black, and H. Gilford Edwards' MSJ Motion to Plaintiffs	a. SOL, b. Breach of Fiduciary Duty, c. Unjust Enrichment, d. SCUTPA, and e. Alter Ego/Amalgamation/Veil Piercing.
Rick Schultz, Rick Taylor, and Thomas Plankers' MSJ Motion to Plaintiffs	a. Breach of Fiduciary Duty, b. Unjust Enrichment, and c. SCUTPA.

This is Plaintiffs' Memorandum in Opposition to all of the Defendants' Motions for Summary Judgment and in support of Plaintiffs' Motions for Summary Judgment, both with respect to Plaintiffs' claims and with respect to the counterclaims asserted against Mr. Dykes and Mrs. Eisenhardt by the Defendants represented by the Bellamy Law Firm, which are Wild Wing Company, LLC; Sunstar, LLC; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development, LLC; Stratford Land Manager, L.P.; Stratford Land Fund IV, L.P.; SB Investments, LLC; Realstar Management, LLC; Founders Wild Wing, LLC; Founders Group International, LLC; and Dan Liu.

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For the reasons set forth below, the Motions for Summary Judgments of the Defendants should be denied, as questions of fact preclude those motions or because Plaintiffs have conclusively proven their case. Conversely, Plaintiffs' Motions for Summary Judgment should be granted.

Claim Overview

This is a derivative action, brought pursuant to Rule 23(b)(1), *SCRCP*, and has been brought by the Plaintiffs on behalf of the Wild Wing Plantation Property Owners Association (the "POA"). Barry Dykes and Barbara Eisenhardt, who are the Plaintiffs, are homeowners in a development known as Wild Wing Plantation and are members of the POA. Wild Wing Plantation ("Wild Wing") is a large, established development in Horry County consisting of hundreds of residential lots, an amenity center, several pools, and numerous connected lakes. Wild Wing was initially developed by Wild Wing Company, LLC, which was owned by several successful Myrtle Beach businessmen, including the Defendants Ralph Teal, Edward Benton, and Gilford Edwards, through various business entities, including the Defendant Sunstar.

Summary of Claim

The Plaintiffs' substantive claims break down into two primary claims, both of which are asserted against all the Defendants. The first claim arises from the Declarants underfunding of the POA because of incorrect accounting used to calculate the Declarant Funding Alternative. The second claim involves Declarants' breach of fiduciary duty as it relates to the Declarants' two amendments of the Regime Documents which extended the Declarant Funding Alternative from December 31, 2010, when it was originally set to expire, all the way through December 31, 2019. The extensions of the Declarant Funding Alternative also resulted in a substantial shortfall of funding to the POA by the Declarants.

In addition to the claims against the Declarants for breach of fiduciary duty, claims have also been brought against the members of the Board of Directors. Those various members of the Board of Directors failed to safeguard the POA from the Declarants' underfunding, and facilitated that underfunding and the

amendments, all at the sole expense of the POA and for the sole benefit of the Declarants. Taylors, Planks and Shultz also failed to pursue reimbursement from the Declarants once the underfunding was identified by Plaintiffs and brought to their attention.

Finally, Plaintiffs have asserted amalgamation/single business enterprise claims against the people and entities who had *defacto* control of the Declarants, and consequently the Board of Directors, and who siphoned off the assets of the Declarants, leaving them insolvent and unable to respond to the claims of the POA. During this time the Declarants breached their fiduciary duties to the POA and its members in two respects. First, the Declarants failed to properly calculate the amount of their funding obligations to the POA as set forth in the Regime Documents. That accounting error resulted in underfunding by Declarants in the principal amount of $891,241 since 2007. *See* Dykes 2020.09.24 Calculations "Accounting" Exhibit A. Second, the Declarants wrongfully amended the Regime Documents twice, in 2011 and again in 2016, to postpone the deadline for the Declarants to pay regime fees and assessments on a per lot basis which resulted in the Declarants' underfunding the POA in the amount of $2,152,260. *See* Dykes 2020.09.24 Calculations "Amendment" Exhibit B. Plaintiffs are also claiming pre-judgement interest on those sums.

The Defendants

The Defendants in the case are comprised of three groups of entities and people. The first group consists of four different entities that had the rights of the "Declarant" under the Wild Wing Regime Documents which are described more fully below. The Declarants, and the dates they held the Declarant rights, are listed below:

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Declarant	Date Range of Rights
Wild Wing Company, LLC	9/26/06-12/22/10
SLF IV/SBI Wild Wing, LLC	12/22/10-11/09/11
Wild Wind Residential Development, LLC	11/09/11-04/13/15
Founders Wild Wing, LLC	04/13/15-Present

The second group of Defendants are individuals who served as members of the Board of Directors for the POA. They were all appointed to the Board of Directors by the Declarants, which have always controlled the POA and still do. The Defendants who served as members of the Board of Directors, and the Declarants for whom they served, are listed below:

Defendant Board Members	Related Declarant
Ralph R. Teal, Jr. (Sunstar/Realstar/SB Investments) Gilford Edwards (Sunstar/Realstar)	Wild Wing Company, LLC
Ralph R. Teal, Jr. (Sunstar/Realstar/SB Investments) Graeme Black (Realstar) Gilford Edwards (Sunstar/Realstar)	SLF IV/SBI Wild Wing, LLC
Ralph R. Teal, Jr. (Sunstar/Realstar/SB Investments) Graeme Black (Realstar) Gilford Edwards (Sunstar/Realstar)	Wild Wind Residential Development, LLC
Rick Schultz Rick Taylor Tom Plankers	Founders Wild Wing, LLC

The third and final group of Defendants are people and entities that were members of, or related to, the Declarants. Those Defendants either controlled the actions of the Declarants and the members of

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the Board of Directors or participated in the siphoning of assets from the Declarants. To assist the Court, we have attached, as Exhibit C, a detailed chart of all the Defendants and some of their relationships.

Plaintiffs' Liability Argument

Below is the substance of Plaintiffs claim which establishes the liability of the Declarants for underfunding. This argument supports Plaintiffs' Motion for Summary Judgment and Plaintiffs' opposition to the summary judgment motions of the Defendants based on liability.

The Rights of the Declarants to Control the Wild Wing POA and the Declarant Funding Alternative:

There are numerous governing documents including the Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens which include the covenants and were originally recorded on or about September 27, 2006 (the "Regime Documents").

For ease of reference, the relevant portions of the Regime Documents are attached hereto as Exhibit D. Included is the language of two amendments to the Regime Documents, in 2011 and 2016, which are also relevant to the issues in this case.

Since the inception of the development, the Declarants have maintained exclusive control of the POA through their control of the Board of Directors and controlling voting rights. The relevant portions of the Regime Documents are attached hereto as Exhibit D for ease of reference. Included are the language of the two amendments to the Regime Documents, in 2011 and 2016, which are also relevant to the issues in this case.

For purposes of this Memorandum and the pending Motions, the Regime Documents provided that 1) the Declarant had the right to and did appoint *all* members of the Board of Directors of the POA; and 2) the Declarant had superior voting rights to the other property owners, such that the Declarant could pass any measure it wanted to pass with only its own votes, without regard to the votes of the non-declarant

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property owners. *See* Exhibit D Regime Document Bylaws Article 2, Section 2 and Article 3; Section 5. Those voting rights give the Declarant, which has Class B rights, votes equal twice the number of Class A votes (Class A rights belong to the non-declarant property owners), plus one. This provision gave the Declarant total control of any vote requiring 67% of the vote or less. Amending the Regime Documents requires a 67% vote. *See* Exhibit D Regime Document Bylaws Article VI, Section 6.

Finally, as noted, the Declarants all owned unsold lots at Wild Wing, with that number reducing over the years as lots were sold. Because the Declarants did not want to pay regime fees and assessments on a per-lot basis on each of their lots, the Regime Documents grant the Declarant an alternative funding structure to help the Declarant reduce its financial exposure associated with the unsold lots it owns. Specifically, rather than paying POA assessments on a per lot basis, *until December 31, 2010*, the Declarant had the right to fund the POA based upon a formula. That formula, found at Article VI Section 2a on Exhibit D, provides that, "***… the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made by the Association against Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves***. (*The underlined language is the language directly at issue in this case*). This option for the Declarant will be hereinafter referred to as the "Declarant Funding Alternative."

The Declarant rights, including the right to appoint the entire Board of Directors, voting rights and the Declarant Funding Alternative, are extremely important and made the Wild Wing development more "marketable" for the developers/Declarants. *See* Exhibit E, Dep. Ralph R. Teal, Jr., Pg.32:10-33:4. The ability to control the Association with the Declarant vote is obvious, but the Declarant Funding Alternative significantly reduced the Declarant's financial obligations to the Association as compared to what the

Declarant would have owed had it been required to pay per lot assessments like the rest of the lot owners/members of the Association.

The First Three Declarant's Were Shell Entities

Since 2006, the valuable Declarant rights discussed below have been assigned from one to another of the four different Declarant entities. As mentioned above, the initial Declarant, Wild Wing Company, LLC, was owned by local businessmen through Sunstar, LLC, a development entity that did other development work in Horry County. The real estate crash in the late 2000s impeded the sale of lots at Wild Wing and ultimately the development loans that the initial developers were personally obligated to pay became due. To secure the funding they needed, the developers entered a relationship with Stratford Land Fund IV, L.P. ("Stratford") out of Texas. *See* Exhibit E, Dep. Ralph R. Teal, Jr, 10:23 to 12:13. With Stratford's money and participation, the developers were able to refinance the original development loans, and Stratford and its entities took a stake in the Wild Wing development.

As a part of the addition of Stratford, the initial Declarant, Wild Wing Company, LLC, assigned its assets to a new Declarant entity, which was owned and controlled by the original Myrtle Beach developers and their new partner, Stratford. *See* Exhibit E, Dep. Ralph Teal Jr. at Pg. 13:13-14:9. That single purpose entity was called SLF IV/SBI Wild Wing, LLC. *See* Exhibit F, Assignment which became the second Declarant. The members of that entity were Stratford Land Fund IV, L.P. (SLF) and SB Investments LLC. *See* Exhibit F, Dep. Ralph Teal Jr. at Pg. 17:15-18:6. There is no evidence that Wild Wing Company, LLC received any consideration for that assignment.

A few months later the developers decided to complete another assignment, effectively changing the name of the Declarant to Wild Wing Residential Development, LLC, and that entity became the third entity to possess the Declarant rights. *See* Exhibit G, Assignment. The sole member of Wild Wing Residential Development, LLC was Wild Wing Residential Development, LLC which was managed by

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SLF IV/SBI Properties, LLC. The sole managing member of SLF IV/SBI Properties, LLC was managed by Ralph Teal and Jeff Turner. Furthermore, there is no evidence that the second Declarant, SLF IV/SBI Wild Wing, LLC, received any consideration for the conveyance of its only assets, and it has been admitted that SLF IV/SBI Wild Wing, LLC and Wild Wing Residential Development, LLC were actually joint venturers. *See* answer of Stratford Land Manager, L.P. d/b/a Stratford Land.

Finally, in 2015, with the economic recovery complete, the developers, still the original Wild Wing developers and their partner, Stratford, sold their interest in Wild Wing to a Chinese company called Founders Group International, LLC ("Founders"). (The members of Founders are Xian Dou and Dan Liu). As part of that transaction, the assets of Wild Wing Residential Development, LLC were assigned to Founders Wild Wing, LLC, which became the fourth and current Declarant. *See* Exhibit H, Assignment. The members of Founders Wild Wing, LLC are Jiangsu Tianrui Danfor Commerce and Industry Co. Ltd. and Xian Dou, who is a defendant in the case. Unlike the previous assignments of Declarant rights, the assignment from Wild Wing Residential Development, LLC to Founders Wild Wing, LLC was very much for good and valuable consideration, which is discussed in detail below.

All the Declarant entities before Founders Wild Wing, LLC were shell, single purpose, entities whose only assets have been the Declarant rights and the remaining unsold lots at Wild Wing. None of those shell entities had other capital, assets, sources of income, or reason to exist. They were funded and controlled by other companies and people through a complicated series of LLCs that were intended to protect the people and companies who controlled those Declarant entities.

Declarants Erroneous Accounting for the Declarant Funding Alternative

The Bylaws provide that accounting for the POA is to be done pursuant to Generally Accepted Accounting Principles ("GAAP"). *See* Exhibit D, Section 18. (1). Under GAAP, which is accrual rather than cash-based accounting, "bad debt" such as, for example, unpaid lot owner assessments, is considered

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an incurred "expense." That means that under GAAP, the Declarant was required to include bad debt as an "expenditure incurred" by the POA when calculating the amount it owed under the Declarant Funding Alternative.

Beginning in 2007, when the original Declarant began calculating its annual contribution to the POA, it elected *not* to include "bad debt" as a POA "expenditure incurred" and to include non-assessment income in the calculation (such as fines, fees, and bad debt recoveries). These accounting decisions, which are not consistent with GAAP, reduced the Declarant's contribution to the POA. This method of calculating the Declarant's contribution continued through 2019, despite Mr. Dykes' expressed concerns and objections about it since 2015. *See* Exhibit I, Dykes Affidavit.

In response, the Defendants argue that the contribution was calculated by an accountant, not by the Board of Directors or the Declarants. *See* Defendants Motion for Partial Summary Judgment on the Business Judgment Rule, Pgs. 4-5. First, that is not true. Gil Edwards, a member of the Board of Directors from 2011 until 2015, testified that he determined that bad debt was not to be considered a POA expense for purposes of calculating the Declarant contribution. *See* Exhibit J, Dep. Gil Edwards Pg. 32:13-19. Second, even if it were true that the error was an error by an accountant, it would be immaterial. At issue in this case is what the Declarant owed to the POA and did not pay. Since it was miscalculated, for whatever reason, and a shortfall occurred, it needs to be paid, immediately with interest. If the miscalculation truly lies with the accountant who performed the calculation, it does not change what should have been paid by the Declarants.

If the underpayment was the result of an accounting error, the Defendants should address that with the accountant. Also recall that the Declarants completely controlled the POA and the Board of Directors, who hired the accountant, who ostensibly made the calculation errors. Accounting errors that year after

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year favored the Declarants, made by an accountant hired by Declarants, are not excused by the fact that an accountant made the error.

Moreover, the Declarants were first alerted to Barry Dykes' concerns about underfunding in 2015 and were sued for it in 2017 and have never offered to correct what they now acknowledge may have been accounting errors.

In addition, the fact that the Declarants paid based on inaccurate accounting is undeniable. The Defendants contention is that the words***, "a sum equal to the actual amount of actual operating expenditures incurred by the Association"*** means *actual expenses* of the POA and that "bad debt" is not an "actual expense." That argument ignores 1) the language of the Regime Documents; and 2) the requirement that GAAP and accrual accounting apply. The word "incurred" is a term of art applicable to accrual accounting, meaning GAAP.

The Defendants' error on this point can be crystallized: Had the Declarants wanted the Declarant Funding Alternative to be based on actual cash-based expenses of the POA, the language should have been written using the word **"paid"** rather than **"incurred"** which would have read: ***"a sum equal to the actual amount of actual operating expenditures paid by the Association".*** That is not how they, the developers/Declarants, wrote the Regime Documents and they cannot pretend that is how it is written now. The provision must be read and applied as they wrote it.

The Defendants argue that it would not be fair for the Declarant to have to assume responsibility for members of the POA who do not pay their assessments. *See* Wild Wing, LLC, et al.'s Motion for Summary Judgment on the Business Rule. That may seem reasonable enough at first because who wants to pay someone else's obligation? But the POA has a budget and expenses so *someone* must make up for the non-payment of fees and assessments by some property owners.

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To avoid responsibility for paying all of the unpaid regime fees, the Declarant could simply pay on a per-lot basis like the other non-declarant property owners and spread that burden equally. They did not want to do that, of course, because the cost of doing that far outweighed the cost of reimbursing the POA based on the Declarant Funding Alternative, even when properly calculated *See* Barry Dykes Calculations "Amendment", Exhibit B, and damages spreadsheet.

The Declarants at Wild Wing got greedy. They wanted the much lower cost associated with the Declarant Funding Alternative, then tried to reduce that further by interpreting that formula, *written by them*, in a way to further reduce that obligation.

The erroneous calculation of the Declarant Funding Alternative has resulted in a substantial shortfall between what the Declarants contributed and what the Declarants should have contributed had it complied with the Regime Documents. From 2007 through 2019 (which is the amount of time that the declarant continued to elect the Declarant Funding Alternative), the shortfall in Declarant contributions totals $891,241. With prejudgment interest, that total is $1,674,724. Our lawsuit seeks the recovery of that shortfall. Of that, $1,436,165 is associated with the pre-Founders Defendants and $238,559 is associated with Founders Defendants. (Mr. Dykes calculations are attached hereto as Exhibit A "Accounting").

Mr. Dykes view of this has been validated by Plaintiffs' expert, Roy Strickland. Mr. Strickland is an expert in accounting and testified as follows in his deposition on this issue:

Q. Do you have an opinion about whether the Defendants failed to utilize GAAP, as is alleged in Paragraphs 34 and 35?

A. I would term it they selectively utilized GAAP.

Q. And you know I'm going to ask you to be very specific about that, so –

A. Yes, sir. Their calculation that was used by -- the calculations that I've seen, they included accrual-based expenses, except for they deducted the bad debt expense from the calculation, so as a result, they selective -- that's the selective use of GAAP. *See* Exhibit K, Dep. Roy Strickland Pg. 29:13-25.

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Mr. Strickland further testified:

Q. Anything else? I want you to be complete on this, now, so take your time. If you need to reference any notes or anything else, I want you to give me a complete answer to anything that you have an opinion about that the Defendants failed to utilize or comply with GAAP.

A. In their calculation, the only thing that I can think of at this time is they did not include bad debt expense. They specifically reduced their operating expenditures by that amount. *See* Exhibit K, Dep. Roy Strickland Pg. 30:1-10.

Mr. Strickland further testified:

Q. Yeah. I want to know where you got your

formula.

A. Yes, sir.

Q. And then we'll break her down from there.

A. Got it. "However, until such time as a lot
is conveyed by the declarant to an owner other than
the declarant, the declarant shall be assessed and
pay to the association, in lieu of an assessment
thereof, a sum equal to the actual amount of actual
operating expenditures incurred" -- 'incurred,'
that's an important word -- "by the association for that portion of the
calendar year less an amount
equal to the total assessments made by the
association against owners of lots other than those
owned by the declarant." That's the calculation right there.
See Exhibit K, Dep. Roy Strickland Pgs. 45:15-46:11.

Mr. Strickland testified that when he performed his work, he compared it to the calculations done by Mr. Dykes, Mr. Strickland testified as follows:

Q: So to be clear, when you were performing your work, did you use Mr. Dykes's work as a template or a format, or did you set it totally aside and do your work independently?

A: I did my work independently and compared it to his work.

A: "…But the substance of my work, naturally, I had a meeting with him, and I concur with his answer, but the work itself was work that I did…"
See Exhibit K, Dep. Roy Strickland Pg. 67:10-15; 69:11-14.

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Regarding the Declarant's improper calculations, Mr. Strickland testifies as follows:

Q. Where did you get the annual dues amount?

A. The same -- in the footnote to the financial statements on I think a majority of those years, it actually says the -- I think it says the monthly annual dues. I think there were two years towards the end where they didn't -- they didn't -- for some reason didn't disclose that in the footnotes, so then I went to the budget document. There was a document that I looked at to tie that in, and again -- no. I tell you what I -- I looked at the calculation by the declarant, and they had the quarterly amount, and I multiplied it times four.

Q. So that's the amount that was assessed to lot owners -- or, rather, owners of lots other than the declarant?

A. Yes, sir.

Q. And then you just do the math and back out what they paid in?

A. Yes, sir.

I think I'm going to go ahead and interject this, because I didn't -- this is not something - but I think it's something important to mention here. The way this was calculated on these individual calculations of the budget and where they calculated the annual fee, that entire amount, the developer didn't have to pay anything. If everything was in budget on accrual basis, basically, even though the developer owned a portion of these lots, substantial portion, and most importantly, the developer benefits from owning those lots and having this homeowners association, because the amenities and things of that nature are typically very important in selling their lots.

And I haven't checked on this yet, and I will tell you I just identified it yesterday. My question is in dividing it by just the homeowner's lots, if everything budgets out, the developer doesn't pay anything. And the reason I figured -that that thought came to me is under this document, they don't have to pay anything for the homeowners association.

Typically, based on my experience, the developer is having to pay some type of fair share on that because they are benefiting and usually benefiting substantially from those amenities in selling the project. *See* Exhibit K, Dep. Roy Strickland Pg. 79:3-80:25.

This case was filed in 2017 and has been actively litigated with this accounting issue being crystal clear. Until recently, Mr. Strickland was the only named expert identified on the issue of accounting. On September 11, 2020, immediately before mediation, Defendants named Missy Johnson as an expert.

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Ms. Johnson has not looked at the central issue in this case, which is whether GAAP required bad debt to be treated as an expense for the purpose of calculating the Declarant contribution and therefore does not rebut the opinions of Mr. Strickland. She testified as follows:

> Q. And is that something that you did in connection with your work on this case?
>
> A. I don't recall specifically looking at any GAAP standards. *See* Exhibit L, Dep. Missy Johnson 21:2-5.

Improper Extension of the Declarant Funding Alternative Deadline

The second claim is related to Declarant underfunding but is distinct from the incorrect calculation of the Declarant Funding Alternative. The Declarant Funding Alternative, allowing the developer to fund the POA based upon a formula rather than pay on a per lot basis, initially expired on December 31, 2010. This meant that from January 1, 2011, through today, the Declarant should have funded the POA based on a per lot assessment, like all other owners. As you will see in Mr. Dykes calculations below, that would have significantly increased the Declarant contributions to the POA from 2011 through 2019.

Since the lapse of the Declarant Funding Alternative would have dramatically increased the Declarant's funding obligations, in 2011, the Declarant at the time, Wild Wing Residential Development, LLC, held a property owners' meeting and amended the Regime Documents to extend the deadline for the Declarant Funding Alternative by six years, to December 31, 2016. *See* Exhibit M, Amendment. Since the Declarant Funding Alternative had already expired, the Declarant made the amendment retroactive to January 1, 2011. In 2016, after the sale of Wild Wing to Founders, a second amendment initiated by Founders further extended the funding alternative deadline until December 31, 2019. *See* Exhibit N, Amendment.

Those amendments were *solely* for the benefit of the Declarants (Wild Wing Residential, LLC and Founders Wild Wing, LLC and their members and related entities), at the *sole* expense of the POA. When asked about that in their depositions, two witnesses called by the Defendants, Press Courtney and Paul

Skirchak, experts in property management, could not offer any testimony about how the POA benefitted from the amendments. Mr. Skircheck testified as follows:

Q. Can you, Mr. Skirchak, tell me any advantage to the association for the declarant to not pay on a per-lot assessment basis?

A. To the association as a whole?

Q. Yes, sir.

A. No. No. Probably not.

See Exhibit O, Dep. Paul Skirchak at Pg. 78:18- Pg. 79:2.

Mr. Courtney is the President of Waccamaw Management, which has managed Wild Wing for many years. When asked how the POA benefited from the amendment, Mr. Courtney testified as follows:

Q. And so how did the -- extending the declarant funding alternative enhance the declarant's interest in 2016?

A. I can't speak for the declarant or how they're -- they were enhanced.

Q. Do you know or can you articulate for me how the association benefited from the extension of that declarant funding alternative in 2016?

A. I cannot, with the exception of saying that, again, it's always important or good to have a successful developer from start to finish of a development.

Q. And do you have any basis to provide to me today, any factual basis, to support a contention that extending the declarant funding alternative in 2016 somehow provided an advantage to the HOA?

A. I do not.

Q. So you can't quantify that value?

A. I cannot.

See Exhibit P, Dep. Press Courtney at Pg. 43:6-24.

As reflected in Barry Dykes' Affidavit, because the Declarants continued to utilize the Declarant Funding Alternative, the shortfall to the POA from the Declarants, from 2011 until 2019, totals

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$2,152,260. Of that, $1,138,604 is the shortfall associated with the pre-Founder's Defendants and $1,013,657 is associated with the shortfall from the Founders defendants. With prejudgment interest that total is $3,459,337. *See* Exhibit B, Dykes "Amendment" Calculations.

The Declarants Breaches of Fiduciary Duty

With respect to the Declarants, our courts have recognized a fiduciary obligation of a developer who controls the Board of Directors. A fiduciary relationship is the highest relationship known in the law. *Stegemann v. Gannett Co., Inc.*, 970 F.3d 465, 469 (4th Cir. 2020) ("Courts have often called these fiduciary duties the 'highest known to the law.'"). Recently, in *Walbeck v. I'on*, 426 S.C. 494, 517 827 S.E. 2d 348 (2019), the Supreme Court ruled as follows:

> Rather, we define Appellants' [Developer's] fiduciary duty arising from its retention of control over the HOA by the standards set forth in *Island Car Wash*:
>
> > [A]nyone acting in a fiduciary relationship shall not be permitted to make use of that relationship to benefit his own personal interests. ... [C]ourts of equity will scrutinize with the most zealous vigilance transactions between parties occupying confidential relations toward each other and particularly any transaction between the parties by which the dominant party secures any profit or advantage at the expense of the person under his influence.
> >
> > In concluding that a developer in control of a homeowners association may not make decisions that benefit the developer's own interest at the expense of the association and its members. This deduction logically flows from the above standards set forth in *Island Car Wash*, *Goddard*, and our supreme court's decision in *Concerned Dunes* adopting *Goddard*'s analysis. (Internal citations omitted.)

The Declarants have breached that duty in two clear respects. First, they failed to accurately calculate their funding obligation under the Declarant Funding Alternative. Instead, they applied a false "interpretation" of the applicable language, and disregarded GAAP, to ensure they paid less to the POA each year than the actual language and GAAP required. With respect to the two amendments, they were for the sole benefit of the Declarants and were at the sole expense of the POA.

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Wild Wing Residential, LLC argues that it would have been unable to continue in business without the extension of the Declarant Funding Alternative accomplished by the 2011 Amendment and that the POA received a benefit from that extension in the form of a solvent Declarant. *See* Wild Wing Company, LLC, et al. Motion for Summary Judgement on Validity of Amendments. However, that Declarant is unable to prove the truth of the Declarant's insolvency. In his deposition, Ralph Teal, a key investor and manager, was unable to say that the obligors on the development note would have been unable to pay it. *See Exhibit* E, Dep. Ralph Teal at Pg. 36:8-17.

The Declarant is also unable to say what monetary value was received by the POA as a result of the having a solvent declarant or how that compared to what the Declarant's contributions would have been. See *Id.* Exhibit E at 38:4-7. In other words, their argument about the justification for the initial amendment is entirely speculative.

Further, even if it is assumed that the first amendment reducing the Declarant contributions somehow benefitted the POA in the short term in some material way, there should still have been some reckoning or reimbursement of the cost to the POA of its forbearance from demanding the full contribution from the Declarant. Instead, when Wild Wing Residential Development, LLC sold the development to Founders in 2015, it received a total sum of more than $11,000,000. At that time, the Declarants could have repaid the POA for the substantial funding shortfall. Instead, they took the sales proceeds, *all of them*, and disbursed them to developer entities and individuals and left all of the Declarant entities without assets and insolvent, leaving the POA with nothing.

Having bought Wild Wing in 2015, Founders cannot even argue that the financial crash justified the 2016 amendment. The testimony at trial will be that after they purchased the Wild Wing lots and interests from the pre-Founder's developers, and were assigned the Declarant rights, they met with a property management firm and were alerted to the fact that the Declarant Funding Alternative was going

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to expire in 2016 and Declarant contributions were going to dramatically increase. Mr. Skircheck testified as follows:

> A: I told the Founders board of directors that this 2011 amendment was fixing to expire and they would be paying assessments the following year on the lots that are unsold. That's all I did.
>
> Q: Did you have any opinion or discussion with the POA board as to the desirability of renewing that amendment through this 2016 document?
>
> A: I have no ability to renew the document. I can just tell them what happened and what the circumstances will be.
>
> Any choice to take any action was fully a choice of the developer. I had no authority in any choice to have a second amendment, other than, you know, administering it as a result of an election or a developer-approved amendment as the supplemental.
>
> Q: Understood.
>
> My question is, did they ask or did you offer any advice on the desirability of this amendment from a, you know, community perspective? Is this a good thing or a bad thing?
>
> A: You know, do you remember having any conversations about that? I told them that the original amendment would expire and that they would be paying assessments on all the lots.

See Exhibit O, Dep. Paul Skirchak at Pg. 50:24 – Pg. 51:24.

Faced with that reality, Founders met with legal counsel (the same counsel as had been used by the prior Declarant, the Bellamy law firm) and the second amendment of the Wild Wing Documents was passed, which extended the Declarant Funding Alternative through the end of 2019.

Given that the amendments were for the sole benefit of Declarants, and were at the sole expense of the POA, it is virtually indisputable that the amendments violated the fiduciary obligations of the Declarants. At the very least, consistent with *Walbeck*, those transactions must be "scrutinized by the most zealous vigilance" by the Court and the matter is not ripe for summary judgment as to the Defendants.

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To the contrary, the foregoing establishes that, as a matter of law, Plaintiffs have proven that Declarants breached their fiduciary obligations to the POA, both with respect to failure to properly calculate the Declarant contributions under the Declarant Funding Alternative and by passing two amendments extending the Declarant Funding Alternative from its initial expiration date of December 31, 2010, until December 31, 2019.

Statute of Limitations

A number of the Defendants have moved for Summary Judgment on the basis of the Statute of Limitations and those Motions should be denied.

Application of the discovery rule contained in S.C. Code Ann. § 15-3-535, as well as the determination of the date the statute began to run in a particular case, are questions of fact for the jury when the parties present conflicting evidence. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 338, 534 S.E.2d 672, 681 (2000). Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law. *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187(1997). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts. *Id*. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Manning v. Quinn*, 294 S.C. 383, 365 S.E.2d 24 (1988)

In making their arguments about that Statute of Limitations, Defendants gloss over the fact that this action is an action on behalf of the POA, pursuant to Rule 23, *SCRCP*. The character of the claim is fundamentally important to the statute of limitations issue.

The POA is the rightful owner of the claims asserted herein. The POA, charged with the knowledge of its Board of Directors, knew or should have known of the underfunding by the Declarants

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when it occurred, each year beginning in 2008. Likewise, the Board, acting on behalf of the Declarants, would have known that the 2011 amendment was solely in the best interests of the Declarant, and was at the expense of the POA.

Regardless of when the POA knew or should have known that the members of the Board of Directors and the Declarants had violated the obligations to the POA, the Declarants completely controlled the Board of Directors. Since people rarely sue themselves, our courts have recognized that that inherent conflict in developer-controlled boards of directors impacts the application of the statute of limitations. In another Horry County case, the Court of Appeals equitably tolled the statute of limitations for the period of time that the HOA was controlled by a developer and its appointed board of directors. In *Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 725 S.E.2d 112, (Ct. App. 2012), the Court of Appeals held as follows:

> In *Hooper v. Ebenezer Senior Services and Rehabilitation Center,* our supreme court stated:
>
> Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness. The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. It has been observed that equitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control.
> *Id. at 371-372,* citing *Hooper v. Ebenezer Senior Services and Rehabilitation Center* 386 S.C. 108, 115–17, 687 S.E.2d 29, 32–33 (2009).
>
> The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that *relief will be granted when,* in view of all the circumstances, *to deny it would permit one party to suffer a gross wrong at the hands of the other.* Equitable tolling may be applied where it is justified under all the circumstances. *Id.* (citations and quotation marks omitted) (emphasis added).
>
> Unlike equitable estoppel, equitable tolling does not require a showing that the Defendant has made a misrepresentation to the plaintiff. *Id.* ("Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it.").

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In the present case, the POA board consisted of Appellants' officers until the date of "turnover," September 9, 2002. We find unpersuasive Appellants' claim that an organization they controlled would have initiated an action against itself during this period. Further, after the property owners gained control over the POA, they exercised due diligence by filing this action on May 28, 2003, approximately eight months after assuming control. Therefore, we affirm the trial court's ruling on this issue.

Because the POA was wholly controlled by the Declarants, through their appointed Board of Directors and their controlling voting rights, equitable tolling precludes the application of the statute of limitations on the claims that the Plaintiffs have asserted.

Amalgamation/Liability of Secondary Defendants/Stratford's Motion on the Complaint

Many of the non-Declarant Defendants have asserted an entitlement to summary judgment on Plaintiffs' claim for alter ego/amalgamation/veil piercing. That motion should also be denied.

While the Defendants cite to South Carolina law regarding veil-piercing and alter ego, those cases are irrelevant. Plaintiffs are proceeding on an amalgamation/single business enterprise claim which are simple and are supported by uncontroverted facts discussed below.

In *Pertuis v. Front Roe Restaurants, Inc.,* 423 S.C. 640, 817 S.E.2d 273 (2018), the Supreme Court reviewed the amalgamation of interests claim first recognized in *Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 96, 344 S.E.2d 869, 874 (Ct.App.1986) and brought more clarity to the elements of the claim, renaming it the single business enterprise theory. In doing so the Court held:

> We formally recognize today this single business enterprise theory, and in doing so, we acknowledge that corporations are often formed for the purpose of shielding shareholders from individual liability; there is nothing remotely nefarious in doing that. For this reason, the single business enterprise theory requires a showing of more than the various entities' operations are intertwined. **281 Combining multiple corporate entities into a single business enterprise requires further evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions.

Pertuis v. Front Roe Restaurants, Inc., 423 S.C. 640, 655, 817 S.E.2d 273, 280–81 (2018)

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The pre-Founders Declarants were Wild Wing Company, LLC (made up of Sunstar, LLC, and Ralph R. Teal, Jr.), SLF IV/SBI Wild Wing, LLC, (whose members were SLF IV/SBI Properties MM, LLC and SLF IV/SBI JV, LLC) and finally Wild Wing Residential Development, LLC (whose sole member SLF IV/SBI Development Holdings, LLC, which acted as Declarant from November 9, 2011 until a sale of its assets to Founders in 2015. There is no testimony in this case is that any of those entities had a purpose other than serving as Declarants for Wild Wing. The evidence supports a conclusion that they were formed for that sole purpose and when the developers were finished using them for that purpose, they were left without assets from which any claims could be satisfied.

In this case, there was a consistency of ownership and interests among the three pre-Founders Declarants, starting with Sunstar (Teal, Edwards and others) and carrying forward with the Stratford, "SLF" entities. Even the pleadings in this case require careful review, with charts and graphs, just to keep the various SLF and SB entities straight. To be clear, they were all involved with a single development, Wild Wing, and for a period of time of less than 10 years.

Further, the members of the Board of Directors, appointed by the Declarants, remained essentially the same from 2006 (Mr. Teal and Mr. Edwards were on the Board of Directors from 2006 until 2015 and Mr. Edwards and Mr. Black (joined Mr. Edwards in 2010) and remained on the Board until 2015), which evidences the continual ownership and management interests, notwithstanding the name changes for the Declarant entity.

The "bad faith", "wrongdoing" or "injustice" element of *Pertuis*, is satisfied by the fact that the Declarants were left insolvent by the non-Declarant pre-Founder's Defendants. No consideration was given for the assignment of assets from either Wild Wing Company, LLC or SLF IV/SBI Wild Wing, LLC. Those entities simply ceased to exist and were not available to satisfy the POA's claims for underfunding.

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As previously noted, the assignment of the assets of Wild Wing Residential Development, LLC to Founders Wild Wing, LLC did result in $11,000,000.00 of actual consideration. In his deposition, Mr. Teal was asked about the whereabouts of the proceeds of that transaction. One would think a sophisticated developer and business manager would have some inkling of the whereabouts of $11,000,000, but his testimony was as follows:

Q: Do you know how those sales proceeds were disbursed?

A: No, I do not.

Q: Do you know whether or not Wild Wing Residential Development, LLC, received any of those proceeds?

A: I do not.

See Exhibit E, Dep. Ralph Teal at Pg. 19:19 – 25.

Given his foggy recollection, he was asked who would know about those proceeds and he testified that the accountant for Wild Wing Residential Development, LLC, Elliott Davis, would know. *See* Exhibit E, Dep. Ralph Teal at Pg. 20:1-8. A subpoena was sent to Elliott Davis, which is attached as Exhibit Q. In response to that subpoena, Elliott Davis produced two documents which relate to the closing of the sale of the assets of Wild Wing Residential Development, LLC to Founders Wild Wing, LLC. (The sale also included the golf courses from SLF IV/SBI Wild Wing, LLC, which is not relevant to this case).

Of the approximately $11,000,000 that went to Wild Wing Residential Development, LLC for the sale of its assets (the remaining lots and the Declarant rights), $11,000,000 is reflected on the disbursement sheet and being "Due to JV". "JV" is SLVF/SBI JV, LLC, which interestingly was the 99% member of the second Declarant, SLF IV/SBI Wild Wing, LLC. The member of third Declarant, and actual seller, Wild Wing Residential Development, LLC, was SLF IV/SBI Development Holdings, LLC, which appears to have gotten nothing from the sale.

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This transaction raises several concerns which support Plaintiffs' claims. First, if there was not a relationship between the JV and the Declarant, why did the JV get substantially all of the proceeds of the sale of the Declarant's assets? The answer of course, is simple: The JV and its members were the *defacto* Declarants, performing that role through Wild Wing Residential Development, LLC. That alone is more than a scintilla of evidence to support a claim under *Kincaid* and *Pertius*.

We also have an admission from Stratford Land, that SLF IV/SBI Wild Wing, LLC and Wild Wing Residential Development, LLC were a joint venture. If so, why the change in members? Does it matter? In whose interest was that joint venture working given that neither SLF IV/SBI Wild Wing, LLC or Wild Wing Residential Development, LLC was left with any assets?

More troubling is that the distribution of funds to the JV (SLVF/SBI JV, LLC) left the Declarant, Wild Wing Residential Development, LLC, insolvent and without assets. Then, apparently, the proceeds were removed from the JV (which is also a Defendant in this case). Graeme Black, of Realstar, served on the Board of Directors along with Gil Edwards and Ralph Teal. Serving on the Board of Directors was a job function for Realstar on behalf of its clients, including Ralph Teal and Graeme Black. In his deposition, Mr. Black was asked about what assets of the Declarant (Wild Wing Residential Development, LLC) or the JV remained after the sale to Founders. Below is his testimony:

Q. Do you know what assets remained in the JV or in Wild Wing Residential after the sale to Founders?

A. I hope none.

Q. And does either the JV or Wild Wing Residential, are either of those entities still valid, ongoing concerns?

A. Valid, ongoing concerns in what way?

Q. Yeah. Are they still conducting business, to your knowledge?

A. I don't have any idea if they're still entities of record.

Q. Okay. Do you have any reason to believe they're conducting any business?

A. I have no reason to believe either way. We're not conducting business at Wild Wing.

See Exhibit R, Dep. Graeme Black at Pg. 68:8-23.

Mr. Teal was asked if Wild Wing Residential had assets remaining to pay the claims of the POA after the sale of its assets to Founders. His answer was:

Q. I asked you about the sales proceeds to Founders, and I think what you said is you don't know much about what happened to those sales proceeds.

A. Sales proceeds to Founders or from?

Q. To Founders. When you all sold to Founders and Founders paid $19 million, you don't know how those funds were disbursed?

A. No, sir.

Q. Do you know what, if anything, you received from the sale of that property?

A. No, sir, I don't.

Q. That's a question for the accountants?

A. Yes, sir.

See Exhibit E, Dep.Ralph Teal at Pg. 30:3-16.

As Black testified, the Declarant entity, Wild Wing Residential Development, LLC, was left assetless after the sale of the Declarants assets to Founders. Because of that, the innocent members of the POA, whose POA was underfunded by Wild Wing Residential Development, LLC and its predecessor Declarants, were deliberately left unable to satisfy any award they may obtain against the Declarant entities.

It would be a substantial injustice to allow the entities and people who controlled and benefitted from the actions (and inaction) of Wild Wing Residential, to pocket the proceeds of the sale of that entities assets and leave the POA and its members bereft of recovery.

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Furthermore, with respect to the non-Declarant entities, they have all asserted a counterclaim against Mr. Dykes and Mrs. Eisenhardt. In doing so they have *all* alleged that they have the rights of the Declarant under the Regime Documents and should be judicially estopped from now contending that they are unrelated to the Declarants for the purposes of liability.

South Carolina Unfair Trade Practices Act (SCUTPA)

The pre-Founders Defendants, all move for summary judgment as to the claim based upon the South Carolina Unfair Trade Practices Act. That motion should be denied.

The Unfair Trade Practices Act (UTPA) was created to protect the consumer in its purchases of goods and services. (*See* S.C. Code Ann. §39.5.10) To prevail on a UTPA claim, Plaintiffs must prove: 1. The defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; 2. The unfair or deceptive act affected the public interest, and 3. the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive acts. *See Wright v. Craft,* 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). If a violation of the act is found to be willful, treble damages and attorney's fees may be awarded.

As to the second element of the claim, the Plaintiffs must prove that the deceptive "practice" of Defendants affected the public interest. *Singleton v. Stokes Motors Inc.*, 358 S.C. 369, 379, 595 S.E. 2d 461 (2004) (internal citations omitted). To show that the public interest has been affected, the Plaintiffs need to show that the "(1) ...same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) By showing the company's procedures create a potential for repetition of the unfair and deceptive acts. *Id.*

In this instance, there is evidence to support all three components of the cause of action. First, the actions of the Defendants were deceptive and unfair and therefore actionable. The testimony of Teal,

Edwards and Black establish that they were, in essence, professional directors on HOA or POA boards.

Teal testified:

Q. The first time period with the Wild Wing Company, LLC, was September 26, '06, to December 22, 2010. Were you on the board of the Wild Wing POA at that point in time?

A. I don't remember how that board was set up. I don't remember.

Q. Do you don't know if you were on the board or not?

A. I don't remember.

Q. How about the time period of December 22, 2010, to November 9, 2011? That's the time period that SLF IV/SBI Wild Wing, LLC, was the declarant. Do you know if you served on the board then?

A. I believe I did.

Q. In the capacity as president?

A. I believe so.

Q. Did you attend any board meetings?

A. I did not.

Q. Why not?

A. The way our business has run for 30 years -- well, Gilford has been with me for about that long, Graeme almost that long -- is Gilford and Graeme run the day-to-day operations of all the HOAs, and they attend all the board meetings. They report back to me. After every board meeting we have a meeting to discuss kind of where it is, but the day-to-day operations of the board and the association they manage and run. That's the way we've run our business for, like I say, almost 30 years.
Se Dep. Ralph Teal, Jr. at Pg. 22:8-23:12.

Q. What is Real Star?

A. Real Star Management is the company that handles the day-to-day properties in the JV and other things that are done. It's a management company.

Q. When you say the "JV," what are you referring to?

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A. I'm talking about the Stratford/SBI properties. You asked me earlier SLF IV/SBI JV. I don't know that company, but it handles the assets of the Stratford/SBI properties.

Q. Real Star Management is owned by you and Mr. Edwards?

A. And Joe Brinn and Gary Ingersoll and Joe Brinn's son.

See Exhibit E, Dep. Ralph Teal, Jr. at Pg. 23:20-24:9.

Teal, who was a developer and an owner of Realstar, testified that Realstar, and its employees Teal, Black, and Edwards, hired Realstar to sit on the BOD for Wild Wing. He also testified that Realstar, Edwards, and Black, served in that capacity on numerous Boards of Directors for other developments for Sunstar and perhaps others.

The evidence also establishes that as directors, they oversaw, and in fact orchestrated, a multi-year effort, by the Declarants, running from 2006 until 2015, to avoid paying the POA all sums owed to the POA by the Declarants by employing erroneous accounting to calculate the Declarants Funding Alternative. Edwards himself claimed to be the architect of that effort by deciding that bad debt was not to be treated as a POA expense in calculating the Declarants' contributions. Teal and Black participated and facilitated that accounting slight of hand, which inured to the benefit of the Declarants, of which Teal and Edwards were owners, and was done at the expense of the POA.

As for Mr. Black, his directly deceptive efforts cannot be ignored. As established by the Affidavit of Barbara Eisenhardt (*see* Exhibit S), Black personally spoke to the non-Declarant owners about the benefits of the 2011 amendment, neglecting to tell them what the financial consequences would be for them and not explaining to them that he was advancing the interests of the Declarant, at their expense.

Furthermore, Mr. Black's testimony also highlights the cavalier attitude of Teal, Black, and Edwards in their roles as members of the Board of Directors. Black was asked about how he handled conflicts of interest between the interests of the members of the POA and the interests of his employer,

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Realstar, and the Declarants which appointed him to the Board of Directors. In sum, Black testified he had never seen such a conflict. His testimony follows:

> Q. What do you do when there is a conflict or a potential conflict between the interest of the declarant and the interest of the owners -- or the members, I should say?
>
> A. Can you give me an example of a conflict? I cannot think of one.
>
> Q. Sure. Well, while you've been doing your business for the last 20 years, I've been doing mine. And I have represented dozens and dozens of developers who have been sued by HOAs for various and sundry things, including construction deficiencies, board mismanagement, breaches of fiduciary duty, for example.
>
> Surely you're familiar with at least some of the cases that have been filed in and around the Myrtle Beach area between HOAs and developers.
>
> A. Right.
> Q. So that would be one type of conflict, where owners feel aggrieved because they have been given a building that they don't believe is suitable or proper.
>
> A. Right.
>
> Q. The declarant thinks it was.
>
> A. Right.
>
> Q. So if you're a board member and there's an issue like that, how do you resolve that?
>
> A. I can honestly tell you, I don't recall having any such conflict in my dual roles in my experience.

See Exhibit R, Dep. Graeme Black 37:21-38:25.

It is striking that a person who has professionally served on numerous Boards of Directors has never seen a conflict between the interests of a declarant and the interests of the members of an HOA or POA. One inference to be drawn from that testimony is that Mr. Black has not ever seen such a conflict because he has never bothered to consider any interests other than those of the Declarants who hire his company and appoint him to the numerous board positions. If one never opens his eyes to the interests of the members, then one never sees a potential conflict with what the Declarants want to do. That he would

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serve on boards and disregard the duties and obligations that come with that, not once but on numerous boards, is deceptive and unfair. It is deceptive and unfair on the part of his employer, Realstar, and is deceptive and unfair on the part of the Declarants who know of his objective to push through their interests and appoint him to carry that out. (To his credit, Mr. Black apparently attended meetings of the various Boards of Directors he was on. Mr. Teal, the Court may recall, never attended a meeting of the Board of Directors at Wild Wing despite being its president for nine years).

Innocent POA members and homeowners, like Barb Eisenhardt, have no idea that the Board of Directors, given to them by the Declarant, is not protecting their interests at all and is instead acting contrary to their interests.

Teal, Black, and Edwards misrepresented their roles to the members of the POA, and presumably others for which they served on the board of directors. The affirmatively put the interests of the Declarants ahead of those of the POA, to the point of not even being aware of it. That is at least a scintilla of evidence that would support a claim under SCUTPA. Likewise, the Declarants who appointed them, and who enjoyed the benefits of their loyalty, to the detriment of the POAs, are also liable for their actions.

Business Judgement Rule/ Breach of Fiduciary Duty/Declarant Liability

The Board member Defendants (Teal, Edwards, Black as well as Plankers, Shultz, and Taylor) as well as the Declarants, have all moved for summary judgment on the basis that their actions were protected by the business judgment rule. Those motions should be denied.

The Declarants have moved for Summary Judgement on the business judgment rule, which does not apply to the Declarants, who are fiduciaries, as set forth above in the *Walbeck* case referenced above. Contrary to the business judgement rule, courts are required to scrutinize with the" most zealous vigilance transactions" between the dominant fiduciary party (here the Declarants) and the party under its influence (here the POA).

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With respect to the board member motions, the business judgement rule is not applicable as a defense to the Plaintiffs claims because the business judgment rule applies to *intra vires* acts only (meaning those within the authority of the board members) and it does not apply where there is evidence of self-dealing, as is the case here, which warrants judicial review.

In South Carolina, the business judgment rule was explained by the Supreme Court in *Dockside Ass'n, Inc.* v. Deytens, 291 S.C. 214, 352 S.E.2d 714 (1987)*:*

> A court should be reluctant to question action taken *intra vires* by the governing board of a non-profit corporation. *See Papalexiou v. Tower West Condominium,* 167 N.J.Super. 516, 401 A.2d 280, 286 (Chanc.Div.1979) **("If the corporate directors' conduct is authorized, a showing must be made of fraud, self-dealing or unconscionable conduct to justify judicial review.").**

The actions of the board members with respect to the calculation of the Declarant Contributions were not *intra vires* and are thus not afforded protection under the business judgment rule. Plaintiffs' claims are, in part, based upon an ongoing and repetitive failure of the four Declarants to calculate their POA contributions in conformance with the requirements of the Regime Documents. The Defendants who were or are members of the Board of Directors condoned the underfunding and, at least in the case of Mr. Edwards, was responsible for it. Nothing authorizes the Board of Directors to waive or re-write the Regime Documents which was the effect of their actions with respect to the Declarant contributions.

Whether those actions were *intra vires* or *ultra vires*, is a question of fact. *See*, *Fisher, et al. v. Shipyard Village Council of Co-Owners, Inc.,* 415 S.C. 256, 272, 781 S.E2d 903 (2016) ("…ultimately, they jury must decide whether the Board violated the requirements of the Master Deed and Bylaws, which of the Board's actions were intra vires and which were ultra vires…").

Additionally, the evidence in this case is clear that the Board of Director Defendants, all appointed and controlled by the Declarants, were all "self-dealing" for the benefit of themselves (as owners of the Declarants, in the case of Mr. Teal, Mr. Black, and Mr. Edwards) or for the benefit of their masters, the

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Declarants. Mr. Black was employed by Realstar, which was owned by Mr. Teal and Mr. Edwards. According to Mr. Teal, Realstar and Mr. Black managed all the HOAs Mr. Teal developed. *See* Exhibit E, Dep. Ralph Teal, Jr. Pg. 23:20-24:9.

There is at least a question of fact as to whether Mr. Black's actions with respect to Wild Wing were influenced by his employment by and duties of loyalty to Realstar, Mr. Teal and Mr. Black. (An employee in South Carolina owes a duty of loyalty to his employer. *See Food Lion, Inc. v. Capital Cities/ABC, Inc.,* 194 F.3d 505 (4th Cir. Ct. App. 1999). The evidence on that point is compelling. For several years, the Declarants who appointed Mr. Black to the Board of Directors enjoyed favorable accounting which reduced the amount of money they owed to the POA. That accounting was at the direction of Mr. Black's boss, Mr. Edwards. Further, Mr. Black himself met with the members of the POA to persuade them to vote in favor of the 2011 amendment, without explaining to them the consequences of that amendment. As previously noted, Mr. Courtney, a property management expert, agrees that the POA received no benefit from it. Instead, the benefits of the amendment were realized only by Wild Wing Residential, LLC, the Declarant who appointed Mr. Black and in which Mr. Black's employers had a financial interest.

With regard to the actions of Shultz, Taylors and Plankers. First, like Black, Edwards, and Teal, they elected to continue to accept the erroneous accounting of the Declarant Funding Alternative even after Mr. Dykes brought it to their attention. Mr. Schulz, Mr. Plankers, and Mr. Taylor the affirmatively decided not to pursue recovery of the additional funding to which the POA is entitled, even after the demands of Mr. Dykes.

Regarding the 2016 Amendment, the testimony of Mr. Skirchak is that when Founders Wild Wing, LLC became the Declarant he advised them that the Declarant Funding Alternative was set to expire and that its expiration would mean a sharp increase in Declarant contributions from Founders. Based on that,

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the Founders appointed Board of Directors, moved for, and passed the 2016 Amendment which again, was for the sole benefit of Founders at the expense of the POA. That raises the possibility of self-dealing, in favor of the master who appointed them, and precludes application of the business judgment rule at summary judgment.

For the foregoing reasons, Defendants' motions based upon the business judgment rule should be denied.

The Plaintiffs Possess Derivative Capacity

The Defendants argue that Mr. Dykes and Mrs. Eisenhardt are not adequate representatives to prosecute this derivative action. In doing so, they wrongfully conflate the representative capacity requirements for a class action, under Rule 23(a), with those of a derivative action under Rule 23(b)(1). Their motion should be denied.

In a class action Rule 23(a), a representative Plaintiff is claiming personal damages, and is acting as a representative for personal damages sustained by others who are similarly situated. That he or she fairly represents the others who have ostensibly suffered the same or similar injury is a threshold requirement and must be satisfied before a class can be certified, which is also required by Rule 23(a).

Rule 23(b) allows an individual to prosecute a claim on behalf of an entity for damages to that entity, not for damages incurred by himself or herself. The rule exists so that entities who will not protect their own interests, such as here, when they are controlled by the wrongdoers, can be protected by those who have an interest in the entity.

Rule 23(b)(1) states as follows:

(b)(1) Derivative Actions by Shareholders.

> In a ***derivative action brought by one or more shareholders or members to enforce a right of a corporation*** or of an unincorporated association***, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of***

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> ***the transaction of which he complains*** or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. ***The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.*** The action shall not be dismissed or compromised without the approval of the court and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

The rule requires that the person or people bringing the action be *members* of the entity; that the entity having failed to enforce the right it could have asserted; that the complaint be verified; and that the plaintiffs were members at the time of the transactions of which they complain. Mr. Dykes and Ms. Eisenhardt indisputably meet those requirements and there is no certification process associated with Rule 23(b)(1).

Defendants argue that for whatever reasons Mr. Dykes and Mrs. Eisenhardt do not fairly represent the interest of other POA members, erroneously conflating that with Rule 23(a), and they disregard the rest of the relevant sentence, which says, "…similarly situated in enforcing the right of the corporation or association."

All of the members of the POA will gain equally through the enforcement of the POA rights in this case, which seeks to provide funding to the POA which was deprived by the actions of the Defendants. Even if there was a non-Declarant property owner who agreed with the accounting methodology employed by the Declarants, or who was all in favor of the amendments, if the POA recovers the sums it seeks in this case, such a member would receive the benefit of that in the form of a more fully, and correctly funded POA.

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The POA has Standing to Assert Claims

The Declarant entities have asserted that the POA does not have standing to bring this claim because, "The POA has not suffered an injury-in-fact. No creditors of the POA have ever been left unpaid and no lawsuits have ever been filed against the POA."

The focus by the Declarants on unpaid bills and lawsuits against the POA is misplaced. The issue is whether the POA has been paid all of the money that was due from the Declarants under the language of the Declarant Funding Alternative. It has not. It is impossible to argue that not being paid money the POA was owed does not result in a damage to the POA.

To illustrate this point expert Roy Strickland testifies as follows:

> Q. Do you have an opinion as to whether the reserves are adequately funded or not?
>
> A. No, sir. I haven't been asked to testify or look into that at this time.
>
> Q. If that changes, will you let me know?
>
> A. Yes, sir.
> And I will say this: To the extent that the developer has not paid these amounts that are owed under my calculation, the amount associated that ties to the reserves naturally would be unfunded. *See* Exhibit K, Dep. Roy Strickland Pg. 91:10-20.

Had the Declarants wished to tie their funding obligation to ensuring that all the bills of the POA would be paid or ensuring that the POA would not be sued by a creditor, then they should have written the Declarant Funding Alternative to say that. They did not and must comply with the funding obligation they created and agreed to in the Regime documents.

Counterclaim/Breach of Declaration

Defendants assert a first and only counterclaim entitled "Breach of the Declaration" which alleges that under Article XIII, Section 2, of the Declarations they are entitled to "all costs and expenses of this action, including reasonable attorney's fees." *Amd. Ans. and Counterclaim on Behalf of Wild Wing Co.,*

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LLC, et al., filed April 16, 2020 at ¶ 111 (emphasis added). The section of the Declarations cited by the Defendants is entitled "Enforcement" and provides, in pertinent part, as follows:

> Should Declarant of Association employ Counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for Declarant's Counsel, shall be paid by the Owner of such lot or Lots in breach thereof." *See* Exhibit D, Regime Documents, Covenants Article XII, Section 2.

In this action the Declarant is a defendant. The Declarant has not brought any action against any party to enforce any covenant, condition, reservation, or restriction of the covenants. While the Defendants entitle their claim "Breach of the Declaration," and assert that they are "enforcing the provisions of the Declaration" as a defense to the action brought against them. They did not initiate any action to enforce any covenant.

In fact, in this action the Declarants are alleged to have breached the covenants. The only entities who are subject to any enforcement action are the Defendants, and therefore if any parties may be entitled to costs incurred in this enforcement action it would be the Plaintiffs. Therefore, the Plaintiffs are entitled to summary judgment as to Defendant's counterclaim.

Conclusion

Pursuant to the arguments stated herein, the Motions of the Plaintiffs should be granted and the Motions of the Defendants should be denied.

[SIGNATURE BLOCK TO FOLLOW]

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LYLES & ASSOCIATES, LLC

s/ Robert T. Lyles, Jr.
Robert T. Lyles, Jr., Esq. (SC Bar No. 10299)
Emily C. Sheets, Esq. (SC Bar No. 78768)
1037 Chuck Dawley Boulevard, Suite G100
Mount Pleasant, South Carolina 29466-4162
T: (843) 577-7730 | F: (843) 577-7172
rtl@lylesfirm.com | ecs@lylesfirm.com
ATTORNEYS FOR PLAINTIFFS

March 3, 2021
Mount Pleasant, South Carolina

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C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit A

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WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
STATEMENTS OF REVENUES AND EXPENSES
YEARS ENDED DECEMBER 31

For Calculation of Declarant's Assessment - based on Accounting Methodology

	2007	2008	Restated 2009	2010	2011	2012	Restated 2013	Unsigned 2014	2015	Restated 2016	2017	2018	2019	TOTALS
TOTAL EXPENSES	$75,442	$296,445	$469,101	$507,445	$585,791	$524,416	$592,178	$593,429	$518,980	$489,586	$505,570	$544,472	$597,305	$6,300,160
PLUS: Reserve Contributions Budgeted		$79,603	$79,603	$79,603	$79,603	$79,603	$74,773	$78,000	$78,215	$85,273	$85,273	$123,300	$83,004	$1,005,853
LESS: Major Repairs And Replacements	0	0	0	0	$0	($24,316)	($27,001)	($50,096)	($30,260)	($2,570)	($2,140)	($26,061)	($80,901)	($243,345)
Net Additional Expense For Reserves	$0	$79,603	$79,603	$79,603	$79,603	$55,287	$47,772	$27,904	$47,955	$82,703	$83,133	$97,239	$2,103	$762,508
"Actual Operating Expenses"	$75,442	$376,048	$548,704	$587,048	$665,394	$579,703	$639,950	$621,333	$566,935	$572,289	$588,703	$641,711	$599,408	$7,062,668
REVENUES														
Member Assessments - Operations		$272,459	$294,899	$353,319	$375,104	$390,189	$369,108	$398,527						$2,453,605
Member Assessments - Future Repairs And Replacements		$79,603	$79,603	$79,603	$79,603	$79,603	$74,773	$78,000						$550,788
Assessments: Regular									$507,097	$509,335	$570,843	$587,228	$594,380	$2,768,883
Initial Assessments	$15,500	$3,400	$600	$400	$800	$700	$1,000	$800	$200	$1,000	$5,900	$1,200	$0	$31,500
Total Assessments	$15,500	$355,462	$375,102	$433,322	$455,507	$470,492	$444,881	$477,327	$507,297	$510,335	$576,743	$588,428	$594,380	$5,804,776
DEFICIT														
Due From Declarant	$59,942	$20,586	$173,602	$153,726	$209,887	$109,211	$195,069	$144,006	$59,638	$61,954	$11,960	$53,283	$5,028	$1,257,892
Declarant Contributions	($59,942)	($15,328)	($133,236)	($49,407)	($68,168)	($40,570)	$0	$0	$0	$0	$0	$0	$0	($366,651)
Net Additional Due from Declarant	$0	$5,258	$40,366	$104,319	$141,719	$68,641	$195,069	$144,006	$59,638	$61,954	$11,960	$53,283	$5,028	$891,241
Net Due with Interest		$15,646	$110,449	$262,477	$301,507	$134,282	$350,910	$238,215	$90,715	$86,655	$15,382	$63,018	$5,468	$1,674,724
Pre-Founders Due		$15,646	$110,449	$262,477	$301,507	$134,282	$350,910	$238,215	$22,679					$1,436,165
Founders Due									$68,037	$86,655	$15,382	$63,018	$5,468	$238,559

Source: Annual Audits
Updated with 2019 Audit information and interest thru 2020
Prepared by C.B. Dykes

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C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit B

Calculation of Declarant Obligation to Wild Wing POA based on Lots owned and The Original Date of Payments Required by Lot

9/24/2020

Year	Average Lots owned by Declarant*	Annual Dues	Total Due Based on Lots Owned	Declarant Contribution Received	Net Additional Due Based on Lots Owned	Base Pre-Founders	Add 8.75%/YR	Base Founders	Add 8.75%/YR	Totals
2011	315	$1,368	$430,920	$68,168	$362,752	$362,752	$771,755		$0	$771,755
2012	196	$1,368	$268,128	$40,570	$227,558	$227,558	$445,172		$0	$445,172
2013	187	$1,368	$255,816	$0	$255,816	$255,816	$460,187		$0	$460,187
2014+	179.5	$1,332	$239,094	$0	$239,094	$239,094	$395,509		$0	$395,509
2015#	179.5	$1,404	$252,018	$38,484	$213,534	$53,384	$81,202	$160,151	$243,605	$324,807
2016	162	$1,404	$227,448	$26,163	$201,285		$0	$201,285	$281,537	$281,537
2017	142	$1,404	$199,368	-$64,647	$264,015		$0	$264,015	$339,550	$339,550
2018	139.5	$1,404	$195,858	$0	$195,858		$0	$195,858	$231,641	$231,641
2019	137	$1,404	$192,348	$0	$192,348		$0	$192,348	$209,178	$209,178
Estimate of Current Amount Owed			$2,260,998	$108,738	$2,152,260	$1,138,604		$1,013,657		$2,152,260
Estimate of Current Amount Owed with interest @ 8.75%					$3,459,337		$2,153,825		$1,305,512	$3,459,337

*Based on Annual Audit Reports. Represents average of lots owned for the year.
+Audit never finalized. Used 2015 lot information.
The 2017 audit reclassified the 2015/16 Developer Contributions to Liabilities due back to the Developer
Updated for 2019 Audit Report
Interest Calculated until 12/31/20
Does not consider phasing

Prepared by C.B. Dykes
Updated 9/24/20

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Exhibit C

Declarant	Dates	Members	Management Entities	BOD Members/Officers Appointed by Declarant	Party Individuals Associated with the entity
Wild Wing Company, LLC	9/26/06-12/22/10	Sunstar, LLC (75%)		Ralph Teal Gilford Edwards	Ralph R. Teal, Jr. (Sunstar) Gilford Edwards (Sunstar) Carson Benton
SLF IV/SBI Wild Wing, LLC	12/22/10-11/09/11	SLVF/SBI JV, LLC (99%) (Members were Stratford Land Fund IV, L.P. (SLF) and SB Investments LLC)	Real Star	Ralph Teal Graeme Black Gilford Edwards	Ralph R. Teal, Jr. (Sunstar & Real Star) Graeme Black (Real Star Employee) Gilford Edwards (Sunstar Real Star)
Wild Wind Residential Development, LLC	11/09/11-04/13/15	SLF IV/SBI Development Holdings, LLC	SLF IV/SBI Properties MM, LLC managed by SB Investments	Ralph Teal Graeme Black Gilford Edwards	Ralph R. Teal, Jr. (SB Investments) Graeme Black Gilford Edwards
Founders Wild Wing, LLC	04/13/15-Present	Xian Dou		Rick Schultz Rick Taylor Tom Plankers	Dan Liu Zian Dou Rick Schultz Rick Taylor Tom Plankers

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C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit D

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EXHIBIT D

Selective, Relevant Portions of the Wild Wing Regime Documents.

Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation

1. **Declarant Voting Rights**:

2006 Article IV, Section 3:

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership.

Class A. Class A Members shall be all Owners excepting the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 1 above. When more than one person holds such interest or interests in any Lot, the vote attributable to such Lot shall be exercised as such persons mutually determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. ***The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to total votes in an amount equal to twice the number of the class A votes plus one.*** *The Class B membership shall cease and become converted to Class A membership upon the conveyance to Lot Owners of all Lots subject to this Declaration, or* ***December 31, 2015****, whichever first occurs. In addition, Declarant may terminate the Class B membership upon written notice to the Association.*

When a purchaser of an individual Lot or Lots takes title thereto from the Declarant, he automatically becomes a Class A Member.

2. **Declarant Funding Alternative:**

2006 Article VI, Section 2:

Section 2. Assessments, Liens and Personal Obligations Therefor, and Operation Maintenance of Common Areas Solely by the Association.

(a) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses, extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of

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such lot or Lots at the time when the assessment fell due. ***Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2010, each Lot within The Properties shall be exempt, at Declarant's option, from the assessments herein provided for (both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made by the Association against Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves****. Commencing* ***January 1, 2011****, the Declarant shall be subject to assessments as provided for in this Declaration so that it will pay assessments on the same basis provided for in this Declaration for other Lot Owners. In the event that additional phases are subjected to the provisions of this Declaration, then it is declared that until the later of: (1) January 1, 2011; or (5) five years after the date the amendments or supplemental declarations submitting such additional phase(s) are filed for record in the• public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the lot is conveyed by the Declarant to an Owner other than the Declarant. Until such time as a lot in such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less an amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lot Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.*

3. The 2011 Amendment:

2011 Amendment, Paragraphs 2 and 3:

2. Article IV, Section 3, Voting Rights, Class B. Is hereby amended and restated as follows:

Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to total votes in an amount equal to twice the number of the Class A votes plus one. The Class B Membership shall cease and become converted to Class A Membership upon the conveyance to Lot Owners of all Lots subject to this Declaration **or December 31, 2022**, whichever first occurs. In addition, Declarant may terminate the Class B membership upon written notice to the Association.

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3. Article VI, Section 2. Assessments, Liens and Personal Obligations Therefore, and Operation Maintenance of Common Areas Solely by the Association, subsection (a) is hereby amended and restated as follows:

(a) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses, extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot or Lots at the time when the assessment fell due. Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2016, each Lot within Phase I of the Property shall be exempt, at Declarant's option, from the assessments herein provided for (Both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessment made by the Association against the Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing **January 1, 2017**, the Declarant shall be subject to assessments as provided for in this Declaration so that it will pay assessments on the same basis provided for in this Declaration for other Lot Owners. In the event that additional phases are subjected to the provisions of this Declaration, then it is declared that until the later of: (1) January 1, 2017; or (10) ten years after the date the amendment or supplemental declarations submitting such additional phase(s) are filed for record in the public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the Lots is conveyed by the Declarant to an Owner other than the Declarant, Until such time as a lot is such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less and amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lots Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.

4. The 2016 Amendment:

Paragraph 1:

1. Article VI, Section 2. Assessments Liens and Personal Obligations Therefor, and Operation, Maintenance of Common Areas Solely by the Association, subsection (a) is hereby amended and restated as follows:

(A) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual

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assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses, extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot or Lots at the time when the assessment fell due. Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through **December 31, 2019**, each Lot within Phase I of the Property shall be exempt, at Declarant's option, from the assessments herein provided for (Both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessment made by the Association against the Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing **January 1, 2020**, the Declarant shall be subject to assessments as provided for in this Declaration for other Lot Owners. In the event that additional phases are subject to the provisions of this Declaration, then it is declared that until the later of: (1) December 31, 2019; or (10) ten years after the date the amendment or supplemental declarations submitting such additional phases(s) are filed for record in the public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the Lots are conveyed by the Declarant to an Owner other than the Declarant. Until such time as a lot in such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less an amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lot Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.

By-Laws of Wild Wing Plantation Property Owners' Association, Inc.

5. Voting Rights:

Article 2, Section 2:

Section 2. Voting Rights. The Association shall have two (2) classes of membership, Class "A" and Class 13", as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference. The classes of membership shall be as follows:

Class A. Class A members shall be all Owners excepting the Declarant. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for

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membership pursuant to the Declaration. When more than one person holds such interest or interests in any Lot, the vote attributable to such Lot shall be exercised as such persons, mutually determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. The sole Class B member sl-m11 be the Declarant (as defined in the Declaration). The Class B member shall be entitled to total votes in an amount equal to twice the number of the Class A votes plus one. The Class B membership shall cease and become converted to Class A membership upon the conveyance to Lot Owners of all Lots subject to the Declaration, or December 31, 2015, whichever first occurs. in addition, Declarant may terminate the Class B membership upon written notice to the Association. When a purchaser of an individual Lot or Lots takes title thereto from the Declarant, he automatically becomes a Class A member.

6. **Declarant Appointment of Board of Directors**:

Article 3, Section 2:

Section 2. Directors During Class "B" Control. **The Directors who shall serve on the Board of Directors of the Association shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member** until the first annual meeting of the membership following termination of Class B control at which tune the Board of Directors shall be increased to five (5) Members.

Within one hundred twenty (120) days thereafter, the Class "B" member shall call a meeting, as provided in Article II, Section 5, of these By-Laws for special meetings, to advise the membership of the termination of the Class "B" member's control or, in the alternative, shall notify each member by U.S. Mail that the Class B membership has terminated.

The Directors selected by the Class "B" member pursuant to this Section need not be Members as provided in Section 1 of this Article.

7. **Powers and Duties of the Board of Directors**:

Article 3, Section 18:

Section 18. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the Voting Members or the membership generally.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may be hereafter adopted, **the Board of Directors shall have the power to and shall be responsible for the following,** in. way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;

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(b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board of Directors, the annual assessment for each Declaration's proportionate share of the Common Expenses shall be payable in equal monthly installments, or as determined by the Board of Directors;

(c) providing for the operation, care, upkeep, and maintenance of all of the Common Areas;

(d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Areas and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) **collecting the assessments**, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, any reserve fund may be deposited, in the Directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and brining any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof,

(k) paying the cost of all services rendered to the Association or its Members and not chargeable to Owners;

(1) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon chart be available for examination by the Owners and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting principles;

(m) making available to any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Lot, current copies of the Declaration, the By-Laws, rules governing the Lot, and all other books, records, and financial statements of the Association; and

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the properties.

8. Amending the By-Laws:

Article 6, Section 6:

Section 6. Amendment. Prior to the conveyance of the first Lot, Declarant may unilaterally amend these By-Laws. Thereafter and otherwise, but subject to the provisions hereinafter provided, these By-Laws may be amended only by the affirmative vote' (in person or by alternate) or written consent of Voting Members representing sixty-seven (67%) percent of the total votes of the Association, including sixty-seven (67%) percent of the votes of Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than, the prescribed percentage of affirmative votes required for action to be taken under that clause. Further, no amendment of any provision reserving a right specifically in favor of the Declarant may be amended without the Declarant's express consent, No amendment shall be effective until recorded in the public records of dory County, South Carolina.

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C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit E

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IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY

C. BARRY DYKES and BARBARA EISENHARDT, individually and derivatively on behalf of The Wild Wing Plantation Property Owners' Association, Inc. Plaintiffs	: CIVIL ACTION NO. 2017-CP-26-04187
vs.	
WILD WING COMPANY, LLC; RALPH R. TEAL, JR.; SLF IV/SBI WILD WING, LLC; WILD WING RESIDENTIAL DEVELOPMENT, LLC; STRATFORD LAND MANAGER; SB INVESTMENTS, LLC; GRAEME T. BLACK; GILFORD EDWARDS; FOUNDERS WILD WING, LLC; FOUNDERS GROUP INTERNATIONAL, LLC; DAN LIU and XIAN DOW, Defendants	:

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WILD WING PLANTATION OWNERS'
ASSOCIATION, INC.,
Nominal Defendant

DEPONENT: RALPH R. TEAL, JR.
DATE: MAY 14, 2019
TIME: 10:00 a.m.
LOCATION: THE BELLAMY LAW FIRM
1000 29TH AVENUE NORTH
MYRTLE, SC

REPORTED BY: CAROL T. LUCIC, RPR, RMR

CLARK & ASSOCIATES, INC.
CHARLESTON, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM

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Were those people members of Wild Wing Company, LLC, individually or were they members through other entities?

A. I'm not sure how everybody had their membership.

Q. Was there a relationship between a company called Sun Star and Wild Wing Company, LLC, or do you know?

A. There was, but I don't remember the details of that. The same time frame?

Q. Yes, sir.

A. I don't remember the details of that.

Q. Do you know whether or not Wild Wing Company, LLC, ever had any assets?

A. I'm not sure. I mean we bought the property, but I'm not sure how it was titled.

Q. Do you know who funded the operations of Wild Wing Company, LLC? And by "who" I mean either what people or what entity.

A. Everybody funded their pro rata share from whatever entity how it was held, and then of course there were bank proceeds.

Q. So when Wild Wing Company, LLC, had an obligation to pay some bill or some expense, the people that you've mentioned through whatever

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entities they may have been doing business as funded that obligation?

A. Yeah. I wasn't involved in the accounting aspect of it. I don't remember how all that transpired or worked.

Q. The second declarant that was noted by your lawyers was an entity called -- you're familiar with them, but I've been struggling with them -- SLF IV/SBI Wild Wing, LLC.

Are you familiar with that entity?

A. Yes, sir.

Q. And the time period that that entity is referenced as having been a declarant was December 22, 2010 to November 9, 2011.

A. That doesn't mean -- I don't understand the time frames, but...

Q. What do you recall about the circumstances that led to Wild Wing Company, LLC, conveying its interest in the Wild Wing development to SLF IV/SBI Wild Wing, LLC?

A. Ask that one more time, please.

Q. What do you remember about the circumstances of the conveyance of Wild Wing Company, LLC's, interest in the Wild Wing development to SLF IV/SBI Wild Wing, LLC?

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A. There was a period of time there in 2010 that we were in a dispute with the Wild Wing Company, LLC. When I say "we," I'm just talking about Wild Wing Company, LLC. They were threatening foreclosure, and we as a company along with another company, SLF IV, ended up buying the notes and deed in lieu of that asset along with others in order to stave off a foreclosure action.

Q. And SLF refers generally to a company called Stratford Land; is that right?

A. Yes, sir.

Q. A Texas company?

A. Yes, sir.

Q. When you say they were threatening foreclosure, you meant --

A. Well -- I'm sorry. I broke your rule.

Q. I'm going to let you finish.

A. Go ahead.

Q. So Stratford Land, that was a developer I think with roots in Texas; right?

A. It's a private equity group. I don't know if you would classify them as a developer.

Q. But they came in and they invested through some entity in the Wild Wing project?

A. They came in and invested along with the

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people in the Wild Wing Company and in others into the new entity that ended up with the Wild Wing property.

Q. When you were beginning your explaining to me what resulted in that transaction, you said that they were threatening foreclosure. Do you mean NBSC?

A. Yes, NBSC.

Q. Because NBSC had loaned somebody the money to purchase the property and ultimately start the Wild Wing Company development; is that right?

A. Yes, sir.

Q. As I understand it, the people who you named as being members of Wild Wing Company, LLC, were also signatories on that NBSC note?

A. Yes, sir.

Q. So at some point NBSC wanted their money, and an agreement was reached with an entity affiliated with Stratford Land to come in and provide capital to pay off the NBSC note?

A. Stratford brought their money to the table, and then our interests brought -- the ultimate interests of the other side, the SBI side, brought their capital in, and then together with all that money they bought the asset. Stratford

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wasn't the only person.

Q. When you say "bought the asset," you mean what happened was those two entities or Stratford Land and the SBI crowd paid off the NBSC note?

A. I don't know the technical way it was structured. It was basically a deed in lieu, and it wasn't for that particular piece of property. It was a bigger group of properties that were assembled.

Q. The entity SLF IV/SBI Wild Wing, LLC, if we can focus just on that discrete entity --

A. One more time.

Q. SLF IV/SBI Wild Wing, LLC. I understand that at some point there was a joint venture with a similar name. Does that ring a bell to you?

A. Can you tell me the similar name?

Q. Yes, sir. SLF IV/SBI JV, LLC. Does that ring a bell?

A. I don't know if that was the parent company that it closed under or not. I don't remember.

Q. Do you know whether or not the company SLF IV/SBI Wild Wing, LLC, ever had any assets?

A. I don't know.

Q. Do you know how the obligations of SLF

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A. I do not.
Q. Do you know who, if anybody, funded the obligations of Wild Wing Residential Development, LLC?
A. I do not.
Q. That company was the declarant from 11/09/11 until 04/13/15.
A. What time in '15?
Q. April 13, 2015.
A. Okay.
Q. The next declarant which picked it up on April 13, 2015, is listed as Founders Wild Wing, LLC. Does that ring a bell to you?
A. I don't know that company.
Q. Do you know anything about the transfer of Wild Wing development assets from Wild Wing Residential Development, LLC, to Founders, Wild Wing, LLC?
A. Founders Wild Wing -- the Founders group -- I don't know their name, their entities -- purchased the asset Wild Wing from SLF IV/SBI Wild Wing in and around April. I don't remember the date.
Q. Were you involved in that transaction?
A. I'm one of two managing members of all the

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assets, so I signed the closing documents just in the course of doing business through the transaction, but as far as anything else, you know, the attorneys prepared the documents, and they're signed and it was closed just like we do on any other transaction.

Q. Without regard to the names of the entities, you're familiar with the Founders Group, and I'm not using that as a formal name, but the people who are Founders? Is that a fellow by the name of Dan Liu?

A. I met Dan. I did not deal with the dealings of the deal. It was being handled by Gilford, and others in the office handled the negotiations and the back and forth, but I have met Dan Liu.

Q. So who was handling the negotiations on behalf --

A. It was a collective effort between Stratford -- they're involved in every major decision, selling every asset. I'm involved, Gilford is involved, but the day-to-day minutiae of paper and all that I don't get involved in. Through the course of all that I did have a chance to meet Dan Liu. There was another person with him

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as well, some fellow by the name of Nick. I met him, but never had any substantive other than how are you doing type conversations with them.

Q. Who at Stratford Land was the person that you recall being most involved in those discussions?

A. Well, their attorney was involved in any of the -- they look at everything from the legal side, but they have an asset manager by the name of David Moore. That would be the liaison. It was a very transparent relationship, so we talked to, you know, all sorts of people. We may have even talked to the owner, Phil Wiggins. Like I said, it was very transparent and everybody talked to everybody through the process.

Q. Who arrived at the purchase price for the Wild Wing assets by Founders?

A. I don't remember how that came about.

Q. Do you know how those sales proceeds were disbursed?

A. No, I do not.

Q. Do you know whether or not Wild Wing Residential Development, LLC, received any of those proceeds?

A. I do not.

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Q. If you were going to try to find out what happened to the proceeds, where would you go look?

A. I would ask our accountant.

Q. Who is that?

A. It would be Darren Hardin.

Q. With Elliott Davis?

A. Well, he was with Elliott Davis. He's not with them any longer.

Q. Who is he with now?

A. I think he's on his own. I don't know the circumstances with him and Elliott Davis, but he did work a long time for Elliott Davis. He was the -- we called it a JV, but he was the accountant of record for that, and he in conjunction with Stratford and the attorneys on the SBI side worked together on that.

Q. Is he local to Myrtle Beach, Charlotte?

A. I think he lives in Columbia.

Q. There is a reference in the filing that your attorneys made that says at the time of the transfers of rights between the declarants, so as Wild Wing Company, LLC, conveyed its declarant rights to SLF IV/SBI Wild Wing, LLC, and as that entity conveyed its rights to Wild Wing Residential Development, LLC --

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Q. Why not?

A. The way our business has run for 30 years -- well, Gilford has been with me for about that long, Graeme almost that long -- is Gilford and Graeme run the day-to-day operations of all the HOAs, and they attend all the board meetings. They report back to me. After every board meeting we have a meeting to discuss kind of where it is, but the day-to-day operations of the board and the association they manage and run. That's the way we've run our business for, like I say, almost 30 years.

Q. I'm familiar or have become familiar in this case with a company called Real Star.

A. Uh-huh.

Q. You said "uh-huh." I didn't ask a question. I just want to make sure if you have something to say, that you say it.

A. I'm sorry.

Q. What is Real Star?

A. Real Star Management is the company that handles the day-to-day properties in the JV and other things that are done. It's a management company.

Q. When you say the "JV," what are you

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referring to?

A. I'm talking about the Stratford/SBI properties. You asked me earlier SLF IV/SBI JV. I don't know that company, but it handles the assets of the Stratford/SBI properties.

Q. Real Star Management is owned by you and Mr. Edwards?

A. And Joe Brinn and Gary Ingersoll and Joe Brinn's son.

Q. Does Real Star Management charge a fee for its services?

A. We get paid a fee, yes, sir.

Q. You mentioned a moment ago that you, Graeme, and Mr. Edwards have been together about 30 years?

A. Well, Gilford and I have been together since about 1992. Graeme has been with us since the mid-'90s. There have been periods of time that I have done other things without -- we sold our company in '98. Graeme and Gilford stayed on with that company. I started a new company. In 2002-ish Gilford came back with us, and we've worked together since then, 2002, 2003. Graeme came to work back with us in 2011. We've known each other and stayed in contact for those years

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Q. So you don't know if that's true or not?
A. I don't know if it's true or not.
Q. I asked you about the sales proceeds to Founders, and I think what you said is you don't know much about what happened to those sales proceeds.
A. Sales proceeds to Founders or from?
Q. To Founders. When you all sold to Founders and Founders paid $19 million, you don't know how those funds were disbursed?
A. No, sir.
Q. Do you know what, if anything, you received from the sale of that property?
A. No, sir, I don't.
Q. That's a question for the accountants?
A. Yes, sir.
Q. One of the issues that has been raised in this case was a decision in 2011 to amend the regime documents to extend the time period that the declarant had a funding option. They could either pay on a per lot basis or they could pay based on the language of the regime documents, basically pay the shortfall of the HOA. Are you familiar with that?
A. I'm familiar with that, yes, sir. I'm

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all the declarant control.

Q. Including the funding option?

A. Everything.

Q. Have you read the depositions of Mr. Black or Mr. Edwards in this case?

A. I have not.

Q. Have you talked to them about their depositions?

A. In generalities.

Q. Were you involved in the decision to extend those declarant rights including that funding obligation?

A. Everybody within SLF was involved because to extend those declarant rights was an issue to save the development, to make it more marketable. So it stabilized the value of the asset. Without that there wouldn't have been an opportunity for anybody to buy -- well, we wouldn't have bought it. We wouldn't have been interested in that nor would any other developer be as well. If that were to happen, it would negatively impact every property owner out there.

Q. How is that?

A. Because I think it would have made it less desirable for a developer or anybody to come in and

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buy that property because without the declarant control, I don't know of an issue -- I've never been involved in anything in my 30 years or seen or heard of anybody doing that as a developer.

Q. You mean anybody coming in and buying development rights when the developer or the declarant didn't have control?

A. We've never had that that I'm aware of. We wouldn't be a part of that, and I don't think anybody else -- a professional or any other developer would.

Q. If you can for a minute, I want to ask this question in a particular context. What I want to try to understand from you is this: Can you quantify the benefit that you believed that the members of the POA received because of the extension of development rights, declarant rights? Can you tell me what the individual homeowners, members of the POA got out of that?

A. I can't tell you, but I do know that it stabilized the community. There are a lot of cases around this town where similar communities' property values went to 5, 6 thousand dollars a lot. Because of what was done there, that saved that community and it saved everybody invested in

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Wing, LLC, was not going to be able to pay off its obligations?

A. One more time.

Q. Was there ever a risk that SLF IV/SBI Wild Wing, LLC, would not have been able to pay its obligations?

A. No, sir.

Q. Prior to the conveyance to Founders Wild Wing Residential Development, LLC, was the declarant, and that was the one that we talked about from November 9, 2011, to April 13, 2015.

Is there any evidence that you can point me to that indicates that that declarant was ever unable to pay its bills?

A. "That declarant" being?

Q. Wild Wing Residential Development, LLC.

A. No, sir.

Q. How did the members of the POA -- I'm speaking specifically to individual property owners -- how did they benefit from the sale to Founders?

A. I think they benefited from the sale to Founders and from SBI because a stable company came in there and continued to develop that property increasing and helping to stabilize everybody's

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C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit F

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Instrument#: 2010000127957, DEED BK: 3497 PG: 1935 DOCTYPE: 046 12/28/2010 at 03:25:55 PM, 1 OF 8 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

Cross Reference: Instruments recorded in Deed Book 1978, at Page 855; Deed Book 3164, at Page 361; Deed Book 2001, at Page 107; Deed Book 3248, at Page 1269; Deed Book 3248, at Page 1277; Deed Book 3287, at Page 1176; Deed Book 3300, at Page 173; Deed Book 3374, at Page 2692; each in the records of Horry County, South Carolina.

When recorded, please return to:
M. Edwin Hinds, Jr.
Bellamy, Rutenberg, Copeland, Epps,
Gravely & Bowers, P.A.
1000 29th Avenue North
P.O. Box 357
Myrtle Beach, South Carolina 29578

ASSIGNMENT OF RIGHTS

This ASSIGNMENT OF RIGHTS ("Assignment") is made and effective this 22nd day of December, 2010 (the "Effective Date"), by and between WILD WING COMPANY, LLC, a South Carolina limited liability company ("Assignor") and SLF IV / SBI WILD WING, LLC, a Texas limited liability company ("Assignee").

WHEREAS, simultaneous with the execution of this Assignment, Assignor is transferring to Assignee all of its interest in that certain real property commonly referred to as Wild Wing Plantation and more fully described on **Exhibit "A"** attached hereto (the "Property"); and

WHEREAS, the Property is subject to those certain restrictive covenants, restrictions, easements, charges and liens relative to the Property as more fully described on **Exhibit "B"** attached hereto (the "Covenants"), as amended from time to time; and

WHEREAS, the Covenants include various reserved rights, membership interests in associations (including, but not limited to, the Class B membership interests in Wild Wing Plantation Property Owner's Association, Inc. and the Class C membership interests in Wild Wing Plantation Road Maintenance Association, Inc.), options, conditions and powers to include, but not limited to, the right to levy assessments and dues against lots subject to the Covenants, lot owners and members of any entities or organizations within the Property established from time to time by the Assignor (collectively the "Declarant Rights"); and

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to assume from Assignor, the Declarant Rights and any other rights Assignor may have in and to the Covenants; and

WHEREAS, under the Covenants, Assignor has the power and authority to enter this Assignment.

NOW, THEREFORE, for and in consideration of Ten Dollars and No/100 ($10.00) and other good and valuable consideration, Assignor hereby transfers and assigns to Assignee, its successors or assigns, all of Assignor's right, title and interest in and to the Covenants and the Declarant Rights subject to the following terms and conditions, to-wit:

1. Assignor hereby assigns all of its interest in the Covenants and the Declarant Rights effective immediately upon execution of this Agreement and recording in the Office of the Register of Deeds of Horry County, South Carolina.

2. Assignor warrants and represents that it is the Declarant under the terms of the Covenants.

3. Assignor warrants and represents that as Declarant it has the right, title, and authority to assign its interest in the Covenants and Declarant Rights.

4. Assignor warrants and represents that it has not previously assigned any of its interest in the Covenants and Declarant Rights to any other person, party or entity.

5. Assignor warrants and represents that it is not currently in breach of its obligations and duties under the Covenants and that there is no current act or omission which, if continued, would constitute a breach of its obligations and duties under the Covenants.

6. Assignor warrants and represents that all assessments, dues or other obligations of Declarant are current and have been paid through December 31, 2010.

7. This Assignment shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Assignee, its successors and assigns.

8. This Assignment shall be governed by and construed in accordance with the laws of the State of South Carolina.

[SIGNATURE PAGES TO FOLLOW]

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IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment of Rights as of the day and year first written above.

Witnesses:

ASSIGNOR:

WILD WING COMPANY, LLC, a South Carolina limited liability company
By: Sunstar, LLC, a SC limited liability company
Its: Manager
By: _____
Its: Manager

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF Richland)

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Ralph R. Teal Jr, Manager of Sunstar, LLC, Manager of **Wild Wing Company, LLC**, a South Carolina limited liability company, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 22nd day of December, 2010.

(SEAL)
Notary Public for South Carolina
My Commission expires: 3/17/18

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Witnesses:

ASSIGNEE:

SLF IV / SBI WILD WING, LLC, a Texas limited liability company

By: SB Investments, LLC, a South Carolina limited company, its managing member

By: _____
Ralph T. Teal, Jr., Co-Manager

By: _____
Jeffrey B. Turner, Co-Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF Richland)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Ralph T. Teal, Jr. and Jeffrey B. Turner, both Co-Managers of SB Investments, LLC, a South Carolina limited liability company, Manager of **SLF IV / SBI WILD WING, LLC**, a Texas limited liability company, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 22nd day of December, 2010.

_____ (SEAL)
Notary Public for South Carolina
My Commission expires: 3/17/18

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EXHIBIT "A"

Parcel 1:

All and Singular all that certain piece, parcel or lot of land being situated in Conway Township, Horry County, State of South Carolina, and being more particularly described as that certain 1003.426 more or less acre tract on Sheet 1 of 2 on a map of "Wetlands Located on Buist-APAC Tract of International Paper Company for Interstate Realty Corporation", dated September 18, 1986, revised November 3, 1986, prepared by Sur-Tech, Incorporated, which map is recorded in records of Horry County, Plat Book 93, at Page 186.

A. Less and excepting:

All and Singular, that certain piece, parcel or tract of land situate, lying and being in Conway Township, Horry County, South Carolina, and more particularly described as 10.42 acres, more or less, as shown on a plat or map of property made for Wild Wing Plantation, Inc. by Southstar Surveying, Inc. dated July 1, 1996, and recorded in Plat Book 152, at Page 134, in the Office of the Register of Deeds for Horry County, South Carolina, which is by reference made a part of this description. (Aviary Village)

B. Less and excepting:

Those certain lots of land described as Lots 1 - 12 of Wild Wing Industrial Park as shown on a plat entitled "Final Subdivision Plat of Wild Wing Industrial Park" dated August 10, 1999, and recorded August 16, 1999, in Plat Book 164, at Page 189, Office of the Register of Deeds for Horry County.

C. Less and excepting:

Those certain lots of land described as Lots 1 through 72, in Phase 2-A of the Sanctuary at Wild Wing Plantation and any common areas/amenity areas contained therein in the Sanctuary Phase 2-A. Said lots being more particularly shown as all lots in Phase 2-A on a plat made by Survey Technology recorded in Plat Book 154, at Page 103, in the Office of the Register of Deeds for Horry County, South Carolina.

D. Less and excepting:

Those certain parcels being described as roadways and easements for drainage which were conveyed to the City of Conway in Deed Book 2393, at Page 1032, Office of the Register of Deeds for Horry County, South Carolina.

E. Less and excepting:

That certain lot or parcel of land described as Parcels "A", "B" and "C", Phase 2-B, The Sanctuary at Wild Wing Plantation PUD, containing 6.912 acres, more or less, and more particularly shown on a plat prepared by Thomas & Hutton Engineering Co. dated April 1, 2005, recorded in Plat Book 204, at Page 164, in the Office of the Register of Deeds for Horry County, South Carolina.

Parcel 2:

All and Singular, all that certain piece, parcel or lot of land being situate in Conway Township, Horry County, State of South Carolina, being more particularly described as that certain twenty (20) acre parcel shown on Sheet 1 of 2 on the plat entitled "Wetlands Location on the Buist-APAC Tract of International Paper Company for Interstate Realty Corporation", dated September 18, 1986, revised November 3, 1986, prepared by Sur-Tech, Incorporated and recorded in the records of Horry County in Plat Book 93, at Page 186.

A. Less and excepting:

All and Singular, all that certain piece, parcel or tract of land in Conway Township, Horry County, South Carolina, consisting of 2.351 acres, more or less, and being further designated as Tract 2 on that certain map entitled "Boundary Survey for Wild Wing Golf Plantation", prepared by Survey Technology, Inc., on February 1, 2000, and recorded on March 14, 2000, in Plat Book 168, at Page 132, in the Office of the Register of Deeds for Horry County. (Peppertree Sales Center Parcel).

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Parcel 3:
All and Singular, that certain piece, parcel or lot of land situate, lying and being in Conway Township, Horry County, South Carolina, shown and designated as Parcel F-2 containing 5.175 acres, on that certain map for Interstate Realty Corp. by Sur-Tech, Incorporated, dated October 29, 1986, which map is recorded in Plat Book 102, at Page 254, records of Horry County.

Said parcel is more particularly described on said map as follows: Commencing at an iron pin N on the northeastern margin of U.S. Hwy. 501 on the line of Tract F-1 as shown on said map, thence along the northeastern margin of U.S. Hwy. 501, North 38 degrees 04 minutes 08 seconds West 175 feet to an iron pin N; thence North 51 degrees 55 minutes 40 seconds East 1,277.25 feet to an iron pin N on the southwestern margin of the Horry County Railroad Right-of-Way; thence along the southwestern margin of said railroad right-of-way, South 45 degrees 13 minutes 23 seconds East 176.37 feet to an iron pin N, thence South 51 degrees 55 minutes 40 seconds West 1,299.22 feet to the beginning corner.

Said parcel is bounded on said map as follows: Northwest by Tract F-3; Northeast by Horry County Railroad; Southeast by Tract F-1; and Southwest by U.S. Hwy. 501.

Parcel 4:
All and Singular, all that certain piece, parcel or tract of land in Conway Township, Horry County, South Carolina, being shown as "Tract A" containing 10.056 acres, more or less, on that certain survey entitled "Survey of Buist Railroad Frontage Tract for International Paper Realty Corporation, Conway Township, Horry County, South Carolina"; said survey dated May 15, 1996 and prepared by Survey Technology, Inc. Said survey has been recorded on June 14, 1996 in Plat Book 141, at Page 205, Register of Mesne Conveyances, Horry County, South Carolina.

LESS AND EXCEPTING FROM PARCELS 1, 2, 3 AND 4 ABOVE THE FOLLOWING DESCRIBED PROPERTIES:

ALL AND SINGULAR, those certain pieces, parcels or lots of land, situate, lying and being in Horry County, South Carolina, designated as Lots 1, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28,30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 61, 62, 63, 65, 66, 67, 68, 69, 70, 76, 77, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100,101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 117, 118, 119,122, 125, 127, 129, 130, 131, 132, 133, 135, 136, 137, 140, 141, 143, 149, 150, 151, 152, 155, 157, 162, 163, 166, 168, 169, 170, 174, 175, 176, 177, 178, 179, 181, 182, 184, 186, 193, 194, 195, 199, 202, 203, 204, 205, 206, 208, 209, 211, 214, 215, 216, 218, 219, 220, 221, 222, 223, 225, 226, 227, 228, 229, 230, 231, 232, 235, 236, 238, 239, 240, 247, 248, 249, 250, 251, 252, 253, 254, 256, 257, 259, 262, 264, 265, 270, 283, 284, 285, 287, 288, 289, 292, 293, 294, 299, 308, 310, 313, 314, 317, 318, 323, 324, 325, 326, 327, 328, 330, 331, 332, 333, 334, 335, 336 and 337, Phase I of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Phase I Wild Wing Plantation", dated September 18, 2006 and recorded September 20, 2006 in Plat Book 217 at Pages 55 through 55i inclusive, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

ALL AND SINGULAR, those certain pieces, parcels or lots of land, situate, lying and being in Horry County, South Carolina, designated as Lots 338, 339, 340, 341, 342, 343, 344, 345, and 346, Phase IB of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Wild Wing Plantation Phase IB", dated May 3, 2007, revised May 10, 2007 and recorded May 29, 2007 in Plat Book 225 at Page 298, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

ALL AND SINGULAR, those certain pieces, parcels or lots of land, situate, lying and being in Horry County, South Carolina, designated as Lots 351, 359, 360, 364, 365, 372, 374, 375, 376, 377, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 414, 415, 416, 417, 419, 420, 422, 423, 424, 425, 426, 427, 428, 429, 430, 435, 437, 438, 443, 446, 447, 448, 449, 450, 451 and 452, Phase 2 of Wild Wing Plantation as shown on that certain plat

prepared by Associated Land Surveyors entitled "Final Plat of Wild Wing Plantation Phase Two", dated May 3, 2007, final revised May 29, 2007 and recorded May 29, 2007 in Plat Book 225 at Pages 299 and 300, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

ALL AND SINGULAR, those certain pieces, parcels or lots of land, situate, lying and being in Horry County, South Carolina, designated as Lots 459, 460, 461, 462, 463, 464, 465, 468, 469, 470, 471, 473, 475, 477, 478, 482, 484, 486, 487, 489, 490, 491, 492, 493, 494, 497, 501, 502, 503, 505, 507, 510, 512, 513, 514, 515, 516, 524, 525, 529, 530, 541, 543, 544, 545, 546, 547, 548, 549, 550, 555 and 556, Phase 3 of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Wild Wing Plantation Phase Three", dated October 12, 2007 and recorded October 24, 2007 in Plat Book 231 at Pages 264 and 265, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as "Proposed City of Conway" containing 130,141 sq. ft., 2.99 acres, Phase I of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Phase I Wild Wing Plantation", dated September 18, 2006 and recorded September 20, 2006 in Plat Book 217 at Pages 55 through 55i inclusive, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

ALSO LESS AND EXCEPTING:

Those certain streets and roadways shown on the following plats prepared by Associated Land Surveyors:

(a) "Final Plat of Phase I Wild Wing Plantation", dated September 18, 2006, and recorded September 20, 2006, in Plat Book 217, at Pages 55 through 55i inclusive, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

(b) "Final Plat of Wild Wing Plantation Phase IB", dated May 3, 2007, revised May 10, 2007 and recorded May 29, 2007, in Plat Book 225, at Page 298, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

(c) "Final Plat of Wild Wing Plantation Phase Two", dated May 3, 2007, final revised May 29, 2007, and recorded May 29, 2007, in Plat Book 225, at Pages 299 and 300, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

(d) "Final Plat of Wild Wing Plantation Phase Three", dated October 12, 2007, and recorded October 24, 2007, in Plat Book 231, at Pages 264 and 265, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

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ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

EXHIBIT B

COVENANTS

1. Declaration of Restrictive Covenants regarding Wetlands by Wild Wing Plantation, Inc. recorded October 1, 1997, in Deed Book 1978, at Page 855, records of Horry County, South Carolina.

2. Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens for Wild Wing Plantation dated September 26, 2006, and recorded September 27, 2006 in Deed Book 3164, at Page 361, records of Horry County, South Carolina, as amended.

3. Declaration of Special Covenants for the Wild Wing Plantation Road Maintenance Association, Inc. dated December 22, 1997, by Wild Wing Plantation, Inc. and recorded in Deed Book 2001, at Page 107, records of Horry County, South Carolina.

4. Supplemental Declaration to Declaration of Protective Covenants for Wild Wing Plantation recorded May 30, 2007, in Deed Book 3248, at Page 1269, records of Horry County, South Carolina.

5. Supplemental Declaration to Declaration of Protective Covenants for Wild Wing Plantation recorded May 30, 2007, in Deed Book 3248, at Page 1277, records of Horry County, South Carolina.

6. Supplemental Declaration to Declaration of Protective Covenants for Wild Wing Plantation recorded October 25, 2007, in Deed Book 3287, at Page 1176, records of Horry County, South Carolina.

7. Supplemental Declaration to Declaration of Protective Covenants for Wild Wing Plantation recorded December 12, 2007, in Deed Book 3300, at Page 173, records of Horry County, South Carolina.

8. Supplemental Declaration to Declaration of Protective Covenants for Wild Wing Plantation recorded November 20, 2008, in Deed Book 3374, at Page 2692, records of Horry County, South Carolina.

C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit G

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Assignment of Rights

ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

Instrument#: 2011000113531, DEED BK: 3550 PG: 3051 DOCTYPE: 111 11/09/2011 at 01:19:45 PM, 1 OF 3 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

RETURN TO APM
BELLAMY, RUTENBERG, COPELAND
EPPS, GRAVELY & BOWERS, P.A.
POST OFFICE BOX 357
MYRTLE BEACH, SC 29578
843-448-2400

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ASSIGNMENT OF RIGHTS

This ASSIGNMENT OF RIGHTS ("Assignment") is made this 9th day of November, 2011 by and between SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company (hereinafter referred to as "Assignor") and Wild Wing Residential Development, LLC, a Delaware Limited Liability Company (hereinafter referred to as "Assignee").

RECITALS

WHEREAS, Wild Wing Plantation is subject to that certain Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation, dated September 26, 2006 and recorded September 27, 2006 in Deed Book 3164, at Page 361, records of Horry County, South Carolina, (the "Covenants"), as amended from time to time; and

WHEREAS, the Covenants include various reserved rights, interests in associations, options, conditions and powers to include, but not limited to, the right to levy assessments and dues against lots subject to the Covenants, lot owners and members of any entities or organizations within the Property established from time to time by the Assignor (collectively the "Declarant Rights"); and

WHEREAS, Wild Wing Company, LLC ("Wild Wing Company") assigned to Assignor the Declarant Rights and any other rights Wild Wing Company had in and to the Covenants, by that certain Assignment of Rights dated December 22, 2010 and recorded December 28, 2010 in Deed Book 3497, at Page 1935, records of Horry County, South Carolina; and

WHEREAS, Assignor desires to assign to Assignee and Assignee desires to assume from Assignor, the Declarant Rights and any other rights Assignor may have in and to the Covenants.

WHEREAS, Assignor is the Declarant (as such term is defined in the Covenants) under the terms of the Covenants and as such has the power and authority to enter this Assignment.

NOW, THEREFORE, for and in consideration of Ten Dollars and No/100 ($10.00) and other good and valuable consideration, Assignor hereby transfers and assigns to Assignee, its successors or assigns, all of Assignor's right, title and interest in and to the Covenants and the Declarant Rights subject to the following terms and conditions, to-wit:

1. Assignor hereby assigns all of its interest in the Covenants and the Declarant Rights effective immediately upon execution of this Agreement and recording in the Office of the Register of Deeds of Horry County, South Carolina.

2. Assignor warrants and represents that it has not previously assigned any of its interest in the Covenants and Declarant Rights to any other person, party or entity.

3. This Assignment shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Assignee, its successors and assigns.

4. This Assignment shall be governed by and construed in accordance with the laws of the State of South Carolina.

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IN WITNESS WHEREOF the parties hereto have set their respective hand and seals this 9th day of November, 2011.

WITNESSES:

ASSIGNOR:

SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company

By: **SLF IV / SBI Properties MM, LLC, a Texas Limited Liability Company, its Manager**

By: **SB Investments, LLC, a South Carolina Limited Liability Company, its Managing Member**

Patty Keyes

Anne Anderson

By: _____
Ralph R. Teal, Jr., Co-Manager

WITNESSES:

ASSIGNEE:

Wild Wing Residential Development, LLC, a Delaware Limited Liability Company

By: **SLF IV / SBI Properties MM, LLC, a Texas Limited Liability Company, its Manager**

By: **SB Investments, LLC, a South Carolina Limited Liability Company, its Managing Member**

Patty Keyes

Anne Anderson

By: _____
Ralph R. Teal, Jr., Co-Manager

Instrument#: 2011000113531, DEED BK: 3550 PG: 3053 DOCTYPE: 111 11/09/2011 at 01:19:45 PM, 3 OF 3 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, states and deposes that s/he saw the within named SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company, by SLF IV / SBI Propertes MM, LLC, by SB Investments, LLC, a South Carolina Limited Liability Company, its managing member, by Ralph R. Teal, Jr., Its Co-Manager, Sign, Seal and as its Act and Deed deliver the within Assignment and that s/he with the undersigned notary witnessed the execution thereof.

Patty Keyes
(above witness also sign here)

SWORN to before me this 9th
day of November, 2011
Anne Anderson (L.S.)
Notary Public for South Carolina

My Commission expires: 2-3-16

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Wild Wing Residential Development, LLC, a Delaware Limited Liability Company, by SLF IV / SBI Properties MM, LLC, a Texas Limited Liability Company, its Manager, by SB Investments, LLC, a South Carolina Limited Liability Company, its Managing Member, by Ralph R. Teal, Jr., Co-Manager, Sign, Seal and as its Act and Deed deliver the within Assignment; and that s/he with the other witness subscribed above witnessed the execution thereof.

Patty Keyes

SWORN to before me this 9th
day of November, 2011
Anne Anderson (L.S.)
Notary Public for South Carolina
My Commission Expires: 2-3-16

ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit H

Assignment of Declarant Rights

ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

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After recording return to:
Bellamy, Rutenberg, Copeland, Epps,
Gravely & Bowers, P.A.
1000 29th Avenue North
PO Box 357
Myrtle Beach, SC 29578

Instrument#: 2015000043010, DEED BK: 3812 PG: 2978 DOCTYPE: 111 04/14/2015 at 09:33:27 AM, 1 OF 68 HORRY COUNTY, SC REGISTER OF DEEDS

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ASSIGNMENT OF DECLARANT RIGHTS

This ASSIGNMENT OF RIGHTS ("Assignment") is made and effective this 13th day of April, 2015 (the "Effective Date"), by and between **Wild Wing Residential Development, LLC**, a Delaware Limited Liability Company ("Assignor") and **Founders Wild Wing, LLC**, a South Carolina Limited Liability Company ("Assignee").

WHEREAS, by Deed of even date herewith, to be recorded in the Office of the Register of Deeds for Horry County, Assignor has conveyed to Assignee all of its interest in that certain real property commonly referred to as a portion of Wild Wing Plantation as more fully described on Exhibit "A" attached hereto (the "Property"); and

WHEREAS, the Property is subject to that certain Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation, dated September 26, 2006, and recorded September 27, 2006, in Deed Book 3164, at Page 361, in the office of the Register of Deeds for Horry County, South Carolina, a copy of which is attached hereto as Exhibit "B" (the "Covenants"), as amended from time to time; and

WHEREAS, the Covenants include various reserved rights, membership interests in associations, including, but not limited to, rights of the Declarant pursuant to the Covenants, the Class B membership interests in Wild Wing Property Owner's Association, Inc. and the options, conditions and powers to include, but not limited to, the right to levy assessments and dues against lots subject to the Covenants, lot owners and members of any entities or organizations within the Property established from time to time by the Assignor (collectively the "Declarant Rights"); and

WHEREAS, Wild Wing Company, LLC ("Wild Wing Company"), assigned to SLF IV / SBI Wild Wing, LLC ("SLF Wild Wing"), the Declarant Rights and any other rights Wild Wing Company had in and to the Covenants, by that certain Assignment of Rights dated December 22, 2010, and recorded December 28, 2010, in Deed Book 3497, at Page 1935, records of Horry County, South Carolina; and

WHEREAS, SLF Wild Wing assigned to Assignor the Declarant Rights and any other rights SLF Wild Wing had in and to the Covenants, by that certain Assignment of Rights dated November 9, 2011, and recorded November 9, 2011, in Deed Book 3550, at Page 3051, records of Horry County, South Carolina; and

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to assume from Assignor, the Declarant Rights and any other rights Assignor may have in and to the Covenants; and

WHEREAS, under the Covenants, Assignor has the power and authority to enter this Assignment.

NOW, THEREFORE, for and in consideration of Ten Dollars and No/100 ($10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby transfers and assigns to Assignee, its successors or assigns, all of Assignor's right, title and interest in and to the Covenants and the Declarant Rights subject to the following terms and conditions, to-wit:

1. Assignor hereby assigns all of its interest in the Covenants and the Declarant Rights effective immediately upon execution of this Agreement and recording in the Office of the Register of Deeds of Horry County, South Carolina, and Assignee shall be considered the Declarant for purposes of exercising Declarant rights from this date forward.

2. Assignor warrants and represents that it has not previously assigned any of its interest in the Covenants and Declarant Rights to any other person, party or entity.

3. This Assignment shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Assignee, its successors and assigns.

4. This Assignment shall be governed by and construed in accordance with the laws of the State of South Carolina.

Signature pages to follow.

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IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment of Rights as of the day and year first written above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

ASSIGNOR:

Wild Wing Residential Development, LLC, a Delaware Limited Liability Company
By: SLF IV / SBI Properties MM, LLC, a Texas Limited Liability Company, its Manager
By: SB Investments LLC, a South Carolina Limited Liability Company, its Managing Member

By: _____
Ralph R. Teal, Jr., Co-Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGMENT

I, the undersigned notary, do hereby certify that the above subscribed Ralph R. Teal, Jr., as Co-Manager of SB Investments, LLC, Managing Member of SLF IV / SBI Properties MM, LLC, Manager of Wild Wing Residential Development, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 15th day of April, 2015.

_____
Notary Public for South Carolina

My Commission Expires: 2/3/16

(Seal)

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IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment of Rights as of the day and year first written above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

ASSIGNEE:

Founders Wild Wing, LLC
A South Carolina Limited Liability Company
By: Jiangsu Tianrui Danfo Commerce and Industry Co., Its Manager

By: _____
Dan Liu, President

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGMENT

I, the undersigned notary, do hereby certify that the above subscribed Dan Liu, as President of Founders Wild Wing, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 13th day of April, 2015.

_____
Notary Public for South Carolina

My Commission Expires: 2/19/24

(Seal)

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EXHIBIT "A"

Lots

Phase 1

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lots 2, 3, 4, 5, 6, 9, 20, 21, 29, 54, 55, 61, 64, 73, 74, 75, 79, 115, 116, 118, 119, 120, 121, 123, 124, 126, 134, 139, 142, 144, 145, 146, 147, 148, 152, 153, 154, 156, 158, 159, 160, 161, 167, 172, 173, 174, 187, 188, 189, 190, 191, 192, 196, 197, 198, 201, 210, 212, 213, 217, 233, 234, 237, 241, 242, 243, 245, 246, 258, 259, 260, 263, 266, 267, 268, 269, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 286, 290, 291, 295, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 311, 312, 315, 316, 319, 320, 321 and 322, Phase 1 of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Phase I Wild Wing Plantation", dated September 18, 2006 and recorded September 20, 2006 in Plat Book 217 at Pages 55 through 55i inclusive, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lot 224, Phase 1 of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Boundary Line Adjustment Plat Between Lots 223 & 224 Wild Wing Plantation, Phase One", dated May 2, 2007, and recorded May 31, 2007, in Plat Book 226, at Page 24, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lots 58, 59, and 60, Phase 1 of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Boundary Line Adjustment Plat Between Lots 58 Thru 60, Wild Wing Plantation", dated November 15, 2007, and recorded December 7, 2007, in Plat Book 233, at Page 49, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Phase 1B

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lots 345, 346, 347, 348, 349 and 350, Phase IB of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Wild Wing Plantation Phase IB", dated May 3, 2007, revised May 10, 2007 and recorded May 29, 2007 in Plat Book 225 at Page 298, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Phase 2

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lots 352, 353, 354, 355, 356, 357, 358, 361, 362, 363, 366, 367, 368, 369, 370, 371, 373, 378, 379, 380, 407, 413, 414, 418, 421, 424, 431, 432, 433, 435, 439, 440, 441, 442, 444, 445, and 453, Phase 2 of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Wild Wing Plantation Phase Two", dated May 3, 2007, final revised May 29, 2007 and recorded May 29, 2007 in Plat Book 225 at Pages 299 and 300, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

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Phase 3

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lots 466, 467, 472, 474, 476, 479, 480, 481, 483, 485, 488, 495, 498, 504, 508, 509, 511, 517, 518, 519, 520, 521, 523, 526, 527, 528, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 542, 550, 551, 552, 553 and 554, Phase 3 of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Wild Wing Plantation Phase Three", dated October 12, 2007 and recorded October 24, 2007 in Plat Book 231 at Pages 264 and 265, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Development Land

Parcel B

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel B"** containing 2,956,814 sq. ft., 67.88 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-019

Parcel E

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel E"** containing 378,746 sq. ft., 8.69 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-019

Parcel G

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel G"** containing 213,215 sq. ft., 4.89 AC., more or less, including the area containing 2.54 AC., more or less, shown as being included within Parcel G, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-019 and 151-44-01-119

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Parcel J

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel J"** containing 4,893 sq. ft., 0.11 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-202

Parcel K

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Sign Parcel K"** containing 5,248 sq. ft., 0.12 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-44-01-032

Parcel L

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel L, Inclusive of TMS 151-00-04-204 & Portion of TMS 151-44-01-032"** containing 681,402 sq. ft., 15.64 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

TMS # 151-00-04-204 and Portion of 151-44-01-032

Parcel M

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel M"** containing 280,863 sq. ft., 6.45 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-204

Parcel O

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel O"** containing 307,408 sq. ft., 7.06 AC., more or

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less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-204

Parcel P

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel P"** containing 33,955 sq. ft., 0.78 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-204

Parcel Q

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel Q"** containing 72,768 sq. ft., 1.67 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-204

Parcel R

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel R"** containing 13,414 sq. ft., 0.31 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-204

Parcel S

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel S"** containing 65,065 sq. ft., 1.49 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for

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a more complete description.

Portion of TMS # 151-00-04-204

Remainder of TMS 151-00-04-019

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Remainder of TMS 151-00-04-019"** containing 5,495,724 sq. ft., 126.16 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Golf Course Land

Parcel A

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel A"** containing 9,565,940 sq. ft., 219.60 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-019

Parcel C

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel C"** containing 848,839 sq. ft., 19.49 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-019

Parcel F

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel F"** containing 164,809 sq. ft., 3.78 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-00-04-019

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Parcel H

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel H"** containing 784,538 sq. ft., 18.01 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-44-01-119

Parcel I

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Parcel I"** containing 332,597 sq. ft., 7.64 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Portion of TMS # 151-45-02-056

Remainder of TMS 151-00-04-202

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as **"Remainder of TMS 151-00-04-202"** containing 2,829,822 sq. ft., 64.96 AC., more or less, as shown on a map or plat entitled "Boundary, Subdivision Combination Plat of Wild Wing Plantation Parcels, U.S. Highway 501, City of Conway, Horry County, South Carolina, Prepared for SLF IV / SBI Wild Wing, LLC", dated April 8, 2015, and recorded April 10, 2015, in Plat Book 265, at Page 310, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Remainder of TMS # 151-00-04-202

EXHIBIT "B"

Covenants attached

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STATE OF SOUTH CAROLINA	)	DECLARATION OF PROTECTIVE COVENANTS,
	)	RESTRICTIONS, EASEMENTS, CHARGES
COUNTY OF HORRY	)	AND LIENS FOR WILD WING PLANTATION

THIS DECLARATION made this 26th day of September, 2006, by **Wild Wing Company, LLC, a South Carolina Limited Liability Company**, with its principal place of business located in Myrtle Beach, South Carolina, hereinafter referred to as the "Declarant":

FILED
HORRY COUNTY
REGISTRAR OF DEEDS
SEP 27 PM 4:40

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property more particularly described in Exhibit "A" of this Declaration, which Exhibit "A" is made a part and parcel hereof by this reference and desires to develop thereon a residential subdivision to be known as "Wild Wing Plantation"; and

WHEREAS, the Declarant, in its discretion, may incorporate additional real property as additional phases of this development and bring same under this Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation, but shall be under no obligation to do so; and,

WHEREAS, the Declarant is desirous of maintaining design criteria, location and construction specifications, and other controls to assure the integrity of the development; and,

WHEREAS, each owner of a Lot in Wild Wing Plantation will be required to maintain and construct homes in accordance with the design criteria herein contained; and,

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in such development and for the maintenance of common lands and facilities, if any, and to this end, desires to subject the real property described in Exhibit "A", to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and,

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in such community, to create an agency to which will be delegated and assigned the powers of maintaining and administering the Development (as defined hereinafter), promulgating rules and regulations for the usage of common areas in accordance with this Declaration, administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, the Declarant has caused to be incorporated under the laws of the State of South Carolina, as a Not-for-Profit corporation to be known as the Wild Wing Plantation Property Owner's Association, Inc. for the purpose of exercising the aforesaid functions,

NOW THEREFORE, the Declarant declares that the real property described in Exhibit "A", annexed hereto and forming a part hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

RETURN TO
BELLAMY, RUTENBERG, COPELAND
EPPS, GRAVELY & BOWERS, P.A.
POST OFFICE BOX 367
MYRTLE BEACH, SC 29578
843-448-2400 mcl/mcm 3164-361

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ARTICLE I

Definitions

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Annual Assessments" or "Assessments" shall mean an assessment established by the Board of Directors for common expenses as provided for herein or by a subsequent amendment which shall be used for the purpose of promoting the recreation, common benefit and enjoyment of the Owners and occupants of all Lots and the operation, maintenance and repair of the Common Area.

(b) "Architectural Review Board" or "A.R.B." shall mean and refer to that committee or board of Association (as hereinafter defined) created for the purpose of establishing and enforcing criteria for the construction of improvements (including landscaping) within the Properties. Initially, Declarant shall appoint all members of the Architectural Review Board until such rights of Declarant terminate or are transferred to Association in accordance with Article VII of this Declaration.

(c) "Association" shall mean and refer to Wild Wing Property Owners Association, Inc., its Successors and Assigns.

(d) "Common Area" shall mean and refer to those areas of land, including the facilities to be constructed thereon, if any, shown and specifically designated as such on any subdivision map of The Properties filed by Declarant or by any other means so designated by Declarant and shall include an easement (as hereinafter provided) over the Lake and Lake Areas. Such areas are intended to be devoted to the common use and enjoyment of the members of the Association as herein defined, and are not dedicated for use by the general public. However, no general plan or plat of the Properties showing adjoining areas which may later be developed as additional phases of the Development shall be included as Common Areas nor shall the Association or any Owner be entitled to any right, title or interest therein unless and until such adjoining areas shall have been formally included as a part of the Development by the Declarant pursuant to the terms hereinafter contained. Declarant reserves the right, but shall be under no obligation, to build a swimming pool, clubhouse, playground, two (2) tennis courts, beach area, boat docking slips and boat landing, as well as such other amenities as Declarant may, in its sole discretion, determine to construct and dedicate same as a Common Area. As to all conveyances of Common Areas by Declarant to Association, Association agrees to accept title to such areas upon execution and delivery of a quit-claim deed of conveyance provided (i) said Common Areas have been completed and are, subject to normal wear and tear, in reasonable repair and condition, and (ii) reasonable provisions have been made for the establishment of a reserve fund budgeted for normal maintenance thereof which such fund has been turned over to the Association.

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Provided however, the recording and reference to said plat shall not in and of itself be construed as creating any dedications, rights or easements (negative reciprocal or otherwise), all such dedications, rights and/or easements being made only specifically by this Declaration, any amendment or supplement hereto or any deed of conveyance from Declarant, its successors or assigns, as developer.

(e) "Declarant" shall mean and refer to Wild Wing Company, LLC, its Successors and Assigns in the development of the Properties, but shall not include an Owner of an individual Lot located within the Properties.

(f) "Declaration" shall mean and refer to this Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation.

(g) "Design Criteria", "Plans", and "Specifications", and such like terms shall refer to and encompass the Plans, Specifications, Elevations, and Designs, including but not limited to, exterior finishes and textures, and exterior colors and materials for dwellings and improvements to be constructed upon Lots within the Project as well as setbacks, locations, etc. contained hereinafter in this Declaration.

(h) "Development", "Project" "Wild Wing" and "Community" shall all mean and refer to the project known as Wild Wing Plantation as hereafter developed by the Declarant.

(i) "Lot" shall mean and refer to any plot of land intended for residential use, with delineated boundary lines appearing on any recorded subdivision map of the Properties with the exception of any Common Area shown on a recorded map. In the event any Lot is increased or decreased in size by resubdivision, the same shall nevertheless be and remain a Lot for the purpose of this Declaration. This definition shall not imply, however, that a Lot may be subdivided if prohibited elsewhere in this Declaration. In the event that an Owner desires to combine two (2) or more adjoining Lots for the purpose of constructing and maintaining a single residence thereon, the resulting combined Lots shall from that date forward be deemed one (1) Lot for the purposes of this Declaration, including for the purpose of determining Assessments in accordance with this Declaration.

(j) "Lake" and "Lake Areas" means any Common Area or portion of a Lot or Lots on which a Lake now exists or is later constructed by Declarant and "Lake" means a body of water which now exists or is later constructed by Declarant and so designated.

(k) "Lake Maintenance Easement" means those areas identified on the recorded plat(s) of the Property as "Lake Access/Maint Easmt (typ)" or similar designation which shall be reserved to the Association for the purpose of performing maintenance of the Lakes in accordance with the terms and provisions of this Declaration.

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(l) "Member" shall mean and refer to all those Owners who are members of the Association, as provided in Article IV hereof.

(m) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee-simple title to any Lot(s), but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure. Said term "Owner" shall also refer to the heirs, successors and assigns of any Owner.

(n) "Properties" or "Property" shall mean and refer to all property including Lots and Common Areas, as are subject to this Declaration, and which are described in Exhibit "A" together with any additional phases that may be developed and specifically submitted to the provisions of this Declaration pursuant hereto.

(o) "Personal watercraft" means a boat less than sixteen feet in length which: (i) has an outboard motor or an inboard motor which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion, (ii) is designed with the concept that the operator and passenger ride on the outside surfaces of the vessel as opposed to riding inside the vessel; (iii) has the probability that the operator and passenger, in the normal course of use, may fall overboard. Personal watercraft includes, without limitation, a vessel where the operator and passenger ride on the outside surfaces of the vessel, even if the primary source of motive propulsion is a propeller, and a vessel commonly known as a "jet ski".

(p) "Setback" shall mean an area along the boundary of a Lot where no building or other structures such as swimming pools or decks shall be permitted, without the express written permission of Declarant or the Architectural Review Board. However, the location of normal air handling and heat, ventilation and air conditioning units (and the associated approved screening for such units) within such Setback area shall be permissible so long as it is in conjunction with an approved residential structure located on a Lot.

(q) "Subsequent Amendment" or "Supplemental Declaration" shall mean an amendment to this Declaration which adds property to this Declaration and makes it subject to the Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations and/or modifications to these Restrictions on the land submitted by that Subsequent Amendment to the provisions of the Declaration.

(r) "Special Assessments" shall mean an assessment established by the Board of Directors from time to time for capital improvements, unique costs or expenses, extraordinary budget or expense items and the like.

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ARTICLE II

Uses of Property

Section 1. Conformity and Approval of Structures. No structure, fence, sidewalk, wall, swimming pool, boat docking slip, bulkhead wall, landscaping (other than replacement of landscaping in accordance with an approved plan) or other improvement shall be placed or altered on any Lot except in accordance with the provisions of this Declaration and after approval of the Architectural Review Board as hereinafter provided in Article VII of this Declaration.

Section 2. Subdivision of Lot. No Lot shall be subdivided except as hereinafter provided and no building or residence, including porches, swimming pools or projections of any kind, shall be erected so as to extend over or across any of the building lines as hereinafter established except as herein provided. Provided, however, two or more Lots may be combined to provide one building site in accordance with this Declaration, subject to the limitations contained in Article I of this Declaration.

Section 3. Increased Size of Lots. A Lot or Lots may only be subdivided provided the effect is to increase the size of both of the adjoining Lots. In such cases, the Declarant may alter the building lines to conform. Should the Owner or Owners of any Lots and/or portions of Lots which have been combined for a single building site subsequently wish to revert to the original plan of subdivision, or make any other combination which would not be in violation of this restriction, such may be done only if the written consent of the Declarant is first had and obtained. In such instances, the adjoining Lot Owners, or other Owners in the subdivision do not have the right to review, pass on or interfere with such rearrangement of Lots, as such rights shall be exclusively that of the Declarant or any successors or assigns to whom the Declarant may expressly have transferred such rights, but the purchaser of any other Lot in the subdivision does not, by virtue of his status as a purchaser, become any such successor or assign.

Section 4. Alteration of Setback Lines in the Best Interest of Development. Where because of size of Lot, shape of Lot, natural terrain, or any other reason in the sole opinion of the Declarant, that the Setback lines of any Lot(s) should be altered or changed, then the Declarant reserves unto itself, its successors or assigns, and no other, the right to change said Setback lines to meet such conditions. The Declarant specifically reserves the right to transfer and assign this right of approval to the Architectural Review Board hereinafter established.

Section 5. Completion of Improvements. The exterior of all dwellings and other structures constructed upon any Lot must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergencies or natural calamities. No building under initial construction shall be occupied until construction is completed, and all necessary approvals of any governmental authorities have been obtained, and the Architectural

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Review Board has issued its certificate of completion in accordance with guidelines promulgated by the Architectural Review Board.

Section 6. Residential Use of Lots. Except as provided herein, all Lots shall be used for residential purposes exclusively. No structures, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family dwelling constructed in accordance with the Plans and Specifications herein defined in Article III. No timesharing, interval ownership or other related ownership scheme shall be permitted. No separate storage or other out building shall be permitted; all storage rooms must be attached to, form a part of and conform to the architectural scheme and appearance of the dwelling. In addition, no leasing or rental of any dwelling shall be permitted having a duration of less than six (6) months. However, Declarant or its assignee may maintain sales offices, models and construction offices upon one or more Lots until all Lots located or to be located within the Properties (including all subsequent phases) have been sold to third parties or Declarant no longer has the right to incorporate additional property under the terms of this Declaration. Easements are hereby reserved through the Common Area , including, without limitation, the easements shown on the plat (s) of the Property for use by Developer, for its use and the use of its agents, employees, licensees and invitees, for all purposes in connection with the use, development and sales of the Property, including, without limitation, for the erection and maintenance of signage.

Section 7. Maintenance of Lots. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly, or unkept condition of buildings or grounds on such Lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area. Each Owner shall maintain his Lot and shall keep underbrush and weeds mowed, which shall include, without limitation, the mowing of Lots on which no residence has been built not less than twice annually in October and May of each year.

Section 8. Nuisances. No noxious, unlawful or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood. No plants, poultry, animals (other than household pets) or devices or things of any sort, the normal activities or existence of which are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood shall be placed, kept or maintained on any Lot. Without limiting the foregoing, exterior lighting may not be so installed on any Lot as to illuminate any portion of a neighboring Lot or to shine into any window or otherwise enter a dwelling located on an adjoining Lot. Garage doors must be closed except when in use.

Section 9. Exclusion of Above Ground Utilities. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission or receiving antenna shall be erected, placed or maintained on any part of the premises. Provided, however, that the normal service pedestals, and similar equipment, used in conjunction with such underground utilities shall be permitted within the development. Overhead utilities shall be permitted during the construction period and until utility

companies can place them underground. Except as hereinafter provided, no Owner shall install any receiving or transmitting device which requires any exterior protrusion, nor shall any antennas or other receiving or transmitting devices be located on any Lot. Notwithstanding the foregoing, the following types of antennas may be installed, but only in accordance with reasonable rules and regulations to be promulgated by the Architectural Review Board, which rules and regulations shall include, without limitation , restrictions as to location, color and screening:

> a dish antenna that is one (1) meter or less in diameter and is designed to receive direct broadcast satellite service, including direct to home satellite service; (B) an antenna that is one (1) meter or less in diameter or diagonal measurement and is designed to receive video programming services via multi-channel multi-point distribution (wireless cable) providers (MMDS); or (C) an antenna that is designed to receive television broadcast signals.

Section 10. Signs. Except as required by law, no billboards, posters or advertising signs of any kind or character (specifically including "for sale" or "for rent" signs or posters) shall be erected, placed, permitted, maintained or allowed to remain on any lot or improvement thereon (including in any window) except for signs designating the Lot Owner and contractor on any Lot on which a residence is then under construction. Such signs shall be of a uniform type and color as approved by the Architectural Review Board and shall be supplied by Association upon payment of a fee for same by Owner. However, it shall be permissible for the Association to have a sign located on the Common Area, if the design, size and location of such sign is approved by Declarant, prior to its erection. No other sign of any kind or design shall be allowed. Declarant reserves the right to erect temporary or permanent signs identifying and/or advertising the Project on the Common Area.

Section 11. Prohibition Against Business Activity. Except as hereinafter provided, no business activity, including but not limited to, a rooming house, boarding house, gift shop, antique shop, professional office or beauty shop or the like or any trade of any kind whatsoever shall be carried on upon a Lot or Lots. Nothing herein shall be construed to prevent a "home office" so long as all activities are conducted within the residence and no customers, employees, clients or others enter the Properties relative to such business activity. Provided, however, that nothing contained herein shall be construed so as to prohibit the construction of houses to be sold on said Lots or the showing of said houses for the purpose of selling houses in the subdivision. Nothing herein shall be construed to prevent the Declarant from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and sales in the subdivision.

Section 12. Mining and Drilling. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the premises, nor shall any oil, natural gas, petroleum, asphalt or hydrocarbon products or materials of any kind be produced or extracted from the premises.

Section 13. Garbage Disposal. Each Lot Owner shall provide garbage receptacles or

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similar facilities in accordance with reasonable standards established by the Declarant, or a roll-out garbage rack of the type approved by the Declarant, which shall be visible from the streets on garbage pickup days only. No garbage or trash incinerator shall be permitted upon the premises. No burning, burying or other disposal or garbage on any Lot or within the Project shall be permitted. Provided that the Declarant shall be permitted to modify the requirements of this Section 13 where necessary to comply with orders of governing bodies.

Section 14. Temporary Structures. No structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractors during construction of the main dwelling house, it being clearly understood that the latter temporary shelters may not, at any time, be used for a residence or permitted to remain on the Lot after completion of construction.

Section 15. Other Structures. No home, tent (other than small overnight tents used by children which remain in place for less then 24 hours), barn, tree house or other similar out-building or structure shall be placed on any Lot at any time either temporarily or permanently, except as provided in Section 14 above.

Section 16. Storage Receptacles. No fuel tanks or similar storage receptacles may be located on the Lots (with the exception of small portable tanks for supplying fuel to gas grills and gas logs for fireplace) nor may any such tanks or storage receptacles be buried underground.

Section 17. Clotheslines. No clotheslines or drying yards shall be located upon the premises so as to be visible from any Common Area or from any adjoining property or Lot.

Section 18. Water and Irrigation Systems. No individual water supply system shall be permitted upon any Lot. Furthermore, no wells may be drilled upon any Lot or Common Area for supplying water, whether the same shall be used for lawn irrigation or otherwise. No drawing of water from any lake or pond shall be permitted.

Section 19. Off-Street Parking. Adequate off-street parking shall be provided by the Lot Owner herein for the parking of automobiles or other vehicles owned by said Owner and said Owner agrees not to park his automobile or other vehicles on the Streets or Common Areas in the subdivision. No travel trailers or mobile homes, campers or other habitable motor vehicles of any kind, whether self-propelled or not, school buses, trucks (other than non-commercial pickup trucks) or commercial vehicles, or boat trailers or boats shall be kept, stored or parked overnight, either on any Common Area, any streets, or any Lot, except within enclosed approved garages or sheltered from view from neighboring Lots, any adjacent property which is not part of the project or Common Areas or within a portion of the Common Areas which may be hereafter specifically designated for such use. Furthermore, no non-operative or junked vehicles (or parts thereof) may be kept on the Properties. It shall not be permissible to make repairs to or "work on" vehicles, boats or other watercraft while same are located on the Properties.

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Section 20. Sewer System. No surface toilets are permitted on the Properties. The Grantee of any Lot assumes all responsibility for obtaining the necessary permits for attaching to the public sanitary sewer and water system for the project, developer making no warranties or representations thereabout.

Section 21. Firearms and Fireworks. No firearms or fireworks of any variety shall be discharged upon the Lots or Common Areas.

Section 22. Pets. No pet shall be permitted off of its owner's Lot when not on a leash.

Section 23. Lakes and Lake Area(s). Subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration and except as otherwise provided, no individual using a Lake, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association or within a Lake Area. Notwithstanding the foregoing, Declarant, the Association and each and every Owner (subject to restrictions contained in this Declaration with regard to the simultaneous use of Common Areas by multiple Owners of a single Lot), their respective successors, heirs and assigns, shall have a right and easement over all Lakes and Lake Areas for entry thereon and the use thereof by Declarant or any Owner and such Owner's guest(s) when accompanied by an Owner in accordance with the Association's rules and regulations, whether or not such Lake or Lake Area (or portions thereof) is actually located upon a Lot or Lots. No Owner shall have the right to exclude Declarant or any Owner and such Owner's accompanied guest(s) from any Lake or Lake Area because of such Lake or Lake Area being partially located within the bounds of any Lot(s). Such easements shall be appurtenant to, and pass with, the title to each Lot. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. No docks, piers or other structures may be erected in, over or adjoining any Lake, except for a boat dock slip and associated bulkhead walls constructed in strict accordance with guidelines promulgated by the Architectural Review Board. Furthermore, no Lake may be used by any Owner for the purpose of providing water for irrigation purposes. A Lake may be used for swimming, boating, and other recreational purposes only in accordance with rules and regulations promulgated by Association, as such rules and regulations may now or hereafter be adopted, amended and/or modified. Such rules and regulations may include restrictions as to type, length and horsepower of any boats to be used upon such Lake(s). Furthermore, no personal watercraft (as defined in this Declaration) may be used or located upon any Lake or Lake Areas. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any lake or Lake Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

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Declarant reserves unto itself, its designated successors and assigns, the right to increase or decrease the level of the waters of any Lake, from time to time, without obtaining the consent or approval of Association or any Owner(s) and without liability for such actions.

ARTICLE III

Construction in Accordance with Plans and Specifications

Section 1. General. All structures of every type and description shall be constructed, placed or erected within the Development in accordance with the provisions of this Article III together with other applicable provisions of this Declaration.

Section 2. Size of Residences and Lot Coverage. All residences to be constructed upon any Lot shall have a minimum of 2,000 square feet of enclosed heated floor space for single level dwellings, exclusive of porches, decks and garages, and a minimum of 2,400 square feet of enclosed heated floor space in multi-level dwellings (with not less than 1, 600 square feet of enclosed heated floor space on the first level), exclusive of porches, decks and garages as herein defined. For purposes of this Declaration, a single level or one story dwelling shall be a dwelling having living areas on only one level while a multi-level or two story dwelling shall be a dwelling having living areas located on more than one level within the dwelling. In addition, each residence must include an enclosed garage. While Declarant may not modify the provisions of this Section with regard to the Property being hereby submitted to the terms and provisions of this Declaration as Phase I, Declarant expressly reserves the right, in its sole discretion, to modify the terms of this Section as to any subsequent property submitted to the terms of this Declaration as additional phase(s) by subsequent amendment or supplemental declaration. Such subsequent amendment or supplemental declaration shall specify the modifications of this Section (if any) applicable to such additional property or phase so incorporated under the terms of this Declaration.

Section 3. Setbacks. No building or structure, including porches, swimming pools or projections of any kind, shall be erected so as to extend over or across any of the Setback lines so as to be nearer to the Lot boundary line than such Setback line. The Setback lines for each Lot shall be as follows:

Front Setback Line - 35 feet from front Lot Boundary Line
(As to all Lots except as otherwise specifically provided in this section)

Front Setback Line
(Lots 248 through251,
Lots 265 through 297 and Lots
305 through 331, inclusive) - 20 feet from front Lot Boundary Line

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Side Setback Line - 10 feet from each side Boundary Line of the Lot
(As to all Lots except as otherwise specifically provided in this section)

Rear Setback Line - 35 feet from the Rear Lot Boundary Line
(On Lots which do not adjoin a Lake or Lake Area and are not otherwise specifically provided for in this section)

Rear Setback Line - 23 feet measured from the Lake Maintenance Easement boundary line on the upland or high ground side of the Lake Maintenance Easement
(On Lots which adjoin a Lake or Lake Area and are not otherwise specifically provided for in this section)

Rear Setback Line (Lots 248 through251, Lots 265 through 297 and Lots 305-331, inclusive) - 20 feet measured from the Lake Maintenance Easement boundary lineon the upland or high ground side of the Lake Easement

However, (a) the location of normal air handling and heat, ventilation and air conditioning units and associated approved screening within such Setback area shall be permissible so long as it is in conjunction with an approved residential structure on said Lot, (b) roof overhangs not to exceed twenty-four (24") inches from and as a part of the main dwelling may extend unto the Setback area, and (c) boat dock slips and bulkheads constructed in strict accordance with plans approved by the Architectural Review Board may extend into setback and Lake maintenance easement areas.

Notwithstanding the foregoing, Declarant reserves the rights provided in Article II, Section 4 of this Declaration to modify said setback lines.

ARTICLE IV

Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is an Owner of any Lot which is subjected by this Declaration to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.

Section 2. Articles of Incorporation and Bylaws. A copy of the Articles of Incorporation of the Association and Bylaws of the Association are attached hereto as Exhibit "B" and Exhibit "C", respectively, and made a part and parcel hereof.

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Section 3. Voting Rights. The Association shall have two (2) classes of voting membership.

Class A. Class A Members shall be all Owners excepting the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 1 above. When more than one person holds such interest or interests in any Lot, the vote attributable to such Lot shall be exercised as such persons mutually determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to total votes in an amount equal to twice the number of the class A votes plus one. The Class B membership shall cease and become converted to Class A membership upon the conveyance to Lot Owners of all Lots subject to this Declaration, or December 31, 2015, whichever first occurs. In addition, Declarant may terminate the Class B membership upon written notice to Association.

When a purchaser of an individual Lot or Lots takes title thereto from the Declarant, he automatically becomes a Class A Member.

ARTICLE V.

Property Rights in the Common Areas

Section 1. Member's Easements of Enjoyment.. Subject to the provisions of Section 3 of this Article, every Member shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot. This right and easement shall be for use in common with all other such members, their tenants, guests and invitees. In the event that Declarant incorporates additional land under the provisions of this

Declaration pursuant to Article IX of this Declaration, all Owners of Lots within such additional phases shall have the same rights and privileges with regard to use of the Common Areas as the Owners of Lots originally made subject to this Declaration.

Furthermore, and notwithstanding anything in this Declaration to the contrary, any owner of a lot within the subdivision located near to the Property which is known as "The Sanctuary at Wild Wing"(the "Sanctuary") may use the swimming pool, tennis court(s) and Owner's Clubhouse facilities (at such time as the same may be constructed) located within the Common Areas of the Development upon payment by such owner of an annual fee to the Association, which fee shall be equal to thirty-five (35%) percent of the regular annual assessment assessed by the Association against each Lot (and the Owner thereof) within the Development, as the same changes from time to time. Such usage shall be in accordance with the rules and regulations promulgated by the

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Association for the members thereof. However, nothing herein shall create any ownership or membership rights in the owners of lots within the Sanctuary nor shall any of such owners within the Sanctuary have any rights to vote or otherwise manage the Association of the Common Areas.

Section 2. Title to Common Areas. Subject to the provisions of Article I, Section C, the Declarant hereby covenants for itself, its successors and assigns, it will convey to the Association, by Quit-Claim Deed, fee simple title to the Common Areas (excluding any portions of Lakes and Lake Areas which are located within the bounds of any Lot) upon the conditions set forth herein, free and clear of all encumbrances and liens, except those created by or pursuant to this Declaration and except for those rights reserved unto the Developer pursuant to this Declaration. Association shall accept such conveyance of the Common Areas (which may include streets, roads and drainage facilities).

In lieu of the conveyance provided for herein with regard to the streets, roads, and/or drainage facilities. Declarant may cause such streets, roads and/or drainage facilities to be dedicated to any governmental entity, as provided for in Section 3(a) hereof.

Section 3. Extent of Member's Easements. The rights and easements created hereby shall be subject to the following:

(a) The right of the Declarant, and/or of the Association, to dedicate, transfer or convey all or any part of the Common Areas, with or without consideration, to any governmental body, district, agency or authority, or to any utility company, provided that no such dedication, transfer or conveyance shall adversely limit the use of the Common Areas by the Members of the Association;

(b) The right of the Declarant, and/or of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage and other utilities and services, including, without limitation, a cable (CATV) or community antenna television system and irrigation or lawn sprinkler systems, and the right of the Declarant to grant and reserve easements and rights-of-way through, over and upon and across the Common Areas for the completion of the Development, and for the operation and maintenance of the Common Areas;

(c) The right of the Association, as provided in its By-Laws, to suspend the enjoyment rights of any Owner in the Common Areas for any period during which any assessment remains unpaid, and for any period during which the Owner is in violation of this Declaration or the rules and regulations of the Association and in addition thereto (and without limiting the foregoing periods) for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.

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(d) The rights of the Association, in accordance with law, its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Areas and in pursuance thereof, to mortgage the same.

(e) Restrictions and easements contained on any plat or other instrument filed of record with respect to the Properties.

(f) The right of Declarant to grant and/or dedicate non-exclusive easements across the Common Area in favor of other property of Declarant.

(g) The right of Declarant to develop Wild Wing Plantation, which may or may not include additional property, in such manner as it may determine, in its sole discretion.

Section 4. Maintenance. Subject to the provisions herein contained, the Association shall at all times maintain all Common Areas, Lakes and Lake Areas in good repair, and shall repair or replace as often as necessary, the paving, drainage structures, street lighting fixtures, landscaping, entrance signage, and other amenities (except utilities) situated on the Common Areas. Association shall also cause the landscaping, entrance features and signage at the entrance to the Property to be maintained at Association's expense. Notwithstanding the foregoing, it shall be the responsibility of each Owner of a Lot located adjacent to a Lake or Lake Area to maintain that portion of the bank of the Lake or Lake Area bordering such Owner's Lot, at such Owner's sole expense, in a manner to prevent erosion of the Lake bank and in accordance with rules and regulations to be promulgated by the Board of Directors of Association. The Board of Directors acting on a majority vote shall order all work to be done and shall pay for all expenses including all electricity consumed by the lighting located in the Common Areas and all other common expenses. All work pursuant to this Section and all expenses hereunder shall be paid for by such Association through assessments imposed in accordance with this Declaration. Nothing herein shall be construed as preventing the Association from delegating or transferring its maintenance obligations to the governmental authority under such terms and conditions as the Board of Directors may deed in the best interest of the Association.

Section 5. Additional Structures. Neither the Association nor any Owner or any group of Owners shall, without the prior written approval of Declarant, erect, construct or otherwise locate any structure or other improvement in the Common Areas.

Section 6. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised by members of the Owners' family who occupy the residence of the Owner within the properties.

(b) Tenants. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants who occupy a residence within the Properties.

(c) Guests. Recreational facilities, if any, situated upon the Properties may be utilized by guests of an Owner accompanied by such Owner or tenants subject to the rules and regulations of the Association governing said use and as established by its Board of Directors.

Section 7. Rules and Regulations. The use of the Common Areas by an Owner or Owners, and all other parties authorized to use same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established by the Association governing such use, or which may hereafter by prescribed and established by the Association. Such rules and regulations shall include a limitation on use of amenities within Common Areas (including Lakes) to a designated Owner and such Owner's family and/or significant other in cases of Lots owned by multiple Owners who are not members of the same family. For purposes of this section, "family" shall mean and refer to a group of persons, each of whom is related to each other member of the group through blood or marriage either as siblings or in direct lines of ancestry or descent. Such designation of the Owner for purposes of use of the Common Areas may not be changed more often than six (6) months and shall be made in writing to Association.

Section 8. Easement for Utilities and Lake Maintenance. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and reasonable easement and right of ingress and egress, over, upon, across and under the Setback areas and easement areas on each Lot as shown on the recorded map of the Properties and/or as set forth herein and over, upon, across and under the Common Area for the erection, maintenance, installation and use of electrical and telephone wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public convenience or utilities, including an easement for privately owned television and other communications cable and equipment and for the construction and maintenance of the Lakes and Lake Areas located (or to be located as shown on the recorded plats of the Property) upon the Property. The Declarant may further cut drainways for surface water when such action may appear to the Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of soil, or to take any other similar action reasonably necessary to provide economical and safe utility or other installations and to maintain reasonable standards of health, safety and appearance. Declarant further reserves the right to locate wells, pumping stations, and tanks within residential areas on any Lot owned by Declarant. It shall not be necessary to obtain the consent of Owners of Lots adjoining the existing utilities and pump station. Such rights may be exercised by the licensee of the Declarant but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility service. No structures or other items, including walls, fences, paving or planting shall be erected upon any part of the property which will interfere with the rights of ingress and egress provided for in this paragraph. Specifically, except as herein provided, no Owner shall erect any structure, including, without limitation, walls, fences, paving or planting within the areas designated on the Plat of the

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Properties as a "Drainage Easement", "Lake Maintenance Easement" or words of similar import nor shall any Owner change the grade of any such easement area. In that regard, an easement for ingress and egress for the maintenance of the Lakes and Lake Areas is hereby reserved for the benefit of the Association over all Lake Maintenance Easements. However, nothing herein shall restrict or prevent the location of boat docking slips and bulkhead walls in accordance with plans approved by the Architectural Review Board within any such easement or setback area. In the event that any such approved boat docking slip is constructed within any Lake Maintenance Easement on any Lot, the Owner of such Lot shall make provision for such additional access around such boat docking slip as is reasonably necessary for the purpose of Lake Maintenance as is reasonably acceptable to Association. Each Owner shall keep drainage ditches and swales located on his/her Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon such Lot as may be reasonably required for proper drainage. Declarant may, at its sole option, convey any such drainage easements to an appropriate governmental entity and/or the Association. The easements referred to in this paragraph are, without limitation, those shown upon the recorded plat of the Properties; as set out in easements of record; upon the plans of the Development; or which are located on or under the ground.

In addition to the foregoing rights reserved to Declarant, and not in limitation thereof, Declarant further reserves unto itself, its successors and assigns, a perpetual, alienable commercial easement and right of ingress and egress over, upon, across and under the Common Areas and all streets and roads within the Properties for the purpose of providing drainage and utility installation, construction, reconstruction, and maintenance to adjacent property now or hereafter owned by Declarant and for the installation and maintenance of any pipes, drainways or other installations necessary for the foregoing and further for the installation, maintenance, repair, replacement and operation of water lines and other utilities which serve or shall serve property presently owned by Declarant. Declarant, its agents, contractors, servants, employees and assignees may enter upon the easement areas for the purposes of maintaining, repairing, replacing and operating such water lines and other utilities and drainage facilities and for the purpose of installing additional utilities and drainage facilities. Declarant further reserves unto itself, its successors and assigns, a perpetual, alienable easement and right-of-way over, under and across those areas designated as "Drainage Easement" or like wording on the plat of the Properties referred to in Exhibit "A" hereto for the purpose of providing drainage of the Properties and lands adjacent to the Properties and for the installation, repair and maintenance of pipes and other facilities necessary for such drainage. Declarant, its agents, contractors, servants, employees and assignees may enter upon any of the easement areas so designated on the recorded plat of the Properties for the purpose of maintaining, repairing, replacing and operating any of the drainage facilities, pipes, ditches, and drainage areas located thereon. The Owners of Lots on which such easements are located shall not interfere in any manner with such easements or any of the facilities located therein or the access thereto. Except for boat docking slips and bulkheads constructed in accordance with plans approved by the Architectural Review Board, no Owner shall erect any structure or fence within such easement areas without the prior written consent of Declarant. Declarant, its agents, employees and assignees shall have no liability for damage which may occur to any structures or other items which may be located in such utility and drainage easements and Declarant shall have no obligation to replace any such structures

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which may be removed or damaged due to maintenance, repair or other work performed in such easement areas. Declarant further specifically reserves unto itself, its successors and assigns, a perpetual, alienable, commercial easement and right of ingress and egress over all Lots along an area 5 feet in width inside each boundary line of each Lot and along any Lot boundary line which adjoins any of the streets of the Project. This easement is for the purpose of installation, maintenance and repair of utilities and utility systems and access. This easement shall be in addition to, and not in limitation of, any and all other easements reserved unto the Declarant herein. Declarant further reserves an easement of ingress and egress over and across all streets and roads of the Project which such easements are and shall be for the purpose of ingress and egress to any property now owned or hereafter acquired by Declarant, its successors and assigns whether or not such property is made a part of the Project and whether or not such property adjoins the Project.

Section 9. Sidewalk Easements on Lots. Declarant reserves for itself and the Association, their successors, assigns and agents, a sidewalk easement ten (10) feet in width across all Lots for use and enjoyment by the Owners of Lots and others, only under such rules as may be promulgated by the Association from time to time. The sidewalk easement is ten (10) feet in width, lies on the Lots adjacent to the boundaries between Lots and all road rights-of-way, and includes the right to usual and necessary access for purposes of construction, maintenance, repair, removal and replacement of sidewalks. The provisions in this paragraph shall not be construed as an obligation on the part of Declarant or the Association to undertake construction of any sidewalks. In the event sidewalks are constructed on the easements reserved herein or in the road rights-of-way adjacent to the Lots, the Association shall be responsible for the maintenance and management of such sidewalks.

ARTICLE VI.

Assessments for the Maintenance and Operation of Common Areas and Facilities

Section 1. Initial Contribution. Upon the closing of the initial sale of each lot by the Declarant, the purchaser of each Lot shall pay an initial contribution to the Association of One Hundred and No/100 ($100.00) Dollars to provide initial reserve funds for the Association. Such payment shall not in any way be considered a prepayment of any regular or special assessment. Such funds may be used by the Association in such manner as the board of directors thereof shall direct.

Section 2. Assessments, Liens and Personal Obligations Therefor, and Operation Maintenance of Common Areas Solely by the Association.

(a) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses,

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extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such lot or Lots at the time when the assessment fell due. Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2010, each Lot within The Properties shall be exempt, at Declarant's option, from the assessments herein provided for (both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made by the Association against Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing January 1, 2011, the Declarant shall be subject to assessments as provided for in this Declaration so that it will pay assessments on the same basis provided for in this Declaration for other Lot Owners. In the event that additional phases are subjected to the provisions of this Declaration, then it is declared that until the later of: (1) January 1, 2011; or (5) five years after the date the amendments or supplemental declarations submitting such additional phase(s) are filed for record in the public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the lot is conveyed by the Declarant to an Owner other than the Declarant. Until such time as a lot in such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less an amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lot Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.

(b) The Assessment levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Development, and in particular for the improvement and maintenance of the Common Areas, Lakes and Lake Areas, now or hereafter designated or existing, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereof, the cost of labor, equipment, materials, management and supervision thereof, and the cost of lawn and landscaping maintenance, maintenance of the fencing and/or signage, the employment of attorneys to represent the Association when necessary and such other needs as may arise. In the event that Declarant performs any of the foregoing services for Association, including,

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but not limited to, accounting and bookkeeping services, it shall have the right to receive a reasonable fee therefore and such shall not be deemed to be a conflict of interest.

Section 3. Amount and Payment of Annual Assessment. The Board of Directors of the Association shall at all times fix the amount of the annual Assessment at an amount sufficient to pay the costs of maintaining and operating the Common Areas and performing the other exterior maintenance required to be performed by the Association under this Declaration including adequate reserves. The Board shall also fix the date of commencement and the amount of the Assessment against each Lot for each Assessment period (which shall be based on a calendar year), and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto, which shall be kept in the Office of the Association and shall be open to inspection by any Owner. Written notice of the Assessment shall thereupon be sent to every Owner subject thereto. In the event that any Lot is subject to an assessment for only part of a calendar year, then the amount of such assessment shall be prorated based on the portion of the assessment period for which such Lot is subject to an assessment.

Each annual Assessment shall be fully payable in advance on the 1st day of January each year, but the Board of Directors of the Association shall have the option to permit monthly or quarterly payments. The exact amount of each annual Assessment shall be fixed by the Board of Directors of the Association.

The Association shall, upon demand at any time, furnish to any Owner liable for any assessment, a certificate in writing, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be in recordable form and shall be conclusive evidence of payment of any assessment therein stated to have been paid.

This Section shall not be amended as provided in this Declaration to eliminate or substantially impair the obligation to fix the assessment at an amount sufficient to properly maintain and operate the Common Areas and perform the exterior maintenance required to be performed by the Association under this Declaration.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments, the Board of Directors of the Association, on behalf of the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying unexpected repair or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto. The due date of any specified assessment shall be fixed in the Resolution of the Board of Directors authorizing such assessment.

Section 5. Paid Professional Manager. The Board of Directors of the Association may employ a professional manager or managerial firm to supervise all the work, labor, services and material required in the operation and maintenance of the Common Areas and in the discharge of the Association's duties throughout the Community.

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Section 6. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner: The Lien. Remedies of Association. If any assessment is not paid on the date when due, then such assessment shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof as are hereinafter provided, continue as a lien on the Lot or Lots, which shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such assessment or reimbursement, however, shall remain his personal obligation and will also pass on to his successor in title.

If the assessment or reimbursement is not paid within thirty (30) days after the due date, a late charge in an amount to be specified by the Board of Directors of the Association may be assessed and furthermore, the assessment shall bear interest from the date of delinquency at the rate of eighteen (18%) percent per annum. In addition, the Association may bring legal action against the then Owner personally obligated to pay the same or may enforce or foreclose the lien against the Lot or Lots in the same manner as a mortgage is foreclosed; and in the event a judgment is obtained, such judgment shall include interest on the assessment or reimbursement as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. The Association may further file a notice of lien in the office of the Register of Deeds for Horry County, South Carolina.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments (and reimbursement) provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon any Lot subject to assessment and reimbursement; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments or reimbursements thereafter becoming due, nor from the lien of any subsequent assessment or reimbursement.

Section 8. Exempt Property. All Common Areas subject to this Declaration shall be exempted from the assessments, charges and liens created herein.

ARTICLE VII.

Architectural and Landscape Control

Section 1. Architectural Review Board. The Architectural Review Board shall have the right to approve or disapprove all architectural and landscaping plans and the location of any proposed Improvements. The Architectural Review Board may, in its sole discretion, impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning or other governmental codes.

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Section 2. The Architectural Review Board shall be a permanent committee of the Association and shall administer and perform the architectural and landscape review and control functions of the Association. The Architectural Review Board shall consist of five (5) voting members who shall initially be named by the Declarant and who shall hold office at the pleasure of the Declarant. Until termination of Declarant's Class B membership status in the Association, as defined in this Declaration, the Declarant shall have the right: to change the number of members on the Architectural Review Board provided, however, that the Architectural Review Board shall at all times consist of at least three (3) members; to appoint all members of the Architectural Review Board; and to remove and replace all members appointed to the Architectural Review Board. The Declarant shall determine which member of the Architectural Review Board shall serve as its Chairman, or which members of the Architectural Review Board shall serve as Co-Chairmen. In the event of the failure, refusal or inability to act of any of the members appointed by the Declarant, and in the event that the Declarant fails to fill any such vacancy within thirty (30) days of such occurrence, the remaining members of the Architectural Review Board shall fill such vacancy by appointment. At such time as Declarant's Class B membership status terminates or at such earlier date as Declarant may decide, the Declarant shall assign to the Association the rights, powers, duties and obligations of the Architectural Review Board, whereupon the Board of Directors shall determine how many persons shall serve on the Architectural Review Board, provided that the Architectural Review Board shall at all times consist of not less than three (3) members, shall appoint the members of the Architectural Review Board shall provide for the terms of the members of the Architectural Review Board, and shall determine which member of the Architectural Review Board shall serve as its Chairman. There shall be no requirement that any of the members of the Architectural Review Board be a member of either the Association or an Owner within Wild Wing Plantation. Any three (3) members of the Architectural Review Board shall constitute a quorum to transact business at any meeting, and the action of the majority present shall constitute the action of the Architectural Review Board.

Section 3. Buildings, fences, walls, etc. No building, fence, wall, boat docking slip, landscaping or other improvements, and no change in topography, landscaping or any other item originally approved by the Architectural Review Board shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change be made until the plans and specifications showing the nature, kind, texture, shape, height, materials, color and locations of the same shall have been submitted to and approved in writing as to the harmony of the external design and location in relation to the surrounding structures and topography by the Architectural Review Board. The right of approval herein reserved and granted shall include, without limitation, the right to designate or re-designate which Lot line shall be the "front" in the case where a Lot is bordered by more than one street. In the event the Architectural Review Board fails to approve or disapprove any request within sixty (60) days after complete plans and specifications have been submitted to it in accordance with the guidelines promulgated by the Architectural Review Board, the same shall be deemed approved, and this Article shall be deemed to have been fully complied with, provided, however, that no such failure to act shall be deemed an approval of any matters specifically prohibited by any other provision of this Declaration. Refusal of approval of plans, specifications and plot plans or any of them may be based on any grounds, including purely aesthetic grounds,

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which in the sole and uncontrolled discretion of the Declarant or the Architectural Review Board may seem sufficient. Any change in exterior appearance of any building, wall, fence or other structural improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval.

All construction of any nature shall further be subject to the provisions and requirements of Article XV RESTRICTIVE COVENANT.

Section 4. Lot Filling. No Lot may be cleared, graded cut or filled for any reason until the Architectural Review Board has reviewed and approved the application for approval of the proposed improvement. The site plan, along with the tree survey and other documents required by the Architectural Review Board, must clearly delineate the extent of clearing, grading, cutting and filling.

Section 5. Fee Schedule. The Architectural Review Board may adopt a schedule of reasonable fees for processing requests for approval. Such Fees, if any, shall be payable to the Association at the time that the plans and specifications and other documents are submitted to the Architectural Review Board. The payment of such fees, as well as other expenses of the Architectural Review Board required to be paid, shall be deemed to be an individual Assessment, enforceable against the Owner and the Lot as provided hereinabove. The Architectural Review Board is expressly reserved the right and power, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the Architectural Review Board in its review of any plans or specifications, and the cost of such consulting services shall be the responsibility of the respective applicant or Owner of the subject property.

Section 6. Defects or Damages. Neither the Declarant, the directors or officers of the Association, the members of the Architectural Review Board, nor any person acting on behalf of any of them, shall be liable for any costs or damage incurred by an Owner or Association or any other party whatsoever, due to any mistakes in judgment, negligence or any action of the Architectural Review Board in connection with the approval or disapproval of plans and specifications. Each Owner or Association and occupant of any property within Wild Wing Plantation agrees, as do their successors and assigns by acquiring title thereto or an interest therein, or by assuming possession thereof, that they shall not bring any action or suit against the Declarant, the directors or officers of the Association, the members of the Architectural Review Board, or their respective agents, in order to recover any damages caused by the actions of the Architectural Review Board. The Association shall indemnify, defend and hold the Architectural Review Board and each of its members harmless from all costs, expenses and liabilities, including attorneys' fees, of all nature resulting by virtue of the acts of the Architectural Review Board or its members. Neither the Declarant, the directors or officers of the Association, the members of the Architectural Review Board, nor any person acting on behalf of any of them, shall be responsible for any defects in any plans and specifications, nor for any defects in any Improvements constructed pursuant thereto. Each party submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

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ARTICLE VIII.

Exterior Maintenance. Reasonable Access and Maintenance of Common Areas

Section 1. Exterior Maintenance. The Owner shall maintain the structures and grounds on each Lot at all times in a neat and attractive manner. Upon the Owner's failure to do so, the Declarant, or the Association (after the termination of Class B membership status of Declarant) may, at its option, after giving the Owner ten (10) days written notice sent to his last known address, or to the address of the subject premises, have the grass, weeds, shrubs and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed from such Lot, and replaced, and may have any portion of the Lot resodded or landscaped, all of which shall not be deemed a trespass, and all expenses of the Association under this provision shall be a lien and charge against the Lot on which the work is done and the personal obligation of the then Owner of such Lot. The Declarant or the Association, and its assigns, may likewise, after giving the owner ten (10) days written notice sent as aforesaid, enter upon such Lot(s) to remove any trash, debris or garbage which has collected on said Lot(s) without such entrance and removal being deemed a trespass, all at the expense of the owner of said Lot. Upon the Owner's failure to maintain the exterior of any structure in good repair and appearance, the Association may, at its option, after giving the Owner thirty (30) days written notice sent to his last known address, make repairs and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Lot and shall constitute an assessment against the Lot on which the work was performed, collectible in a lump sum secured by a lien against the Lot as herein provided.

Section 2. Access at Reasonable Hours. For the purpose of performing its function under this or any other Article of the Declaration, and to make necessary surveys in connection therewith, the Association, by its duly authorized agent and employees, or the Declarant during the period of development, shall have the right to enter upon any Lot at reasonable hours, on any day except Sundays and holidays, on reasonable prior notice.

Section 3. Maintenance of Common Areas. It shall be the responsibility of the Association to maintain the Common Areas. However, should the Declarant (prior to conveyance to the Association) or the Association (after the termination of the Class B status of Declarant), decide to transfer any portion or all of the areas designated or to become, by conveyance, Common Areas to governmental authority, as they have the right to do, such duty to maintain same shall cease as to that portion so transferred.

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ARTICLE IX.

Phased Development

Section 1. Phase I. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Horry County, South Carolina, and is more particularly described on Exhibit "A" attached hereto and made a part and parcel hereof.

Section 2. Additional Phases. The Declarant may, at its option, from time to time bring other land under the provisions hereof by recording a Supplemental Declaration(s) or amendment stating its intention to so incorporate additional real estate. Declarant may incorporate such additional land under the provisions hereof in any number of additional phases as it may so desire. Such Supplemental Declaration(s) or amendment shall not require the vote or consent of the association or any Owner. Any such Supplemental Declaration(s) shall be effective upon the filing thereof in the public records of Horry County, South Carolina. Such Supplemental Declaration shall describe the real property to be brought under the provisions hereof. Any such property to be brought under the provisions of this Declaration must be contiguous or near to property already subjected to the provisions of this Declaration at that time and must be owned by Declarant or its successors and assigns as developer. Declarant may bring such additional real estate under the terms hereof either in whole or in part and may do so in multiple phases. Upon the Declarant's election to incorporate additional real estate hereunder, all of such real estate so incorporated shall be as fully covered hereby as if a part of the original Development. However, Declarant reserves the right unto itself to change or modify the restrictions applicable to such additional phases by such supplemental declaration, which changes or modifications may include, without limitation, increasing or decreasing the size of Lots within such phases(s), modifying the building setback lines within such phases(s) and changing architectural and material requirements and minimum home size requirements within such phase(s). Subject to the foregoing, all property so incorporated shall be subject to all the declarations, covenants, easements, liens, restrictions and duties as herein contained, together with such additional restrictions and obligations or modifications to these Restrictions as Declarant may impose on the land being submitted to the provisions of this Declaration by such Supplemental Declaration(s). Declarant shall have the unilateral right to transfer to any other person or entity the said right to submit additional property to the provisions of this Declaration. Declarant shall have no obligation to develop any land adjoining the Properties in accordance with this Declaration and may develop same in any manner it may desire and further, Declarant, in the event that it should decide to develop any additional land located adjacent to the Properties, in its sole discretion, shall have no obligation to make same a part of this Project or subject to this Declaration. THE DECLARANT SHALL BE UNDER NO OBLIGATION TO DEVELOP ADDITIONAL PHASES AND NONE OF THE REMAINING PORTION OF THE PROPERTY DESCRIBED HEREIN SHALL BE DEEMED A PART OF ANY SCHEME OF DEVELOPMENT UNTIL ACTUALLY BROUGHT UNDER THESE RESTRICTIONS AS HEREIN PROVIDED.

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Section 3. Reservation of Additional Easements and Rights. Declarant reserves for itself and its successors and assigns as developer (and all conveyances by Declarant to Association of Common Areas shall be deemed to automatically reserve) easements over, under and across all Common Areas for ingress and egress and for construction and completion of construction and development of this phase and all future phases of the Development and/or for the construction and development of other property of Declarant, whether or not such other property is submitted to the terms and provisions of this Declaration, including, without limitation, easements for the installation, construction, reconstruction, repair, maintenance and operation of all utility services; said easements to be in addition to and not in lieu of any other rights or easements reserved by Declarant herein or in any supplement hereto or any other conveyance by or to Declarant or its predecessors in title.

ARTICLE X.

Rights of Mortgagees

Rights of Mortgagees or Third Parties. Should a mortgagee or third party acquire the rights of Declarant, by way of foreclosure or otherwise in adjoining or neighboring property contained within the property contiguous to the property subject to this declaration, as same may exist from time to time, it shall be allowed full use of all rights, easements, rights-of-way and utilities contained within The Properties for the purpose of serving such adjoining or neighboring areas. These rights shall also inure to the benefit of Declarant should it retain or be the Owner of any portion of said property. Any of such parties may elect to bring additional phases under this Declaration.

ARTICLE XI.

Insurance and Casualty Losses

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount (as determined by the insurance underwriter) sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Area, Buffer area and any other areas Association is permitted to enter upon, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million and No/100 ($1,000,000.00) Dollar single person limit as respects bodily injury and property damage, a One Million and No/100 ($1,000,000.00) Dollars limit per occurrence, and a Five Hundred Thousand and No/100

($500,000.00) Dollar minimum property damage limit.

Cost of insurance coverage obtained by the Association for the Common Area shall be included in the Assessment.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefitted parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in South Carolina which holds a Best's rating of A or better as is assigned a financial size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area and fencing referred to above shall be for the benefit of the Association and Declarant shall be named as additional insured.

(c) Exclusive authority to adjust losses under policies in force on the Common Areas and said fencing obtained by the Association shall be vested in the Association's Board of Directors.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) that no policy may be cancelled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, its Owner, or mortgagee;

(iii) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(iv) That no policy may be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

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Association, its successors and assigns, members, officers and directors do hereby knowingly and voluntarily forever release and discharge Declarant, its principals, officers, managers, members, employees, agents and/or contractors, their heirs, successors and assigns, from any and all claims at law or equity, including, without limitation, indemnification and/or subrogation, in anyway arising from our related to conditions of the Property, accidents, personal injury, occurences or the like, in anyway relating to or arising from the prior use of the Property as part of the Bombing and Gunnery Range, to specifically include, without limitation, active or inactive ordnance upon the Property.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. However, no fidelity bond shall be required as long as the class B Member exists. The amount of fidelity coverage shall be determined in the directors' best business judgment but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

The Association may purchase officers and directors liability insurance, if reasonably available and the Board of Directors of the Association approves the purchase of same. However, every Director and every officer of the Property Owners Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or Officer of the Association, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty or willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the Director or Officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

Section 2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as my be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

(b) If it is determined, as provided for in Section 4 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in Section A above. However, repair or replacement of the affected Common Area must be made unless prevented by law or governmental rule or regulation.

Section 3. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Board of Directors of the Association, shall decide within thirty (30) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the Common Area damaged or destroyed shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Area shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

Section 4. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners in proportion to the number of Lots owned, provided, if the damage or destruction involves a Lot or Lots only Owners of the affected Lots shall be subject to such assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Section 5. Declarant has contracted and paid for Pollution Legal Liability Policy #PLS 1959333 written by American International Specialty Lines Insurance Company (the"Policy", which term shall include substitute policies, renewals, replacement policies or the like), which such policy is procured responsive to portions of the Development, Project, Wild Wing, Community, Properties

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or Property, as defined herein, having been determined by the United Stated Army Corps of Engineers to be within the former Conway Bombing and Gunnery Range. See Articles XV and XVI herein. The effective anniversary dates of the Policy are December 27, 2005 thru December 27, 2015, after which the Association Board of Directors may, in its discretion, elect to renew, extend, replace or discontinue such coverage. The Association Board of Directors shall not discontinue such coverage at any time prior to the expiration of the original effective anniversary date recited above.

The Policy has or shall be amended to include the Association as an Additional Named Insured. Immediately thereupon, The Association agrees and hereby does accept contractual liability obligations to indemnify and hold harmless Declarant, Members, Owners, their successors, heirs and assigns, their guests, licensees, invitees or others upon the Development, Project, Wild Wing, Community, Properties or Property, as defined herein, to the full extent coverage exists, and only to such extent, pursuant to the terms and conditions of the Policy.

The Association shall report, notice and facilitate the handling and management of any such claims and shall and hereby does assume responsibility for any Self Insured Retention (deductible) applicable thereto. Any and all Self Insured Retention amounts shall be borne by the Association and charged to the Members as a portion of Annual Assessments and/or Special Assessments as defined herein.

In the event Insurance Coverage in these regards is unavailable for any reason, including inapplicability, non-renewal, lapse or otherwise, **Member and/or Owner, its, his, her or their (as the case may be) heirs, successors and assigns, do hereby knowingly and voluntarily forever release and discharge Association, its principals, officers, managers, members, employees, agents and/or contractors, their heirs, successors and assigns, from any and all claims at law or equity in any way arising from or related to conditions of the Property, accidents, personal injury, occurrences or the like in any way related to or arising from the prior use of the Property as part of the Bombing and Gunnery Range, to specifically include, without limitation, active or inactive ordnance upon the Property.**

ARTICLE XII.

General Provisions

Section 1. Time of Essence. It is agreed that time is of the essence with regard to these restrictions, protective covenants, limitations and conditions.

Section 2. Enforcement. In the event of a violation or breach of any of these restrictions by any Owner, or agent, or agent of such Owner, the Owners of Lots in the subdivision, or any of them, jointly or severally, the Declarant and/or the Association shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any such event or to recover damages. In addition to the foregoing, the Declarant, its successors and assigns, shall have the right, but shall be under no obligation whenever there shall have been built

on any lot in the subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the Owner, if, after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservation, restriction or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the rights to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should Declarant or Association employ Counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for Declarant's Counsel shall be paid by the Owner of such lot or Lots in breach thereof. Any amount assessed hereunder shall constitute a lien on such lot and shall be enforceable as herein provided. Failure of Declarant, the Association or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter.

Section 3. Responsibility of Declarant. The Declarant herein shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself. In addition, nothing contained in this Declaration shall be deemed to be a representation by Declarant with regard to the requirements of any governmental authority and it shall be the duty of each Owner to comply with any such requirements in addition to the provisions of this Declaration.

Section 4. Rule Against Perpetuities. In the event that any of the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event, such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of South Carolina, and such provision shall be fully effective for said reduced period of time.

Section 5. Binding Effect. All covenants, conditions, limitations, restrictions, easements and affirmative obligations set forth in this declaration shall be binding on the Owners of the Lots, and their respective heirs, successors and assigns and run with the land. All rights, easements and agreements reserved by or granted to Declarant shall inure to the benefit of Declarant, its successors and assigns including, without limitation, the right to develop and submit additional phases. Declarant reserves the right in addition to all other rights of Declarant, to assign its rights of consent and approval as set out in this Declaration and any amendment hereto or supplement hereof, to Association, or to any assignee of Declarant's development rights.

Section 6. Duration. 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 Declarant, the Association, or the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns.

Section 7. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered

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or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 8. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in nowise effect any other provisions which shall remain in full force and effect.

Section 9. Amendment. In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges and liens of this agreement may be amended, changed, added to, derogated or deleted at any time and from time to time upon the execution and recordation of any instrument executed by Owners holding not less than two-thirds (2/3) vote of the membership in the Association, provided, that so long as the Declarant is the Owner of any Lot affected by this Declaration the Declarant's consent must be obtained. Provided, further, that the provisions for voting of Class A and Class B Members as hereinabove contained in this Declaration shall also be effective in voting for changes in this Declaration.

Section 10. Amendment Prior to Sale by Declarant. At any time prior to the closing of the first sale of a Lot by Declarant, the Declarant, and any mortgage holder, if any, may amend this Declaration by mutual consent. The closing of the first sale shall mean transfer of title and delivery of a deed and not execution of a Contract of Sale or a like document.

Section 11. Effective Date. This Declaration shall become effective upon its recordation in the Office of the Register of Deeds for Horry County, South Carolina.

Section 12. Plat. Reference to Exhibit A, "plat", "map" other term synonymous therewith shall mean and include Exhibit A as recorded herewith and all subsequent revisions thereof, together with any and all additional plats or maps filed as any additional phases, if any, are submitted to this Declaration as and when recorded in the Office of the Register of Deeds for Horry County, South Carolina.

ARTICLE XIII

Additional Matters Dealing with Phased Development

Section 1. Voting Rights. As each phase, if any, is added to the Development, the Lots comprising such additional phase shall be counted for the purpose of voting rights.

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ARTICLE XIV

Special Restrictions for Golf Course Lots

Section 1. Golf Course Property. A golf course is currently located adjacent to portions of the Property. Although the golf course is currently owned by Declarant, the golf course is not, and is not intended to be, a Common Area of the Project. Purchase of property in the Subdivision does not guarantee or vest in the purchaser or Owner the right to use of the golf course. Each Owner, by acceptance of a deed to a Lot acknowledges that no Owner acquires any interest in the golf course by virtue of taking title to property within the Project. Each Owner acknowledges that no representations or warranties, either verbal or written have been made by the Declarant or any other person regarding the continued ownership or operation of, or rights in the golf course, or that the golf course will become Common Area to the Association.

Section 2. Easements. Until such time as a residence is constructed on a Lot bordering the golf course, Declarant hereby reserves unto itself, its successors and assigns, an easement to permit and authorize registered golf course players to enter upon such Lot to recover a ball or play a ball, without such entering and playing being deemed a trespass.

Every Lot bordering a golf course and any Common Area bordering the golf course are burdened with an easement to come upon the Lot or Common Area immediately adjacent to the golf course for the purposes related to the playing of golf and the normal operation of the golf course and for golfers at reasonable times and in a reasonable manner to come upon the exterior portions of such Lot or Common Area in order to retrieve errant golf balls. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. However, under no circumstances shall the Declarant or the Association be held liable for any damages or injury caused from errant golf balls or the exercise of this easement.

Section 3. Golf Course Maintenance. Each Owner, occupant or other person acquiring an interest in a Lot within the Project is hereby deemed to acknowledge being aware that for such period of time as the golf course is being used as a golf course, it can be expected that (a) maintenance activities on the golf course shall begin early in the morning and extend until late into the evening; (b) during certain periods of the year the golf course will be heavily fertilized; and (c) golf balls are not susceptible of being easily controlled and accordingly may land or strike beyond the golf course boundaries. Neither the Declarant, nor any employee or agent of the Declarant, shall be liable for personal injury or property damage caused by errant golf balls.

Section 4. Actions of Lot Owners. Owners or occupants of Lots bordering the golf course fairways shall be obligated to refrain from any actions which would detract from the playing qualities of the golf course or unreasonably distract golfers from the playing of golf.

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ARTICLE XV

Restrictive Covenant

No excavation of any portions of the property shall be made which exceed four (4) feet in depth below the grade level of the property without the prior written approval of Declarant (or its assignee or designee). Furthermore, swimming pools or other similar improvements shall not be installed without the prior written approval of Declarant (or its assignee or designee). The approval of Declarant (or its assignee or designee) may be conditioned upon the Lot Owner providing Declarant (or its assignee or designee) with the written results of an examination of the area in which such excavation is to occur, which examination shall be performed by EODT (as hereafter defined,or such other party approved by Declarant or its assignee or designee), confirming that the area is clear of any ordnance or explosive materials.

ARTICLE XVI

Disclosure

The undersigned understands that this property has been determined by the U.S. Army Corps of Engineers to be within either Area A or Area A-1 of the former Conway Bombing and Gunnery Range. Seller has contracted with EOD Technology, Inc ("EODT") to conduct subsurface clearance within Area A in accordance with U.S. Army Corps of Engineers Guidelines of ordnance/explosive materials detected within Area A. In addition, Seller has contracted with EODT for an investigation of the property within Area A-1. EODT has conducted a preliminary site investigation and has issued a report (the Report") detailing the results of its preliminary site investigation and the work performed relative thereto. The Report is available for inspection and copying at the office of Seller. Further, Seller has contracted with EODT to perform an additional Scope of Work toward further and more extensive investigation of Area A-1. The additional Scope of Work is available for inspection and copying at the office of Seller. However, Purchaser acknowledges that Seller makes no warranties or representations relative to the accuracy and results of such preliminary site investigation, Scope of Work and the work undertaken relative thereto and their recommendations, as well as any subsequent reports issued by EODT. Furthermore, Purchaser acknowledges and agrees that all construction activities on the Lot shall be undertaken by Purchaser in compliance with the provisions of the Report and its recommendations, as well as any subsequent reports issued by EODT and shall further be undertaken by Purchaser in compliance with the requirements of this Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation.

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ARTICLE XVII

Release

Member and/or Owner, its, his, her or their (as the case may be) heirs, successors and assigns, do hereby knowingly and voluntarily forever release and discharge Declarant, its principals, officers, managers, members, employees, agents and/or contractors, their heirs, successors and assigns, from any and all claims at law or equity in any way arising from or related to conditions of the Property, accidents, personal injury, occurrences or the like in any way related to or arising from the prior use of the Property as part of the Bombing and Gunnery Range, to specifically include, without limitation, active or inactive ordnance upon the Property.

Association, its successors and assigns, members, officers and directors do hereby knowingly and voluntarily forever release and discharge Declarant, its principals, officers, managers, members, employees, agents and/or contracts, their heirs, successors and assigns, from any and all claims at law or equity, including, without limitation, indemnification and/or subrogation, in anyway arising from our related to conditions of the Property, accidents, personal injury, occurences or the like, in anyway relating to or arising from the prior use of the Property as part of the Bombing and Gunnery Range, to specifically include, without limitation, active or inactive ordnance upon the Property.

IN WITNESS WHEREOF, Wild Wing Company LLC, has caused this instrument to be executed by its proper officers and its corporate seal to be affixed thereto on the day and year first above written.

In the Presence of:

Michelle L. Merlo

DECLARANT:

WILD WING COMPANY, LLC, A South Carolina Limited Liability Company
BY: Sunstar, LLC, Its Manager

By:
Ralph R. Teal, Jr., Manager

By:
E. Lawton Benton, Manager

Wild Wing Property Owners Association, Inc. executes this Declaration for the purposes of acknowledging and agreeing to the terms and conditions hereof.

WILD WING PROPERTY OWNERS ASSOCIATION, INC.

By: _____
Ralph R. Teal, Jr., President

_____
Michelle L. Merlo

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Wild Wing Company, LLC, by and through its duly authorized Manager(s) Sign, Seal and as its Act and Deed deliver the within written DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WILD WING PLANTATION; and that s/he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 26th

day of September, 2006.

Michelle L. Merck (L.S.)
Notary Public for South Carolina
My Commission Expires: 1-23-2014

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named WILD WING PLANTATION PROPERTY OWNERS ASSOCIATION, INC., Sign, Seal and as its Corporate Act and Deed deliver the within written DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WILD WING PLANTATION; and that s/he with the other witness subscribed above witnessed the execution thereof and saw the Corporate Seal thereto affixed.

SWORN to before me this 26th

day of September, 2006.

Michelle L. Mercer (L.S.)
Notary Public for South Carolina
My Commission Expires: 1-23-2014

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EXHIBIT A

ALL AND SINGULAR, Those certain pieces, parcels or lots of land, situate, lying and being in the State of South Carolina, County of Horry and being shown and designated as Lots 1 through 337, inclusive, of Wild Wing Plantation on a plat prepared by Associated Land Surveyors dated September 18, 2006, which plat was recorded September 20, 2006 in Plat Book 217 at Pages 55, 55-a, 55-b, 55-c, 55-d, 55-e, 55-f, 55-g, 55-h and 55-i, records of Horry County, South Carolina, reference to which is craved as forming a part and parcel of these presents.

This being a portion of the property conveyed to Wild Wing Company, LLC by deed of Wild Wing Plantation, Inc dated December 15,2005 and recorded December 15, 2005 in Deed Book 3023 at Page 272, in the office of the Register of Deeds for Horry County, South Carolina.

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CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

JUN 14 2006

NONPROFIT CORPORATION
ARTICLES OF INCORPORATION

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

1. The name of the proposed corporation is **Wild Wing Plantation Property Owners' Association, Inc.**

2. The initial registered office of the nonprofit corporation is

990 Wild Wing Boulevard, Conway, South Carolina 29526

The name of the registered agent of the nonprofit corporation at that office is:

Ralph R. Teal, Jr.

I hereby consent to the appointment as registered agent of the corporation.

Agent's Signature

3. Check "a", "b" or "c", whichever is applicable. Check only one box:

a. [ ] The nonprofit corporation is a public benefit corporation.

b. [ ] The nonprofit corporation is a religious corporation.

c. [X] The nonprofit corporation is a mutual benefit corporation.

4. Check "a" or "b", whichever is applicable:

a. [X] This corporation will have members.

b. [ ] This corporation will not have members.

5. The address of the principal office of the nonprofit corporation is

990 Wild Wing Boulevard, Conway, South Carolina 29526

6. If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of paragraph #3 is checked), complete either "a" or "b", whichever is applicable to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.

a. [ ] Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of

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WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATI
Filing Fee: $25.00 ORIG

Mark Hammond South Carolina Secretary of State

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Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

b. [ ] Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to: _____

7. If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

a. [X] Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefitting or serving.

b. [ ] Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to: _____

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See Section 33-31-202© of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instruction to this form).

_____

9. The name and address of each incorporator is as follows (only one is required)

Ralph R. Teal, Jr.
990 Wild Wing Boulevard, Conway, South Carolina 29526

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

N/A
Name (Only if named in articles) Signature of director

11. Each incorporator must sign the articles.

Signature of Incorporator - Ralph R. Teal, Jr.

The State of South Carolina

Office of Secretary of State Mark Hammond

Certificate of Incorporation, Nonprofit Corporation

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., a nonprofit corporation duly organized under the laws of the State of South Carolina on June 14th, 2006, and having a perpetual duration unless otherwise indicated below, has as of the date hereof filed a Declaration and Petition for Incorporation of a nonprofit corporation for Religious, Educational, Social, Fraternal, Charitable, or other eleemosynary purpose.

Now, therefore, I Mark Hammond, Secretary of State, by virtue of the authority in me vested by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto, do hereby declare the organization to be a body politic and corporate, with all the rights, powers, privileges and immunities, and subject to all the limitations and liabilities, conferred by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto.

Given under my Hand and the Great Seal of the State of South Carolina this 14th day of June, 2006.

Mark Hammond

Mark Hammond, Secretary of State

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BY-LAWS

OF

WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.

Article I
Name, Principal Office and Definitions

Section 1. Name. The name of the Association shall be Wild Wing Plantation Property Owners' Association, Inc. (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The principal office of the Association in the State of South Carolina shall be located in Myrtle Beach, County of Horry. The Association may have such other offices, either within or without the State of South Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in the Declaration of Protective Covenants, Restrictions, Charges and Liens for Wild Wing to which these Bylaws are attached as an Exhibit, as amended, renewed or extended from time to time, as hereinafter sometimes referred to as the "Declaration," unless the context shall prohibit.

Section 4. Purpose. The purpose of the Association is to manage the affairs of Wild Wing, a Subdivision established pursuant to the terms of the Declaration therefor, filed or to be filed in the Office of the Register of Deeds for Horry County, South Carolina.

The Association is not organized for profit and no part of the net earnings, if any, shall inure to the benefit of any member or individual person, firm or corporation.

The Association shall have all of the common law and statutory powers of a nonprofit corporation. The Association shall also have all of the powers necessary to implement the purposes of the Association and to provide for the general health and welfare of its membership.

Article II
Association: Membership, Meetings, Quorum, Voting, Proxies

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. The Association shall have two (2) classes of membership, Class "A" and Class "B", as more fully set forth in the Declaration, the terms of which pertaining to

membership are specifically incorporated herein by reference. The classes of membership shall be as follows:

Class A. Class A members shall be all Owners excepting the Declarant. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership pursuant to the Declaration. When more than one person holds such interest or interests in any Lot, the vote attributable to such Lot shall be exercised as such persons, mutually determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. The sole Class B member shall be the Declarant (as defined in the Declaration). The Class B member shall be entitled to total votes in an amount equal to twice the number of the Class A votes plus one. The Class B membership shall cease and become converted to Class A membership upon the conveyance to Lot Owners of all Lots subject to the Declaration, or December 31, 2015, whichever first occurs. In addition, Declarant may terminate the Class B membership upon written notice to the Association.

When a purchaser of an individual Lot or Lots takes title thereto from the Declarant, he automatically becomes a Class A member.

Section 3. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Voting Members as may be designated by the Board of Directors either within the properties or as convenient thereto as possible and practical.

Section 4. Annual Meetings. The first meeting of the membership, whether a regular or special meeting, shall be held within one hundred twenty (120) days after the expiration of one (1) year from the date of incorporation of the Association. The next annual meeting shall be set by the Board so as to occur no more than ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings of the membership shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to the foregoing, the annual meeting shall be held at a date and time as set by the Board of Directors.

Section 5. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Voting Members representing at least ten (10%) percent of the total votes of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

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Section 6. Notice of Meetings. Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered either personally or by mail, to each Voting Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary.

In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 7. Waiver of Notice. Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Member may, in writing, waive notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member or alternate shall be deemed waiver by such Voting Member of notice of the time, date and place thereof, unless such Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 8. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Voting Members who are present at such meeting, either in person or by alternate, may adjourn the meeting to a time not more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted.

Section 9. Voting. The voting rights of the Members shall be as set forth in the Declaration and as set forth herein, and such voting rights provisions are specifically incorporated herein.

Section 10. Proxies. Voting Members may vote in person or by proxy.

Section 11. Majority. As used in these By-Laws, the term "majority" shall mean those votes, Owners or other group as the context may indicate, totaling more than fifty (50%) percent of the total number.

Section 12 Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by alternate of the Voting Members representing fifty-one (51%) percent of the total vote of the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein. So long as a quorum is present at the opening of the meeting, business may be transacted until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum in attendance.

Further, at any adjourned meeting at which a quorum is present at the reconvening of such meeting, any business may be transacted which might have been transacted at the original meeting notwithstanding the withdrawal of enough members to leave less than a quorum in attendance.

Section 13. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

Section 14. Action Without a Meeting. Any action required by law to be taken at a meeting of the Voting Members, or any action which may be taken at a meeting of the Voting Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Voting Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Voting Members.

Article III
Board of Directors, Number, Powers, Meetings

A. Composition and Selection.

Section 1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors each of whom shall have one (1) vote. Except as provided in Section 2 of this Article, the Directors shall be Members. In the case of an Owner which is a corporation or partnership, the person designated in writing to the Secretary of the Association as the representative of such corporation or partnership shall be eligible to serve as a Director. The initial Board of Directors shall consist of three (3) persons. The names and addresses of the first Board of Directors of the Association, who shall hold office until the first annual meeting of members and until qualified successors are duly elected and have taken office, shall be as follows:

Ralph R. Teal, Jr.
E. Lawton Benton
J. Carson Benton

Section 2. Directors During Class "B" Control. The Directors who shall serve on the Board of Directors of the Association shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first annual meeting of the membership following termination of Class B control at which time the Board of Directors shall be increased to five (5) Members.

Within one hundred twenty (120) days thereafter, the Class "B" member shall call a meeting, as provided in Article II, Section 5, of these By-Laws for special meetings, to advise the membership of the termination of the Class "B" member's control or, in the alternative, shall notify each member by U. S. Mail that the Class B membership has terminated.

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The Directors selected by the Class "B" member pursuant to this Section need not be Members as provided in Section 1 of this Article.

Section 3. Veto. This Section 3 may not be amended without the express, written consent of the Class "B" member, so long as the Class "B" membership exists.

So long as the Class "B" membership exists, the Class "B" member shall have a veto power over all actions of the Board and any committee, as is more fully provided in this Section. This veto power shall be exercisable only by the Class "B" member, its successors, and assigns who specifically take this power in a recorded instrument. The veto power shall be as follows:

No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) The Class "B" member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meetings with Article III, Sections 10 and 11, of these By-Laws as to regular and special meetings of the Directors and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Class "B" member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of the meeting relative to any prospective action, policy, or program to be implemented by the Board, any committee, or the Association. The Class "B" member and its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the subject committee and/or the Board. The Class "B" member shall have and is hereby granted a veto power over any such action, policy, or program authorized by any committee or the Board of Directors and to be taken by any committee or Board of the Association or any individual member of the Association if Board, committee, or Association approval is necessary for said action. This veto may be exercised by the Class "B" member, its representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. Any veto shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association.

Section 4. Number of Directors. The number of Directors in the Association shall not be less than three (3) nor more than five (5), as provided below. The initial Board shall consist of three (3) members as identified in the Articles of Incorporation.

Section 5. Nomination of Directors. Except with respect to Directors selected by the Class "B" Member, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and three (3) or more Members of the Association. The Nominating Committee

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shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Voting Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each such annual meeting. Nominations shall be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Section 6. Election and Term of Office. Notwithstanding any other provision contained herein:

At the first annual meeting after the termination of Class B control, five (5) Directors shall be elected. Two (2) of the Directors, elected pursuant to this Section, shall be elected to serve for a term of three (3) years. Two (2) of the remaining Directors shall be elected to serve for a term of two (2) years, with the final Director elected to serve for a one (1) year term. Members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association. Directors may be elected to serve any number of consecutive terms. Each member elected thereafter shall be elected for a two (2) year term.

Section 7. Removal of Directors and Vacancies. Any Director of the Association may be removed, with or without cause, by a vote of the Voting Members with a majority vote of the membership. Any Director whose removal is sought will be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall then and there be elected to fill the vacancy by the Voting Members responsible for such removal.

Any Director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment for more than thirty (30) days may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board. In the event of the death, disability, or resignation of a Director, a vacancy may be declared by the Board and it may appoint a successor. Any Director appointed by the Board shall serve for the remainder of the term such successor was appointed to fill.

Section 8. Voting Procedure for Directors. At any election of Directors to the Board of Directors, each Voting Member may cast, in respect to each vacancy, as many votes as he or she is entitled to exercise under the Declaration. The candidates receiving the largest number of votes shall be elected.

B. Meetings.

Section 9. Organizational Meetings. The first meeting of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

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Section 10. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 11. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or by a majority of Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) by first class mail, postage prepaid: (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by telegram, charges prepaid. All such notices shall be given by use of the Director's telephone number or shall be sent to the Director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least three (3) days before the time set for the meeting.

Section 12. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 13. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors who are present at such meeting may adjourn the meeting until such time and place as they may determine. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 14. Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by Members holding a majority of the total vote of the Association at a regular or special meeting of the Association; provided any Director may be

reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors.

Section 15. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

Section 16. Open Meetings. Subject to the provisions of Section 17 of this Article, all meetings of the Board shall be open to all Voting Members, but Voting Members other than Directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a Director. In such case, the President may limit the time any Voting Member may speak.

Section 17. Action Without a Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

Section 18. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the Voting Members or the membership generally.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;

(b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board of Directors, the annual assessment for each Declaration'S proportionate share of the Common Expenses shall be payable in equal monthly installments, or as determined by the Board of Directors;

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(c) providing for the operation, care, upkeep, and maintenance of all of the Common Areas;

(d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Areas and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, any reserve fund may be deposited, in the Directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable to Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting principles;

(m) making available to any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Lot, current copies of the Declaration, the By-Laws, rules governing the Lot, and all other books, records, and financial statements of the Association; and

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(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the properties.

Section 19. Management Agent.

(a) The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 18 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

(b) No management contract may have a term in excess of one (1) year and must permit termination by either party without cause and without termination fee or penalty on ninety (90) days' or less written notice.

Section 20. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed with regard to the annual audit, while the regular monthly accounting shall be on a cash basis;

(b) accounting and controls shall conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise unless it benefits the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(f) commencing at the end of the month in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

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(ii) a variance report reflecting the status of all Association ledger accounts in an "actual" versus "approved" budget format;

(iii) a balance sheet as of the last day of the preceding period; and

(iv) a delinquency report listing all Owners who are delinquent in paying the assessments at the time of the report and describing the status of any action to collect such installments which remain delinquent (A monthly installment of the assessment shall be considered to be delinquent on the fifteenth (15th) day of each month unless otherwise determined by the Board of Directors); and

(g) an annual report as of the end of the fiscal year consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited basis, by an independent certified public accountant for each fiscal year.

Section 21. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the Common Areas or for the purpose of funding budgetary shortfalls, without the approval of the membership; provided, however, the Board shall obtain Voting Member approval by majority vote for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association for that fiscal year.

Section 22. Rights of the Association. With respect to the Common Areas, and in accordance with the Articles of Incorporation and By-Laws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other Owners or residents associations, both within and without the properties. Such agreements shall require the consent of two-thirds (2/3) of all Directors of the Association.

Section 23. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. In the event that any occupant of a Lot violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the

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Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder, except the suspension of voting rights for nonpayment of assessments, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less then ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested in a timely manner, the hearing before the Covenants Committee shall be held in executive session affording the Owner a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within thirty (30) days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

Article IV
Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform

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the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the membership, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term. The names and addresses of the first officers of the Association, who shall hold office until the first annual meeting of directors and until successors are duly elected and have taken office, shall be as follows:

Office	Name	Address
President	Ralph R. Teal, Jr.	2002 Oak Street, Suite 200 Myrtle Beach, SC 29577
Vice President	E. Lawton Benton	706 38th Avenue North Myrtle Beach, SC 29577
Secretary/ Treasurer	J. Carson Benton	706 38th Avenue North Myrtle Beach, SC 29577

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have the responsibility for the preparation of the budget as provided for in the Declaration.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors. Provided however, agreements, contracts and checks may be executed by the Management Agent.

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Article V
Committees

Section 1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Section 2. Covenants Committee. In addition to any other committees which may be established by the Board pursuant to Section 1 of this Article, the Board of Directors may appoint a Covenants Committee consisting of at least five (5) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and conduct all hearings held pursuant to Article III, Section 23 of these By-Laws.

Article VI
Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with South Carolina law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of South Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration and By-Laws, membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the Properties as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to a Member or Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member or Voting Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6. Amendment. Prior to the conveyance of the first Lot, Declarant may unilaterally amend these By-Laws. Thereafter and otherwise, but subject to the provisions hereinafter provided, these By-Laws may be amended only by the affirmative vote (in person or by alternate) or written consent of Voting Members representing sixty-seven (67%) percent of the total votes of the Association, including sixty-seven (67%) percent of the votes of Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Further, no amendment of any provision reserving a right specifically in favor of the Declarant may be amended without the Declarant's express consent. No amendment shall be effective until recorded in the public records of Horry County, South Carolina.

Article VII

INDEMNIFICATION

The Association shall indemnify any person who is made a party or is threatened to be made a party to any claim, suit, proceeding or liability by reason of the fact that he is or was a director, officer, employee, agent or representative of the Association to the fullest extent permitted by law, and the Association may advance expenses to any such person to the fullest extent permitted by law. The Association shall also have the power to purchase and maintain insurance on behalf of any

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person who is or was a director, officer, employee, agent or representative of the Association against any liability asserted against him in any such capacity.

IN WITNESS WHEREOF, Wild Wing Property Owners' Association, Inc., a South Carolina Corporation, has caused these presents to be executed this 26th day of September, 2006.

WILD WING PROPERTY OWNERS' ASSOCIATION, INC.

By: _____
Ralph R. Teal, Jr., President

_____
Michelle L. Merkle

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C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit I

STATE OF SOUTH CAROLINA COUNTY OF HORRY C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., PLAINTIFFS, VS. WILD WING COMPANY, LLC; SUNSTAR, LLC; RALPH R. TEAL, JR.; SLF IV/SBI WILD WING, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI PROPERTIES MM, LLC; SLF IV/SBI DEVELOPMENT HOLDINGS, LLC; WILD WING RESIDENTIAL DEVELOPMENT, LLC; STRATFORD LAND MANAGER, L.P. D/B/A STRATFORD LAND; STRATFORD LAND FUND IV, L.P.; SB INVESTMENTS LLC; REALSTAR MANAGEMENT, LLC; GRAEME T. BLACK; H. GILFORD EDWARDS; FOUNDERS WILD WING, LLC; FOUNDERS GROUP INTERNATIONAL, LLC; DAN LIU; XIAN "NICK" DOU; RICK SCHULTZ; RICK TAYLOR AND THOMAS PLANKERS, DEFENDANTS. WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., NOMINAL DEFENDANT.	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT C/A NUMBER: 2017-CP-26-04187 **AFFIDAVIT OF C. BARRY DYKES**

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PERSONALLY, APPEARED BEFORE ME, C. Barry Dykes, who deposes and states as follows in support of Plaintiffs' Memorandum in Opposition to Defendants Wild Wing Company, LLC; Sunstar, LLC; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development Holdings, LLC; Wild Wing Residential Development, LLC; SB Investments, LLC; Realstar Management, LLC; Founders Wild Wing, LLC; Founders Group International, LLC; and Dan Lui's Motion for Partial Summary Judgment on the Statute of Limitations:

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1. I am over the age of 18 and all of the statements made herein are based upon my personal knowledge.

2. I am a member of the Wild Wing Plantation Property Owners Association, Inc. (the "POA") and am a property owner at Wild Wing.

3. I previously submitted an Affidavit dated May 20, 2019, which is attached hereto as Exhibit 1 and incorporated herein.

4. This matter is being prosecuted to secure funding that is due and owed to the POA from the defendants. It is money that I believe was owed and was not paid. That means it is money that the POA should have and does not have, which is a damage or harm that has been suffered by the POA.

5. Over the course of my professional career, I have been employed at the administrative level of a number of large businesses, including hospitals. Currently I am an adjunct professor in the Department of Finance and Economics at the Wall College of Business at Coastal Carolina University, all of which is reflected on my current CV, which is attached hereto as Exhibit 2.

6. I am familiar with, apply, and teach about accounting practices , including what are referred to as Generally Accepted Accounting Principles, which are also known as "GAAP".

7. I purchased my home in Wild Wing in 2013 and moved into the community in September 2013.

8. At Wild Wing, there are numerous governing documents including the Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation. Portions of those documents are referred to herein and the documents will generally be referred to as the "Regime Documents".

9. Soon after moving to the community, I was asked to serve on the Finance Committee for the POA. Because of my educational and employment background, and my familiarity with finance and accounting, I agreed and began serving on the Finance Committee in 2014.

10. At the time I was put on the Finance Committee, the "Declarant" was Wild Wing Residential Development, LLC. The Board of Directors of the POA was comprised of Ralph R. Teal, Jr., Graeme T. Black and H. Gilford Edwards, who were appointed to the Board of Directors by the Declarant. Under the Regime Documents, the Declarant had the right to fully control the POA by appointing the Board of Directors and through the Declarants controlling voting rights which are referenced in Exhibit 3 attached hereto. That control continued at all times referred to in this affidavit and exists today.

11. The auditor for the POA until 2015 was Jim Corbett, who had been retained at the direction of the Declarants and who worked only with the Board of Directors and the Management Company who were controlled by the Declarant.

12. As I began my work on the Finance Committee in 2014, and after reviewing the financial data that had been given to the Finance Committee, I became concerned about the high level of delinquencies, meaning the number of property owners who were not paying their assessments to the POA. Because of that, I requested more detailed financial data from the existing Board of Directors via their Property Managers and Auditor . That Board of Directors, which was still comprised of the referenced members, provided the Finance Committee with the draft audit for 2014, which contained more detail than had been available previously.

13. In 2015, when I saw the detailed calculations of the declarant contributions from 2011 through 2014, which was included in the draft audit of 2014, which I believe to be the first time it had been provided to the Finance Committee, I was concerned because I saw that the Declarant contribution

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was not being properly calculated. Specifically, "bad debt" was not being treated as a POA "expense" for purposes of the Declarant contribution.

14. "Bad debt" in the context of this issue means money owed to the POA, but not paid. An example of bad debt for a POA such as Wild Wing would be assessments, fines and fees owed by a property owner or property owners, but not paid.

15. Having read the Regime Documents, I knew that the POA funding required by the Declarant was based upon the audited financials and, in part, the "expenditures incurred" by the POA. Under GAAP, that includes "bad debt".

16. In April 2015, the Finance Committee which including Bill King and I met with Mr. Corbett and asked Mr. Corbett about the treatment of bad debt in the draft audited financials of the POA. I was told by Mr. Corbett that he did not agree with my view that bad debt should be treated as a POA "expenditure incurred" for purposes of calculating the Declarant contribution. Following that meeting, Mr. Corbett and I exchanged emails about the issue and that exchange is attached hereto as Exhibit 4.

17. In his emails of April 30, 2015, Mr. Corbett expressly recognized the applicability of GAAP with respect to the POA accounting, and the treatment of bad debt as an expense, but then explained that he did not calculate it as an "expense" for purposes of determining the Declarant contributions. As reflected therein, I expressed my disagreement, and I was told by Mr. Corbett that his calculation was the result of his "interpretation" of the Regime Documents without providing me with any support for that interpretation.

18. It was in my meetings with Mr. Corbett, and our subsequent email exchange, that I first realized that the Declarant contributions for the POA had historically been made based upon inaccurate calculations. Those inaccurate calculations had always 1) been done by the auditor accountant retained by the Board of Directors, which was controlled by the Declarants; 2) had always favored the Declarant

at the expense of the POA; and 3) were based on an "interpretation" of the Regime Documents driven by a belief that the Declarant should not have to include bad debt as an expense of the POA, despite the language of the Regime Documents.

19. In July 2015, Bill King and I met with Waccamaw Management and its CFO, Jane Atkinson, and its property manager, Paul Skirchak. Waccamaw Management was the property management firm hired by the Board of Directors. At that meeting, I raised my Declarant funding concerns. Ms. Atkinson and Mr. Skirchak told me at that meeting that the reserves of the POA were not being fully funded because of cash flow issues.

20. In August 2015, having not been satisfied with the response to my concerns about the underfunding by the Declarants, I did an initial spreadsheet calculating the total underfunding at more than $300,000.00. Bill King and I requested a meeting with the Board of Directors to discuss my concerns.

21. On September 10, 2015, Bill King and I met with two members of the Board of Directors, one of whom was Rick Schultz (by this time Founders Wild Wing, LLC was the Declarant and had appointed its own Board of Directors, one of whom was Mr. Schultz). I provided them with my calculations, showing underpayments by more than $300,000.00, and explained my concerns. They told me that they would look into it, but I did not hear back from them in 2015.

22. By early 2016, the Board of Directors and Declarant had retained a new accountant/auditor, Deborah Weir. Ms. Weir met with the Finance Committee (of which I was still a member) and the Board of Directors to review the draft audit for 2015. I reviewed the audit and noted that there was no footnote about the erroneous treatment of excluding bad debt that was used for the calculations of Declarant contributions. Since I had not gotten a response from my earlier meeting with the Board of Directors and Mr. Schultz, I asked Ms. Weir if there should at least be a footnote in the audit memorializing the dispute about the bad debt issue and the Declarant underfunding. She told me that she would not include such

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note unless a lawsuit was pending regarding the issue. At that point I asked the members of the Board of Directors who were present including Mr. Plankers, what the Board of Directors intended to do about the Declarants historic underfunding of the POA. Mr. Plankers, who at that time was the president of the Board of Directors, told me that the Board of Directors was not going to do anything to address our concerns or remedy the underfunding of the POA by the Declarants. At that point, I knew that I must act to protect my interests and those of the non-Declarant members of the POA.

23. I have read some of the motions filed by the Bellamy Law Firm. At one point they state:

> Plaintiffs challenge contributions made by the Declarant as insufficient despite the fact that no other member, in the history of the POA, has ever raised the issue.[53] When the issue was raised by Plaintiff Dykes, **the Finance Committee sought the expert opinion of the POA accountant and decided to continue the calculation of the Math in accordance with his advice and recommendation.** Plaintiffs bring this action on the Math contrary to the majority vote of the POA Finance Committee acting on behalf of the same membership Plaintiffs now claim to represent.

This assertion is simply not true. The Finance Committee did not agree with the "calculation of the Math" and did not agree to continue with it, though a vote or otherwise.

24. On January 23, 2017, I sent the letter attached as Exhibit 5, to the Board of Directors. They ignored my demands and on June 30, 2017, this lawsuit was filed.

C. Barry Dykes

MARCH 2, 2021

SWORN to before me this 3/2 Day of 2021.

Ksenia Marlowe
Notary Public for South Carolina
My Commission expires: 01/11/2029

KSENIA MARLOWE
Notary Public - State of South Carolina
My Commission Expires January 11, 2029

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Affidavit of C. Barry Dykes
Exhibit 1

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT C/A NUMBER: 2017-CP-26-04187
C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., PLAINTIFFS, VS. WILD WING COMPANY, LLC; RALPH R. TEAL, JR.; SLF IV/SBI WILD WING, LLC; WILD WING RESIDENTIAL DEVELOPMENT, LLC; STRATFORD LAND MANAGER; SB INVESTMENTS, LLC; GRAEME T. BLACK; H. GILFORD EDWARDS; FOUNDERS WILD WING, LLC; FOUNDERS GROUP INTERNATIONAL; DAN LIU AND XIAN DOU, DEFENDANTS. WILD WING PLANTATION OWNERS' ASSOCIATION, INC. NOMINAL DEFENDANT.	**AFFIDAVIT OF C. BARRY DYKES**

PERSONALLY, APPEARED BEFORE ME, C. Barry Dykes, who deposes and states as follows in support of Plaintiffs' Motion to Amend:

1. I am over the age of 18 years old and competent to testify to the matters set forth in this affidavit.

2. I am the owner of a home in Wild Wing Plantation and a member of the Wild Wing Plantation Owners' Association, Inc.

3. I am one of the Plaintiffs in this lawsuit.

4. On September 19, 2017, I attended a meeting with attorneys for the Defendants. The goal of the meeting was to explain our claims and to present our damages calculations to the Defendants' attorneys. During that meeting, I made a presentation regarding the claims of the Wild Wing Plantation Owners' Association, which included concerns and calculations regarding the 2011 and 2016 amendments to the original Declaration of Protective Covenants.

5. As part of that meeting, I presented Defendants' counsel with two different spreadsheets. The first, attached as Exhibit 1, was a spreadsheet showing the shortfall in Declarant funding we have alleged based upon the Declarants' failure to adhere to its funding obligations under the operative regime document language. In those documents, in the early years of the POA, and specifically until December 31, 2010, the Declarant had an option to either pay the annual POA assessments on Declarant owned lots (as all other owners had to pay) or to only fund the following: "...a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total Assessments made by the Association against Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall include any reserve for replacements or operating reserves." This can be referred to as the Declarant Funding Option.

6. Eleven months after the deadline passed for the Declarant Funding Option, meaning the Declarant would have to pay the same assessments as all other lot owners, the Declarant and/or other defendants acting on its behalf, amended the original Declaration of Protective Covenants to extend that alternative funding deadline retroactively from December 31, 2010 to December 31, 2016. At that time, they also extended the Declarant's supermajority voting and control rights from December 31, 2015 until December 31, 2022, and created an inconsistency with the associated By-Laws which they did not have the unilateral authority to amend. See

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Amendment dated November 22, 2011 and attached hereto as Exhibit 2. The Declaration was subsequently amended to further extend the deadline to December 31, 2019. See Amendment dated November 15, 2016 and attached as Exhibit 3. Because we believe those amendments were improper, the second spreadsheet I presented to Defendants' counsel at our meeting on September 19, 2017 was a spreadsheet showing the shortfall in Declarant funding as a result of the 2011 and 2016 amendments of the Declaration. Exhibit 4. At our meeting I explained the basis for the spreadsheet attached as Exhibit 4 and answered any questions the Defendants' counsel had for me.

FURTHER AFFIANT SAYETH NOT.

C. Barry Dykes

SWORN to before me this
18 day of May, 2019

Notary Public for South Carolina
My Commission expires: 6·13·21

WILD WING PLANTATION
PROPERTY OWNERS' ASSOCIATION, INC.
STATEMENTS OF REVENUES AND EXPENSES
YEARS ENDED DECEMBER 31

For Calculation of Declarant's Assessment

	2007	2008	Restated 2009	2010	2011	2012	Restated 2013	Unsigned 2014	2015	2016		TOTALS
TOTAL EXPENSES	$75,442	$296,445	$469,101	$507,445	$585,791	$524,416	$592,178	$593,429	$518,980	$484,856		$4,648,083
PLUS: Reserve Contributions Budgeted		$79,603	$79,603	$79,603	$79,603	$79,603	$74,773	$78,000	$78,215	$85,273		$714,276
LESS: Major Repairs And Replacements	0	0	0	0	$0	($24,316)	($27,001)	($50,096)	($30,260)	($2,570)		($134,243)
Net Additional Expense For Reserves	$0	$79,603	$79,603	$79,603	$79,603	$55,287	$47,772	$27,904	$47,955	$82,703		$580,033
"Actual Operating Expenses"	$75,442	$376,048	$548,704	$587,048	$665,394	$579,703	$639,950	$621,333	$566,935	$567,559		$5,228,116
REVENUES												
Member Assessments - Operations		$272,459	$294,899	$353,319	$375,104	$390,189	$369,108	$398,527				$2,453,605
Member Assessments - Future Repairs And Replacements		$79,603	$79,603	$79,603	$79,603	$79,603	$74,773	$78,000				$550,788
Assessments: Regular									$507,097	$509,335		$1,016,432
Initial Assessments	$15,500	$3,400	$600	$400	$800	$700	$1,000	$800	$200	$1,000		$24,400
Total Assessments	$15,500	$355,462	$375,102	$433,322	$455,507	$470,492	$444,881	$477,327	$507,297	$510,335		$4,045,225
DEFICIT												
Due From Declarant	$59,942	$20,586	$173,602	$153,726	$209,887	$109,211	$195,069	$144,006	$59,638	$57,224		$1,182,891
Declarant Contributions	($59,942)	($15,328)	($133,236)	($49,407)	($68,168)	($40,570)	$0	$0	($38,484)	($26,163)		($431,298)
Net Additional Due from Declarant	$0	$5,258	$40,366	$104,319	$141,719	$68,641	$195,069	$144,006	$21,154	$31,061		$751,593

Source: Annual Audits

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ELECTRONICALLY FILED - 2019 May 08 3:34 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF HORRY)

AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS EASEMENTS, CHARGES, AND LIENS FOR WILD WING PLANTATION

WHEREAS, Wild Wing Company, LLC (hereinafter referred to as "Wild Wing Company"), made and executed that certain Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens for Wild Wing Plantation, dated September 26, 2006 and recorded September 27, 2006 in Deed Book 3164, at Page 361, records of Horry County, South Carolina, as amended (hereinafter referred to as the "Declaration");

WHEREAS, Wild Wing Company assigned all of its rights as the declarant and any other rights it has under the Declaration to SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company, in that certain Assignment of Rights dated December 22, 2010 and recorded December 28, 2010 in Deed Book 3497, at Page 1935, records of Horry County, South Carolina;

WHEREAS, SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company assigned all of its rights as the declarant and any other rights it has under the Declaration to Wild Wing Residential Development, LLC (hereinafter referred to as "Declarant"); in that certain Assignment of Rights dated November 9, 2011 and recorded November 9, 2011, in Deed Book 3550, at Page 3051, records of Horry County, South Carolina.

WHEREAS, a special meeting of Wild Wing Plantation Property Owners' Association, Inc. (Hereinafter referred to as the "Association"), was held pursuant to Article II, Section 5 of the Bylaws of Wild Wing Plantation Property Owners' Association, Inc., (hereinafter referred to as "Bylaws");

WHEREAS, at the special meeting, after notice and with a quorum present, a vote was held and passed pursuant to Article XII, Section 9 of the Declaration, by owners holding not less than two-thirds (2/3) of the total vote of the membership in the Association, to amend the Declaration as set forth herein.

NOW THEREFORE in accordance with the terms and provisions of the Declaration, the Declaration is hereby amended, as follows:

1. Article II, Section 16. Storage Receptacles, is hereby amended and restated as follows:

All fuel tanks or similar storage receptacles larger than twenty (20) pounds shall be buried underground and shall be located no closer to the lot line than the setback requirements.

2. Article IV, Section 3. Voting Rights, Class B. Is hereby amended and restated as follows:

Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to total votes in an amount equal to twice the number of the Class A votes plus one. The Class B Membership shall cease and become converted to Class A Membership upon the conveyance to Lot Owners of all Lots subject to this Declaration or December 31, 2022, whichever first occurs. In addition, Declarant may terminate the Class B membership upon written notice to the Association.

RETURN TO
BELLAMY, RUTENBERG, COPELAND
EPPS, GRAVELY & BOWERS, P.A.
POST OFFICE BOX 357
MYRTLE BEACH, SC 29578
843-448-2400 APM

Instrument#: 2011000119029, DEED BK: 3553 PG: 2358 DOCTYPE: 069 11/23/2011 at 01:11:00 PM, 1 OF 4 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

ELECTRONICALLY FILED - 2019 May 08 3:34 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

3. Article VI, Section 2. Assessments, Liens and Personal Obligations Therefor , and Operation Maintenance of Common Areas Solely by the Association, subsection (a) is hereby amended and restated as follows:

(a) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses, extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot or Lots at the time when the assessment fell due. Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2016, each Lot within Phase I of the Property shall be exempt, at Declarant's option, from the assessments herein provided for (Both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Delcarant to an Owner other than the Delcarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessment made by the Association against the Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing January 1, 2017, the Declarant shall be subject to assessments as provided for in this Declaration so that it will pay assessments on the same basis provided for in this Declaration for other Lot Owners. In the event that additional phases are subjected to the provisions of this Declaration, then it is declared that until the later of: (1) January 1, 2017; or (10) ten years after the date the amendment or supplemental declarations submitting such additional phase(s) are filed for record in the public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the Lots is conveyed by the Declarant to an Owner other than the Declarant. Until such time as a lot is such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less and amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lots Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.

The provisions contained in this Amendment shall be retroactive and therefore shall be effective as of January 1, 2011.

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IN WITNESS WHEREOF, the undersigned have caused this Amendment to be made as of this 22 day of November 2011.

Patty Keyes
Ashley Roach Clarke

WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.

By: _____
Ralph R. Teal, Jr., Its President

The Declarant executed this Amendment for the purposes of acknowledging and agreeing to the terms and conditions hereof.

Wild Wing Residential Development, LLC, a Delaware Limited Liability Company

By: SLF IV / SBI Properties MM, LLC, a Texas Limited Liability Company, its Manager

By: SB Investments, LLC, a South Carolina Limited Liability Company, its Managing Member

Patty Keyes
Ashley Roach Clarke

By: _____
Ralph R. Teal, Jr., Co-Manager

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Wild Wing Plantation Property Owners' Association, Inc. By Raph R. Teal, Jr., Its President, Sign, Seal and as its Act and Deed deliver the within written AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WILD WING PLANTATION; and that s/he with the other witness subscribed above witnessed the execution thereof.

Patty Keyes

SWORN to before me this 22
day of November, 2011
Ashley Leach Clowser (L.S.)
Notary Public for South Carolina
My Commission Expires: 12/6/14

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Wild Wing Residential Development, LLC, a Delaware Limited Liability Company, by SLF IV / SBI Properties MM, LLC, a Texas Limited Liability Company, its Manager, by SB Investments, LLC, a South Carolina Limited Liability Company, its Managing Member, by Ralph R. Teal, Jr., Co-Manager, Sign, Seal and as its Act and Deed deliver the within written AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WILD WING PLANTATION; and that s/he with the other witness subscribed above witnessed the execution thereof.

Patty Keyes

SWORN to before me this 22
day of November, 2011
Ashley Leach Clowser (L.S.)
Notary Public for South Carolina
My Commission Expires: 12/6/14

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STATE OF SOUTH CAROLINA	)	AMENDMENT TO DECLARATION OF
	)	PROTECTIVE COVENANTS, RESTRICTIONS,
COUNTY OF HORRY	)	EASEMENTS, CHARGES AND LIENS FOR
		WILD WING PLANTATION

WHEREAS, Wild Wing Company, LLC (hereinafter referred to as "Wild Wing Company"), made and executed that certain Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation, dated September 26, 2006 and recorded September 27, 2006 in Deed Book 3164 at Page 361, records of Horry County, South Carolina, as amended (hereinafter referred to as the "Declaration"):

WHEREAS, Wild Wing Company assigned all of its rights as the Declarant and any other rights it has under the Declaration to SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company, in that certain Assignment of Rights dated December 22, 2010 and recorded December 28, 2010 in Deed Book 3497 at Page 1935, records of Horry County, South Carolina;

WHEREAS, SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company assigned all of its rights as the declarant and any other rights it has under the Declaration to Wild Wing Residential Development, LLC in that certain Assignment of Rights dated November 9, 2011 and recorded November 9, 2011 in Deed Book 3550 at Page 3051, records of Horry County, South Carolina;

WHEREAS, by Assignment of Declarant Rights dated April 13, 2015, recorded in Deed Book 3812 at Page 2978, Wild Wing Residential Development, LLC assigned its Declarant rights to Founders Wild Wing, LLC (hereinafter referred to as the "Declarant");

WHEREAS, pursuant to Article XII, Section 9 of the Declaration, the Declaration may be amended by the execution and recordation of any instrument executed by Owners holding not less than two-thirds (2/3) vote of the membership in Wild Wing Property Owners' Association (the "Association"), with Declarant's consent required so long as Declarant is the Owner of any Lot affected by the Declaration; and

WHEREAS, Declarant currently holds votes in excess of the two-thirds (2/3) of the total vote of the Membership in Association;

WHEREAS, Declarant is the Owner of multiple Lots affected by the Declaration;

WHEREAS, the right to amend is unambiguously set forth in the Declaration; the Declarant has a sufficient property interest in the development, as set forth above, including the right to add additional phases to the Development; the Declarant has strictly complied with the amendment process set forth in the Declaration; the Declarant has undertaken to ensure that notice of the amendment is provided as set forth in the Declaration and that the amended covenants are not unreasonable nor do they contravene public policy in accordance with South Carolina law;

WHEREAS, it is the intention of Declarant, as the holder if in excess of two-thirds (2/3) of the vote of Association to amend the Declaration as more particularly set forth herein.

NOW, THEREFORE, in accordance with the terms and provisions of the Declaration, the Declaration is hereby amended, as follows:

Instrument#: 2016000136671, DEED BK: 3964 PG: 1648 DOCTYPE: 069 11/15/2016 at 01:41:41 PM, 1 OF 4 MARION D. FOXWORTH III, HORRY COUNTY, SC REGISTRAR OF DEEDS

ELECTRONICALLY FILED - 2019 May 08 3:34 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

1. Article VI, Section 2. Assessments, Liens and Personal Obligations Therefor, and Operation, Maintenance of Common Areas Solely by the Association, subsection (a) is hereby amended and restated as follows:

(A) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses, extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot or Lots at the time when the assessment fell due. Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2019, each Lot within Phase I of the Property shall be exempt, at Declarant's option, from the assessments herein provided for (Both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessment made by the Association against the Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing January 1, 2020, the Declarant shall be subject to assessments as provided for in this Declaration for other Lot Owners. In the event that additional phases are subject to the provisions of this Declaration, then it is declared that until the later of: (1) December 31, 2019; or (10) ten years after the date the amendment or supplemental declarations submitting such additional phases(s) are filed for record in the public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the Lots are conveyed by the Declarant to an Owner other than the Declarant. Until such time as a lot in such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less an amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lot Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.

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IN WITNESS WHEREOF, the undersigned have caused this Amendment to be made as of this 15th day of November, 2016.

WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.

Michelle L. Merkle
Anne Anderson

BY: Tom Plankers
Its: President

DECLARANT:

FOUNDERS WILD WING, LLC, a Delaware Limited Liability Company

Tom Plankers
Graham Garfield

BY: Nick Dau
Its: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Wild Wing Plantation Property Owners' Association, Inc., by Tom Plankers, Its President, Sign, Seal and as its Act and Deed deliver the within written Amendment to Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation; and that s/he with the other witness subscribed above witnessed the execution thereof.

Tom Plankers Michelle L. Merkle

SWORN to before me this 15th day of November, 2016.

Anne Anderson
Notary Public for South Carolina
My Commission Expires: 2/13/26

Witness is not a party to or a beneficiary of the transaction.

ANNE ANDERSON NOTARY PUBLIC SOUTH CAROLINA MY COMMISSION EXPIRES FEBRUARY 18, 2026

9/13/2017

Calculation of Declarant Obligation to Wild Wing POA based on Lots owned and The Original Date of Payments Required by Lot

Year	Lots owned by Declarant*	Annual Dues	Total Due Based on Lots Owned	Declarant Contribution Received	Net Additional Due Based on Lots Owned
2011	200	$1,368	$273,600	$68,168	$205,432
2012	192	$1,368	$262,656	$40,570	$222,086
2013	182	$1,368	$248,976	$0	$248,976
2014	177	$1,332	$235,764	$0	$235,764
2015	182	$1,404	$255,528	$38,484	$217,044
2016	182	$1,404	$255,528	$26,163	$229,365
2017est	130	$1,404	$182,520	$0	$182,520
			$1,714,572	$173,385	$1,541,187

*Based on Annual Audit. Represents lots owned at the end of the year. The weighted average number may be higher.

Original CC&R, Articlee VI. Section 2. (excerpt)

1701

Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2010, each Lot within The Properties shall be exempt, at Declarant's option, from the assessments herein provided for (both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made by the Association against Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing January 1, 2011, the Declarant shall be subject to assessments as provided for in this Declaration so that it will pay assessments on the same basis provided for in this Declaration for other Lot Owners. In the event that additional phases are subjected to the provisions of this Declaration, then it is declared that until the later of: (1) January 1, 2011; or (5) five years after the date the amendments or supplemental declarations submitting such additional phase(s) are filed for record in the public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the lot is conveyed by the Declarant to an Owner other than the Declarant. Until such time as a lot in such additional

EXHIBIT 4

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Affidavit of C. Barry Dykes
Exhibit 2

ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

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C. Barry Dykes
Professional Biography

Mr. Dykes is a highly skilled health care executive with over 40 years of successful leadership experience. He has served as a CEO for over 25 of those years in a variety of health systems and other organizations. He presently provides consulting services (primarily to health care clients) and teaches Management and Economics courses at Coastal Carolina University. His career has spanned five states, all with very competitive and well-developed health care markets, including Pennsylvania, New Jersey, Massachusetts, Delaware and California. His experience includes major teaching hospitals, faith-based hospitals, not-for-profit, independent, investor-owned, and system-owned organizations. Most of his assignments have required significant financial, cultural, and quality turnarounds. He is now president of Westwind Advisors LLC.

Mr. Dykes' expertise includes strategy development, business growth, customer relations, operational excellence and leadership development. He has served as the CEO of both a newly acquired hospital and as the CEO of a hospital being divested. He has, in conjunction with physician and board leadership, developed and implemented successful strategic and business plans in each of the markets in which he has served. The implementation of these plans has not only resulted in substantial quality, cultural, and service improvements; but also in rapid growth for those organizations including annual revenue growth of up to 15% (and up to 100% in key product lines), recruitment of numerous physicians and the implementation of many new services. He has provided strategic consulting assistance to a variety of business clients including hospitals, Visiting Nurse Associations (VNA's), health care investment groups, physician practices, entrepreneurs, law firms, and other consulting groups.

Mr. Dykes has a track record of working collaboratively to achieve win-win outcomes. This has included collaborating with large hospital employed physician groups, independent groups and individual practitioners. Outcomes have included such initiatives as restructuring processes, development of joint ventures, development of physician support services, improved managed care contracting, practice development, aggressive physician recruitment and the development of new programs.

Hospitals he has led have achieved significant improvements in lengths of stay, quality outcomes, and financial performance. He has achieved Core Measure results in the top quartile of all hospitals. Hospitals under his leadership have also received recognition as Top 50 Cardiac Hospitals, Top 100 ICU's, Top 100 for Orthopedics, and Cardiac Centers of Excellence for both quality and efficiency.

1423 Whooping Crane Drive, Conway, SC 29526 ▪ Phone: 508-414-3300 ▪ WestwindAdvisors@gmail.com

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Operational excellence has been one of the hallmarks of Mr. Dykes' career. By recruiting and developing top notch leadership and focusing on achieving outstanding customer service, along with achieving financial results, his teams have been able to deliver superb operational results. These have included patient satisfaction scores in the top 10% of the national Studer database, physician satisfaction gains of over 10%, reductions of 30% or more in the processing times, improved patient scheduling, rapid results reporting, and the like. Employee turnover has been substantially reduced by up to 68% and RN vacancy rates to as low as 2.5%. These improvements, combined with aggressive renegotiation of managed care reimbursements and other initiatives, have resulted in financial turnarounds exceeding $30 million per year.

Mr. Dykes' received his BBA and MBA degrees from Temple University in Philadelphia, PA. He is Board Certified as a Lifetime Fellow in the American College of Healthcare Executives (ACHE) and has served on many community boards including the United Way, the Chamber of Commerce and the American Heart Association. He has a visionary, collaborative, and results-oriented style. He has built multiple high performing leadership teams. He has also been successful in earning the respect and support of the board, physicians, management, and the communities in which he has served. He is married to Diane and has three daughters, one of whom lives in New York and the others in Pennsylvania. He resides in the Myrtle Beach area of South Carolina.

Contact information:

C. Barry Dykes, President
Westwind Advisors LLC
1423 Whooping Crane Drive
Conway, SC 29526

(508) 414-3300
WestwindAdvisors@gmail.com

Affidavit of C. Barry Dykes
Exhibit 3

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EXHIBIT __

Selective, Relevant Portions of the Wild Wing Regime Documents.

Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation

1. **Declarant Voting Rights**:

2006 Article IV, Section 3:

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership.

Class A. Class A Members shall be all Owners excepting the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 1 above. When more than one person holds such interest or interests in any Lot, the vote attributable to such Lot shall be exercised as such persons mutually determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

*Class B. **The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to total votes in an amount equal to twice the number of the class A votes plus one.** The Class B membership shall cease and become converted to Class A membership upon the conveyance to Lot Owners of all Lots subject to this Declaration, or **December 31, 2015**, whichever first occurs. In addition, Declarant may terminate the Class B membership upon written notice to the Association.*

When a purchaser of an individual Lot or Lots takes title thereto from the Declarant, he automatically becomes a Class A Member.

2. **Declarant Funding Alternative:**

2006 Article VI, Section 2:

Section 2. Assessments, Liens and Personal Obligations Therefor, and Operation Maintenance of Common Areas Solely by the Association.

(a) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses, extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs

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of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such lot or Lots at the time when the assessment fell due. ***Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2010, each Lot within The Properties shall be exempt, at Declarant's option, from the assessments herein provided for (both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made by the Association against Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves****. Commencing* ***January 1, 2011****, the Declarant shall be subject to assessments as provided for in this Declaration so that it will pay assessments on the same basis provided for in this Declaration for other Lot Owners. In the event that additional phases are subjected to the provisions of this Declaration, then it is declared that until the later of: (1) January 1, 2011; or (5) five years after the date the amendments or supplemental declarations submitting such additional phase(s) are filed for record in the• public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the lot is conveyed by the Declarant to an Owner other than the Declarant. Until such time as a lot in such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less an amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lot Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.*

3. The 2011 Amendment:

2011 Amendment, Paragraphs 2 and 3:

2. Article IV, Section 3, Voting Rights, Class B. Is hereby amended and restated as follows:

Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to total votes in an amount equal to twice the number of the Class A votes plus one. The Class B Membership shall cease and become converted to Class A Membership upon the conveyance to Lot Owners of all Lots subject to this Declaration **or December 31, 2022**, whichever first occurs. In addition, Declarant may terminate the Class B membership upon written notice to the Association.

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3. Article VI, Section 2. Assessments, Liens and Personal Obligations Therefore, and Operation Maintenance of Common Areas Solely by the Association, subsection (a) is hereby amended and restated as follows:

(a) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses, extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot or Lots at the time when the assessment fell due. Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2016, each Lot within Phase I of the Property shall be exempt, at Declarant's option, from the assessments herein provided for (Both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessment made by the Association against the Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing **January 1, 2017**, the Declarant shall be subject to assessments as provided for in this Declaration so that it will pay assessments on the same basis provided for in this Declaration for other Lot Owners. In the event that additional phases are subjected to the provisions of this Declaration, then it is declared that until the later of: (1) January 1, 2017; or (10) ten years after the date the amendment or supplemental declarations submitting such additional phase(s) are filed for record in the public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the Lots is conveyed by the Declarant to an Owner other than the Declarant, Until such time as a lot is such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less and amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lots Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.

4. The 2016 Amendment:

Paragraph 1:

1. Article VI, Section 2. Assessments Liens and Personal Obligations Therefor, and Operation, Maintenance of Common Areas Solely by the Association, subsection (a) is hereby amended and restated as follows:

(A) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual

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assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses, extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot or Lots at the time when the assessment fell due. Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through **December 31, 2019**, each Lot within Phase I of the Property shall be exempt, at Declarant's option, from the assessments herein provided for (Both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessment made by the Association against the Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing **January 1, 2020**, the Declarant shall be subject to assessments as provided for in this Declaration for other Lot Owners. In the event that additional phases are subject to the provisions of this Declaration, then it is declared that until the later of: (1) December 31, 2019; or (10) ten years after the date the amendment or supplemental declarations submitting such additional phases(s) are filed for record in the public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the Lots are conveyed by the Declarant to an Owner other than the Declarant. Until such time as a lot in such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less an amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lot Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.

By-Laws of Wild Wing Plantation Property Owners' Association, Inc.

5. Voting Rights:

Article 2, Section 2:

Section 2. Voting Rights. The Association shall have two (2) classes of membership, Class "A" and Class 13", as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference. The classes of membership shall be as follows:

Class A. Class A members shall be all Owners excepting the Declarant. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for

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membership pursuant to the Declaration. When more than one person holds such interest or interests in any Lot, the vote attributable to such Lot shall be exercised as such persons, mutually determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. The sole Class B member sl-m11 be the Declarant (as defined in the Declaration). The Class B member shall be entitled to total votes in an amount equal to twice the number of the Class A votes plus one. The Class B membership shall cease and become converted to Class A membership upon the conveyance to Lot Owners of all Lots subject to the Declaration, or December 31, 2015, whichever first occurs. in addition, Declarant may terminate the Class B membership upon written notice to the Association. When a purchaser of an individual Lot or Lots takes title thereto from the Declarant, he automatically becomes a Class A member.

6. **Declarant Appointment of Board of Directors**:

Article 3, Section 2:

Section 2. Directors During Class "B" Control. **The Directors who shall serve on the Board of Directors of the Association shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member** until the first annual meeting of the membership following termination of Class B control at which tune the Board of Directors shall be increased to five (5) Members.

Within one hundred twenty (120) days thereafter, the Class "B" member shall call a meeting, as provided in Article II, Section 5, of these By-Laws for special meetings, to advise the membership of the termination of the Class "B" member's control or, in the alternative, shall notify each member by U.S. Mail that the Class B membership has terminated.

The Directors selected by the Class "B" member pursuant to this Section need not be Members as provided in Section 1 of this Article.

7. **Powers and Duties of the Board of Directors**:

Article 3, Section 18:

Section 18. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the Voting Members or the membership generally.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may be hereafter adopted, **the Board of Directors shall have the power to and shall be responsible for the following,** in. way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;

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(b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments and establishing the period of the installment payments of the annual assessment; provided, unless otherwise determined by the Board of Directors, the annual assessment for each Declaration's proportionate share of the Common Expenses shall be payable in equal monthly installments, or as determined by the Board of Directors;

(c) providing for the operation, care, upkeep, and maintenance of all of the Common Areas;

(d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Areas and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) **collecting the assessments**, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, any reserve fund may be deposited, in the Directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and brining any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof,

(k) paying the cost of all services rendered to the Association or its Members and not chargeable to Owners;

(1) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon chart be available for examination by the Owners and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting principles;

(m) making available to any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Lot, current copies of the Declaration, the By-Laws, rules governing the Lot, and all other books, records, and financial statements of the Association; and

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the properties.

8. Amending the By-Laws:

Article 6, Section 6:

Section 6. Amendment. Prior to the conveyance of the first Lot, Declarant may unilaterally amend these By-Laws. Thereafter and otherwise, but subject to the provisions hereinafter provided, these By-Laws may be amended only by the affirmative vote' (in person or by alternate) or written consent of Voting Members representing sixty-seven (67%) percent of the total votes of the Association, including sixty-seven (67%) percent of the votes of Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than, the prescribed percentage of affirmative votes required for action to be taken under that clause. Further, no amendment of any provision reserving a right specifically in favor of the Declarant may be amended without the Declarant's express consent, No amendment shall be effective until recorded in the public records of dory County, South Carolina.

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Affidavit of C. Barry Dykes
Exhibit 4

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---------- Forwarded message ----------
From: Jim Corbett <corbett_cpa@yahoo.com>
To: C Barry Dykes <cbdmdykes@gmail.com>
Cc:
Bcc:
Date: Fri, 1 May 2015 15:16:34 -0400
Subject: Re: Bad Debt Treatment by GAAP
They have been requested and will let you know as soon I get them.
Jim

On Friday, May 1, 2015 10:14 AM, C Barry Dykes <cbdmdykes@gmail.com> wrote:

Jim:
Thanks Jim. What I mean by the term "justify", is that the audit calculations need to be supported by the underlying governing documents. Since the documents do not exclude bad debt from the calculation of the developer contribution, I believe you need some support for an "interpretation" that would do so.

Also, have you received any documentation that the original developer went bankrupt or was foreclosed upon which was the whole basis for considering the amounts to be bad debt in the first place?

Thanks,
Barry

From: Jim Corbett [mailto:corbett_cpa@yahoo.com]
Sent: Thursday, April 30, 2015 1:30 PM
To: Jane Atkinson; C. Barry Dykes
Subject: Re: Bad Debt Treatment by GAAP

Thanks Barry
Also I am not trying to "justify" anything
Its an interpretation
Jim

On Thursday, April 30, 2015 1:27 PM, Jim Corbett <corbett_cpa@yahoo.com> wrote:

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On Thursday, April 30, 2015 1:24 PM, C Barry Dykes <cbdmdykes@gmail.com> wrote:

Jim:

Also, attached is the Florida definition for developer contributions in lieu of assessments. I realize we're not in Florida, but the terminology is similar to our CC&R. Since Bad Debt expense/allowance is not EXCLUDED from the definition of "actual operating expenses" , a reasonable person would conclude that, since it's a GAAP expense, that it has to be included in the calculation of the developer's alternative contribution amount.

Regards,
Barry

From: C Barry Dykes [mailto:cbdmdykes@gmail.com]
Sent: Thursday, April 30, 2015 11:48 AM
To: 'Jim Corbett'
Subject: RE: Bad Debt Treatment by GAAP

Jim:

I couldn't disagree more. Your explanation is precisely the reason the developer has 2 options - he can pay the assessments on only the lots he owns OR he can make up the operating deficit of the Association (which would in include the cost of bad debts). The non-developer lot owners also do not have an obligation to pay the "unpaid" assessments any more than the developer - how can you justify making the other lot owners pay and not the developer?

Barry

From: Jim Corbett [mailto:corbett_cpa@yahoo.com]
Sent: Thursday, April 30, 2015 11:39 AM
To: C Barry Dykes
Subject: Re: Bad Debt Treatment by GAAP

Barry
Good meeting you as well. I enjoyed it
The financials are GAAP- no question.
Bad debt expense and the allowance is recognized in the financials.
Bad debt is an operating expense.

The developer calculation as you know is a separate issue.
In the master deed it states that the declarant is only responsible for assessments on
lots he owns. Once they convey to the owner he is not responsible at all to pay their assessments.
That is a personal obligation of the owner their assigns and heirs, etc...

The amount of the bad debt expense on the income statement represents "unpaid assessments"
To include the amount in the calculation is effectively making the declarant pay those assessments the
owners did not pay and he is only required to pay assessments on lots he owns.

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I have spoken to several people and they agree to exclude it is appropriate. You cant make him pay assessments
on lots he doesn't own.

Thanks Jim

On Thursday, April 30, 2015 11:19 AM, C Barry Dykes <cbdmdykes@gmail.com> wrote:

Jim:

Thank you for meeting with us the other night to review the draft Audit report for the POA. I did some research on the treatment of bad debt following our meeting. I could not locate any specific reference in the CC&R documents or the By-laws specifically about bad debt (either that it should be included or excluded). Those documents did reference that the reserves are to be considered operating expenditures. The terms that are used in the documents are "actual operating expenses incurred by the Association"(Covenants, VI.2.a.), "All books and records shall be kept in accordance with generally accepted accounting principles"(Bylaws III.C.18.I.), and "accrual accounting, as defined by generally accepted accounting principles, shall be employed with regards to the annual audit, while the regular monthly accounting shall be on a cash basis"(Bylaws III.C.20.a.)

So the question seems to be whether GAAP considers bad debt expenses/allowances as an operating expense. Everything I see clearly treats bad debt expenses/allowances as an operating expense of operating the organization and therefore should be included in determining the Declarant's financial obligation to the POA. Attached are some references. Please let us know if you find anything different.

Thank you.

Regards,
Barry Dykes

Finance Committee for Wild Wing Plantation Property Owners Association

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Affidavit of C. Barry Dykes
Exhibit 5

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C. Barry Dykes
1423 Whooping Crane Drive
Conway, SC 29526
(843) 234-0013

January 23, 2017

Board of Directors
Wild Wing Property Owners Association
C/O Founders Wild Wing LLC
1000 Wild Wing Boulevard
Conway, SC 29526

RE: Wild Wing POA/Funding Shortfall

Dear Board Members:

I am hereby writing in my personal capacity as a member of the Wild Wing Property Owners Association ("POA").

As you know, a review of financial records of the POA clearly establishes that the developers, as declarants, failed to utilize generally accepted accounting procedures (GAAP) in calculating the difference between income and expenses of the POA for a number of years, which has resulted in a significant underfunding of the POA. The financial records of the POA establish that the amount of the underfunding totals $519,801 through 2015.

This issue has been raised to you, the relevant accounting has been provided, and you informed me verbally that a decision has been made by the Board not to pursue an action against the declarant based upon the discovery of this erroneous accounting practice. Given the amount of money at issue, I disagree with the decision not to pursue recovery of the funds. I am also concerned that the Board's actions have been dictated by a conflict of interest between the Board, the prior developer and the current developer, both developers having declarant rights and responsibilities under the terms of Wild Wing's governing documents.

I hereby urge the Board to reconsider its decision not to pursue recovery of these funds. If the Board does not, I will have no choice but to file suit myself, on behalf of the Board, pursuant to Rule 23, *South Carolina Rules of Civil Procedure*, and will seek all legal remedies available.

Please let me have your response, in writing, no later than February 6, 2017.

Sincerely,

C. Barry Dykes

CC: Paul Skirchak, Community Association Manager,
Waccamaw Management, P.O. Box 51558, Myrtle Beach, SC 29579

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C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit J

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt,
Individually and derivatively
on behalf of the Wild Wing Plantation
Property Owners' Association, Inc.,

Plaintiff(s),

vs. CIVIL ACTION NO.
2017-CP-26-04187

Wild Wing Company, LLC,
Ralph R. Teal, Jr.,
SLF IV/SBI Wild Wing, LLC,
Wild Wing Residential Development LLC,
Stratford Land Manager,
SB Investments LLC,
Graeme T. Black, Gilford Edwards,
Founders Wild Wing, LLC,
Founders Group International, LLC,
Dan Liu, and Xian Dou,

Defendant(s).

Wild Wing Plantation
Owners' Association, Inc.

Nominal Defendant.

DEPOSITION OF: H. GILFORD EDWARDS

DATE: Thursday, December 6, 2018

TIME: 2:03 p.m. through 3:05 p.m.

LOCATION: BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Defendant(s)

COURT REPORTER: MADONNA M. FARRELL
Registered Professional Reporter
Certified Livenote Reporter
CaseViewNet Realtime Reporter

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familiarity with Mr. Dykes' view of the declarant contribution formula and how those contributions or the declarant obligations were calculated.

A. Right.

Q. Have you come to understand Mr. Dykes' view of how those contributions should have been calculated?

A. Absolutely not.

Q. So you don't have an understanding of what he is contending?

A. I understand what he's contending, but I think he's wrong.

Q. Okay. And did you -- what did you do as a board member to ensure that the declarant was making the proper contributions under the regime documents?

A. I read the documents and did what they said.

Q. You didn't rely on any accountants for that?

A. No.

Q. And you are a member of Sun Star, right?

A. No. I'm not now.

Q. But you were at the time?

A. At what time?

Q. At the time the Wild Wing project was developed.

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C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit K

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	15TH JUDICIAL CIRCUIT
C. BARRY DYKES and BARBARA EISENHARDT, et al.,	
Plaintiffs,	
vs.	CASE NO. 2017-CP-26-04187
WILD WING COMPANY, et al.,	
Defendants.	

DEPOSITION OF:	ROY STRICKLAND, CPA, MAFF
DATE:	Wednesday, April 3, 2019
TIME:	10:32 a.m. to 1:10 p.m.
LOCATION:	Dixon Hughes Goodman, LLP 525 East Bay Street, Suite 100 Charleston, South Carolina
TAKEN BY:	Attorneys for the Defendants
COURT REPORTER:	MARIE H. BRUEGGER Registered Professional Reporter Certified Realtime Reporter

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35. I'll just read them. They're really short.

Paragraph 34: In calculating the contributions owed by the declarant entities, the defendants failed to utilize GAAP, which resulted in contributions by the declarant that were substantially less than would be required had defendants used GAAP.

Paragraph 35: Defendants' failure to use GAAP has resulted in a substantial shortfall and underfunding of the association's operations.

Did I read those correctly?

A. Yes, sir.

Q. Do you have an opinion about whether the defendants failed to utilize GAAP, as is alleged in Paragraphs 34 and 35?

A. I would term it they selectively utilized GAAP.

Q. And you know I'm going to ask you to be very specific about that, so --

A. Yes, sir. Their calculation that was used by -- the calculations that I've seen, they included accrual-based expenses, except for they deducted the bad debt expense from the calculation, so as a result, they selective -- that's the selective use of GAAP.

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believe to be the declarant's obligation for contribution to dues?

A. Yes, sir.

Q. Where did you get the formula?

A. Out of the agreement.

Q. Out of the declaration?

A. Yes, sir.

Q. Point me to exactly where you got it.

A. I basically turned wording to a formula.

Q. Right. That's what we want to do.

A. And all of it is in -- the majority of it's in Section 2, Subsection (a), Paragraph (a). And basically for the -- you're asking about the developer piece?

Q. Yeah. I want to know where you got your formula.

A. Yes, sir.

Q. And then we'll break her down from there.

A. Got it. "However, until such time as a lot is conveyed by the declarant to an owner other than the declarant, the declarant shall be assessed and pay to the association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred" -- 'incurred,' that's an important word -- "by the association for

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that portion of the calendar year less an amount equal to the total assessments made by the association against owners of lots other than those owned by the declarant."

That's the calculation right there.

Q. Is that the -- do you want to call that the operative sentence in this document?

A. Yes, sir, yes, sir. They naturally -- earlier, it explains that in lieu of that, they can pay the same assessment on the lots that they own, the declarant owns.

Q. So in your experience, how would you classify a transaction that required an outlay of funds? What would you call that?

A. I don't understand your question. Maybe you can clarify that.

Q. I'll try. There are certain transactions where the entity has to write a check, right?

A. Yes, sir.

Q. They have to pay.

A. Yes, sir.

Q. They have to spend. They have to outlay --

A. Yes, sir.

Q. -- money.

A. Yes, sir.

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A. Only that I compared it at the end. And on this one, I think I was having a difficult time with the lots, and I might have utilized the lots piece, but I've tied every one of them into the auditor's reports at the time.

Q. You're talking about Exhibit 35?

A. Exhibit 35, yes, sir.

Q. Which is the lot-by-lot calculation?

A. Yes, sir, yes, sir.

Q. So to be clear, when you were performing your work, did you use Mr. Dykes's work as a template or a format, or did you set it totally aside and do your work independently?

A. I did my work independently and compared it to his work.

(Defendant's Exhibit 36, Preliminary Damages Calculation, was marked for identification.)

BY MR. MILLER:

Q. So I'm going to mark as Exhibit 36 what I believe finally to be your work. Do you recognize that?

A. Yes, sir.

MR. MILLER: Let's take a break.

(A recess transpired.)

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I can't recall if I sent my report to him or -- I sent it to the attorneys, I'm sure. But naturally -- and I don't -- and I don't recall why he was actually doing a report. I was thinking it might have been for mediation.

We might have had -- we had some small differences, as I recall. I don't know if he had a difference or I had a difference. We got that resolved, and I issued my report based on that. So that's the process.

But the substance of my work, naturally, I had a meeting with him, and I concur with his answer, but the work itself was work that I did. I verified everything. I put all the information in, all the numbers. I've reviewed all the financial statements, the audit reports, declarations, et cetera. So that's the process.

BY MR. MILLER:

Q. Good. Thank you for that.

You're looking at Exhibit 36?

A. Yes, sir.

Q. Which is, in fact, your work product?

A. That's my work product.

Q. And it is a five-page -- six-page document,

done your best on the number of lots?

A. Yes, sir.

Q. Where did you get the annual dues amount?

A. The same -- in the footnote to the financial statements on I think a majority of those years, it actually says the -- I think it says the monthly annual dues. I think there were two years towards the end where they didn't -- they didn't -- for some reason didn't disclose that in the footnotes, so then I went to the budget document. There was a document that I looked at to tie that in, and again -- no. I tell you what I -- I looked at the calculation by the declarant, and they had the quarterly amount, and I multiplied it times four.

Q. So that's the amount that was assessed to lot owners -- or, rather, owners of lots other than the declarant?

A. Yes, sir.

Q. And then you just do the math and back out what they paid in?

A. Yes, sir.

I think I'm going to go ahead and interject this, because I didn't -- this is not something -- but I think it's something important to mention here.

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The way this was calculated on these individual calculations of the budget and where they calculated the annual fee, that entire amount, the developer didn't have to pay anything. If everything was in budget on accrual basis, basically, even though the developer owned a portion of these lots, substantial portion, and most importantly, the developer benefits from owning those lots and having this homeowners association, because the amenities and things of that nature are typically very important in selling their lots.

And I haven't checked on this yet, and I will tell you I just identified it yesterday. My question is in dividing it by just the homeowner's lots, if everything budgets out, the developer doesn't pay anything. And the reason I figured -- that that thought came to me is under this document, they don't have to pay anything for the homeowners association.

Typically, based on my experience, the developer is having to pay some type of fair share on that because they are benefiting and usually benefiting substantially from those amenities in selling the project.

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it for anything.

The only thing I was looking for for the reserve is making sure -- because the expenditures include the reserve less the cost that's spent out of those reserve accounts, so -- and I can't remember if Mr. Dykes provided this at the beginning or I asked the attorneys for it just to verify my reserve number that I'm using in the calculation.

Q. Do you have an opinion as to whether the reserves are adequately funded or not?

A. No, sir. I haven't been asked to testify or look into that at this time.

Q. If that changes, will you let me know?

A. Yes, sir.

And I will say this: To the extent that the developer has not paid these amounts that are owed under my calculation, the amount associated that ties to the reserves naturally would be unfunded.

And I want to say this because I think this is an important point to make on this. Their calculation, as I told you, is accrual based except for bad debt, and I'm assuming -- the other side, I assume, is saying, well, no, you only put what's

C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit L

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ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
HORRY COUNTY

DEPOSITION OF MISSY JOHNSON

C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.,

PLAINTIFFS,

VS. CASE NO. 2017-CP-26-04187

WILD WING COMPANY, LLC; SUNSTAR, LLC; RALPH R. TEAL, JR.; SLF IV/SBI WILD WING, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI PROPERTIES MM, LLC; SLF IV/SBI DEVELOPMENT HOLDINGS, LLC; WILD WING RESIDENTIAL DEVELOPMENT, LLC; STRATFORD LAND MANAGER, L.P. D/B/A STRATFORD LAND; STRATFORD LAND FUND IV, L.P.; SB INVESTMENTS LLC; REALSTAR MANAGEMENT, LLC; GRAEME T. BLACK; H. GILFORD EDWARDS; FOUNDERS WILD WING, LLC; FOUNDERS GROUP INTERNATIONAL, LLC; DAN LIU; XIAN "NICK" DOU; RICK SCHULTZ; RICK TAYLOR AND THOMAS PLANKERS,

DEFENDANTS.

WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.,

NOMINAL DEFENDANT

DATE: SEPTEMBER 28, 2020

TIME: 1:14 P.M.

LOCATION: COPELAND, STAIR, KINGMA & LOVELL
CHARLESTON, SC

REPORTED BY: RUTH L. MOTT, RPR, CRR
CLARK & ASSOCIATES, INC.
P.O. BOX 12189
CHARLESTON, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM

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A. But we work virtually as a group, so if we have analysts that sit in other offices, we'll have them do that type of work for us too.

Q. And are you the only CPA on that group in Charleston?

A. No, we all are. We all are except for one.

Q. Now, you worked at Pratt-Thomas Gumb, right?

A. I did.

Q. And you worked with Roy Strickland there?

A. Yes, sir.

Q. And tell me about that.

A. He was the head of the audit department when I first started working there, and then transitioned into I guess fraud and forensics and litigation support as well.

Q. At Pratt-Thomas Gumb?

A. Yes.

Q. And did Roy work with you in the fraud and forensics section of Pratt-Thomas Gumb too or not?

A. Yes. We did work together on a project or two.

a petroleum engineer.

Q. Did you find Roy to be a good CPA?

A. I did, yes.

Q. Did you have any problems with his work?

A. No.

Q. Now, you indicated that you have testified in depositions before; is that right?

A. Yes.

Q. And has that all been in connection with your professional work as a CPA?

A. Yes.

Q. Have you ever been involved in any sort of litigation personally?

A. No.

Q. Good for you.

So if you will, tell me, have you been accepted or certified by a court as an expert in any subject?

A. Yes.

Q. And could you tell me about that?

A. The first time was with a business valuation pursuant to a family law dispute.

Q. So you were designated as an expert or accepted by the court as an expert in specifically what subjects?

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available to us as well.

Q. And is that something that you did in connection with your work on this case?

A. I don't recall specifically looking at any GAAP standards.

Q. Okay. Well, talking about this case, when were you contacted for this case or about this case?

A. I can't recall the first date.

Q. Do you know who contacted you?

A. I think David Miller did.

No, it wasn't. Actually, it was Doug MacKelcan.

Q. What did Doug say to you when he contacted you?

A. I can't remember the conversation.

Q. You didn't take notes or anything like that?

A. No. I think it was over lunch.

Q. Okay. And were you working with Doug on any other case?

A. I was not.

Q. Have you ever worked with Carlock on another case?

A. I don't know if I've worked with them on

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Q. Okay. And does that have anything to do with in your mind the declarant's financial obligations to the association?

A. I believe that the formula that's outlined in the covenant requires you to look at the financial statements which are prepared on a GAAP basis but that's the starting point are the GAAP prepared financials, and then you apply the formula.

Q. I gotcha. So the financial statements are done pursuant to GAAP, right?

A. Yes.

Q. And then the financial statements are going to be used as a starting place for the declarant contributions based on the formula that you're referring to?

A. That's my understanding.

Q. Okay. All right. And did you use the audited financial statements in doing your analysis?

A. Yes.

Q. And to your knowledge had those audited financial statements been done pursuant to generally accepted accounting principles?

A. That's my understanding.

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A. Okay. It begins with -- I'm trying to find the -- the sentence starts with "however". It's about two-thirds of the way down.

Q. Okay. Until such time?

A. "Until such time a lot is conveyed by the declarant to an owner other than the declarant the declarant shall be assessed and pay to the association in lieu of an assessment thereof a sum equal to the actual amount of actual operating expenditures incurred by the association for that portion of calendar year, less an amount equal to the total assessments made by the association against owners of lots other than those by the declarant."

Q. Okay. All right. And so tell me how you utilized that formula to reach your opinions in this case.

A. So in dissecting this and looking at the historical financials and also looking at the deposition testimony of Jim Corbett and Deborah Weir and Mr. Dykes as well --

Q. Did you look at the testimony of Roy Strickland?

A. I did look at Roy Strickland's testimony as well too.

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Q. Okay. And the board was controlled by who?

A. Well, I think the timing is probably going to depend on the answer.

Q. Well, in this case it's the declarant.

A. Correct.

Q. Okay. So why shouldn't the declarant get dinged by the costs associated with homeowners who don't pay their assessments?

A. In the spirit of what this formula is providing, I don't think that is the interpretation of the formula.

Q. So you read this formula as saying that for assessments that don't get paid we're going to ding the owners, not the declarant.

A. They don't ding the owners, though. The homeowners really never had their assessments increased materially.

Q. Well, the declarants get stuck with the bad debt, that is, the fact that these other owners don't pay.

A. I disagree with you. That bad debt expense is truly just a decrease to the revenue. It's not a true cash outlay. No money is coming out of the bank.

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Q. Well, it's budgeted, isn't it?

A. It is budgeted.

Q. And so homeowners' assessments take into consideration a certain amount of estimated bad debt.

A. Let me back up. The bad debt expense -- I need to look at a budget, but I don't think the bad debt expense is a budgeted item. I need to look and see.

Q. Okay. If the association collected all of the -- if the association collected the total assessments made against -- made by the association against owners of lots, okay, all of them, and didn't exceed their budgeted expenses, would the declarant owe anything?

A. No.

Q. Yet the declarant owns at various times hundreds of unsold lots, right?

A. I'm not sure the number.

Q. Any unsold lots? I mean, this goes all the way back to 2007, right?

A. I'm guessing between zero and what you say are hundreds.

Q. And there are roads, right, and curbs?

A. Yes.

C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit M

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STATE OF SOUTH CAROLINA	)	AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS EASEMENTS, CHARGES, AND LIENS FOR WILD WING PLANTATION
	)	
	)	
COUNTY OF HORRY	)	

WHEREAS, Wild Wing Company, LLC (hereinafter referred to as "Wild Wing Company"), made and executed that certain Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens for Wild Wing Plantation, dated September 26, 2006 and recorded September 27, 2006 in Deed Book 3164, at Page 361, records of Horry County, South Carolina, as amended (hereinafter referred to as the "Declaration");

WHEREAS, Wild Wing Company assigned all of its rights as the declarant and any other rights it has under the Declaration to SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company, in that certain Assignment of Rights dated December 22, 2010 and recorded December 28, 2010 in Deed Book 3497, at Page 1935, records of Horry County, South Carolina;

WHEREAS, SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company assigned all of its rights as the declarant and any other rights it has under the Declaration to Wild Wing Residential Development, LLC (hereinafter referred to as "Declarant"); in that certain Assignment of Rights dated November 9, 2011 and recorded November 9, 2011, in Deed Book 3550, at Page 3051, records of Horry County, South Carolina.

WHEREAS, a special meeting of Wild Wing Plantation Property Owners' Association, Inc. (Hereinafter referred to as the "Association"), was held pursuant to Article II, Section 5 of the Bylaws of Wild Wing Plantation Property Owners' Association, Inc., (hereinafter referred to as "Bylaws");

WHEREAS, at the special meeting, after notice and with a quorum present, a vote was held and passed pursuant to Article XII, Section 9 of the Declaration, by owners holding not less than two-thirds (2/3) of the total vote of the membership in the Association, to amend the Declaration as set forth herein.

NOW THEREFORE in accordance with the terms and provisions of the Declaration, the Declaration is hereby amended, as follows:

1. Article II, Section 16. Storage Receptacles, is hereby amended and restated as follows:

   All fuel tanks or similar storage receptacles larger than twenty (20) pounds shall be buried underground and shall be located no closer to the lot line than the setback requirements.

2. Article IV, Section 3. Voting Rights, Class B. Is hereby amended and restated as follows:

   Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to total votes in an amount equal to twice the number of the Class A votes plus one. The Class B Membership shall cease and become converted to Class A Membership upon the conveyance to Lot Owners of all Lots subject to this Declaration or December 31, 2022, whichever first occurs. In addition, Declarant may terminate the Class B membership upon written notice to the Association.

RETURN TO
BELLAMY, RUTENBERG, COPELAND
EPPS, GRAVELY & BOWERS, P.A.
POST OFFICE BOX 357
MYRTLE BEACH, SC 29578
843-448-2400 APM

Instrument#: 2011000119029, DEED BK: 3553 PG: 2358 DOCTYPE: 069 11/23/2011 at 01:11:00 PM, 1 OF 4 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

3. Article VI, Section 2. Assessments, Liens and Personal Obligations Therefor , and Operation Maintenance of Common Areas Solely by the Association, subsection (a) is hereby amended and restated as follows:

(a) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses, extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot or Lots at the time when the assessment fell due. Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2016, each Lot within Phase I of the Property shall be exempt, at Declarant's option, from the assessments herein provided for (Both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Delcarant to an Owner other than the Delcarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessment made by the Association against the Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing January 1, 2017, the Declarant shall be subject to assessments as provided for in this Declaration so that it will pay assessments on the same basis provided for in this Declaration for other Lot Owners. In the event that additional phases are subjected to the provisions of this Declaration, then it is declared that until the later of: (1) January 1, 2017; or (10) ten years after the date the amendment or supplemental declarations submitting such additional phase(s) are filed for record in the public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein.until such time as the Lots is conveyed by the Declarant to an Owner other than the Declarant. Until such time as a lot is such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less and amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lots Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.

The provisions contained in this Amendment shall be retroactive and therefore shall be effective as of January 1, 2011.

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be made as of this 22 day of November 2011.

Patty Keyes

Ashley Roach Clarke

WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.

By: _____
Ralph R. Teal, Jr., Its President

The Declarant executed this Amendment for the purposes of acknowledging and agreeing to the terms and conditions hereof.

Wild Wing Residential Development, LLC, a Delaware Limited Liability Company

By: SLF IV / SBI Properties MM, LLC, a Texas Limited Liability Company, its Manager

By: SB Investments, LLC, a South Carolina Limited Liability Company, its Managing Member

Patty Keyes

Ashley Roach Clarke

By: _____
Ralph R. Teal, Jr., Co-Manager

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Wild Wing Plantation Property Owners' Association, Inc. By Raph R. Teal, Jr., Its President, Sign, Seal and as its Act and Deed deliver the within written AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WILD WING PLANTATION; and that s/he with the other witness subscribed above witnessed the execution thereof.

Patty Keyes

SWORN to before me this 22
day of November, 2011
Ashley Peach Cloninger (L.S.)
Notary Public for South Carolina
My Commission Expires: 12/16/14

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Wild Wing Residential Development, LLC, a Delaware Limited Liability Company, by SLF IV / SBI Properties MM, LLC, a Texas Limited Liability Company, its Manager, by SB Investments, LLC, a South Carolina Limited Liability Company, its Managing Member, by Ralph R. Teal, Jr., Co-Manager, Sign, Seal and as its Act and Deed deliver the within written AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WILD WING PLANTATION; and that s/he with the other witness subscribed above witnessed the execution thereof.

Patty Keyes

SWORN to before me this 22
day of November, 2011
Ashley Peach Cloninger (L.S.)
Notary Public for South Carolina
My Commission Expires: 12/16/14

ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit N

ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

STATE OF SOUTH CAROLINA	)	AMENDMENT TO DECLARATION OF
	)	PROTECTIVE COVENANTS, RESTRICTIONS,
COUNTY OF HORRY	)	EASEMENTS, CHARGES AND LIENS FOR
		WILD WING PLANTATION

WHEREAS, Wild Wing Company, LLC (hereinafter referred to as "Wild Wing Company"), made and executed that certain Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation, dated September 26, 2006 and recorded September 27, 2006 in Deed Book 3164 at Page 361, records of Horry County, South Carolina, as amended (hereinafter referred to as the "Declaration"):

WHEREAS, Wild Wing Company assigned all of its rights as the Declarant and any other rights it has under the Declaration to SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company, in that certain Assignment of Rights dated December 22, 2010 and recorded December 28, 2010 in Deed Book 3497 at Page 1935, records of Horry County, South Carolina;

WHEREAS, SLF IV / SBI Wild Wing, LLC, a Texas Limited Liability Company assigned all of its rights as the declarant and any other rights it has under the Declaration to Wild Wing Residential Development, LLC in that certain Assignment of Rights dated November 9, 2011 and recorded November 9, 2011 in Deed Book 3550 at Page 3051, records of Horry County, South Carolina;

WHEREAS, by Assignment of Declarant Rights dated April 13, 2015, recorded in Deed Book 3812 at Page 2978, Wild Wing Residential Development, LLC assigned its Declarant rights to Founders Wild Wing, LLC (hereinafter referred to as the "Declarant");

WHEREAS, pursuant to Article XII, Section 9 of the Declaration, the Declaration may be amended by the execution and recordation of any instrument executed by Owners holding not less than two-thirds (2/3) vote of the membership in Wild Wing Property Owners' Association (the "Association"), with Declarant's consent required so long as Declarant is the Owner of any Lot affected by the Declaration; and

WHEREAS, Declarant currently holds votes in excess of the two-thirds (2/3) of the total vote of the Membership in Association;

WHEREAS, Declarant is the Owner of multiple Lots affected by the Declaration;

WHEREAS, the right to amend is unambiguously set forth in the Declaration; the Declarant has a sufficient property interest in the development, as set forth above, including the right to add additional phases to the Development; the Declarant has strictly complied with the amendment process set forth in the Declaration; the Declarant has undertaken to ensure that notice of the amendment is provided as set forth in the Declaration and that the amended covenants are not unreasonable nor do they contravene public policy in accordance with South Carolina law;

WHEREAS, it is the intention of Declarant, as the holder if in excess of two-thirds (2/3) of the vote of Association to amend the Declaration as more particularly set forth herein.

NOW, THEREFORE, in accordance with the terms and provisions of the Declaration, the Declaration is hereby amended, as follows:

Instrument#: 2016000136671, DEED BK: 3964 PG: 1648 DOCTYPE: 069 11/15/2016 at 01:41:41 PM, 1 OF 4 MARION D. FOXWORTH III, HORRY COUNTY, SC REGISTRAR OF DEEDS

ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

1. Article VI, Section 2. Assessments, Liens and Personal Obligations Therefor, and Operation, Maintenance of Common Areas Solely by the Association, subsection (a) is hereby amended and restated as follows:

(A) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses, extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot or Lots at the time when the assessment fell due. Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2019, each Lot within Phase I of the Property shall be exempt, at Declarant's option, from the assessments herein provided for (Both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessment made by the Association against the Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing January 1, 2020, the Declarant shall be subject to assessments as provided for in this Declaration for other Lot Owners. In the event that additional phases are subject to the provisions of this Declaration, then it is declared that until the later of: (1) December 31, 2019; or (10) ten years after the date the amendment or supplemental declarations submitting such additional phases(s) are filed for record in the public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the Lots are conveyed by the Declarant to an Owner other than the Declarant. Until such time as a lot in such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less an amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lot Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be made as of this 15th day of November, 2016.

WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.

Michelle L. Merkle
Anne Anderson

BY: Tom Plankers
Its: President

DECLARANT:

FOUNDERS WILD WING, LLC, a Delaware Limited Liability Company

Tom Plankers
Brandon Garfield

BY: Nick Dau
Its: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Wild Wing Plantation Property Owners' Association, Inc., by Tom PLANKERS, Its PRESIDENT, Sign, Seal and as its Act and Deed deliver the within written Amendment to Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild Wing Plantation; and that s/he with the other witness subscribed above witnessed the execution thereof.

Tom Plankers Michelle L. Merkle

SWORN to before me this 15th day of November, 2016.
Anne Anderson
Notary Public for South Carolina
My Commission Expires: 2/13/26

Witness is not a party to or a beneficiary of the transaction.

ANNE ANDERSON NOTARY PUBLIC SOUTH CAROLINA MY COMMISSION EXPIRES FEBRUARY 18, 2026

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C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit O

ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

STATE OF SOUTH CAROLINA — COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt, Individually and derivatively on behalf of the Wild Wing Plantation Property Owners' Association, Inc.,

Plaintiff(s),

vs.

CIVIL ACTION NO.
2017-CP-26-04187

Wild Wing Company, LLC, Ralph R. Teal, Jr., SLF IV/SBI Wild Wing, LLC, Wild Wing Residential Development LLC, Stratford Land Manager, SB Investments LLC, Graeme T. Black, Gilford Edwards, Founders Wild Wing, LLC, Founders Group International, LLC, Dan Liu, and Xian Dou,

Defendant(s).

Wild Wing Plantation Owners' Association, Inc.

Nominal Defendant.

TELEPHONIC DEPOSITION OF: **PAUL SKIRCHAK**

DATE: Thursday, July 30, 2020

TIME: 10:03 a.m. through 12:40 p.m.

LOCATION: BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Defendant(s)

COURT REPORTER: MADONNA M. FARRELL
Registered Professional Reporter
CaseViewNet Realtime Reporter

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this case concerning those amendments?

A. Hmm...

Q. And if you'll turn to your Exhibit Number 10, you'll see the one that was done in 2016. 11:28AM

(EXHIBIT 10, 9/26/2006 Amendment to Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for Wild West Plantation, was marked for identification.) 11:29AM

THE DEPONENT: Yes. I am aware of those amendments.

BY MR. MILLER:

Q. Okay.

A. That's part of reading the -- understanding the governing documents. 11:29AM

Q. And did you -- did you ever undertake to advise anyone at the Founders or at the property owners' board of the desirability of that amendment? 11:29AM

A. I'm a community manager. I look at things and I try to plan for what's coming, what's behind, what's happening right now; what I do.

I told the Founders board of directors that this 2011 amendment was fixing to expire and they 11:29AM

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would be paying assessments the following year on the lots that are unsold. That's all I did.

Q. Did you have any opinion or discussion with the POA board as to the desirability of renewing that amendment through this 2016 document? 11:30AM

A. I have no ability to renew the document. I can just tell them what happened and what the circumstances will be.

Any choice to take any action was fully a choice of the developer. I had no authority in any 11:30AM choice to have a second amendment, other than, you know, administering it as a result of an election or a developer-approved amendment as the supplemental.

Q. Understood. 11:30AM

My question is, did they ask or did you offer any advice on the desirability of this amendment from a, you know, community perspective? Is this a good thing or a bad thing?

You know, do you remember having any 11:31AM conversations about that?

A. I told them that the original amendment would expire and that they would be paying assessments on all the lots.

Q. Do you remember the -- can you remember 11:31AM

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Q. Okay. If we look at this vote tally sheet, is it your testimony that the lots that are referenced on this vote tally sheet, these several pages, are lots that were not still owned by the declarant? 12:21PM

A. These lots were owned by owners, not the declarant.

Q. And how --

A. Not the declarant.

Q. Do you know how many lots were owned by declarant -- excuse me -- by owners at the time this vote took place? 12:21PM

A. I probably knew back then, but I don't recall now.

Q. But we would be able to count these lots up on your vote tally sheet, right? 12:22PM

A. That is correct.

Q. Would you agree with me that the number of owners who actually voted on this amendment was a small fraction of the total number of owners? 12:22PM

A. Yes. Yes.

Q. Can you, Mr. Skirchak, tell me any advantage to the association for the declarant to not pay on a per-lot assessment basis?

A. To the association as a whole? 12:23PM

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Q. Yes, sir.

A. No. No. Probably not.

Q. Now, Mr. Skirchak, you had earlier mentioned that you had some interaction with what was called the finance committee? 12:23PM

A. Yes.

Q. And you found, I think -- and I don't want to put words in your mouth -- but my recollection of your testimony is you found them -- by the time you got there, you found the committee to be 12:23PM comprised of what appeared to be reasonably thoughtful, intelligent people?

A. Yes.

Q. Do you know that the finance committee was disbanded by Founders? 12:24PM

A. I do not.

Q. Now, Mr. Skirchak, you are not a certified public accountant, correct?

A. Correct.

Q. And you're not qualified to do a financial 12:24PM audit of an association, correct?

A. Correct.

Q. I want to take you back, if you don't mind, to something that Mr. Miller asked you about earlier in your testimony. That's all the way back 12:24PM

C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit P

ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt,
Individually and derivatively
on behalf of the Wild Wing Plantation
Property Owners' Association, Inc.,

Plaintiff(s),

vs. CIVIL ACTION NO.
2017-CP-26-04187

Wild Wing Company, LLC,
Ralph R. Teal, Jr.,
SLF IV/SBI Wild Wing, LLC,
Wild Wing Residential Development LLC,
Stratford Land Manager,
SB Investments LLC,
Graeme T. Black, Gilford Edwards,
Founders Wild Wing, LLC,
Founders Group International, LLC,
Dan Liu, and Xian Dou,

Defendant(s).

Wild Wing Plantation
Owners' Association, Inc.

Nominal Defendant.

VIRTUAL
DEPOSITION OF: PRESTON COURTNEY

DATE: Wednesday, August 20th, 2020

TIME: 11:38 a.m. through 12:39 p.m.

LOCATION: BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Defendant(s)

COURT REPORTER: MADONNA M. FARRELL
Registered Professional Reporter
CaseViewNet Realtime Reporter

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A. My understanding in 2016 is simply because they were unfinished with the development, and it -- because of the failure of the development, the entire process was taking longer and being pushed out.

Q. And so how did the -- extending the declarant funding alternative enhance the declarant's interest in 2016?

A. I can't speak for the declarant or how they're -- they were enhanced.

Q. Do you know or can you articulate for me how the association benefited from the extension of that declarant funding alternative in 2016?

A. I cannot, with the exception of saying that, again, it's always important or good to have a successful developer from start to finish of a development.

Q. And do you have any basis to provide to me today, any factual basis, to support a contention that extending the declarant funding alternative in 2016 somehow provided an advantage to the HOA?

A. I do not.

Q. So you can't quantify that value?

A. I cannot.

Q. Have you done any sort of analysis to

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AMENDED

C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit Q

LYLES & ASSOCIATES, LLC
ATTORNEYS AT LAW
342 East Bay Street
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Lee Anne Walters
Attorney

E-mail: lw@lylesfirm.com

January 21, 2019

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Elliott Davis, LLC
1901 Main St. #900
Columbia, SC 29201

Re: C. Barry Dykes & Barbara Eisenhardt, on behalf of Wild Wing Plantation Property Owners' Association, Inc. v. Wild Wing Company, LLC et al.
Case No.: 2017-CP-26-04187

To Whom It May Concern:

This firm represents C. Barry Dykes and Barbara Eisenhardt, on behalf of Wild Wing Plantation Property Owners' Association, Inc., with regard to the above referenced matter. In that regard, please find enclosed for service upon you a Subpoena, which compels you to produce all documents referring or relating to SLF IV/SBI Wild Wing LLC; All documents referring or relating to Wild Wing Residential Development LLC; All documents referring or relating to any sales or transfers of ownership or assets from or to SLF IV/SBI Wild Wing LLC; All documents referring or relating to any sales or transfers of ownership or assets from or to Wild Wing Residential Development LLC; and All documents referring or relating to any sales or transfers between Wild Wing Residential Development LLC SLF IV/SBI Wild Wing LLC.

Please return the documents, along with a certificate stating that the copies are a true, accurate, and a complete copy of all the requested documents, as kept in the normal course of business. For your convenience, I have enclosed a standardized Certificate of Authenticity that may be used for this purpose. If you prefer, your own form may be utilized to certify the authenticity of the records. We will, of course, reimburse you for any reasonable expense incurred in complying with our requests. If the documents can only be provided in hard copy, or if there are costs associated with producing the documents electronically, please let us know in advance if the cost will exceed $100.00.

By copy of this letter, I am advising counsel for the Defendants that records in regard to the above-referenced matter have been requested. This letter will also serve to notify opposing counsel that once the subject documents have been received from you, they will be available for inspection and copying.

If you have any questions, please do not hesitate to contact me.

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With kind regards, I remain

Very truly yours,

LYLES & ASSOCIATES, LLC

L. Walters by/ Marcus Griffin

Lee Anne Walters

Enclosures (as stated above)
cc: David B. Miller
Zachary J. Crowl
Douglas W. Mackelcan
William J. Farley, III

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STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt, individually and on behalf of the Wild Wing Plantation Property Owners' Association, Inc., Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Wild Wing Company, LLC, et al., Defendant

Case Number: 2017CP2604187

Pending in Horry County

TO: Elliott Davis, LLC
1901 Main St. #900
Columbia, SC 29201

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below: All documents referring or relating to SLF IV/SBI Wild Wing LLC; All documents referring or relating to Wild Wing Residential Development LLC; All documents referring or relating to any sales or transfers of ownership or assets from or to SLF IV/SBI Wild Wing LLC; All documents referring or relating to any sales or transfers of ownership or assets from or to Wild Wing Residential Development LLC; and All documents referring or relating to any sales or transfers between Wild Wing Residential Development LLC SLF IV/SBI Wild Wing LLC.

PLACE	DATE AND TIME
Lyles & Associates 342 East Bay Street Charleston, SC 29401	February 4, 2019 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

L. Walters by/ Marian J. Baffin — 1/21/19 — Robert T. Lyles or Lee Anne Walters, attorneys for Plaintiffs

Attorney/Issuing Officer's Signature — Date — Print Name

Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number :
Lyles & Associates
342 East Bay Street,
Charleston, SC 29401
(843)577-7730

Clerk of Court/Issuing Officer's Signature — Date — Print Name

Pro Se Litigant's Name, Address and Telephone Number :

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PROOF OF SERVICE

SERVED	DATE January 21, 2019 PLACE 1901 Main St. #900 Columbia, SC 29201	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐YES ☐ NO AMOUNT $
SERVED ON Elliott Davis, LLC		MANNER OF SERVICE Certified Mail, Return Receipt Requested
SERVED BY Cindy Worsham		TITLE Paralegal

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on January 21, 2019

Cindy Worsham
SIGNATURE OF SERVER

342 East Bay Street, Charleston, SC 29401
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CASE NO.: 2017-CP-26-04187

C. Barry Dykes and Barbara Eisenhardt, individually and derivatively on behalf of the Wild Wing Plantation Property Owners' Association, Inc.,

Plaintiffs,

vs.

Wild Wing Company, LLC, Ralph R. Teal, Jr., SLV IV/SBI Wild Wing, LLC, Wild Wing Residential Development LLC, Stratford Land Manager, SB Investments LLC, Graeme T. Black, H. Gilford Edwards, Founders Wild Wing LLC, Founders Group International LLC, Dan Liu and Xian Dou (Defendants) Wild Wing Plantation Owners' Association, Inc.,

Defendants.

Wild Wing Plantation Owners' Association, Inc.,

Nominal Defendant.

CERTIFICATE OF AUTHENTICITY

The undersigned hereby certifies that the enclosed documents are a complete, true and accurate copy of all documents requested via Subpoena by Lyles & Associates, LLC relative to the above-referenced matter.

SIGNED: _____

By:
Its:

Elliott Davis, LLC
1901 Main St. #900
Columbia, SC 29401

DATE: _____

SWORN to before me this _____ day of _____, 2018

_____
Notary Public for South Carolina
My Commission Expires:

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SLF IV/SBI Wild Wing, LLC
Sale of Remaining Assets
April 14, 2015

		SLF IV/SBI Wild Wing, LLC				Wild Wing Residential Dev., LLC
	Total	**Inventory**	**Equipment**	**Golf Course**	**Raw Land**	**Developed lots**
Sales price	19,000,000.00	82,393.07				
Closing costs:						
Commissions	(419,100.00)					
Deed Stamps	(70,300.00)					
Escrow holdback	(250,000.00)					
Other	(15,000.00)					
Total	(754,400.00)	-				
Net sales price	18,245,600.00	82,393.07	219,275.00	4,280,725.00	2,745,600.00	11,000,000.00
Basis:						
Inventory	82,393.07	82,393.07	-	-	-	-
Equipment	65,864.00	-	65,864.00	-	-	-
Less: A/D	(45,189.67)	-	(45,189.67)	-	-	-
Building	550,000.00	-	-	550,000.00	-	-
Less: A/D	(55,452.36)	-	-	(55,452.36)	-	-
Golf course land	2,621,691.00	-	-	2,621,691.00	-	-
Raw land	266,954.00	-	-	-	266,954.00	-
Development land	5,036,300.00	-	-	-	-	5,036,300.00
CIP	2,958,664.89	-	-	-	-	2,958,664.89
Escrow from closing	53,080.59	-	-	-	-	53,080.59
Estimated add'l CIP	922,875.00	-	-	-	-	922,875.00
REO lots	391,499.00	-	-	-	-	391,499.00
Basis in asset	12,848,679.52	82,393.07	20,674.33	3,116,238.64	266,954.00	9,362,419.48
Gain (loss) on sale	5,396,920.48	-	198,600.67	1,164,486.36	2,478,646.00	1,637,580.52
Tax rate			0.20	0.20	0.20	0.40
Estimated taxes	1,423,378.81		39,720.13	232,897.27	495,729.20	655,032.21

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SLF IV/SBI Wild Wing, LLC
AJE to record sale
April 14, 2015

Wild Wing Residential Development, LLC

10040	Bellamy Escrow - Net proceeds	(53,080.59)
11000	CIP - Construction in Prog	(2,958,664.89)
12050	Land	(5,427,799.00)
14100	WW Model Homes	(30,481.87)
21000	Estimated CIP costs	(922,875.00)
40000	Residential lot sales	(11,000,000.00)
50002	COS-Relief of inventory	3,934,620.48
50003	COS-Relief of land	5,427,799.00
60400	Sales & Marketing costs	30,481.87
20150	Due to JV	11,000,000.00

(to record sale of remaining lots)

SLF IV/SBI Wild Wing LLC

10050	Inventory-Pro Shop	(40,209.20)
10060	Inventory-F&B	(14,258.68)
10070	Inventory-Golf Maintenance	(23,090.79)
10075	Inventory-Fuel	(4,834.40)
12100	Furniture & Fixtures	(65,864.00)
12101	Acc Depr - Furn & Fixt	45,189.67
12400	Other depreciable property	(550,000.00)
12401	Acc Depr - Other deprec prop	55,452.36
11500.1	Prepaid ins - worker's comp	(17,153.44)
11500.2	Prepaid ins - property	(5,080.13)
11500.3	Prepaid ins - auto	(717.80)
11500.4	Prepaid ins - umbrella	(2,146.80)
11500.5	Prepaid ins - commercial	(5,192.60)
12050.1	Land: Golf Course	(2,621,691.00)
12050	Land	(266,954.00)
20450	Surety bond - Santee Cooper	20,000.00
80235	Gain/loss on sale of assets	(3,841,733.03)
20150.1	Due to JV #1	7,327,993.07
8075	General & Admin insurance	30,290.77
5175.1	Electric - Club House	(20,000.00)

(to record sale of golf course and remaining land)

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C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit R

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt,
Individually and derivatively
on behalf of the Wild Wing Plantation
Property Owners' Association, Inc.,

Plaintiff(s),

vs. CIVIL ACTION NO.
2017-CP-26-04187

Wild Wing Company, LLC,
Ralph R. Teal, Jr.,
SLF IV/SBI Wild Wing, LLC,
Wild Wing Residential Development LLC,
Stratford Land Manager,
SB Investments LLC,
Graeme T. Black, Gilford Edwards,
Founders Wild Wing, LLC,
Founders Group International, LLC,
Dan Liu, and Xian Dou,

Defendant(s).

Wild Wing Plantation
Owners' Association, Inc.

Nominal Defendant.

DEPOSITION OF: GRAEME T. BLACK

DATE: Thursday, December 6, 2018

TIME: 9:45 a.m. through 1:32 p.m.

LOCATION: BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Defendant(s)

COURT REPORTER: MADONNA M. FARRELL
Registered Professional Reporter
Certified Livenote Reporter
CaseViewNet Realtime Reporter

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Q. And to carry forth the purposes of the regime documents, the declarations, covenants restrictions, bylaws, and so on and so forth?

A. Yes.

Q. Okay. And so my question to you is, is you were serving as a member of the board of Wild Wing POA for four years or so. You have said that you were a representative of the declarant.

My question to you is, in performing your functions as a member of the board, did you believe that your obligations and loyalties lied [sic] primarily with the declarant or with the members of POA?

A. I never viewed it separately as a -- in a -- as a conflict or a -- it's easy to understand your responsibilities as a member of a POA board and your responsibilities as a developer or an employee of a development entity. So yes, I can clearly understand both responsibilities and conduct accordingly at the same time.

Q. What do you do when there is a conflict or a potential conflict between the interest of the declarant and the interest of the owners -- or the members, I should say?

A. Can you give me an example of a conflict? I

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cannot think of one.

Q. Sure.

Well, while you've been doing your business for the last 20 years, I've been doing mine. And I have represented dozens and dozens of developers who have been sued by HOAs for various and sundry things, including construction deficiencies, board mismanagement, breaches of fiduciary duty, for example.

Surely you're familiar with at least some of the cases that have been filed in and around the Myrtle Beach area between HOAs and developers.

A. Right.

Q. So that would be one type of conflict, where owners feel aggrieved because they have been given a building that they don't believe is suitable or proper.

A. Right.

Q. The declarant thinks it was.

A. Right.

Q. So if you're a board member and there's an issue like that, how do you resolve that?

A. I can honestly tell you, I don't recall having any such conflict in my dual roles in my experience.

ELECTRONICALLY FILED - 2021 Mar 05 1:04 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

assets belonging to Wild Wing Residential and the JV?

A. It would have.

Q. Okay. And do you know how much profit was earned by either the JV or Wild Wing Residential on the sale of their assets?

A. I do not.

Q. Do you know what assets remained in the JV or in Wild Wing Residential after the sale to Founders?

A. I hope none.

Q. And does either the JV or Wild Wing Residential, are either of those entities still valid, ongoing concerns?

A. Valid, ongoing concerns in what way?

Q. Yeah. Are they still conducting business, to your knowledge?

A. I don't have any idea if they're still entities of record.

Q. Okay. Do you have any reason to believe they're conducting any business?

A. I have no reason to believe either way. We're not conducting business at Wild Wing.

Q. Okay. And if the owners -- or my clients in this case, if they are able to convince a judge or

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C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., MEMORANDUMS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT AND MEMORANDUMS IN OPPOSITION TO THE DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

Exhibit S

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT C/A NUMBER: 2017-CP-26-04187
C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., PLAINTIFFS, VS. WILD WING COMPANY, LLC; SUNSTAR, LLC; RALPH R. TEAL, JR.; SLF IV/SBI WILD WING, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI PROPERTIES MM, LLC; SLF IV/SBI DEVELOPMENT HOLDINGS, LLC; WILD WING RESIDENTIAL DEVELOPMENT, LLC; STRATFORD LAND MANAGER, L.P. D/B/A STRATFORD LAND; STRATFORD LAND FUND IV, L.P.; SB INVESTMENTS LLC; REALSTAR MANAGEMENT, LLC; GRAEME T. BLACK; H. GILFORD EDWARDS; FOUNDERS WILD WING, LLC; FOUNDERS GROUP INTERNATIONAL, LLC; DAN LIU; XIAN "NICK" DOU; RICK SCHULTZ; RICK TAYLOR AND THOMAS PLANKERS, DEFENDANTS. WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., NOMINAL DEFENDANT.	**AFFIDAVIT OF BARBARA EISENHARDT**

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PERSONALLY, APPEARED BEFORE ME, Barbara Eisenhardt, who deposes and states as follows in support of Plaintiffs' Memorandum in Opposition to Defendants Wild Wing Company, LLC; Sunstar, LLC; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI properties MM, LLC; SLF IV/SBI Development Holdings, LLC; Wild Wing Residential Development, LLC; SB Investments, LLC; Realstar Management, LLC; Founders Wild Wing, LLC; Founders Group International, LLC; and Dan Lui's Motion for Partial Summary Judgment on the State of Limitations:

1. I am over the age of 18 and all of the statements made herein are based upon my personal knowledge.

2. I have been a property owner at Wild Wing since 2007 and owned two lots, one of which was sold several years ago. I am also a member of the Wild Wing Plantation Property Owners Association, Inc. (the "POA").

3. My husband and I were early owners, moving into Wild Wing in 2011 as the seventh (7th) house built in the neighborhood. Currently there are over 500 lots in the Wild Wing Plantation subdivision..

4. At the time I moved in, the Declarant, Wild Wing Company, LLC, owned the vast majority of the lots at Wild Wing.

5. In 2011, when I would estimate that there were less than 50 homes, many of which did not house full time residents, I was asked to be on the initial Finance Committee created by the Board of Directors at the time, which was comprised of Ralph R. Teal, Jr., Graeme T. Black, and H. Gilford Edwards, all of whom had been appointed by the Declarants (at that time, we had the third Declarant, Wild Wing Residential Development, LLC).

6. I agreed to serve on the committee along with Kathy Barbato and Craig Johnson. The three of us were a nurse (me), another nurse, and a pharmacist. I had no background in finance and, based on my personal observations and interactions with them, neither did Kathy Barbato or Craig Johnson.

7. The committee's authority was limited by the Board of Directors, which had created the committee that served at its pleasure. The Finance Committee did not have any meaningful oversight capacity or input in creating the budgets, nor in retaining accountants or property management firms. All of those functions were performed by the Board of Directors, the Declarants that controlled

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the POA, and their retained expert accountants and property managers, none of whom interacted with or reported to the Finance Committee in any meaningful way.

8. The Finance Committee was invited to attend Board of Directors meetings, but the Board of Directors went into executive session to discuss any material financial matters such as delinquencies and budget performance. The Committee was excluded from executive sessions, meaning the Finance Committee did not receive any more financial information than was available to any other non-declarant property owner.

9. To the best of my knowledge, until 2015, when Barry Dykes was put onto the committee by the Board of Directors, no one on the committee had asked for detailed financial information or knew to ask for detailed financial information. Until that time, I had no reason to believe that anyone on the Finance Committee knew or could have known how Declarant contributions were calculated and or would have known how GAAP (Generally Accepted Accounting Principles) affected the treatment of bad debt or its impact on the Declarant contributions. Likewise, I had no reason to believe that anyone on the Finance Committee would have known that the Declarant had underfunded the POA, or would have known to demand that the Board of Directors seek reimbursement from the Declarant that had appointed and controlled it.

10. I attended a meeting in 2011, when the Board of Directors proposed amending the Regime Documents to extend the Declarant Funding Alternative, which had previously expired on December 31, 2010. Again, at the time, my recollection is that there were less than 50 homes in Wild Wing. The proposal was to extend it until December 31, 2016. At that meeting the Declarant appointed Board of Directors representative, Graeme T. Black, explained to the few residents in attendance that the amendment was necessary for the financial health of the POA. He told us that if the proposed

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amendment did not pass, then *all* of the expenses of the POA would have to be paid by the few non-declarant property owners and that the Declarant would no longer fund any of the POA obligations.

11. Mr. Black did not explain to us how much the Declarant would pay if the amendment did not pass and the Declarant was forced to pay on the same basis as the other property owners. He did not explain to us that with the passage of the amendment, and an extension of the Declarant Funding Alternative, the Declarant would actually contribute much less, that year and thereafter, than if the Declarant paid on a per-lot basis as the other owners.

12. Based on those representations, which I now know to be false and incomplete, the property owners and the Declarant voted. I have not seen and do not know what the vote was among the non-declarant property owners, but it was immaterial. The Declarant did and still does control enough votes to carry any measure it chooses.

13. I also believed that the Board of Directors, however constituted, was working with the bests interests of the POA in mind, for the benefit of the non-Declarant property owners. I trusted and relied on them to do that and did not know or understand that they were advancing the interests of the Declarant at the expense of the POA. I would have expected them to disclose to me and the other non-Declarant property owners any conflicts of interest they had between the interests of the Declarant and the non-Declarant property owners. They never disclosed such a conflict of interest though they clearly existed.

14. I have corresponded by email with people I knew to be members of the Board of Directors over several years. Some of the email addresses I have received from them are listed below:

graemeblack@atmc.net
graeme@realstarmgmt.com
rick.schultz@foundersgolf.com
rick.t@foundersgrop.com
rick.taylor@foundersgolf.com
tom.plankers@foundersgolf.com

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gedwards@citizenhomes.com

15. In the early years of Wild Wing, I understood our developer/Declarant to be Wild Wing Company, LLC. As the Declarant names changed from Wild Wing Development, LLC to SLF IV/SBI Wild Wing, LLC to Wild Wing Residential Development, LLC, my belief was that those developers were still involved and were serving as the Declarant without regard to what they called themselves.

Barbara Eisenhardt

Barbara Eisenhardt

MARCH 2, 2021

SWORN to before me this 3/2 Day of 2021.

Ksenia Marlowe

Notary Public for South Carolina
My Commission expires: 01/11/2029

KSENIA MARLOWE
Notary Public - State of South Carolina
My Commission Expires January 11, 2029

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT C/A NUMBER: 2017-CP-26-04187
C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., PLAINTIFFS, VS. WILD WING COMPANY, LLC; SUNSTAR, LLC; RALPH R. TEAL, JR.; SLF IV/SBI WILD WING, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI PROPERTIES MM, LLC; SLF IV/SBI DEVELOPMENT HOLDINGS, LLC; WILD WING RESIDENTIAL DEVELOPMENT, LLC; STRATFORD LAND MANAGER, L.P. D/B/A STRATFORD LAND; STRATFORD LAND FUND IV, L.P.; SB INVESTMENTS, LLC; REALSTAR MANAGEMENT, LLC; GRAEME T. BLACK; H. GILFORD EDWARDS; FOUNDERS WILD WING, LLC; FOUNDERS GROUP INTERNATIONAL, LLC; DAN LIU; XIAN "NICK" DOU; RICK SCHULTZ; RICK TAYLOR; AND THOMAS PLANKERS, DEFENDANTS. WILD WING PLANTATION OWNERS' ASSOCIATION, INC. NOMINAL DEFENDANT.	**Defendants Wild Wing Company, LLC; Sunstar, LLC; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development Holdings, LLC; Wild Wing Residential Development, LLC; SB Investments, LLC; Realstar Management, LLC; Founders Wild Wing, LLC; Founders Group International, LLC; and Dan Liu's** **Memorandum in Response to Plaintiffs' Memorandum in Support of Motions for Summary Judgment and Opposition to Defendants' Motions for Summary Judgment**

Plaintiffs face a multitude of absolute affirmative defenses, each fatal to Plaintiffs' case. Plaintiffs are therefore put to creating unreasonable inferences of fact and interpretations of law. The inescapable fact underlying Plaintiffs' case is that the Wild Wing POA is, and always has been, fully funded. Never has a bill gone unpaid, no special assessments have ever been levied, and dues have remained constant. The Declarants have funded any operating shortfalls from inception to date. Efforts to misconstrue this reality fail because they are simply not true.

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I. "Shortfall" of the POA

Throughout Plaintiffs' Memorandum, they have attempted to adopt the term "shortfall" into their interpretation of the financial situation at Wild Wing. There is no shortfall. Plaintiffs make incorrect statements such as:

> "The extensions of the Declarant Funding Alternative also resulted in a substantial shortfall of funding to the POA by the Declarants;"[1] and
>
> "The erroneous calculation of The Declarant Funding Alternative has resulted in a substantial shortfall."[2]

The POA has never operated at a deficit since its inception. In addition:

- Lot owner dues have stayed consistent since 2006;
- No special assessments have ever been levied;
- No POA bills have ever gone unpaid; and
- The Reserve Fund of the POA is fully funded.[3]

Mr. Dykes himself has acknowledged this under oath. The Wild Wing POA is and always has been a financially sound and well managed community.

Plaintiffs attempt to construe the term "shortfall" in terms of allocation among the Declarants and Lot Owners. More particularly, Plaintiffs ask that Declarants be ordered to pay the very dues Plaintiffs' members failed to pay. This perverse argument fails for multiple reasons including Associational Standing and Plaintiffs' Violation of the Declaration, both of which are briefed in these Defendants' prior Memoranda.

[1] Pls.' Mems. in Supp. of Its Mots. for Summ. J. and Mems in Opp'n to the Defs. Mots. for Summ. J. 3.
[2] Pls.' Mems. 12.
[3] Dykes Dec. 5, 2018 29:12 – 30:16. Attached hereto as Exhibit A; Atkinson 50:6-12. Attached hereto as Exhibit B; Superior Reserve Study Defendants (CCS) 0565. Attached hereto as Exhibit C.

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II. The Declarant Contribution Calculation was Prepared by the Independent POA Accountant, Not the Declarants and Not Gilford Edwards

The rules of law governing Plaintiffs' case on the Math are these:

> **In discharging his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by public accountants, other persons as to matters the director reasonably believes are within the person's professional or expert competence, or a committee of the board of which the director is not a member.**
>
> S.C. Code Ann. § 33-31-830(b).

> **"In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the 'business judgment rule,' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action."**
>
> Goddard v. Fairways Dev. Gen. P'ship, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993).

The reality that neither the Declarants nor Gilford Edwards were involved in the calculation of the Math and that the Board of Directors of the POA relied on experts for this function is fatal to the Plaintiffs' claims. Absent falsely pinning the calculation on the Declarants or Gilford Edwards, Plaintiffs' claims are barred by the Business Judgment Rule and statutory law. Plaintiffs have misrepresented the responsible parties for the calculation of the Math. The Math was calculated by the independent auditing POA accountant. The Math was then reviewed and approved by the POA property manager and the POA Finance Committee.

Plaintiffs misconstrue a single statement from Mr. Edwards' testimony to put forth the false theory that Mr. Edwards orchestrated the Math. During Mr. Edwards' deposition, Plaintiffs' counsel and Mr. Edwards discussed Plaintiff Dykes' view of the Math. Mr. Edwards expressed to Plaintiffs' counsel that he understood what Plaintiff Dykes was contending in this lawsuit, but that he disagreed. Continuing that line of questioning, Plaintiffs' counsel inquired:

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> Q. Okay. And did you – what did you do as a board member to ensure that the declarant was making the proper contributions under the regime documents?
>
> A. I read the documents and did what they said.
>
> Q. You didn't rely on any accountants for that?
>
> A. No.[4]

This is the full extent of the questions and answers relied upon by Plaintiffs. From the above exchange, Plaintiffs have drawn the following unreasonable inferences:

- Gil Edwards, a member of the Board of Directors from 2011 until 2015, testified that he determined that bad debt was not to be considered a POA expense for purposes of calculating the Declarant contribution;[5]
- Edwards himself claimed to be the architect of that effort by deciding that bad debt was not to be treated as a POA expense in calculating the Declarants' contributions;[6]
- The Defendants who were or are members of the Board of Directors condoned the underfunding and, at least in the case of Mr. Edwards, was responsible for it;[7] and
- The accounting was at the direction of Mr. Black's boss, Mr. Edwards.[8]

None of these statements are true as Mr. Edwards never made any of the above claims. Attached hereto and incorporated herein as Exhibit E is an Affidavit of Mr. Edwards responding to Plaintiffs' false allegations.

III. Statute of Limitations

Many of Plaintiffs' claims are time barred. In acknowledging this, Plaintiffs seek to avoid the Statute of Limitations through equitable tolling.

[4] Edwards 32:13-19. Attached hereto as Exhibit D.
[5] Pls.' Mems. 10.
[6] Pls.' Mems. 29.
[7] Pls.' Mems. 32.
[8] Pls.' Mems. 33.

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"[E]quitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." Hooper v. Ebenezer Senior Services and Rehabilitations Center, 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009). "[E]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control." Id. at 32. "The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use." Id.

Plaintiffs ask the Court to apply equitable tolling simply because the Declarant has not yet turned over control. Plaintiffs have always enjoyed the ability to bring a derivative action just as they have done here. At no time has any financial matter been withheld or concealed from the Plaintiffs or any other Lot Owner. In fact, the opposite is true.

- Plaintiffs have been members of the POA with access to all POA financial books and records since 2007 and 2013 respectively.[9]
- Plaintiffs served on the POA's Finance Committee which assisted in the preparation of the annual budget, inclusive of the requested Declarant Contribution, and is charged with reviewing and making recommendations on all financial matters.[10] Plaintiff Eisenhardt was one of the charter members in 2012 and Plaintiff Dykes joined the Committee in 2014.
- Plaintiffs filed their Complaint on the Math on June 30, 2017.
- Plaintiff Eisenhardt voted in favor of the Amendment to the Declaration in 2011.[11]
- Plaintiff Dykes purchased his property in Wild Wing Plantation in 2013 with record notice of the 2011 Amendment in his chain of title.[12]
- Plaintiffs did not file their claims related to the 2011 Amendment until June 10, 2019.

[9] By-Laws Art. VI, Section 4(a) Defendants (CCS) 0474. Attached hereto as Exhibit F.
[10] Dykes Dec. 5, 2018 28:1-12. Attached hereto as Exhibit A.
[11] Eisenhardt June 25, 2020 34:19-25. Attached hereto as Exhibit G.
[12] Plaintiff Dykes Title Insurance Policy and Warranty Deed Plaintiff 002713 – 23. Attached hereto as Exhibit H; Dykes June 25, 2020 83:5-15, 84:22 – 85:8. Attached hereto as Exhibit I.

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Nothing in the record suggests Plaintiffs were prevented from filing their case at any time. Plaintiffs have failed to establish a compelling reason to justify the use of equitable tolling under all the circumstances.

IV. Calculation of the Math

Plaintiffs miscalculate the Math by excluding many revenues while including inappropriate expenses. The operative sentence is found in Article VI of the Declaration. Included within this sentence is the following language.

> [T]he Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, ***a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made***.[13]

A. A sum equal to the actual amount of actual operating expenditures incurred.

Plaintiffs have included Bad Debt Expense in the "actual amount of actual operating expenditures incurred". Bad debt is not an "actual operating expenditure incurred." Plaintiffs include Bade Debt despite the fact:

- The "actual amount of actual operating expenditures incurred" unambiguously refers to the actual payment of an expense. These words do not include "paper expenses" such as depreciation or bad debt;[14]
- The POA accountant reviewed whether bad debt should be included and after reviewing the Declaration and GAAP as well as consulting with other CPAs in his office and with the CFO of the POA property management company, determined bad debt was properly excluded;[15]
- The CFO of Waccamaw Management testified that in 26 years of working with countless associations, she has never seen bad debt included;[16]
- The bad debt represents the failure of Plaintiffs' fellow lot owners to pay assessments;[17]

[13] Declaration Article VI, Section 2. Defendants (CCS) 0436-37. Attached hereto as Exhibit F.
[14] Corbett 50:4-10. Attached hereto as Exhibit J; Atkinson 23:4-14. Attached hereto as Exhibit B.
[15] Corbett 31:20 – 32:18; 36:7-25. Attached hereto as Exhibit J.
[16] Atkinson 23:4-20. Attached hereto as Exhibit B.
[17] Dykes Dec. 5, 2018 86:22-23. Attached hereto as Exhibit A.

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- Failure to pay assessments constitutes a violation of the Declaration;[18] and
- The Declaration states, "The Declarant shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself."[19]

B. <u>Less an amount equal to the total assessments made.</u>

Plaintiffs fail to credit many revenue items received by the POA. Article VI of the Declaration incorporates a broad definition of assessments not included in Plaintiffs' calculations. Additionally, the Plaintiffs fail to include certain items specifically deemed assessments in the Declaration including:

- Architectural Review Board Income and Fees;[20]
- The cost of any work performed by the Association upon the owner's failure to do exterior maintenance, such as Bushhogging Income;[21] and
- Late Fees and Fines.[22]

Plaintiffs also fail to take into account other revenue items which offset the operating expenditures and the expenses of the POA. These revenue items include:

- Bad Debt Recoveries;
- Amenity Center Rental Fees; and
- Miscellaneous Income.

If Plaintiffs include all expenses of the POA in the top line of their calculations, they must also include all sources of revenue which offset these expenses in the bottom line of their calculations.

[18] Dykes Dec. 5, 2018 62:23 – 63:4. Attached hereto as Exhibit A.
[19] Declaration Art. XII Sec. 3 Defendants (CCS) 0449. Attached hereto as Exhibit F.
[20] Declaration Art. VII Sec. 5. Defendants (CCS) 0441. Attached hereto as Exhibit F.
[21] Declaration Art. VIII Sec. 1. Defendants (CCS) 0442. Attached hereto as Exhibit F.
[22] Declaration Art. VI Sec. 6. Defendants (CCS) 0439. Attached hereto as Exhibit F.

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V. Amendments

Two years after Plaintiffs filed this action in 2017, Plaintiffs amended their Complaint to include claims on the 2011 and 2016 Amendments to the Declaration. Plaintiffs now ask the Court to review these Amendments under the wrong standard. Plaintiffs claim the Amendments should be governed by a fiduciary duty standard and seek to shift the burden to the Defendants to show the benefits of the Amendments. This is not the standard. In South Carolina, Amendments to a Declaration are to be reviewed by the five factors set forth in Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp., 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006). See AJG Holdings LLC v. Dunn, 392 S.C. 160, 165, 708 S.E.2d 218, 221 (Ct. App. 2011), aff'd, 410 S.C. 346, 764 S.E.2d 912 (2014). Both the 2011 and the 2016 Amendments meet these five conditions. As more fully set forth in prior Memoranda, the Amendments to the Declaration were proper in accordance with the correct standard by which they are to be reviewed under South Carolina law.

VI. Corporate Structure

Plaintiffs have included 11 Secondary Defendants in this action to collect a judgment they have not yet obtained. Plaintiffs announced in their Memorandum that they are proceeding on an amalgamation/single business enterprise theory. In formally recognizing the single business enterprise theory, the Supreme Court in Pertuis v. Front Roe Rests., Inc., 423 S.C. 640, 817 S.E.2d 273 (2018), acknowledged that "corporations are often formed for the purpose of shielding shareholders from individual liability; there is nothing remotely nefarious in doing that." Id. at 280.

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> **The creation of affiliated corporations to limit liability while pursuing common goals lies firmly within the law and is commonplace. We have never held corporations liable for each other's obligations merely because of centralized control, mutual purposes, and shared finances. There must also be evidence of abuse, or injustice and inequity.**
>
> Id.

Plaintiffs must show "more than the various entities operations are intertwined." Id. "Combining multiple corporate entities into a single business enterprise requires further evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions." Id. at 281.

Plaintiffs summarily state "The 'bad faith', 'wrongdoing' or 'injustice' element of *Pertuis,* is satisfied by the fact that the Declarants were left insolvent by the non-Declarant pre-Founder's Defendants."[23] Even if this were true, Pertuis makes clear that this is not what is meant by injustice. "By 'injustice' and 'inequity' we do not mean a subjective perception of unfairness by an individual judge or juror." Id. at 280. Rather, these words refer to actions such as fraud, circumvention of statutes, and criminal conduct. Id. None of which exists.

Plaintiffs cannot meet the high standard of the amalgamation/single business enterprise claim because no evidence exists to support their theory. Plaintiffs use words such as "shell entities" and "siphoning of assets". These terms are used without any basis. Repeatedly, Plaintiffs have been asked what evidence they have to support these claims. Repeatedly, the answers have been that they do not have any.[24] As fully set forth in prior Memoranda, each of these Defendants were legitimate entities.

[23] Pls.' Mems. 23

[24] Dykes Dec. 5, 2018 71:11 – 75:20. Attached hereto as Exhibit A; Dykes June 25, 2020 59:24 – 60:1, 5-7. Attached hereto as Exhibit I.

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VII. Pre-judgment Interest

Plaintiffs' Amended Complaint does not make a claim for pre-judgment interest. A claim for pre-judgment interest must be specifically pled in order to be recovered. Dixie Bell, Inc. v. Redd, 376 S.C. 361, 368, 656 S.E.2d 765, 768 (Ct. App. 2007). Pre-judgment interest should not be included in a judgment where it was not pled in the complaint or prayer. Id.

Plaintiffs, may not now seek pre-judgment interest on their claims when pre-judgment interest was not specifically pled.

VIII. Opinion on Reserves

Plaintiffs point to the testimony of Roy Strickland to show that the POA has suffered damage. To illustrate this point, Plaintiffs refer to a comment in which Mr. Strickland speculates that "the reserves naturally would be unfunded."[25] However, just before this comment, Mr. Strickland testifies that he does not have an opinion as to whether the reserves are adequately funded and that he has not been asked to testify or look into the reserves.[26] Mr. Strickland was specifically asked to notify Defendants' counsel if that changed and he would be testifying on the matter of the reserves.[27] Discovery in this action has ended. Plaintiffs may not offer Roy Strickland to testify to the adequacy of reserves.

IX. Abandoned Causes of Action

These Defendants also note that Plaintiffs have dropped several claims including:

- Veil Piercing;
- Alter Ego; and
- Unjust Enrichment.

[25] Pls.' Mems. 36
[26] Id.
[27] Id.

Based on the foregoing, Defendants respectfully request that the Court deny the Motions of the Plaintiffs and grant the Motions of the Defendants.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843)448-2400
Attorneys for Defendants Wild Wing Company, LLC; Sunstar, LLC; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development Holdings, LLC; Wild Wing Residential Development, LLC; SB Investments, LLC; Realstar Management, LLC; Founders Wild Wing, LLC; Founders Group International, LLC; and Dan Liu

s/ Zachary J. Crowl
David B. Miller, SC Bar #10296
Zachary J. Crowl, SC Bar #103617

Myrtle Beach, South Carolina
March 18, 2021

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EXHIBIT A

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STATE OF SOUTH CAROLINA — COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt, Individually and derivatively on behalf of the Wild Wing Plantation Property Owners' Association, Inc.,

Plaintiff(s),

vs.

CIVIL ACTION NO.
2017-CP-26-04187

Wild Wing Company, LLC, Ralph R. Teal, Jr., SLF IV/SBI Wild Wing, LLC, Wild Wing Residential Development LLC, Stratford Land Manager, SB Investments LLC, Graeme T. Black, Gilford Edwards, Founders Wild Wing, LLC, Founders Group International, LLC, Dan Liu, and Xian Dou,

Defendant(s).

COPY

Wild Wing Plantation Owners' Association, Inc.

Nominal Defendant.

DEPOSITION OF: **C. BARRY DYKES**

DATE: Wednesday, December 5, 2018

TIME: 9:45 a.m. through 1:32 p.m.

LOCATION: BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Defendant(s)

COURT REPORTER: MADONNA M. FARRELL
Registered Professional Reporter
Certified Livenote Reporter
CaseViewNet Realtime Reporter

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A. One of the duties of the finance committee is to review and recommend a budget to the board. The finance committee has no authority to set a budget.

Q. Other than making a recommended budget, what other duties does the finance committee have? 10:12AM

A. We review financial statements. We review check disbursements. We have recently gotten involved in reviewing more of delinquencies. We -- we look at any issue that we believe has a financial impact on the community for review and then potential recommendations to the board. 10:13AM

Q. And when you say "the disbursements," you're talking about the issuing of the checks to pay the bills? 10:13AM

A. Yes. We get a copy of the -- a report to say what checks have been issued in the prior month.

Q. In the time that you've been a member of the Wild Wing POA, are you aware of the bills going unpaid? 10:13AM

A. Clarify the question a little bit more. What -- we know the bills that were paid.

Q. Okay. So you've been there for some years now. 10:

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A. Okay.

Q. You've been on the finance committee for nearly all that time. You got on shortly after you bought in, correct?

A. Correct; about a year. Uh-huh. 10:14AM

Q. Okay. Are you aware that any creditor of the POA, anybody that the POA owed a bill to for anything, didn't get paid?

A. As far as I know, they've gotten paid. Some may be late, but everyone's gotten paid, to my knowledge. 10:14AM

Q. Are you aware of any lawsuit against the POA by any creditor to collect a bill?

A. I am not aware of any.

Q. As a member of the finance committee, have you investigated to see whether, in the history of Wild Wing, any creditors have ever gone unpaid? 10:14AM

A. I haven't.

Q. Have you ever heard that or do you have any evidence to indicate that there's ever been an unpaid creditor of the Wild Wing POA? 10:14AM

A. I'm not aware.

Q. And you're also not aware that there's ever been a lawsuit by any creditor to collect a bill that was owed by the POA? 10:14AM

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A. I'm not aware of any.

Q. Since you've been a member at Wild Wing, has there ever been a special assessment?

A. No.

Q. Other than the regular annual dues as established in the annual budgets? 10:15AM

A. No.

Q. As a member of the finance committee, have you investigated to see whether, in the life of Wild Wing, since its inception, there's ever been a special assessment to any member other than the ordinary annual dues per the annual budgets? 10:15AM

A. No. I haven't investigated that.

Q. Do you have any reason to believe there has ever been a special assessment? 10:15AM

A. Not to my knowledge.

(EXHIBIT 4, 2015 Budget, was marked for identification.)

BY MR. MILLER:

Q. All right. I'm on Exhibit 4. And this is a sample budget that I pulled, and it is for the year 2015, and it consists of three documents. 10:16AM

Okay. Are you familiar with that?

A. Looks familiar.

Q. Okay. Is there -- I don't have a budget, an 10

BY MR. MILLER:

Q. Okay. Thank you.

One of them that you identified is Article 6 of the declaration, which begins on Page 17.

A. Okay.

Q. And you alluded to the fact that that's the article that contains what we've been calling "the formula."

A. Uh-huh.

Q. Correct?

A. Correct.

Q. Okay. At the beginning of that Article 6, Section 2A, "each and every" -- I'm going to read a little bit.

"Each and every owner of any lot or lots within the property by acceptance of a deed therefor" -- et cetera -- "shall be deemed to covenant and agree to pay to the association, (1), annual assessments or charges and, (2), special assessments" -- et cetera.

Do you see that?

A. Uh-huh. Yes.

Q. Would you agree that it is a violation of this declaration for a lot owner not to pay the annual assessments or charges or special

11:11AM 11:11AM 11:11AM 11:12AM 11

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assessments as required in Article 6, Section 2(A)? It's a violation of this document for the lot owner not to pay --

A. I agree. They're required to pay, yes.

Q. Okay. I'm going to go back to your Shareholder's Derivative Complaint. 11:12AM

A. Okay.

Q. And we talked about you and Ms. Eisenhardt being the plaintiffs. Now, let's talk about the defendants. 11:12AM

And it says that the defendants include four of the current and prior declarants, some individuals, and some other entities, correct?

A. Okay.

Q. Is that correct? 11:13AM

A. As far -- I think that's what's in here.

Q. It's your Complaint, right? You filed it on behalf of everybody at Wild Wing, correct?

A. I talked to the lawyer, the lawyer filed it, and I signed it and said I think -- I think it's accurate. 11:13AM

Q. Let's look at it.

A. Okay.

Q. Wild Wing Company, who do you think that is?

A. I believe that was the original developer. 11:13AM

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Okay.

Q. Is it now your belief that you've got them grouped into two sub-groups?

A. It looks like there's a second developer and the third developer. 11:22AM

Q. Okay.

A. That's the way the first -- I guess it's the -- it's at least the second and third. Maybe the first is in there. I can't -- I can't tell.

Q. Let's do it this way. 11:22AM

At Paragraph 51, it groups SLF IV/SBI Wild Wing LLC, Stratford Land Manager, SB Investments, and Wild Wing Residential Development, correct? Those are the four entities that are picked out in that series of allegations of Paragraphs 51, 52, and 53; is that correct? 11:22AM

A. Okay. That's to be true, yes.

Q. Okay. As to those four entities, what evidence do you have that those entities, or any of them, were grossly undercapitalized? 11:23AM

A. I don't recall anything specific.

Q. Do you have any evidence to show that any of those entities were grossly undercapitalized?

A. I don't recall anything, no.

Q. What evidence do you have that any of those 11:23AM

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entities failed to observe corporate formalities?

A. Because I can't find documents that would show that they did.

Q. Where did you look?

A. Looked in the minutes and so forth that we had of meetings, board meetings, and those kind of things. 11:23AM

Q. Minutes of what entity? Are you talking about the POA minutes?

A. Correct. 11:23AM

Q. So you looked in the POA minutes to see whether these other entities observed corporate formalities, and you didn't find any there, so you sued them? Is that what you're saying?

A. I don't understand your question. 11:23AM

Q. I hope not.

A. I don't understand your question. What's your question?

Q. I'm asking you, what evidence do you have that any of these four entities that are identified in Paragraphs 51, 52, and 53 failed to observe corporate formalities? 11:24AM

A. I don't have any specific evidence. I believe it to be true, but I don't have any evidence to support that. 11:

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Q. Do you have any evidence that any of them failed to pay dividends?

A. Again, you're talking which paragraph on dividends?

Q. 51, 52, and 53 are the paragraphs I'm talking about for this series of questions. 11:24AM

Do you have any evidence for nonpayment of dividends?

A. Is that -- I'm missing where it says "dividends" in here. 11:24AM

Q. It doesn't say "dividends" in here.

A. Oh.

Q. I'm asking you, do you have any evidence?

A. Oh, I don't know. No. I don't know.

Q. Okay. How about insolvency? Do you have any evidence of that? 11:24AM

A. I don't, no.

Q. Evidence of siphoning of funds? You've got any of that?

A. Evidence of siphoning funds? I -- the -- explain to me what you mean by "siphoning of funds." 11:24AM

Q. Whether a dominant shareholder of any of these entities siphoned corporate funds from either SLF IV/SBI Wild Wing, Stratford Land Manager, SB 11:25AM

Investments, or Wild Wing Residential.

A. Okay. Between each other, not involving the HOA?

Q. Correct.

A. I don't have any specific evidence, no. 11:25AM

Q. Do you know whether -- or have any evidence as to whether -- as to those entities, they had functioning officers and directors?

A. I don't know.

Q. Do you know whether they maintained 11:25AM corporate records?

A. I don't know.

Q. Do you have any evidence as to whether any of those corporations were a facade?

A. Is that an allegation in here? 11:25AM

Q. No. I'm asking you if you have any evidence that these were facade entities.

A. Not that I know of.

Q. Do you have any evidence of domination or control of one entity by another resulting in 11:26AM inequitable consequences?

A. Say that again.

Q. Do you have any evidence of total domination and control of any one of those entities over the other resulting in inequitable consequences? Do 11:

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you got an answer for that?

A. Consequences for?

Q. For anything.

A. For anything. I don't know.

Q. Do you have any evidence as to those four entities of fraud, bad faith, abuse, wrongdoing, or injustice resulting from their blurring of legal distinctions? 11:26AM

A. Only as it relates to the POA.

Q. How would that be? 11:27AM

A. Because I believe they underfunded the POA based on the obligations that they had.

Q. Who had the obligation to fund?

A. The declarant.

Q. The declarant. And you're relying upon the document, Exhibit Number 5, for that statement? 11:27AM

A. Exhibit 5, which is?

Q. The declaration.

A. Yes.

Q. So that's as to the declarant, correct? 11:27AM

A. Uh-huh.

Q. You have to say "yes."

A. Yes. Sorry.

Q. All right. Now, at Paragraphs 54, 55, and 56, it makes those same allegations as to Founders 11:27AM

obligation is calculated. So it is about the specifics related to that calculation as well.

Q. Okay.

A. So I believe that those --

Q. Now have we covered -- 11:42AM

A. -- I believe those four items, I think they cover it.

Q. Got it.

Now, when you say "bad debt," what are you talking about? What is the bad debt? 11:43AM

A. Bad debt is a -- some of the owners have an obligation to pay the association. That is recorded as income when they have the obligations. And then a reserve is established against that to account for some of those people we're never going 11:43AM to collect from. Some of the people didn't pay us or we're never going to collect from, which eventually will either be written off or later collected.

Q. Is your answer that you're talking about lot 11:43AM owners not paying their dues? That's the bad debt?

A. The bad debt would be lot owners that do not pay their dues. That is correct.

Q. That's what the bad -- so when we talk about bad debt, what we're talking about is members of 11:

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EXHIBIT B

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STATE OF SOUTH CAROLINA — COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt, Individually and derivatively on behalf of the Wild Wing Plantation Property Owners' Association, Inc.,

Plaintiff(s),

vs.

CIVIL ACTION NO.
2017-CP-26-04187

Wild Wing Company, LLC, Ralph R. Teal, Jr., SLF IV/SBI Wild Wing, LLC, Wild Wing Residential Development LLC, Stratford Land Manager, SB Investments LLC, Graeme T. Black, Gilford Edwards, Founders Wild Wing, LLC, Founders Group International, LLC, Dan Liu, and Xian Dou,

Defendant(s).

Wild Wing Plantation Owners' Association, Inc.

Nominal Defendant.

VIRTUAL DEPOSITION OF: **JANE ATKINSON**

DATE: Wednesday, August 5th, 2020

TIME: 10:09 a.m. through 11:25 a.m.

LOCATION: BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Defendant(s)

COURT REPORTER: MADONNA M. FARRELL
Registered Professional Reporter
CaseViewNet Realtime Reporter

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In turn, it is extracted from the calculation as that auditor prepared it, which reduces the expense for the association.

Q. Understood. The language in the declaration that we just read uses the phrase "actual amount of actual operating expenditures incurred." 10:33AM

A. Right.

Q. In your world of association financial management, would those words include bad debt or would they exclude bad debt? 10:33AM

A. I have never seen it included.

Q. You have never --

A. The expenditures, to me, is what's going out the door as payment of expense.

Q. And did you say that you've never seen it included? 10:34AM

A. Unh-unh.

Q. In all of the associations that are more than you can count, you've never seen it included?

A. No. 10:34AM

Q. There's an Exhibit Number 2.

A. Right.

Q. And it is what I call the "Developer Contribution Calculations."

A. That's what it is, yes. 10:34AM

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to do the projects that are needed.

Q. And do you know whether the reserve funds at Wild Wing are adequately funded?

A. I haven't reviewed the study to see if there was a requirement to accelerate the funding or not. 11:08AM

Q. Can you look at this document and tell whether the reserves are adequately funded?

A. Mm-hmm.

Q. "This document" being our Exhibit Number 9.

A. If I compared this to the level that was required in the study, I probably could give you that answer. 11:08AM

Q. Okay. And can you describe to me the study that you're talking about?

A. Yes. It's an engineering study based on the components that are included in Wild Wing's Plantation. They go out and they do an analysis and prepare a study. We then take that data and put it on the sheet so that they can see what's happening in the year, during the year to know what expenses were done and what funding was done for the year. 11:08AM 11:09AM

So included in that study are all of these components and the likes and the replacement value and when the projected expenses are going to come 11:09AM

SUPERIOR RESERVE
ENGINEERING & CONSULTING

Recommended Reserve Funding Plan

Wild Wing Plantation Property Owners' Association, Inc.

Year	Inflated expenditures (2.1% annual)	Recommended reserve contributions	Ending reserve balance	Average $ per home per month (377 units)	$ increase per month from previous year	% increase from previous year
2015*	($5,000)	$78,000	$131,568	$17.24	-	-
2016*	$0	$78,000	$209,909	$17.24	$0.00	0.0%
2017	($83,395)	$79,600	$208,610	$17.60	$0.35	2.1%
2018	($10,345)	$81,300	$282,493	$17.97	$0.38	2.1%
2019	($20,104)	$83,000	$349,157	$18.35	$0.38	2.1%
2020	($36,713)	$84,700	$401,621	$18.72	$0.38	2.0%
2021	$0	$86,500	$493,459	$19.12	$0.40	2.1%
2022	($18,505)	$88,300	$569,594	$19.52	$0.40	2.1%
2023	($5,456)	$90,200	$661,682	$19.94	$0.42	2.2%
2024	($330,959)	$92,100	$429,330	$20.36	$0.42	2.1%
2025	($29,655)	$94,000	$499,214	$20.78	$0.42	2.1%
2026	($221,457)	$96,000	$378,995	$21.22	$0.44	2.1%
2027	($102,659)	$98,000	$378,855	$21.66	$0.44	2.1%
2028	($6,053)	$100,100	$478,013	$22.13	$0.46	2.1%
2029	($46,151)	$102,200	$540,134	$22.59	$0.46	2.1%
2030	($52,160)	$104,300	$599,069	$23.05	$0.46	2.1%
2031	($278,198)	$106,500	$433,529	$23.54	$0.49	2.1%
2032	$0	$108,700	$548,084	$24.03	$0.49	2.1%
2033	($6,716)	$111,000	$659,571	$24.54	$0.51	2.1%
2034	($18,552)	$113,300	$762,802	$25.04	$0.51	2.1%
2035	($47,869)	$115,700	$840,194	$25.57	$0.53	2.1%
2036	($807,627)	$118,100	$156,611	$26.11	$0.53	2.1%
**2037	($126,374)	$120,600	$152,682	$26.66	$0.55	2.1%
2038	($7,451)	$123,100	$270,857	$27.21	$0.55	2.1%
2039	($30,464)	$125,700	$369,915	$27.79	$0.57	2.1%
2040	($55,634)	$128,300	$447,456	$28.36	$0.57	2.1%
2041	$0	$131,000	$584,611	$28.96	$0.60	2.1%
2042	($8,939)	$133,800	$717,237	$29.58	$0.62	2.1%
2043	($206,002)	$136,600	$656,025	$30.19	$0.62	2.1%
2044	($22,838)	$139,500	$781,259	$30.84	$0.64	2.1%
2045	($203,497)	$142,400	$729,172	$31.48	$0.64	2.1%

* reserve contributions are budgeted

**2037 is the THRESHOLD FUNDING YEAR. To reduce reserve contributions, identify items to defer beyond this year.

November 5, 2015

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt,
Individually and derivatively
on behalf of the Wild Wing Plantation
Property Owners' Association, Inc.,

Plaintiff(s),

vs. CIVIL ACTION NO.
2017-CP-26-04187

Wild Wing Company, LLC,
Ralph R. Teal, Jr.,
SLF IV/SBI Wild Wing, LLC,
Wild Wing Residential Development LLC,
Stratford Land Manager,
SB Investments LLC,
Graeme T. Black, Gilford Edwards,
Founders Wild Wing, LLC,
Founders Group International, LLC,
Dan Liu, and Xian Dou,

Defendant(s).

Wild Wing Plantation
Owners' Association, Inc.

Nominal Defendant.

DEPOSITION OF: H. GILFORD EDWARDS

DATE: Thursday, December 6, 2018

TIME: 2:03 p.m. through 3:05 p.m.

LOCATION: BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Defendant(s)

COURT REPORTER: MADONNA M. FARRELL
Registered Professional Reporter
Certified Livenote Reporter
CaseViewNet Realtime Reporter

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familiarity with Mr. Dykes' view of the declarant contribution formula and how those contributions or the declarant obligations were calculated.

A. Right.

Q. Have you come to understand Mr. Dykes' view of how those contributions should have been calculated?

A. Absolutely not.

Q. So you don't have an understanding of what he is contending?

A. I understand what he's contending, but I think he's wrong.

Q. Okay. And did you -- what did you do as a board member to ensure that the declarant was making the proper contributions under the regime documents?

A. I read the documents and did what they said.

Q. You didn't rely on any accountants for that?

A. No.

Q. And you are a member of Sun Star, right?

A. No. I'm not now.

Q. But you were at the time?

A. At what time?

Q. At the time the Wild Wing project was developed.

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EXHIBIT E

ELECTRONICALLY FILED - 2021 Mar 19 2:20 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT OF H. GILFORD EDWARDS

PERSONALLY appeared before me, H. Gilford Edwards, who first being duly sworn, alleges and says:

1. My name is H. Gilford Edwards, and I am familiar with the allegations of the Plaintiffs in the case of C. Barry Dykes, et al. v. Wild Wing Company, LLC, et al. Case No. 2017-CP-26-04187 currently pending in the Horry County Court of Common Pleas (Business Court).
2. I am over the age of 18 years old and competent to testify to the matters set forth in this affidavit.
3. I have been individually named as one of the Defendants in this lawsuit.
4. My deposition was taken on December 6, 2018.
5. During my deposition, Plaintiffs' counsel went through a series of questions in which he reviewed prior testimony of Graeme Black to determine if I agreed, disagreed, or had anything to add to Mr. Black's testimony.
6. On pages 31 and 32 of my deposition it is reflected that Plaintiffs' counsel questioned Mr. Black about his familiarity with Plaintiff Dykes' view of the declarant contribution formula and how those contributions were calculated.
7. In keeping with this line of questioning, Plaintiffs' counsel asked whether I had come to understand Plaintiff Dykes' view of how those contributions should have been calculated.
8. I expressed to Plaintiffs' counsel that I understood what Plaintiff Dykes was contending in this lawsuit, but that I thought his view of the calculation was incorrect.

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9. Plaintiffs' counsel followed up by asking what I did to ensure that the declarant was making the proper contributions under the regime documents.

10. I explained that I read the documents and "did" what they said.

11. Plaintiffs' counsel asked whether I relied on any accountants to ensure my view was correct and I told him that I had not.

12. I have since read Plaintiffs' Memorandum in support of its Motions for Summary Judgment and Memorandums in Opposition to the Defendants Motions for Summary Judgment. Throughout this Memorandum, Plaintiffs allege:

    a. "[I] testified that [I] determined that bad debt was not to be considered a POA expense for purposes of calculating the Declarant Contribution."

    b. "That accounting was at the direction of Mr. Black's boss, Mr. Edwards."

    c. "The Defendants who were or are members of the Board of Directors condoned the underfunding and, at least in the case of Mr. Edwards, was responsible for it."

13. These allegations are not true and are a gross misrepresentation of my testimony.

14. Plaintiffs have taken my testimony out of context and taken liberties with my testimony to put forth statements that are not true.

15. My understanding of the question asked by Plaintiffs' counsel was what I had done to ensure myself that my understanding of the declarant contribution calculations was correct and Mr. Dykes' calculations were incorrect.

16. Given the sequence of questioning, I did not understand Plaintiffs' counsel to be asking how the declarant contribution was calculated dating back to 2007. Rather, I understood his question as my view since the lawsuit had begun.

17. To be clear, I did not participate in the calculation of the declarant contribution at any point in time, nor did I instruct, direct, or even suggest to others how to prepare the calculations at any point in time.
18. The declarant contribution was calculated by the joint efforts of the Wild Wing POA accountant, the Wild Wing POA property manager, and a Wild Wing POA Finance Committee which was made up of members of the POA.
19. The Wild Wing POA property manager and the Wild Wing POA Finance Committee worked hand in hand to create a budget for the Wild Wing POA which established the regular assessments for the membership inclusive of a Developer Contribution amount.
20. Once the budget was approved by the Board of Directors, the property manager would request the Developer Contribution amount from the Declarant in installments, which were paid.
21. The Wild Wing POA hired an outside accountant to audit the annual financials, calculate the declarant contribution, and perform other financial responsibilities. All of these services were provided independently, as is required of auditing accountants.
22. The Finance Committee, made up of members of the POA including Plaintiffs Dykes and Eisenhardt, assisted with all of these functions by providing review and recommendations. There were no Declarant members of the Finance Committee.
23. At the end of each year, the Wild Wing POA accountant would prepare an annual audit of the Wild Wing POA and included a Developer Contribution Calculation worksheet reflecting the Declarant payment options on a look back basis.

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24. At no point did I offer any recommendations or insight into how the declarant contribution should be calculated, nor did I instruct, direct, or even suggest to others how to prepare the calculations at any point in time.

H. Gilford Edwards

March 19, 2021

Sworn to before me this 19th day of March, 2021

(LS)
Notary Public for South Carolina

My Commission Expires:_____

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which may be removed or damaged due to maintenance, repair or other work performed in such easement areas. Declarant further specifically reserves unto itself, its successors and assigns, a perpetual, alienable, commercial easement and right of ingress and egress over all Lots along an area 5 feet in width inside each boundary line of each Lot and along any Lot boundary line which adjoins any of the streets of the Project. This easement is for the purpose of installation, maintenance and repair of utilities and utility systems and access. This easement shall be in addition to, and not in limitation of, any and all other easements reserved unto the Declarant herein. Declarant further reserves an easement of ingress and egress over and across all streets and roads of the Project which such easements are and shall be for the purpose of ingress and egress to any property now owned or hereafter acquired by Declarant, its successors and assigns whether or not such property is made a part of the Project and whether or not such property adjoins the Project.

Section 9. Sidewalk Easements on Lots. Declarant reserves for itself and the Association, their successors, assigns and agents, a sidewalk easement ten (10) feet in width across all Lots for use and enjoyment by the Owners of Lots and others, only under such rules as may be promulgated by the Association from time to time. The sidewalk easement is ten (10) feet in width, lies on the Lots adjacent to the boundaries between Lots and all road rights-of-way, and includes the right to usual and necessary access for purposes of construction, maintenance, repair, removal and replacement of sidewalks. The provisions in this paragraph shall not be construed as an obligation on the part of Declarant or the Association to undertake construction of any sidewalks. In the event sidewalks are constructed on the easements reserved herein or in the road rights-of-way adjacent to the Lots, the Association shall be responsible for the maintenance and management of such sidewalks.

ARTICLE VI.

Assessments for the Maintenance and Operation of Common Areas and Facilities

Section 1. Initial Contribution. Upon the closing of the initial sale of each lot by the Declarant, the purchaser of each Lot shall pay an initial contribution to the Association of One Hundred and No/100 ($100.00) Dollars to provide initial reserve funds for the Association. Such payment shall not in any way be considered a prepayment of any regular or special assessment. Such funds may be used by the Association in such manner as the board of directors thereof shall direct.

Section 2. Assessments, Liens and Personal Obligations Therefor, and Operation Maintenance of Common Areas Solely by the Association.

(a) Each and every Owner of any Lot or Lots within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, unique costs or expenses,

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extraordinary budget or expense items and the like, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such lot or Lots at the time when the assessment fell due. Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2010, each Lot within The Properties shall be exempt, at Declarant's option, from the assessments herein provided for (both annual and special) until such time as such Lot is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made by the Association against Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing January 1, 2011, the Declarant shall be subject to assessments as provided for in this Declaration so that it will pay assessments on the same basis provided for in this Declaration for other Lot Owners. In the event that additional phases are subjected to the provisions of this Declaration, then it is declared that until the later of: (1) January 1, 2011; or (5) five years after the date the amendments or supplemental declarations submitting such additional phase(s) are filed for record in the public records of Horry County, South Carolina, each Lot in such additional phase shall be exempt from the assessment created herein until such time as the lot is conveyed by the Declarant to an Owner other than the Declarant. Until such time as a lot in such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less an amount equal to the total assessments made by Association against Owners of Lots other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Lot Owners as opposed to the method referred to above. Such election may be made by Declarant at any time.

(b) The Assessment levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Development, and in particular for the improvement and maintenance of the Common Areas, Lakes and Lake Areas, now or hereafter designated or existing, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereof, the cost of labor, equipment, materials, management and supervision thereof, and the cost of lawn and landscaping maintenance, maintenance of the fencing and/or signage, the employment of attorneys to represent the Association when necessary and such other needs as may arise. In the event that Declarant performs any of the foregoing services for Association, including,

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Section 6. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner: The Lien. Remedies of Association. If any assessment is not paid on the date when due, then such assessment shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof as are hereinafter provided, continue as a lien on the Lot or Lots, which shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such assessment or reimbursement, however, shall remain his personal obligation and will also pass on to his successor in title.

If the assessment or reimbursement is not paid within thirty (30) days after the due date, a late charge in an amount to be specified by the Board of Directors of the Association may be assessed and furthermore, the assessment shall bear interest from the date of delinquency at the rate of eighteen (18%) percent per annum. In addition, the Association may bring legal action against the then Owner personally obligated to pay the same or may enforce or foreclose the lien against the Lot or Lots in the same manner as a mortgage is foreclosed; and in the event a judgment is obtained, such judgment shall include interest on the assessment or reimbursement as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. The Association may further file a notice of lien in the office of the Register of Deeds for Horry County, South Carolina.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments (and reimbursement) provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon any Lot subject to assessment and reimbursement; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments or reimbursements thereafter becoming due, nor from the lien of any subsequent assessment or reimbursement.

Section 8. Exempt Property. All Common Areas subject to this Declaration shall be exempted from the assessments, charges and liens created herein.

ARTICLE VII.

Architectural and Landscape Control

Section 1. Architectural Review Board. The Architectural Review Board shall have the right to approve or disapprove all architectural and landscaping plans and the location of any proposed Improvements. The Architectural Review Board may, in its sole discretion, impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning or other governmental codes.

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which in the sole and uncontrolled discretion of the Declarant or the Architectural Review Board may seem sufficient. Any change in exterior appearance of any building, wall, fence or other structural improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval.

All construction of any nature shall further be subject to the provisions and requirements of Article XV RESTRICTIVE COVENANT.

Section 4. Lot Filling. No Lot may be cleared, graded cut or filled for any reason until the Architectural Review Board has reviewed and approved the application for approval of the proposed improvement. The site plan, along with the tree survey and other documents required by the Architectural Review Board, must clearly delineate the extent of clearing, grading, cutting and filling.

Section 5. Fee Schedule. The Architectural Review Board may adopt a schedule of reasonable fees for processing requests for approval. Such Fees, if any, shall be payable to the Association at the time that the plans and specifications and other documents are submitted to the Architectural Review Board. The payment of such fees, as well as other expenses of the Architectural Review Board required to be paid, shall be deemed to be an individual Assessment, enforceable against the Owner and the Lot as provided hereinabove. The Architectural Review Board is expressly reserved the right and power, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the Architectural Review Board in its review of any plans or specifications, and the cost of such consulting services shall be the responsibility of the respective applicant or Owner of the subject property.

Section 6. Defects or Damages. Neither the Declarant, the directors or officers of the Association, the members of the Architectural Review Board, nor any person acting on behalf of any of them, shall be liable for any costs or damage incurred by an Owner or Association or any other party whatsoever, due to any mistakes in judgment, negligence or any action of the Architectural Review Board in connection with the approval or disapproval of plans and specifications. Each Owner or Association and occupant of any property within Wild Wing Plantation agrees, as do their successors and assigns by acquiring title thereto or an interest therein, or by assuming possession thereof, that they shall not bring any action or suit against the Declarant, the directors or officers of the Association, the members of the Architectural Review Board, or their respective agents, in order to recover any damages caused by the actions of the Architectural Review Board. The Association shall indemnify, defend and hold the Architectural Review Board and each of its members harmless from all costs, expenses and liabilities, including attorneys' fees, of all nature resulting by virtue of the acts of the Architectural Review Board or its members. Neither the Declarant, the directors or officers of the Association, the members of the Architectural Review Board, nor any person acting on behalf of any of them, shall be responsible for any defects in any plans and specifications, nor for any defects in any Improvements constructed pursuant thereto. Each party submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

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ARTICLE VIII.

Exterior Maintenance, Reasonable Access and Maintenance of Common Areas

Section 1. Exterior Maintenance. The Owner shall maintain the structures and grounds on each Lot at all times in a neat and attractive manner. Upon the Owner's failure to do so, the Declarant, or the Association (after the termination of Class B membership status of Declarant) may, at its option, after giving the Owner ten (10) days written notice sent to his last known address, or to the address of the subject premises, have the grass, weeds, shrubs and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed from such Lot, and replaced, and may have any portion of the Lot resodded or landscaped, all of which shall not be deemed a trespass, and all expenses of the Association under this provision shall be a lien and charge against the Lot on which the work is done and the personal obligation of the then Owner of such Lot. The Declarant or the Association, and its assigns, may likewise, after giving the owner ten (10) days written notice sent as aforesaid, enter upon such Lot(s) to remove any trash, debris or garbage which has collected on said Lot(s) without such entrance and removal being deemed a trespass, all at the expense of the owner of said Lot. Upon the Owner's failure to maintain the exterior of any structure in good repair and appearance, the Association may, at its option, after giving the Owner thirty (30) days written notice sent to his last known address, make repairs and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Lot and shall constitute an assessment against the Lot on which the work was performed, collectible in a lump sum secured by a lien against the Lot as herein provided.

Section 2. Access at Reasonable Hours. For the purpose of performing its function under this or any other Article of the Declaration, and to make necessary surveys in connection therewith, the Association, by its duly authorized agent and employees, or the Declarant during the period of development, shall have the right to enter upon any Lot at reasonable hours, on any day except Sundays and holidays, on reasonable prior notice.

Section 3. Maintenance of Common Areas. It shall be the responsibility of the Association to maintain the Common Areas. However, should the Declarant (prior to conveyance to the Association) or the Association (after the termination of the Class B status of Declarant), decide to transfer any portion or all of the areas designated or to become, by conveyance, Common Areas to governmental authority, as they have the right to do, such duty to maintain same shall cease as to that portion so transferred.

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on any lot in the subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the Owner, if, after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservation, restriction or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the rights to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should Declarant or Association employ Counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for Declarant's Counsel shall be paid by the Owner of such lot or Lots in breach thereof. Any amount assessed hereunder shall constitute a lien on such lot and shall be enforceable as herein provided. Failure of Declarant, the Association or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter.

Section 3. Responsibility of Declarant. The Declarant herein shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself. In addition, nothing contained in this Declaration shall be deemed to be a representation by Declarant with regard to the requirements of any governmental authority and it shall be the duty of each Owner to comply with any such requirements in addition to the provisions of this Declaration.

Section 4. Rule Against Perpetuities. In the event that any of the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event, such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of South Carolina, and such provision shall be fully effective for said reduced period of time.

Section 5. Binding Effect. All covenants, conditions, limitations, restrictions, easements and affirmative obligations set forth in this declaration shall be binding on the Owners of the Lots, and their respective heirs, successors and assigns and run with the land. All rights, easements and agreements reserved by or granted to Declarant shall inure to the benefit of Declarant, its successors and assigns including, without limitation, the right to develop and submit additional phases. Declarant reserves the right in addition to all other rights of Declarant, to assign its rights of consent and approval as set out in this Declaration and any amendment hereto or supplement hereof, to Association, or to any assignee of Declarant's development rights.

Section 6. Duration. 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 Declarant, the Association, or the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns.

Section 7. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered

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Article V
Committees

Section 1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Section 2. Covenants Committee. In addition to any other committees which may be established by the Board pursuant to Section 1 of this Article, the Board of Directors may appoint a Covenants Committee consisting of at least five (5) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and conduct all hearings held pursuant to Article III, Section 23 of these By-Laws.

Article VI
Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with South Carolina law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of South Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration and By-Laws, membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the Properties as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;

amendment, after you had taken all this time to find out everything you can about it, you're not sure if you would have attended that meeting?

A. I don't know that it was the kind of a meeting that we were supposed to attend.

Q. Well, on the front notice, I believe it is inviting you to that meeting.

A. I'm just looking at the exhibit.

Q. Right. That's the notice I'm talking about.

A. Yes, then I would say that I was at the meeting.

Q. Okay. And on the agenda it says that there -- this is on the second page -- that there was supposed to be a discussion of and voting on the amendments.

A. Right.

Q. So we've already talked about the discussion. Was there a vote for the amendment?

A. I would say yes.

Q. Okay. How did you cast your vote?

A. Based on my recollection of the discussion about why it was in our best interest to do that, I would say that I probably voted to say then go ahead and extend it out, as did other people that heard the discussion about why it was in our best interest.

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Commonwealth
LAND TITLE INSURANCE COMPANY

Policy No SC4844 81 13 065 2013 81260 89644181

ADVANTAGE EXPRESS RESIDENTIAL OWNER'S POLICY ONE-TO-FOUR FAMILY
Issued by
Commonwealth Land Title Insurance Company

OWNER'S INFORMATION SHEET

Your Title Insurance Policy is a legal contract between you and COMMONWEALTH LAND TITLE INSURANCE COMPANY

It applies only to a one-to-four family residential lot or to a residential condominium unit
If your property is not either of these, contact us immediately

The Policy insures you against certain risks to your title to the property These risks are listed on page 1 of the Policy

The Policy is limited by

- The Provisions of Schedule A
- The Exceptions, if any, on Schedule B
- The Exclusions on page 2
- The Conditions on pages 2 and 3

You should keep the Policy even if you transfer the title to your property

If you want to make a claim, see Item 3 under Conditions on page 3

You do not owe any more premiums for the Policy

This sheet is not your insurance Policy It is only a brief outline of some of the important Policy features The policy provisions begin on page 1

The Policy explains in detail your rights and obligations and our rights and obligations Since the Policy - and not this sheet - is the legal document, YOU SHOULD READ THE POLICY VERY CAREFULLY

If you have any questions about your policy, contact the office that issued it or

Commonwealth Land Title Insurance Company
P.O. Box 45023
Jacksonville, FL 32232-5023

COMMONWEALTH LAND TITLE INSURANCE COMPANY

SEAL

Authorized Signatory
Jim Feldman

SC4844 13-065
New Dawn Title Agency
212 Main St
Conway, SC 29526
Tel (843) 248-7135
Fax (843) 248 0270

Form 81260
Reorder 1086-150

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OWNER'S COVERAGE STATEMENT

This Policy insures your title to the property described in Schedule A - if that property is a one-to-four family residential lot or a residential condominium unit. Your insurance, as described in this Coverage Statement, is effective on the Policy Date shown in Schedule A.

The Policy is limited by

- The Provisions of Schedule A
- The Exceptions, if any, on Schedule B
- The Exclusions on page 2
- The Conditions on pages 2 and 3

We insure you against actual loss resulting from

- any title risks covered by this Policy - up to the Policy Amount, and
- any costs, attorneys' fees, and expenses we have to pay under this Policy

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2 Identification of the Insured Property	
3 Address of the Property	
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COVERED TITLE RISKS

This Policy covers the following title risks, if they affect your title on the Policy Date

1 Someone else owns an interest in your title, except
   a the holder of a mortgage that you signed or assumed,
   b the holder of an easement appearing of record for ingress and egress or pipeline, or for utilities, including water, sewer, drainage, gas, power, telephone or cable services,
   c the holder of an estate or lease of record in oil, gas or minerals,
   d any portion of the property lying in a public street, alley or right of way, or
   e any portion of the property within the normal bounds of a waterway, lake, pond or wetland

2 A document upon which your title is based is invalid or unenforceable because it was not properly signed, sealed, acknowledged, delivered or recorded

3 Someone else claims to have rights affecting your title arising from
   a forgery, or impersonation, even if caused by an event occurring after the Policy Date,
   b fraud, duress, incompetency, incapacity, or
   c leases, contracts, or options

4 You do not have a legal right of both pedestrian and vehicular access to and from the property

5 Someone else has a lien on your title on the Policy Date, originating from
   a a mortgage,
   b a judgment, tax, tax lien or special assessment,
   c a charge by a homeowner's or condominium association, or
   d a lien, occurring before or after the Policy Date, for services, labor or material furnished before the Policy Date,

   unless you created, allowed, assumed or agreed to the obligation secured by the lien, or it attaches to the property because it is your obligation

6 Another person refuses to perform a contract to purchase, to lease, or to make a mortgage loan on your property
   a because your title is unmarketable,
   b because of an existing violation on your property of a restriction, a subdivision law or a zoning law which happened before you became the owner of your property,
   c because the structure or other building(s) on your neighbor's land, encroaches onto your property, even though the structure is built after the Policy Date

7 Someone else, even if occurring after the Policy Date, builds a structure or other building(s) which encroaches on your land

8 You are ordered to remove or alter your existing structure because
   a it extends onto adjoining property or onto any easement,
   b it violates a restriction, or
   c it violates an existing zoning law or building set-back line, or
   d any portion of the structure was built without obtaining a building permit from the proper governmental office. The amount of your insurance for this Covered Title Risk 8d is subject to a deductible of one percent (1%) of the Amount of Insurance shown in Schedule A

9 You cannot use the property because use as a single-family residence violates a restriction or an existing zoning law

10 Someone else seeks to take away your title because of a violation of a restriction that happened before you became the owner of your property

11 Someone else seeks to enforce a restriction because of a violation on your property, other than a violation already covered by items 6, 8, 9 or 10 of the Covered Title Risks, which happened before you became the owner of your property

12 Your existing structure, or other improvements, including lawns, shrubbery and trees, is damaged because another person uses the surface of your property for the extraction or development of oil, gas or minerals owned by them or water which they have a right to take, provided your structure or improvements were substantially completed before you received notice of their intent to begin extraction or development

13 Someone else tries to enforce a discriminatory covenant, condition or restriction that they claim affects your title that is based upon race, color, religion, sex, handicap, familial status, or national origin

14 Your existing structure or other improvements are damaged because of the exercise of a right to maintain or use any easement affecting the property

15 A taxing authority assesses supplemental real estate taxes not previously assessed against the property for any period before the Policy Date because of construction or a change of ownership or use that occurred before the Policy Date

16 Your existing structure with the address shown in Schedule A is not located on the property at the Policy Date

17 You cannot obtain a building permit because at the Policy Date your lot violates an existing subdivision law

18 Liability of the Company under this policy is limited to the purchase price you paid for the land, plus any amount you have paid for labor and materials for site preparation and construction of the structure. As you make payments for labor and materials to construct the structure, the Company's limit on liability will increase, dollar for dollar, with each payment until it reaches the amount stated in Schedule A

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GRADUATED INCREASES TO POLICY AMOUNT

The Policy Amount stated in Schedule A will increase by ten percent (10%) of the original Policy Amount per year for the first 5 years immediately following the Policy Date to a maximum Policy Amount of one hundred fifty percent (150%) of the original Policy Amount This increase will happen in each of these years on the anniversary of the Policy Date

COMPANY'S DUTY TO DEFEND AGAINST COURT CASES

We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy We will pay the costs, attorneys' fees, and expenses we incur in that defense

We can end this duty to defend your title by exercising any of our options listed in Item 4 of the Conditions

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from

1 Taxes and special assessments on your property that become due and payable after the Policy Date This does not limit Item 15 of the Covered Title Risks

2 Governmental police power, and the existence, enactment or violation of any law or government regulation This includes building and zoning ordinances and also laws and regulations concerning

a land use,
b land division,
c improvements on the property,
d environmental protection

This exclusion does not limit the coverage described in Items 6, 8, 9, 15 and 17 of the Covered Title Risks

This exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the public records at the Policy Date

3 Title risks

a that are created, allowed or agreed to by you,
b that are known to you, but not to us, on the Policy Date – unless they appeared in the Public Records,
c that result in no loss to you,
d that first affect your title after the Policy Date - this does not limit the coverages in Items 3, 5, 6, 7 15, 17 and 18 of the Covered Title Risks which are indicated therein to be applicable to matters occurring after the Policy Date

4 The right to take the property by condemning it, unless

a a notice of exercising the right appears in the Public Records on the Policy Date,
b the taking happened prior to the Policy Date and is binding on you if you bought the property without knowing of the taking

5 Failure to pay value for your title

6 Lack of a right

a to any property outside the area specifically described in the Deed identified in Schedule A, or
b in streets, alleys, sidewalks or waterways that touch your property

This exclusion does not limit the access coverage in Item 4 of the Covered Title Risks

7 Easements appearing of record for ingress, egress or pipeline, or for utilities, including water, sewer, drainage, gas, power, telephone and cable services affecting title to the property This exclusion does not limit the coverage described in Items 8, 12 and 14 of the Covered Title Risks

8 The failure of your existing structure, or any part of it, to be constructed in accordance with applicable building codes This exclusion does not apply to violations of building codes if notice of the violation appears in the public records at the Policy Date

9 Any covenants conditions or restrictions appearing in the public records This does not limit items 6, 8, 9, 10, 11 or 13 of the Covered Title Risks

10 Any lease, grant, exception or reservation of an interest in minerals, oil or gas affecting the property This does not limit item 12 of the Covered Title Risks

CONDITIONS

1 DEFINITIONS

a Easement - the right of someone else to use your property for a special purpose

b Lot - a specific tract of land upon which there is, or is to be constructed, your one-to-four family residence

c Mortgage - a mortgage, deed of trust, trust deed, or other security instrument

d Property - the residential condominium unit or the lot identified in Schedule A, the structure and any improvements on the lot that are real property

e Public Records - title records that give constructive notice of matters affecting your title - according to the state statutes where your property is located

f Structure - the one-to-four family residence or condominium unit

g Title - the ownership of your interest in the property, as shown in Schedule A

2 CONTINUATION OF COVERAGE

This Policy protects you as long as you

- own your title, or
- own a mortgage from anyone who buys your property, or
- are liable for any title warranties you make

This Policy protects anyone who receives your title because of your death
This policy protects your spouse who receives your title because of the dissolution of your marriage

This Policy protects the trustee or successor trustee of a trust in which you are the trustor/settlor to whom you transfer your title after the Policy Date

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3 HOW TO MAKE A CLAIM

a You Must Give The Company Notice Of Your Claim

If anyone claims a right against your insured title, you must notify us promptly in writing Send the notice to Commonwealth Land Title Insurance Company, P O Box 45023, Jacksonville, FL 32232-5023 Please include the Policy Number shown in Schedule A, and the county and state where the property is located

Our obligation to you could be reduced if

- you fail to give us prompt notice, and
- your failure affects our ability to resolve the claim or to defend you against a challenge to your title

b Proof Of Your Loss Must Be Given To The Company

You must give us a written statement to prove your claim of loss This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss
The statement must have the following facts

- the Covered Title Risks which resulted in your loss
- the dollar amount of your loss
- the method you used to compute the amount of your loss

You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss

We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss We may make copies of these papers

We may require you to answer questions under oath

Our obligation to you could be reduced if you fail or refuse to

- provide a statement of loss, or
- answer our questions under oath, or
- show us the papers we request,

and your failure or refusal affects our ability to dispose of or to defend you against the claim

4 OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM

After we receive your claim notice or in any other way learn of a matter for which we are liable, we can do one or more of the following

a Pay the claim against your title

b Negotiate a settlement

c Prosecute or defend a court case related to the claim

d Pay you the amount required by this Policy

e Take other action which will protect you

f Cancel this Policy by paying the Policy Amount then in force, and only those costs, attorneys' fees, and expenses incurred up to that time which we are obligated to pay

5 HANDLING A CLAIM OR COURT CASE

You must cooperate with us in handling any claim or court case and give us all the relevant information
If you do not cooperate, your coverage could be reduced to the extent your failure to cooperate affects our ability to dispose of or defend you against the claim
We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance
When we defend your title, we have a right to choose the attorney We can appeal any decision to the highest court We do not have to pay your claim until your case is finally decided

6 LIMITATION OF THE COMPANY'S LIABILITY

a We will pay up to (i) your actual loss, or (ii) the Policy Amount in force when the claim is made - whichever is less

b If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it If you cannot use any of your property because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until the cause of the claim is removed or we settle your claim

c The Policy Amount will be reduced by all payments made under this Policy, except for costs, attorneys' fees, and expenses

d The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage agreed to, assumed, taken subject to or executed at any time, by you

e If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right

7 TRANSFER OF YOUR RIGHTS

When we settle a claim, we have all the rights you had against any person or property related to the claim You must transfer these rights to us when we ask, and you must not do anything to affect these rights You must let us use your name in enforcing these rights

We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable

With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid We have a right to keep what is left

8 ARBITRATION – ***Provision Intentionally Removed.***

9 OUR LIABILITY IS LIMITED TO THIS POLICY

This Policy, plus any endorsements, is the entire contract between you and the Company Any claim you make against us must be made under this Policy and is subject to its terms

ELECTRONICALLY FILED - 2021 Mar 19 2:20 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

Commonwealth™
LAND TITLE INSURANCE COMPANY

Related Policy No 8141940-89644182
File No. 13-065

OWNER'S RESIDENTIAL ADVANTAGE POLICY

SCHEDULE A

AMOUNT OF INSURANCE	PREMIUM	REISSUE LIABILITY	DATE OF POLICY	POLICY NUMBER
$427,000.00	$218.14	$235,900.00	August 14, 2013 at 12:38 pm	81260-89644181

Address Reference: **1423 Whooping Crane Dr.**
Conway, SC 29526

1 Name of Insured

C. Barry Dykes and Diane M. Dykes

By virtue of a deed from Craig D. Johnson and Lori L. Johnson, dated August 13, 2013, and recorded August 14, 2013 at 12:38 pm, in the Register of Deeds of Horry County, South Carolina, in Book 3677, at Page 822, as Document No. 2013000097582.

2 The estate or interest in the land covered by this Policy is

Fee Simple

3 The land referred to in this policy is situate in the County of Horry, State of South Carolina, and is described as follows

ALL AND SINGULAR, **all that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lot 97, Phase I of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Phase I Wild Wing Plantation", dated September 18, 2006 and recorded September 20, 2006 in Plat Book 217 at Pages 55 through 55i inclusive, records of Horry County, south Carolina, reference to which is hereby made for a more complete description.**

This property is subject to that certain Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens for Wild Wing Plantation recorded September 27, 2006 in Deed Book 3164 at Page 361, records of Horry County, South Carolina, and all amendments thereto, and all easements and restrictions of record and easements on the ground.

NEW DAWN TITLE AGENCY

Countersignature Authorized Officer or Agent

212 Main Street
Conway, SC 29526
Issued at (Location)

This Schedule is valid only when attached to the Owner's Residential Advantage Policy and Schedule B

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Commonwealth™
LAND TITLE INSURANCE COMPANY

FILE NUMBER	SCHEDULE B	POLICY NUMBER
13-065		81260-89644181

EXCEPTIONS FROM COVERAGE

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and expenses resulting from.

The dower, curtesy, homestead, community property, or other statutory marital rights, if any, of the spouse of any individual insured.

Taxes for the year **2013**, which are a lien, but not yet due and payable, and taxes for all subsequent years.

1. Mineral reservation contained in the Deed from International Paper Realty Corporation to ISC Realty Corporation dated November 14, 1986, and recorded November 14, 1986, in Deed Book 1093, at Page 241, records of Horry County, South Carolina

2 The policy will not insure against any loss or damage which might arise out of roll back taxes as contemplated under Title 12, Article 3 of The South Carolina Code of Laws, 1976, as amended, Section 12-43-220

3 Conveyance of Road Rights of Way and Easements as contained in a Deed from Wild Wing Plantation, Inc. to the City of Conway dated March 30, 2001, and recorded July 27, 2001, in Deed Book 2393, at Page 1032, records of Horry County, South Carolina

Right of Way from Suwaso Corporation to the South Carolina Public Service Authority dated May 22, 1990, and recorded in Deed Book 1399, at Page 81, records of Horry County, South Carolina

4 Right of Way from Suwaso Corporation to Grand Strand Water and Sewer Authority recorded July 17, 1990, in Deed Book 1406, at Page 491, records of Horry County, South Carolina

5 Easement from Suwaso Corporation to Horry Telephone Cooperative, Inc recorded September 4, 1991, in Deed Book 1492, at Page 73, records of Horry County, South Carolina.

6 Distribution Right of Way from Suwaso Corporation to the South Carolina Public Service Authority dated December 31, 1991, and recorded January 3, 1992, in Deed Book 1518, at Page 163, records of Horry County, South Carolina

7 Right of Way from Suwaso Corporation to Grand Strand Water and Sewer Authority recorded January 9, 1992, in Deed Book 1519, at Page 169, records of Horry County, South Carolina

8 Distribution Right of Way from Suwaso Corporation to the South Carolina Public Service Authority recorded March 13, 1992, in Deed Book 1532, at Page 815, records of Horry County, South Carolina,

9 Partial Cancellation of Right of Way between Suwaso Corporation and the South Carolina Public Service Authority dated July 31, 1992, and recorded August 20, 1992, in Deed Book 1572, at Page 296, records of Horry County, South Carolina,

10 Distribution Right of Way from Suwaso Corporation to the South Carolina Public Service Authority dated July 31, 1992, and recorded in Deed Book 1572, at Page 298, records of Horry County, South Carolina.

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Plaintiff 002718

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LAND TITLE INSURANCE COMPANY

FILE NUMBER	POLICY NUMBER
13-065	81260-89644181

SCHEDULE B
(continued)

11 Distribution Right of Way from Suwaso Corporation to the South Carolina Public Service Authority dated May 8, 1993, and recorded in Deed Book 1638, at Page 681, records of Horry County, South Carolina.

12. Distribution Right of Way from Suwaso Corporation to the South Carolina Public Service Authority dated July 16, 1996, and recorded in Deed Book 1878, at Page 913, records of Horry County, South Carolina.

13. Easement and Right of Way Deed from Wild Wing Plantation, Inc. to the City of Conway recorded March 19, 1998, in Deed Book 2021, at Page 544, records of Horry County, South Carolina,

14. Declaration of Restrictive Covenants regarding Wetlands by Wild Wing Plantation, Inc. recorded October 1, 1997, in Deed Book 1978, at Page 855, records of Horry County, South Carolina.

15. Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens for Wild Wing Plantation dated September 26, 2006, and recorded September 27, 2006 in Deed Book 3164, at Page 361, records of Horry County, South Carolina, as amended..

16. Conveyance of Sewage Collection Systems and Easements contained therein from Wild Wing Plantation, Inc. to Grand Strand Water and Sewer Authority dated September 29, 1997, and recorded November 21, 1997, in Deed Book 1993, at Page 282, records of Horry County, South Carolina.

17. Declaration of Special Covenants for the Wild Wing Plantation Road Maintenance Association, Inc. dated December 22, 1997, by Wild Wing Plantation, Inc. and recorded in Deed Book 2001, at Page 107, records of Horry County, South Carolina,

18. Easements and Setback Lines shown upon that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Phase I Wild Wing Plantation", dated September 18, 2006 and recorded September 20, 2006 in Plat Book 217 at Pages 55-551, records of Horry County, South Carolina,

19. Distribution Right-of-Way from Wild Wing Company, LLC to the South Carolina Public Service Authority dated July 27, 2006, and recorded August 21, 2006, in Deed Book 3145, at Page 857, records of Horry County, South Carolina.

20. Rights or claims of parties in possession and easements or claims of easements not shown by the public records, boundary line disputes, overlaps, encroachments, and any matters not of record which would be disclosed by an accurate survey and inspection of the land. (Applies to Owner's Policy Only)

21 Mortgage from C Barry Dykes and Diane M Dykes to Branch Banking and Trust in the original principal amount of $320,250 00 dated August 13, 2013, and recorded August 14, 2013, at 12 38 pm, in the Register of Deeds of Horry County, South Carolina in Book 5526, Page 2473, as Document No 2013000097583

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Commonwealth™
LAND TITLE INSURANCE COMPANY

FILE NUMBER	SCHEDULE B (*continued*)	POLICY NUMBER
13-065		81260-89644181

NOTE The exception(s) in Schedule B omit(s) any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that the restriction is not in violation of state or federal law, or relates to a handicap, but does not discriminate against handicapped people

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Plaintiff 002720

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Prepared By and Return to
Johnny Gardner Law Group, P A
212 Main Street
Conway, SC 29526
Telephone 843-248-7135 Fax 843-248-0270
File No.: 13-065

Instrument#: 2013000097582, DEED BK: 3677 PG: 822 DOCTYPE: 001 08/14/2013 at 12:38:29 PM, 1 OF 4 COUNTY STAMPS: 5469.70 STATE STAMPS: $1110.20
BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

(Please do not write above this line Reserved for Register of Deeds Office)

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that CRAIG D. JOHNSON AND LORI L. JOHNSON, in the State aforesaid, for and in consideration of the sum of Four Hundred Twenty-Seven Thousand and 00/100 Dollars ($427,000.00), unto us paid by C. BARRY DYKES AND DIANE M. DYKES, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell, and release unto the said C. Barry Dykes and Diane M Dykes, as joint tenants with the rights of survivorship, not as tenants in common, their heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following described property, to wit:

ALL AND SINGULAR, all that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lot 97, Phase I of Wild Wing Plantation as shown on that certain plat prepared by Associated Land Surveyors entitled "Final Plat of Phase I Wild Wing Plantation", dated September 18, 2006 and recorded September 20, 2006 in Plat Book 217 at Pages 55 through 55i inclusive, records of Horry County, south Carolina, reference to which is hereby made for a more complete description.

This property is subject to that certain Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens for Wild Wing Plantation recorded September 27, 2006 in Deed Book 3164 at Page 361, records of Horry County, South Carolina, and all amendments thereto, and all easements and restrictions of record and easements on the ground

BEING the same property conveyed to Craig D. Johnson and Lori L. Johnson from **Wild Wing Company, LLC** by deed dated **November 16, 2006**, and recorded on **November 21, 2006 in Book 3192 at Page 1233.**

Plaintiff 002721

Tax Map #: 151-45-02-034

Property Address. 1423 Whooping Crane Dr., Conway, SC 29526

Grantee(s) Address: 1423 Whooping Crane Dr., Conway, Sc 29526

THIS CONVEYANCE IS MADE SUBJECT TO easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said C. Barry Dykes and Diane M. Dykes, as joint tenants with the rights of survivorship, not as tenants in common, their heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion.

AND Grantors do hereby bind themselves and their heirs and assigns, to warrant and forever defend all and singular the said premises unto the said C. Barry Dykes and Diane M. Dykes, as joint tenants with the rights of survivorship, not as tenants in common, their heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion against the Grantors' heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

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IN WITNESS WHEREOF our Hands and Seals this 13 day of August, 2013.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

1st Witness

Craig D. Johnson {L.S.

2nd Witness

Lori L. Johnson {L.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within Grantors sign, seal, and as act and deed, deliver the within Warranty Deed; that deponent with the other witness whose name is subscribed above, witnessed the execution thereof.

Witness

SWORN to before me this
13 day of AUGUST, 2013.

Notary Public for South Carolina
My Commission Expires: 5/20/19

(SEAL)

File # 13-065

Plaintiff 002723

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A. That's how they present it and it seems like that's how they operated, yes.
Q. Okay. Any other evidence other than that right there?
A. Not that I recall off the top of my head.
Q. Okay. You kind of put them into groups under that cause of action in the complaint. And your first group included Wild Wing Company and Sunstar. Are you familiar with those two companies?
A. In general.
Q. Okay. And just going to lay out some questions about these companies for you. Do you have any evidence that either of those two companies were undercapitalized?
A. I believe they said they were at one point.
Q. When do you believe they said that they were?
A. I think that's why they -- didn't they end up selling or bringing in new investors.
Q. So other than new investors coming in, is there any evidence that they were undercapitalized?
A. Off the top of my head, I'm not -- I can't point you to a document that I -- I --
Q. Okay. Any evidence that they failed to observe corporate formalities?

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A. Again, I can't point to a document.
Q. Okay. Do you have any evidence that either one of them did not pay dividends?
A. I don't know whether they paid dividends or not.
Q. Okay. Any evidence as to whether either of these two companies was insolvent?
A. I don't know. I -- to my knowledge -- well, you're asking -- so is the question did they ever become insolvent or what's your question?
Q. Were they insolvent -- were they insolvent at the time that they were functioning?
A. At the time that they were functioning as a declarant?
Q. For Wild Wing Company at the time that they were functioning as the declarant, were they insolvent?
A. Not to my knowledge.
Q. What about at the time of formation?
A. At the time that they formed?
Q. Correct.
A. I don't know. They'd know that. I don't know that.
Q. And what about Sunstar, at the time that they were formed do you have any evidence they were insolvent?

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Q. But everything else is in this packet?
A. Right.
Q. If you'll turn to page 2719 for me.
A. Okay.
Q. So this is Schedule B to your title policy, correct?
A. Yes.
Q. Okay. And this -- this Schedule B is exceptions to the title. If you'll look at number 15. Number 15 excepts the declaration of protective covenants as amended, correct?
A. It talks about the protective covenants, yes. I'm not sure what the question is.
Q. And as amended, right?
A. It says as amended, yes.
Q. Okay. Are you aware that there was an amendment to the covenants in 2011?
A. Am I aware today or was I aware then?
Q. Are you aware today?
A. I am aware today, yes, obviously.
Q. Are you aware that it was recorded?
A. I am.
Q. Okay. Were you aware at that time?
A. At the time of settlement, I believe what I received was just the original -- the original

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covenants without any amendments to it.
Q. Okay. But you saw this language when you reviewed the closing package, right?
A. It was in there. I don't recall it, no.
Q. So you didn't undertake to go check if there were any amendments to the declaration based on this language?
A. No, I didn't -- I was -- I was -- I had been given a set of covenants which I read through and -- and frankly, I doubt that I even noticed that.
Q. Okay. All right.
A. Because -- because I was under --
Q. If you'll turn to page --
A. -- the impression that -- that all the declarant control ended in 2015 when I originally bought the property, that was my understanding. And I -- it wasn't until I think I was on the finance committee and I said that and somebody said no, that's not right.
Q. If you'll turn to page 2721 for me.
A. Okay.
Q. This is a copy of your deed, correct?
A. Okay.
Q. All right. So near the bottom it has its own paragraph, it says this property is subject to

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the declaration and all amendments thereto. Do you see that language?

A. Yes, I see that. Yes.

Q. All right. Did you see that language -- did you review this deed when you bought the property?

A. I -- you know you get the packet of stuff, I saw it in there. I didn't -- no, I didn't read it thoroughly, no.

Q. Do you think it would have been prudent to review the deed to the property you had just bought?

A. By that time I had already bought it.

Q. Okay. So at that time you didn't undertake to search for any of the amendments that your property was going to be subject to?

A. No, I didn't.

Q. Okay. Mr. Dykes, you've brought this lawsuit in a derivative capacity. What exactly does that mean to you?

A. Well, my understanding of that is that after trying to work with the board to get the issue resolved, because the board, in my opinion, wasn't acting in the best members -- the best interest of the membership, that in an organization like this a member has the right to essentially step into the shoes of the board and

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EXHIBIT J

ELECTRONICALLY FILED - 2021 Mar 19 2:20 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

STATE OF SOUTH CAROLINA — COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt, Individually and derivatively on behalf of the Wild Wing Plantation Property Owners' Association, Inc.,

Plaintiff(s),

vs.

CIVIL ACTION NO. 2017-CP-26-04187

Wild Wing Company, LLC, Ralph R. Teal, Jr., SLF IV/SBI Wild Wing, LLC, Wild Wing Residential Development LLC, Stratford Land Manager, SB Investments LLC, Graeme T. Black, Gilford Edwards, Founders Wild Wing, LLC, Founders Group International, LLC, Dan Liu, and Xian Dou,

Defendant(s).

Wild Wing Plantation Owners' Association, Inc.

Nominal Defendant.

DEPOSITION OF: **JAMES CORBETT**

DATE: Wednesday, November 6, 2019

TIME: 10:06 a.m. through 11:23 a.m.

LOCATION: BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Defendant(s)

COURT REPORTER: MADONNA M. FARRELL
Registered Professional Reporter
Certified Livenote Reporter
CaseViewNet Realtime Reporter

it's minutes of a Wild Wing POA finance committee meeting. And just look it over and tell me if you recognize that document.

A. Yes, sir.

Q. And I'm looking at the last page. And mine's highlighted (indicating). If you'll see this part right here is what I'm looking at. 10:38AM

A. Okay.

Q. And -- and it reads, and tell me if I read this correctly: "Also, the auditor's formula for determining the developer's contribution excludes bad debt expense from the total expenses of the POA. Barry" -- being Barry Dykes -- "strongly questioned that approach and indicated there was no support for that approach that he was aware of in the community documents. The auditor agreed to review that formula." 10:39AM

Did I read that correctly?

A. Yes, sir.

Q. Okay. My question is this: As the auditor for the property owners association, what did you do to review that formula? 10:39AM

A. I went back and looked at any prior years. Plus I went in and read the covenants and how it's calculated. 10:40AM

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Q. The declaration?

A. Declaration, yeah.

Q. Did you meet with any other of the professionals in your office about it?

A. Yes. It was discussed with myself and Barbara Faircobb (phonetic). She's a CPA. 10:41AM

Q. What about Larry Phillips?

A. Larry would review any and all audits. If first -- if Barb did an audit, I reviewed it, and then it went to Larry. If I did one, it went to Barbara, and then it would go down to Larry. 10:40AM

Q. Got it.

Did you look at any other sources of information, such as generally accepted accounting principles and those kind of things you guy rely upon? 10:41AM

A. Yes, sir. GAAP. The financial statements presented in the audit are GAAP.

Q. General accepted accounting principles?

A. Accounting principles. 10:41AM

Q. Got it. Okay.

A. They include bad debt expense as GAAP. Now we've got a calculation. And over here on this calculation, we would start with that GAAP number, the number that was determined to be the income or 10:41AM

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Q. This letter, if I look at the dates, this follows by a couple of months the prior exhibit where the -- the finance committee asked, where we read the auditor agreed to review the matter?

A. Uh-huh. 10:46AM

Q. This is a couple of months later.

Is this the results of your having gone in and done the review that you just outlined to me?

A. Yes. I remember sitting down with Jane Atkinson, and we went back through years of 10:46AM calculation. Jane, like I say, she's excellent. And we were -- we were within dollars of each other's calculation.

Q. Okay. So early you had testified that you went back and looked at the declaration, you pulled 10:46AM numbers. But now you're telling me, in addition to that, you and the accountant at the -- at the property owners management company worked together to go back years and bring it all the way back forward. 10:46AM

A. I do -- that -- what triggered it is seeing this 119,918.89. Okay? I mean, I apologize. That's four years. I'm 65 years old. I don't remember a lot.

But no. I remember that number. So, yeah. 10:47AM

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Q. All right. Are you --

A. I can have an expense, but I didn't necessarily have to spend money.

Q. Okay. So your interpretation -- in your interpretation under GAAP, expense and expenditure mean two different things. Is that what you're telling me? 11:16AM

A. That's my interpretation. I just see an expenditure as somebody writing a check or reaching in their pocket and paying for something.

Q. So when you look at this statement in the declaration and you look at this sentence, you wouldn't begin with actual operating expenses -- expenses from the financial statement. 11:16AM

Is that what you're telling me?

A. When we did our calculation?

Q. Yeah.

A. Yeah. We would begin with the net income or loss for that period, and then the judgments were made. 11:17AM

Q. And what about that sentence tells you -- about that sentence in the declaration tells you you need to back out certain expenses?

A. What I asked David, somewhere there's a permanent file, and I don't know if you have it, 11:17AM

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	COURT OF COMMON PLEAS CIVIL ACTION NO.: 2017-CP-26-04187
C. Barry Dykes and Barbara Eisenhardt, individually and derivatively on behalf of the Wild Wing Plantation Property Owners' Association, Inc., Plaintiffs, -vs- Wild Wing Company, LLC, Sunstar, LLC, Ralph R. Teal, Jr., SLF IV/SBI Wild Wing, LLC, SLF IV/SBI JV, LLC, SLF IV/SBI Properties MM, LLC, SLF IV/SBI Development Holdings, LLC, Wild Wing Residential Development, LLC, Stratford Land Manager, L.P., d/b/a Stratford Land, Stratford Land Fund IV, L.P., SB Investments, LLC, Realstar Management, LLC, Graeme T. Black, H. Gilford Edwards, Founders Wild Wing, LLC, Founders Group International, LLC, Dan Liu, Xian "Nick" Dou, Rick Schultz, Rick Taylor and Thomas Plankers, Defendants, Wild Wing Plantation Owners' Association, Inc. Nominal Defendant.	**DEFENDANTS SCHULTZ, TAYLOR AND PLANKERS' BRIEF IN RESPONSE TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT**

NOW COME Defendants Rick Schultz, Rick Taylor and Thomas Plankers (hereinafter, jointly, the "Individual Defendants"), by and through undersigned counsel, and file this response to the Plaintiffs' Memorandum in Opposition ("Plaintiffs' Memorandum") filed on March 3, 2021.

DEFENDANT'S MOTION

Individual Defendants expressly incorporate by reference their original motion for summary judgment filed along with the accompanying memorandum of law and exhibits on

October 29, 2020. Individual Defendants moved for summary judgment principally on the grounds that, under the undisputed facts of this case, South Carolina's interpretation of the business judgment rule furnishes the Individual Defendants with a complete defense to all claims of the Plaintiffs against them.

PLAINTIFFS' MEMORANDUM IN OPPOSITION

Naming conventions used for brevity and clarity. Defendants in this litigation include a number of corporate entities with somewhat similar corporate names, along with no less than eight named individual defendants. On p.5 of Plaintiffs' Memorandum, counsel sets forth a table which lists the corporate entities which held the status of Declarant at different times in chronological order. Wild Wing Company, LLC is Declarant One, SLF IV/SBI Wild Wing, LLC is Declarant Two, Wild Wing Residential Development, LLC is Declarant Three, and Founders Wild Wing, LLC is Declarant Four. This table is consistent with the shorthand conventions used by counsel over the course of the litigation. A reference to the "Declarants" generally refers to the four collective individual sets of Declarants. A reference to "Declarant One" or "Declarant Four" identifies an individual declarant based on the chronological order in which the entity held the status of declarant. Individual Defendants will continue to follow those conventions in this Response. The second table on p.5 of Plaintiffs' Memorandum lists various individual board members and groups them with the declarant whose term coincides with their terms of service as board members. Accordingly, Individual Defendants' related declarant as referenced by Plaintiffs is Founders Wild Wing, LLC, a/k/a Declarant Four.

Plaintiffs' Argument as to the Business Judgment Rule. Pages p.17-20 of Plaintiffs' Memorandum sets forth Plaintiffs' argument that the Declarants are fiduciaries under South Carolina law and are thus subject to the standards applied to fiduciaries. On p. 31 of Plaintiff's

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Memorandum, counsel then addresses the application of the business judgment rule. Counsel notes that the individual defendants (including Individual Defendants Schultz, Taylor, and Plankers) and all four Declarants have moved for summary judgment on the basis of the business judgment rule. Plaintiff first asserts that the business judgment rule is not available to the Declarants because they are fiduciaries. Counsel then argues that the business judgment rule is not available to the individual Defendants because it applies only to *intra vires* acts and does not apply where there is evidence of self-dealing. Individual Defendants will address these arguments below.

Plaintiffs' argument that the business judgment rule is not available to fiduciaries misapprehends the holding of *Walbeck v. I'on*. Plaintiffs cite *Walbeck v. I'on,* 426 S.C. 494, 517, 827 S.E.2d 348 (2019) for the position that the business judgment rule cannot be applied to the declarants because they are fiduciaries. Respectfully, Individual Defendants submit that this is a complete misreading of the holding of *Walbeck.* Such a broad interpretation would mean that *Walbeck* effectively abolishes the business judgment rule, as it is difficult to conceive of any type of board which could not, at the least, be credibly argued to be in the position of a fiduciary. The *Walbeck* court extensively discussed the concept of fiduciary duty, citing with approval the decision in *Goddard v. Fairways Development General Partnership,* 310 S.C. 108, 426 S.E.2d 828 (Ct. App. 1993) (cited as authority in Individual Defendants' own summary judgment motion). The *Goddard* court compared the duty of the developer of a PUD (Planned Urban Development) to its eventual villa owners prior to the formation of any HOA, to the duty of the promoters of a corporation. Appellants in *Goddard* sought a determination from the court that the developer had violated its fiduciary duty to ensure the development's common areas were in good repair when conveyed to the villa owners association. For purposes of its analysis, the *Goddard* court assumed the existence of a fiduciary duty between the developer and the owners association. 310 S.C. at

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413, 426 S.E.2d at 414, 426 S.E.2d at 832. Having assumed the existence of a fiduciary duty, the *Goddard* court then elected to analyze the developer's actions in light of the business judgment rule:

> Thus, rather than rejecting the existence of a fiduciary relationship arising from the developer's superior voting power, the court declined to hold that the developer's assessment determinations violated a fiduciary duty to the villa owners. The court merely invoked the business judgment rule, which implicitly recognizes the obligation of the directors of a homeowners association to act in good faith: "In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the 'business judgment rule' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action. This is compatible with the good faith requirement for fiduciaries: "A confidential or fiduciary relationship exists when one reposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence." Therefore, we reject Appellant's argument that the business judgment rule precludes the existence of a fiduciary relationship between a developer in control of a homeowners association and the association's members.
>
> *Walbeck,* 426 S.C. at 515, 827 S.E.2d at 358 (internal citations omitted).

Accordingly and as noted by the *Goddard* and *Walbeck* courts, a determination that the Individual Defendants held the status of fiduciaries with regards to the Plaintiffs in no way prevents them from seeking refuge in the protections afforded by the business judgment rule. Indeed, it seems that our state's courts see these concepts as working in harmony, as the requirements to apply the business judgment rule (the absence of bad faith) is essentially the mirror image of the fiduciary duty's implication of good faith. With this in mind, Individual Defendants assert that *Walbeck* not only does not act as a bar to their invoking the business judgment rule under the facts of this case, but affirmatively favors it.

Plaintiff's argument with regards to *intra vires/ultra vires* considerations is not supported by the record. Plaintiffs' counsel argues, correctly, that the protections extended to directors by the business judgment rule apply to *intra vires* acts and not *ultra vires* acts. Counsel

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then asserts that the actions of the Individual Defendants with regards to (a) calculating Declarant Four's yearly contributions to the budget and (b) amending the existing covenants (characterized in Plaintiff's Memorandum as "waiving" or "re-writing" regime documents) to extend the Declarant's funding option were *ultra vires* acts. Given Plaintiffs' description of the board members as fiduciaries and Plaintiffs' desire to hold the board responsible for a budget that they disagree with, it is difficult to understand opposing counsel's basis for arguing that coming up with and adopting the HOA's yearly budget was an *ultra vires* act of the Board. In fact, in taking this position, counsel's argument is in opposition to the declarations themselves as well as the express sworn testimony of his own clients. (See Excerpts from Barry Dykes Transcript filed with the parties' original Memorandum, p. 9, indicating that the board is authorized to prepare and adopt annual budgets as well as the assessments used in those budgets). The covenants themselves not only permit it, but place an affirmative responsibility upon the members of the board to come up with a yearly budget. (See Section 3 of Exhibit A to Individual Defendants' Memorandum in support of summary judgment -- " the Board shall fix the amount of the annual assessment.") Formulating a budget requires a calculation of the declarant's contribution, and was clearly within the assigned responsibility of the board. To label the Individual Defendants' acts here as an *ultra vires* act simply because Plaintiffs object to the number that the board arrived at is an unwarranted exercise in sophistry.

Regarding modification of the covenants, this is an act clearly contemplated by the original governing documents, both by implication (See Exhibit A, p.4, "Definitions" section, regarding comments referenced amendments to the Declaration) and expressly (See Exhibit A, p.31, Article XII, Section 9 – which provides a means to "amend, change, add, derogate, or delete" the covenants upon the execution and recordation of an instrument executed by owners holding 2/3 of

the votes. Further, Plaintiff Barry Dykes has explicitly stated that the declarations provide a mechanism for their own amendment. (See excerpts from Barry Dykes' deposition testimony, incorporated by reference – i.e., "I'm not disputing that the board has the right to make the decision; I'm disputing that the decision was made in the best interests of the membership") and Plaintiffs have made no showing that the amendment of the declarations was not done in accordance with the provisions of Article XII, Section 9.

Plaintiff's argument with reference to claims of self-dealing. Finally, Plaintiffs' counsel asserts that the business judgment rule should not be available to the Individual Defendants, alleging there is evidence that they were engaged in self-dealing, either "for their own selves or on behalf of their masters." Individual Defendants would argue that the consideration here should be impermissible self-dealing rather than mere self-dealing. For the sake of argument, they will concede that Plaintiffs have articulated a rationale for why certain actions taken by the board were advantageous to the Declarants. However, in making this argument, Plaintiff's counsel improperly conflates the positions of director and declarant, resulting in a syllogism: "All 'A' is 'C'; All 'B' is 'A'; therefore, all 'B' is 'C'. At the risk of being accused of engaging in a tautology, Individual Defendants would point out that "self-dealing" means doing something for the benefit of oneself. If you are doing it for your master, you are not doing it for yourself, you are doing it for your master. As referenced in Individual Defendant's original summary judgment motion, the Plaintiffs have been asked under oath to identify a benefit that the Individual Defendants reaped as a result of being appointed as directors, or from any action they took as directors. The Plaintiffs have failed to identify such. They have no evidence that Individual Defendants were personally enriched in any way. At the most, Plaintiff Dykes testified that he assumed that "they might lose their jobs" if

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they did not act as their "masters" wanted. An assumption, devoid of proof, will not suffice at the summary judgment stage.

CONCLUSION

The business judgment rule protects a corporation's directors' exercise of judgment when deciding between viable options in a given business situation. The Individual Defendants were appointed as board members at a point in time where this development's continued viability was in doubt. The Individual Defendants' Declarant, Founders Wild Wing, LLC was fourth declarant since 2006. The early years of the development's existence coincided with the onset of the Great Recession, and perhaps because of lingering effects, not only were sales of new lots slow, but many existing owners had simply elected not to pay their assessments. The Individual Defendants were instructed to go forth and make the development a success. The Plaintiffs now assert that the development would be in a better place financially if the Individual Defendants had only acceded to their opinions on how the development should have been run. Perhaps other choices might have resulted in better outcomes. But for the purposes of the Individual Defendants' summary judgment motion, that determination is not relevant. The Individual Defendants acted on their own business judgment. What we do know is that today the development is still here and is stable. Declarant Four has stayed engaged and has given no indication that it intends to do otherwise. Lots are being sold, rooftops are going up, and dues and assessments are being collected, and the bills are getting paid. The facilities are being maintained and reserves have been established, all while keeping fees and assessments at a manageable level that appears to meet with the approval of the general membership. Plaintiffs' Memorandum argues that the Individual Defendants continued to accept the erroneous accounting of the declarant funding alternative even after Plaintiff Dykes brought it to their

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attention. The response is two-fold: first, Mr. Dykes' assertion that the accounting is erroneous remains, at this stage, simply his assertion, not an established fact. Second, even if he is correct, the application of the business judgment rule has never required that the party or parties claiming it must make a showing that their business judgment was ultimately proven to be objectively correct.

Based on the foregoing, the Individual Defendants hereby request that the Court grant their Motion for Summary Judgment as to all causes of action alleged against the Individual Defendants by the Plaintiffs. The Individual Defendants further request the Court award them all fees and costs associated with this Motion and any such further and additional relief as this Court deems just and proper.

Dated this the 19th of March, 2021.

Signature page to follow

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.

/s/C. Cliff Rollins
Eugene H. Matthews, 10193
C. Cliff Rollins, #16631
Post Office Drawer 7788
Columbia, South Carolina 29202
T: 803.771.4400
F: 803.779.0016
Email: gmatthews@RichardsonPlowden.com
Email: crollins@RichardsonPlowden.com

COUNSEL FOR DEFENDANTS RICK SCHULTZ, RICK TAYLOR AND THOMAS PLANKERS

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STATE OF SOUTH CAROLINA COUNTY OF HORRY C. Barry Dykes and Barbara Eisenhardt, individually and derivatively on behalf of the Wild Wing Plantation Property Owners' Association, Inc., Plaintiffs, vs. Wild Wing Company, LLC; Sunstar, LLC; Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development Holdings, LLC; Wild Wing Residential Development LLC; Stratford Land Manager, L.P. d/b/a Stratford Land Fund IV, L.P.; SB Investments, LLC; Realstar Management, LLC; Graeme T. Black; H. Gilford Edwards; Founders Wild Wing, LLC; Founders Group International, LLC; Dan Liu; Xian "Nick" Dou; Rick Schultz; Rick Taylor; and Thomas Plankers, Defendants. Wild Wing Plantation Owners' Association, Inc., Nominal Defendant.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-26-04187 **DEFENDANTS TEAL, BLACK & EDWARDS'S RESPONSE MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

Defendants Ralph R. Teal, Jr., Graeme T. Black, and H. Gilford Edwards (hereinafter collectively referred to as "these Defendants"), by and through their undersigned counsel, respectfully submit this Response Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of These Defendants' Motion for Summary Judgment. In addition to the arguments contained in these Defendants' Memorandum in Support filed on September 24, 2020, these Defendants respectfully show the Court as follows:

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I. 2011 AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES, AND LIENS FOR WILD WING PLANTATION

Plaintiffs allege it was improper for these Defendants, as members of the Board of Directors for Wild Wing Plantation Property Owners Association ("the Association"), to vote in favor of the 2011 Amendment to the Declaration of Protective Covenants, Restrictions, Easements, Charges, and Liens for Wild Wing Plantation ("2011 Amendment"), which, among other things, extended the Declarant's rights as to voting and its right to pay the Association the shortfall or assessments on a per lot basis. Plaintiffs cannot recover from these Defendants with regard to the 2011 Amendment for the following reasons, and the Court should grant these Defendants' Motion for Summary Judgment.

A. Plaintiff Dykes lacks standing under Rule 23(b)(1), SCRCP because he was not a member of the Association at the time of the vote to amend the Declaration in 2011.

Rule 23(b)(1), SCRCP states:

> In a derivative action brought by one or more shareholders or members to enforce the right of a corporation or an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, a complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law …

Plaintiff Dykes was not a member of the Association in 2011; therefore, he is not a proper Plaintiff for any claims involving the 2011 Amendment.

Likewise, although Plaintiff Eisenhardt was a member of the Association at the time of the vote to amend the Declaration, she voted in favor of the amendment, and therefore, does not fairly and adequately represent the interests of the members similarly situated. As such, Plaintiffs' claims against these Defendants involving the 2011 Amendment should be dismissed.

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B. Plaintiffs' claim involving the 2011 Amendment is barred by the Statute of Limitations.

As discussed above, Plaintiff Eisenhardt was involved in the vote to amend the Declaration in 2011. She voted for the Amendment based on her belief that it was in the best interests of the members for the developer to remain responsible for expenses. She testified there were very few homes in the neighborhood at the time, and she understood the impact of the Amendment. Therefore, if Plaintiffs have standing, the Statute of Limitations began running on November 22, 2011 and expired three years later on November 22, 2014, more than 2 ½ years prior to the initiation of this lawsuit. Plaintiff Dykes, as discussed above, does not qualify under Rule 23(b)(1) because he was not a member at the time of the vote to amend the Declaration in 2011. However, even if this Court determines that he is a proper Plaintiff for claims related to the 2011 Amendment, Mr. Dykes purchased his property and became a member of the Association with full knowledge of the 2011 Amendment. He purchased his property with the express acceptance of the 2011 Amendment, and he did so more than 3 years prior to the initiation of this lawsuit.

Plaintiffs' counsel argues in his Memorandum that the POA is the rightful owner of the claims asserted in the case; however, even under an analysis as to when the POA knew or should have known of its claim regarding the 2011 Amendment against these Defendants, the applicable date is November 22, 2011, the date the Amendment became effective. The members who participated in the vote all voted in favor of the Amendment, and these Defendants testified they discussed the reasons for the Amendment and the impact of the Amendment at the meeting. Therefore, all information Association members needed to be put on notice of a claim was available to them as of November 2011.

Plaintiffs also assert they are entitled to equitable tolling of the Statute of Limitations. However, Plaintiffs have not met their burden to establish facts supporting equitable tolling. In

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fact, the circumstances of the 2011 Amendment do not support equitable tolling in any way. None of the factors that would typically justify equitable tolling, including bad faith, dishonesty, and incompetence, are present in this case. The Amendment was presented and voted upon at an open meeting, properly noticed by the Association, with clearly stated objectives. Simply stated, there was nothing preventing Plaintiff Eisenhardt or another member from pursuing legal action regarding the 2011 Amendment within the three years of the November 22, 2011 vote, and those claims are barred.

C. The Business Judgment Rule precludes Judicial Review of these Defendants' involvement in the 2011 Amendment.

Plaintiffs' entire argument in opposition to the application of the Business Judgment Rule is that these Defendants were employees or owners of the Declarant. However, South Carolina law requires plaintiffs to establish more than that to characterize actions as *ultra vires*. Plaintiffs must show bad faith, self-dealing, or unconscionable conduct. These Defendants all testified that they believed amending the Declaration was in the best interests of the Association because it would allow Wild Wing Plantation to continue to grow and prosper. That has happened, leading to a thriving community with appreciated home values and valuable amenities. Further, amending the Declaration is within those powers delegated to these Defendants, and it was even anticipated in the governing documents when referencing the potential inclusion of additional Phases of the development into the Association. In 2011, with other developments in the area failing, and with the Declarant having to significantly restructure financially, a very real possibility existed that the development would fail, which would have had devastating effects on the Association. Plaintiffs have simply not met, and cannot meet, the standard for establishing that these Defendants acted in self-interest or bad faith, or that amending the Declaration was not in the best interests of the Association.

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II. DECLARANT'S ANNUAL FINANCIAL CONTRIBUTION TO THE ASSOCIATION

A. The Association's treatment of bad debt in calculating the developer's shortfall obligation was proper, and therefore, Plaintiffs cannot recover from these Defendants on that ground.

The crux of the issue for the Court to decide is whether, in calculating the developer's annual financial contribution to the Association, the bad debt expense on the financial statements should be included in the calculation, or whether the bad debt expense should be backed out of the equation, as has been done throughout the history of Wild Wing Plantation. Jim Corbett, the auditor for the Association for many years and an experienced auditor for hundreds of other homeowner associations, testified about the treatment of bad debt in calculating the developer contribution. He stated, "We're talking about an expense that is recognized in the association's books for homeowners who failed to pay their assessments. And there is very, very little doubt you're not going to get it. It's bad debt; write it off. It's an expense." (Deposition of Jim Corbett, 29: 6-11) attached as Exhibit A. He went on to explain, "The question is, is that a true asset, or is it just puffing up the books because you're really not going to get it. So then we would get in touch with whoever at Waccamaw was familiar with the delinquency, those behind, because they would mail out letters to the homeowners that were running behind. And we would ask them to tell us which ones we need to set up an allowance for. And at that point, we would debt the expense and credit the allowance on the balance sheet. And it would sit under the receivable, so you could see that you had 100,000 total receivable, but you're probably not going to get this 80,000 down here, so the net receivable is 20,000." (Deposition of Jim Corbett, 30: 2-15), attached as Exhibit B.

After Plaintiff Dykes questioned Mr. Corbett about his treatment of bad debt in determining the developer calculation, Mr. Corbett reviewed prior years and the Declaration, discussed the issue with other CPAs in his office, and determined that they had been properly

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calculating the developer contribution since the inception of the Association, and that the Association actually owed the developer money. Mr. Corbett further described the situation, in his deposition "They include bad debt expense as GAAP. Now we've got a calculation. And over here on this calculation, we would start with that GAAP number, the number that was determined to be the income or loss, including the bad debt. Then we would adjust for it." (Deposition of Jim Corbett, 32: 22-33: 2), attached as Exhibit C. Mr. Corbett continued, "Now, then we would also look at what the developer put into the association. Sometimes they would put money in to cover operating bills or whatever, if they're running low, and determine was that meant as a contribution? Was it meant as a - - a loan? You know, what's the reason for it? We get answers to all that. And then we would - - we would start with, well, we've determined to be GAAP. Then we add it, you know, take - - add the expense, or not an expense, but add the need for the funding of the reserve if it wasn't done. Then we would back out the bad debt expense, as in the declaration it says the developer's only responsible for his assessment on - - or assessments on his lots." (Deposition of Jim Corbett, 33: 8-23), Exhibit C.

Mr. Corbett also testified as to the distinction between bad debt expense and expenditures in the context of a GAAP financial statement and the calculation of the developer contribution. He stated, "Because the bad debt allowance, when it's adjusted, if you go to a cash flow statement in a set of financials, it's not a cash out. The association did not go cash out that amount. Nobody paid those assessments, but all we did was book an allowance. So when - - when you do a cash flow statement and follow the flow of cash in and out, you have to adjust for it like depreciation. It's not a cash - out expense. It is an expense, but it's more of a - - it's more of a - - not to puff balance sheets up and make their assets larger than they truly are expected to receive." (Deposition of Jim Corbett, 44: 3-16), attached as Exhibit D. Counsel followed up by asking him "So, it's not an actual expenditure outlay of funds?" Mr. Corbett responded, "Correct." Mr.

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Corbett stated further, in response to a question regarding a distinction between the word "expense" and the word "expenditure", "I do in my - - only because of - - only because of being aware of cash in, cash-out, and cash flow statements and reconciling back to cash, that there are some items where money just really wasn't spent, yeah. But, yeah. I can have an expense, but - - " "I can have an expense, but I didn't necessarily have to spend money." (Deposition of Jim Corbett, 49: 17-25, 50: 2-3), attached as Exhibit E.

Mr. Corbett also testified regarding the potential impact if bad debt was not backed out of the developer contribution and stated, "So what we looked at is if you - - if you only make him assess - - pay assessments on that one calculation on lots he owns, he is not required to pay assessments on homeowners who didn't bother to make their payments. And by not backing that out, it would force you to go to the other - - I mean, the - - his assessments should only include what he was obligated to pay there. But it's on that one formula, but it's not over here on this deficit calculation. So you get the bad debt, other people's assessments, and now we've got apples and apples. If you don't take it out, it's going to force you over to the first calculation, because it will always be higher." (Deposition of Jim Corbett, 51: 11-25), attached as Exhibit F. Jane Atkinson, the long-time CFO of Waccamaw Management testified that, in the management of 200 associations, she has never seen bad debt included in the calculation of the developer contribution. (Deposition of Jane Atkinson, 23: 8-11), attached as Exhibit G.

Missy Johnson, the CPA expert identified by the Defendants, described the distinction between GAAP financial statements and the equation for determining the developer contribution. She testified, "GAAP is is that it's a set of rules and standards that provides financial statements be presented all in a similar fashion so that you can pick up financial statements in any industry or any group and be able to read them." (Deposition of Missy Johnson, 35: 20-25), attached as Exhibit H. She stated further, "I believe that the formula that's outlined in the covenant requires

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you to look at the financial statements which are prepared on a GAAP basis but that's the starting point are the GAAP prepared financials, and then you apply the formula." (Deposition of Missy Johnson, 36: 4-9), attached as Exhibit I. Ms. Johnson suggested that, although bad debt is booked as an expense, once it is determined that those delinquent homeowners will not pay their assessments, a better way to look at it is as a "negative revenue amount". (Deposition of Missy Johnson, 38: 13 and 14), attached as Exhibit J. Ms. Johnson opined that the term "actual amount of actual operating expenditures incurred" means cash out-of-pocket. She testified that it is not GAAP or traditional accounting language." (Deposition of Missy Johnson, 42: 8-16), attached as Exhibit K. Ms. Johnson explained that, to determine the developer calculation, a conversion from the GAAP based accrual accounting and presentation of the financial statement needed to be made to account for cash in and out. (Deposition of Missy Johnson, 50: 1-11), attached as Exhibit L. Ms. Johnson further explained that inclusion of the bad debt expense in the developer contribution calculation clearly would not produce the intended result because it would mean the Declarant would have to pay all of the unpaid assessments by other owners. (Deposition of Missy Johnson, 58: 3-15), attached as Exhibit M. Plaintiffs' counsel, in attempting to argue that the other owners are then paying for the delinquent owners' assessments, Ms. Johnson stated, "I disagree with you. That bad debt expense is truly just a decrease to the revenue. It's not a true cash outlay. No money is coming out of the bank." (Deposition of Missy Johnson, 59: 22-25), attached as Exhibit N. She stated further, "They don't ding the owners, though. The homeowners never really had their assessments increased materially." (Deposition of Missy Johnson, 59: 16-18).

Press Courtney, owner of Waccamaw Management, testified that the developer contribution calculation language is commonly seen in governing documents of associations and that from his experience, it always means actual expenses paid. (Deposition of Press Courtney,

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18: 2-13), attached as Exhibit O. He testified that he has never seen a developer shortfall payment include bad debt expense. (Deposition of Press Courtney, 18: 14-19). In sum, the Association's calculation of the developer contribution is and has always been appropriate in that it excluded the bad debt expense. Including it would create an unintended and absurd result, and this Court should dismiss Plaintiffs' claims.

B. Plaintiffs' Claims Against these Defendants Regarding the Declarant's Contribution are Barred by the Statute of Limitations.

As Plaintiffs stated in their Memorandum in Support of Summary Judgment, the POA is the rightful owner of the claims asserted herein. As such, the POA had sufficient information regarding the calculation of the Declarant's contribution long before June 30, 2014. The calculation of the developer's contribution has remained the same since the inception of the Association, the annual audits have been published to the owners, the Association financials have been available to all owners, and Plaintiffs have failed to provide any evidence that any Association owner was ever prevented from obtaining this information.

As asserted in Section I above, Plaintiff Eisenhardt had numerous opportunities to question and pursue litigation regarding the Declarant's funding, as she has been an owner in Wild Wing Plantation since 2007. Mr. Dykes lacks standing to raise his claims for any year prior to 2013, as he was not an owner at the time and therefore ineligible under Rule 23(b)(1). However, Mr. Dykes' claims against these Defendants are barred by the Statute of Limitations because, upon becoming an owner in the Association, Mr. Dykes also became a member of the Association's Finance Committee, and he had every opportunity to pursue a claim regarding the Declarant's contribution prior to June 30, 2014. More importantly however, because the evidence establishes that the Association did not prevent any owner from obtaining financial information, the Association published the Annual Audits, and there is absolutely no evidence to suggest that these Defendants or the Association withheld or misrepresented the information

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regarding the Declarant's contribution, the Statute of Limitations expired long before Plaintiffs filed this lawsuit in 2017, and Plaintiffs cannot establish facts to support equitable tolling.

Plaintiffs have raised the issue of equitable tolling and cited the Magnolia North case, 397 S.C. 348. The facts of Magnolia North are significantly different from this case. First, it was a construction defects case in which the developer admitted liability. The only issue that went forward was the amount of the damages. Further, the Magnolia North case involved a turnover of the POA from the developer to the owners, which has not occurred at Wild Wing. Although the analysis in the Court's Opinion is limited, it appears the Court determined the POA prevented owners from pursuing legal action regarding the construction defects that were apparently not known to the Association. The court stated that "the party claiming that the Statute of Limitations should be tolled, bears the burden of establishing sufficient facts to justify its use. It has been observed that equitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control." 397 S.C. 372. That extraordinary event does not exist in this case. All of the information necessary to pursue the same derivative action Plaintiffs are pursuing now was available to owners in the Association years ago, and equitable tolling is therefore not justified.

The Court of Appeals, in Walbeck v. The ION Company, LLC, et al., 426 S.C. 494 (2019) considered and upheld the Statute of Limitations in a case with facts closer to those in this case. Walbeck, involved the developer's transfer of certain property that owners claimed should have remained part of the association. The Court held, in citing Dean v. Restaurant Corp., 321 S.C. 360 (1996) "The exercise of reasonable diligence means the injured party must act with some promptness when the facts and circumstances of an injury place a person of reasonable common knowledge and experience on notice a claim against another party might exist." Further, the Court stated the discovery rule does not require absolute certainty that a cause of

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action exists before the Statute of Limitations begins to run. In Walbeck, the jury found that the owners knew or should have known they had claims against the developer on the date the developer sold the disputed amenities. The Court of Appeals agreed and ruled that the Statute of Limitations expired because Walbeck, in his individual and representative capacity knew or should have known that the title to certain amenities was unfulfilled. Walbeck admitted to receiving copies of the HOA's proposed annual budgets. The budgets were mailed to HOA members, and the Court ruled that it should have alerted Walbeck and the association that it might not have title to the amenities listed in the original property report.

Likewise, in this case, the Association provided information regarding the Declarant's contribution, and no owner ever raised it as an issue until 2014 when Mr. Dykes joined the Finance Committee. Thus, Plaintiffs' allegation that these Defendants "condoned the underfunding" is completely inaccurate. First, there was no underfunding. Second, these Defendants never considered they were doing anything other than what they were obligated to do under the governing documents, advised to do by professional community management and licensed CPAs who performed the Association's audits and Declarant's contribution calculation, and what they had done many times as Board members of associations.

C. **The Business Judgment Rule Entitles these Defendants to a Dismissal on the Declarant's Contribution issue**.

As members of the Board of Directors of the Association, these Defendants are obligated to act reasonably, in good faith, and in the best interests of the Association. All of them testified that they understood those duties and believe their decisions were in the best interests of the Association, which is supported by the survival of the neighborhood and growth to where it is today. Likewise, the Association is fully funded, the bills have always been paid, there was never a special assessment on the owners, and the assessments levied on the owners have remained virtually unchanged over time. There is simply no evidence to support a finding of

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ultra vires acts by these Defendants. To the contrary, the evidence supports a finding that they reasonably relied on professionals, including community managers and accountants to calculate the Declarant's funding obligation. Further, the evidence shows the Declarants actually paid what was requested of them, and the question regarding the funding was never raised until 2014. At that time, these Defendants and the Association properly addressed Plaintiff Dykes's question by requesting that the Association auditor and community manager CFO revisit the issue and determine whether they had been handling it properly. Those experts in the field determined that they had been handling it properly, and therefore, these Defendants have met their duties to the Association and are entitled to a dismissal of the claims against them based on the Business Judgment Rule.

III. PLAINTIFFS CANNOT RECOVER FROM THESE DEFENDANTS FOR AMALGAMATION AND THEIR CLAIMS FOR ALTER EGO AND PIERCING THE CORPORATE VEIL SHOULD BE DISMISSED.

Plaintiffs stated in their Memorandum in Support of Summary Judgment that they are proceeding on an Amalgamation/Single Business Enterprise claim. Amalgamation does not apply to individuals. The Court in Walbeck analyzed the amalgamation theory with the Sturkie requirements for holding a corporation's principals personally liable and distinguished the two. From Plaintiffs' Memorandum, it appears they are abandoning the Alter Ego/Piercing the Corporate Veil and proceeding only on an amalgamation theory. As previously addressed in our Memorandum in Support of Summary Judgment, Plaintiffs cannot establish facts necessary to meet the Sturkie requirements for holding a corporation's principals personally liable and therefore, this cause of action must be dismissed as well.

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CONCLUSION

Based on the foregoing, the arguments asserted in these Defendants' Memorandum in Support of Motion for Summary Judgment, and any other arguments raised at the hearing on these Motions, these Defendants are entitled to a dismissal of all claims with prejudice, and hereby request the Court grant their Motion for Summary Judgment as to all causes of action. These Defendants further request the Court award them all fees and costs associated with this Motion and any additional relief this Court deems just and proper.

This 22nd day of March, 2021.

Respectfully submitted,

COPELAND, STAIR, KINGMA & LOVELL, LLP

By: *s/Douglas W. MacKelcan*
DOUGLAS W. MACKELCAN
State Bar No.: 76332
MADISON B. SUTTIE
State Bar No.: 101385
Attorneys for Defendants Ralph R. Teal, Jr., Graeme T. Black, H. Gilford Edwards; and Wild Wing Plantation Owners' Association, Inc. (Nominal Defendant)

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
dmackelcan@cskl.law
msuttie@cskl.law
Ph: 843-727-0307

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A. Speaking on behalf of the firm, as I worked with Phillips at that time.

Q. When we're talking about bad debt today, relative to this conversation we're having, what -- what is that? What bad debt are we talking about? 10:35AM

A. We're talking about an expense that is recognized in the association's books for homeowners who failed to pay their assessments. And there is very, very little doubt you're not going to get it. It's bad debt; write it off. 10:36AM It's an expense.

Q. Okay. But what we're talking about is if somebody bought a lot at Wild Wing and didn't pay their dues?

A. Correct. 10:36AM

Q. That's what we're talking about?

A. Correct.

Q. And I see the term "bad debt," and then I see the term "delinquency," and then I hear "write-off." 10:36AM

Do those -- are those different things that play in different ways in this?

A. Yeah. We get a -- we get a listing of receivables from the management company. We -- we examine the receivables and highlight people who 10:37AM

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have very large, outstanding, unpaid balances.

The question is, is that a true asset, or is it just puffing up the books because you're really not going to get it. So then we would get in touch with whoever at Waccamaw was familiar with the delinquency, those behind, because they would mail out letters to the homeowners that were running behind. And we would ask them to tell us which ones we need to set up an allowance for. And at that point, we would debt the expense and credit the allowance on the balance sheet. And it would sit under the receivable, so you could see that you had 100,000 total receivable, but you're probably not going to get this 80,000 down here, so the net receivable is 20,000. 10:37AM 10:37AM 10:38AM

Q. Understood.

I'm going to hand you another document. This one is marked as Exhibit Number 3.

(EXHIBIT 3, Wild Wing POA Finance Committee minutes, was marked for identification.) 10:38AM

MR. MILLER: And this is Plaintiff's Bates Number 251.

BY MR. MILLER:

Q. If you'll take a look at that, it is a -- 10:38AM

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Q. The declaration?

A. Declaration, yeah.

Q. Did you meet with any other of the professionals in your office about it?

A. Yes. It was discussed with myself and Barbara Faircobb (phonetic). She's a CPA. 10:40AM

Q. What about Larry Phillips?

A. Larry would review any and all audits. If first -- if Barb did an audit, I reviewed it, and then it went to Larry. If I did one, it went to Barbara, and then it would go down to Larry. 10:40AM

Q. Got it.

Did you look at any other sources of information, such as generally accepted accounting principles and those kind of things you guy rely upon? 10:41AM

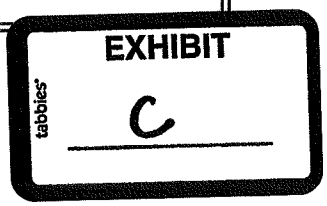
A. Yes, sir. GAAP. The financial statements presented in the audit are GAAP.

Q. General accepted accounting principles?

A. Accounting principles. 10:41AM

Q. Got it. Okay.

A. They include bad debt expense as GAAP. Now we've got a calculation. And over here on this calculation, we would start with that GAAP number, the number that was determined to be the income or 10:41AM



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loss, including the bad debt.

Then we would adjust for it. And I think even in this case, the declaration addressed directly if the reserve had been funded. I don't remember the amount. But if it wasn't funded, that was an additional amount to include that developer owed. 10:41AM

Now, then we would also look at what the developer put into the association. Sometimes they put money in to cover operating bills or whatever, if they're running low, and determine was that meant as a contribution? Was it meant as a -- a loan? You know, what's the reason for it? 10:42AM

We get answers to all that. And then we would -- we would start with, well, we've determined to be GAAP. Then we add in, you know, take -- add the expense, or not an expense, but add the need for the funding of the reserve if it wasn't done. 10:42AM

Then we would back out the bad debt expense, as in the declaration it says the developer's only responsible for his assessment on -- or assessments on his lots. 10:42AM

Q. Okay. So -- so you undertook to review all that at the request of the finance committee? 10:43AM

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Q. Okay. But I don't find the word "expense" in here.

A. Because the bad debt allowance, when it's adjusted, if you go to a cash flow statement in a set of financials, it's not a cash out. The association did not go cash out that amount. Nobody paid those assessments, but all we did was book an allowance. 10:59AM

So when -- when you do a cash flow statement and follow the flow of cash in and out, you have to adjust for it like depreciation. It's not a cash-out expense. 10:59AM

It is an expense, but it's more of a -- it's more of a -- not to puff balance sheets up and make their assets larger than they truly are expected to receive. 11:00AM

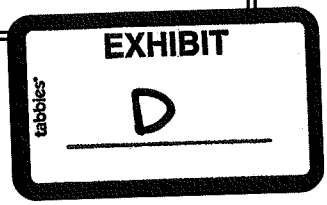
Q. Understood. So it's not an actual expenditure outlay of funds?

A. Correct.

Q. You didn't write a check? 11:00AM

A. Correct.

Q. Okay. Were you involved in the budget process with the finance committee or the property owners association where they would do their forecast budget year to year? 11:00AM



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If you want to object to the form of the question, you can preserve that objection.

BY MS. WALTERS:

Q. Mr. Currin [sic], you testified earlier, I believe, let me ask you again. 11:14AM

Do you agree with me that bad debt is an operating expense?

MR. MILLER: Object to the form of the question. 11:14AM

You can answer.

THE DEPONENT: Oh. I agree that bad debt expense is shown -- to be compliant with GAAP, bad debt expense is shown as an operating expense on the income statement. 11:14AM

BY MS. WALTERS:

Q. Okay. And do you draw any distinction between the word "expense" and the word "expenditure"?

A. I do in my -- only because of -- only because of being aware of cash in, cash-out and cash flow statements and reconciling back to cash, that there are some items where money just really wasn't spent, yeah. But, yeah. I can have an expense, but -- 11:15AM 11:15AM

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Q. All right. Are you --

A. I can have an expense, but I didn't necessarily have to spend money.

Q. Okay. So your interpretation -- in your interpretation under GAAP, expense and expenditure mean two different things. Is that what you're telling me? 11:15AM

A. That's my interpretation. I just see an expenditure as somebody writing a check or reaching in their pocket and paying for something. 11:16AM

Q. So when you look at this statement in the declaration and you look at this sentence, you wouldn't begin with actual operating expenses -- expenses from the financial statement.

Is that what you're telling me? 11:16AM

A. When we did our calculation?

Q. Yeah.

A. Yeah. We would begin with the net income or loss for that period, and then the judgments were made. 11:17AM

Q. And what about that sentence tells you -- about that sentence in the declaration tells you you need to back out certain expenses?

A. What I asked David, somewhere there's a permanent file, and I don't know if you have it, 11:17AM

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but for each association, we would read these things inside and out and highlight the most pertinent paragraphs, articles, whatever, make notes on the side. I really wish I had the one that was all marked up five years ago, because I know there's one out there. 11:17AM

But the one -- and I'm not seeing it specific right now, but the developer's obligation was to pay the lesser of assessments on lots he owned or a deficit, if there was one. 11:18AM

So what we looked at is if you -- if you only make him assess -- pay assessments on that one calculation on lots he owns, he is not required to pay assessments on homeowners who didn't bother to make their payments. And by not backing that out, it would force you to go to the other -- I mean, the -- his assessments should only include what he was obligated to pay there. But it's on that one formula, but it's not over here on this deficit calculation. 11:19AM

So you get the bad debt, other people's assessments, and now we've got apples and apples. If you don't take it out, it's going to force you over to the first calculation, because it will always be higher. 11:19AM

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In turn, it is extracted from the calculation as that auditor prepared it, which reduces the expense for the association.

Q. Understood. The language in the declaration that we just read uses the phrase "actual amount of actual operating expenditures incurred."

A. Right.

Q. In your world of association financial management, would those words include bad debt or would they exclude bad debt?

A. I have never seen it included.

Q. You have never --

A. The expenditures, to me, is what's going out the door as payment of expense.

Q. And did you say that you've never seen it included?

A. Unh-unh.

Q. In all of the associations that are more than you can count, you've never seen it included?

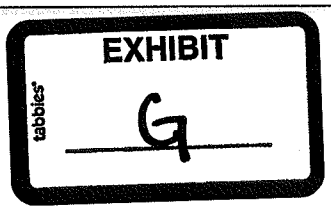
A. No.

Q. There's an Exhibit Number 2.

A. Right.

Q. And it is what I call the "Developer Contribution Calculations."

A. That's what it is, yes.



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Q. You do understand that the documents for the regime say that the accounting is going to be done pursuant to generally accepted accounting principles.

A. Right.

MR. MILLER: Object to the form.

THE WITNESS: Can you repeat the question, please?

(Record read.)

THE WITNESS: Can you rephrase the question for me?

Q. Sure. Well, let me ask you something: Do generally accepted accounting principles have anything to do with the accounting for Wild Wing?

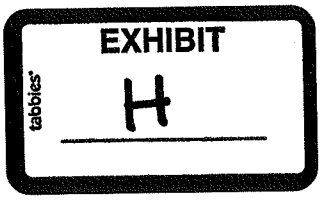
A. Yes.

Q. Tell me what it has to do with that.

A. It is the format in which their audited financial statements are presented.

Q. What does that mean to me?

A. Like I explained earlier, as far as what GAAP is is that it's a set of rules and standards that provides financial statements be presented all in a similar fashion so that you can pick up financial statements in any industry or any group and be able to read them.



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Q. Okay. And does that have anything to do with in your mind the declarant's financial obligations to the association?

A. I believe that the formula that's outlined in the covenant requires you to look at the financial statements which are prepared on a GAAP basis but that's the starting point are the GAAP prepared financials, and then you apply the formula.

Q. I gotcha. So the financial statements are done pursuant to GAAP, right?

A. Yes.

Q. And then the financial statements are going to be used as a starting place for the declarant contributions based on the formula that you're referring to?

A. That's my understanding.

Q. Okay. All right. And did you use the audited financial statements in doing your analysis?

A. Yes.

Q. And to your knowledge had those audited financial statements been done pursuant to generally accepted accounting principles?

A. That's my understanding.

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A. They have an allowance account.

Q. Okay.

A. And then when they determine the amount of those bad debts that they really aren't going to collect, they convert it to an expense.

Q. Okay.

A. So it truly is, though, a reduction in the amount of assessments that are due from the homeowners that they believe they're never going to collect.

Q. But in the audited financial statements they refer to that bad debt as an expense?

A. They do. It's really a negative revenue amount is more of I think how laymen should think of it because it is really a reduction in the assessments that should have been collected and recognized as revenue due to the homeowners' delinquency.

Q. That's true for bad debt in any scenario, right?

A. Right. I was just referring to it in this case.

Q. Okay. All right. And then how does that relate to the formula that you refer to?

A. So the formula, if I remember the

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Q. Okay.

A. The first sentence or the first portion where it is -- well, I've got to get back to it.

Q. Okay. You can mark on it -- well, if you want to take the highlighter and mark the operative language, you can do anything you want to on that exhibit.

A. Okay. Great. Okay. So the first part of the formula is the actual amount of actual operating expenditures incurred. My interpretation of that is probably an attorney that's drafting accounting language that's trying to convey cash actually out of your pocket.

Q. Okay.

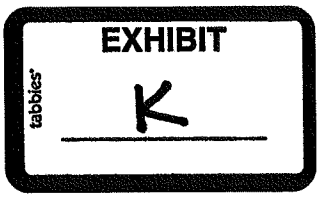
A. This isn't GAAP language. This isn't traditional accounting language that I'm used to.

Q. Okay.

A. It's actual amount of actual operating expenditures incurred.

Q. Okay.

A. My interpretation is that's cash paid. By the association for that portion of the calendar year, and then it's, less an amount of the total assessments made by the association against owners of lots.



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A. Can you ask that question again?

Q. Sure. Where do you go find the actual amount of actual operating expenditures incurred?

A. That's a good question. In my mind you have to look at the expenses on a cash basis.

Q. Okay. So you don't rely on the audited financials, you actually redo the accounting on a cash basis to arrive at that number?

A. No. You have to start with the audited financials and then make accrual to cash adjustments.

Q. And are accrual to cash adjustments -- is that a process that to your knowledge is referred to anywhere in these regime documents?

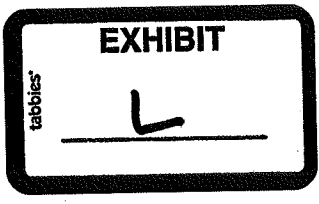
A. Only the interpretation of the language that it's actual amount of actual operating expenditures.

Q. Incurred?

A. Incurred, mm-hmm.

Q. And you can have expenses, from an accounting standpoint, you can have expenses that aren't paid, right; something can be an expense on a balance sheet, doesn't mean it is actually paid, right?

A. I think there were two questions in



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A. Yes, on a cash basis.

Q. Okay.

A. And then look at the assessments made, which in my mind is not the assessments collected but it's the assessments made against the homeowners. Because if you don't look at it in that fashion, right, the declarants automatically are going to be dinged for any homeowners that don't meet the obligations.

Q. Okay.

A. And instead, if you interpret it the way I've done that, they're not going to get dinged for that, and based off the historical financials any overage of expenses compared to budgeted expenses the declarant's paid for.

Q. Okay. And then why shouldn't the declarant get dinged for homeowners who don't pay their assessments?

A. Well, I'm pretty sure when I was reading through this that there's a section in here that says for any assessments that aren't paid that they can go after the homeowners and put a lien on their house.

Q. Who's they?

A. I'm assuming it's the board.

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Q. Okay. And the board was controlled by who?

A. Well, I think the timing is probably going to depend on the answer.

Q. Well, in this case it's the declarant.

A. Correct.

Q. Okay. So why shouldn't the declarant get dinged by the costs associated with homeowners who don't pay their assessments?

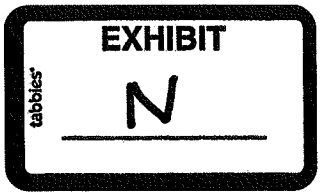
A. In the spirit of what this formula is providing, I don't think that is the interpretation of the formula.

Q. So you read this formula as saying that for assessments that don't get paid we're going to ding the owners, not the declarant.

A. They don't ding the owners, though. The homeowners really never had their assessments increased materially.

Q. Well, the declarants get stuck with the bad debt, that is, the fact that these other owners don't pay.

A. I disagree with you. That bad debt expense is truly just a decrease to the revenue. It's not a true cash outlay. No money is coming out of the bank.



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"owners of lots."

A. Yes. Common language -- language that we see in most governing documents.

Q. Okay.

11:56AM A. Some -- some version thereof, yes.

Q. The words "actual amount of actual operating expenditures," okay, what -- what do you read those words to mean?

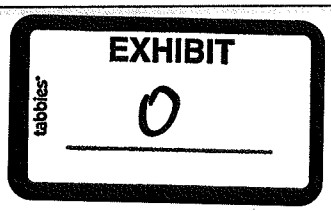
A. Well, I'll tell you from my experience what 11:56AM those words have always meant in my experience, is the actual expenses: The light bill, the landscaper, the maintenance company, paying the bills of the association.

Q. Have you ever seen it to include something 11:57AM **like bad debt expense, the issue here where it's not -- it's not a hand-over of cash out of the association account as such, but it's rather a failure to receive money? Have you ever seen that?**

A. No.

11:57AM **Q. Give me a minute. I'm going to thumb through my notes and try to move along.**

Are -- are you aware of a second issue in this case concerning amendments that were done in 2011 and again in 2016 extending the time for the 11:58AM **developer contribution to be made per this -- this**



STATE OF SOUTH CAROLINA COUNTY OF HORRY C. BARRY DYKES AND BARBARA EISENHARDT, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., PLAINTIFFS, VS. WILD WING COMPANY, LLC; SUNSTAR, LLC; RALPH R. TEAL, JR.; SLF IV/SBI WILD WING, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI PROPERTIES MM, LLC; SLF IV/SBI DEVELOPMENT HOLDINGS, LLC; WILD WING RESIDENTIAL DEVELOPMENT, LLC; STRATFORD LAND MANAGER, L.P. D/B/A STRATFORD LAND; STRATFORD LAND FUND IV, L.P.; SB INVESTMENTS LLC; REALSTAR MANAGEMENT, LLC; GRAEME T. BLACK; H. GILFORD EDWARDS; FOUNDERS WILD WING, LLC; FOUNDERS GROUP INTERNATIONAL, LLC; DAN LIU; XIAN "NICK" DOU; RICK SCHULTZ; RICK TAYLOR AND THOMAS PLANKERS, DEFENDANTS. WILD WING PLANTATION PROPERTY OWNERS' ASSOCIATION, INC., NOMINAL DEFENDANT.	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT C/A NUMBER: 2017-CP-26-04187 **PLAINTIFFS REPLY MEMORANDUM IN RESPONSE TO DEFENDANTS' MEMORANDUMS IN OPPOSITION**

ELECTRONICALLY FILED - 2021 Apr 06 6:09 PM - HORRY - COMMON PLEAS - CASE#2017CP2604187

The Plaintiffs' submit this Reply Memorandum in Response to the Defendants' Memorandums in Opposition filed on March 19, 2021.

This reply will address the Plaintiffs' standing to sue, the inapplicability of the Business Judgment Rule, the Defendants' Obligations that arise out of contract and law, and the inapplicability of the Statute of Limitations.

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Standing and Derivative Capacity

The Defendants allege that the Plaintiffs do not have standing to sue because one of the named Defendants was not a member at the time of the 2011 Amendment. This argument ignores the complete language of Rule 23(b)(1) of the SCRCP, which states:

> In a derivative action brought by one or more shareholders or members to enforce the right of a corporation or an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, a complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law ...

First, Eisenhardt was a member of the POA at the time of the 2011 amendment. That she voted for the amendment does not disqualify her because, as her affidavit establishes, the Declarants, through their directors, misrepresented the effects of the Amendment and failed to disclose the effects of the Amendment. As for Dykes, he became a member of the POA by operation of law when he took title to his property at Wild Wing and was vested with standing to bring all of these claims.

The Business Judgment Rule Does Not Apply

The Defendants' actions preclude the use of the Business Judgement Rule. The Defendants argue that the Business Judgment Rule precludes Plaintiffs' claims in this case. In doing so, they argue cases which are inapplicable, specifically *Queen's Grant* and *AJG*, and misinterpret other cases, including *Goddard* and *Walbeck*. See *Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp.,* 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006), *AJG Holdings, LLC v. Dunn*, 392 S.C. 160, 708 S.E.2d 218 (Ct. App. 2011), aff'd, 410 S.C. 346, 764 S.E.2d 912 (2014), *Goddard v. Fairays Development General* Partnership, 310 S.C. 108, 426 S.E. 2d 828 (Ct. App. 1993), *Walbeck v. I'on,* 426 S.C. 494, 827 S.E.2d 348 (2019).

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No one is disputing the right of the Declarants to draft the Regime Documents they chose to draft. No one disputes the right of the Declarants to exercise complete control the POA for the last 14 years through their hand-selected directors and their controlling voting rights. No one even argues that they did not have the legal right to minimize their funding obligations to the POA through the Declarant Funding Alternative. The Declarants' rights to completely control the POA and to minimize their funding obligations, by shifting those obligations to the other members, is undisputed. At issue here, though, is that the Declarants cannot take advantage of improperly manipulated accounting to *further* limit their POA funding obligations beyond the extent of the express language of the Regime Documents. They also may not hide behind the Business Judgment Rule to use their controlling voting advantage and control of the POA directors and information, to impermissibly amend the Regime Documents to extend their Declarant Funding Alternative benefit beyond its original life expectancy (which, of course, they drafted into the Regime Documents). It is that conduct, that is actionable, and the Business Judgment Rule does not insulate them from liability for the consequences of those actions.

Walbeck is directly controlling. In that case the Court of Appeals expressly found that because of the legal, but completely unequal positions of declarants, who completely control a POA, and the POA's members, a fiduciary relationship exists between that declarant and the POA it controls. In assessing that circumstance, the Court of Appeals discussed the Business Judgment Rule and expressly held:

> Rather, we define Appellants' **fiduciary duty** arising from its retention of control over the HOA by the standards set forth in *Island Car Wash*:
>
> > [A]nyone acting in a fiduciary relationship shall not be permitted to make use of that relationship to benefit his own personal interests. ... [C]ourts of equity will scrutinize with the most zealous vigilance transactions between parties occupying confidential relations toward each other and particularly any transaction between

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> the parties by which the dominant party secures any profit or advantage at the expense of the person under his influence.

Walbeck v. I'on, 426 S.C. 494, 517 (citing *Island Car Wash v. Norris,* 292 S.C. at 599, 358 S.E.2d at 152).

The *Walbeck* Court did not say that courts should ensure, with "zealous vigilance," that the Business Judgment Rule is applied to those transactions. It also did not say that in transactions between fiduciary declarants and a POA, the court should ensure, with "zealous vigilance," that the five factors from *Queen's Grant* are satisfied. If that is all that was required, as the Defendants contend, there would have been no need for the Court of Appeals to address the issue in *Walbeck*.

To the contrary, as a result of *Walbeck,* this Court must independently scrutinize the accounting and the amendments in this case, with zealous vigilance, to ensure that the Defendants did not "make use of [their superior, fiduciary position] to benefit [their] own personal interests," which is precisely what happened at Wild Wing.

Defendant's Obligations Are Defined by Contract and Law and Whether the POA is "Fully Funded" is Irrelevant

a. The Regime Documents Alone Define the Declarant Funding Obligation:

In their arguments, Defendants attempt to move the goalposts with respect to the Declarant funding obligations. Those obligations are defined by the express terms of the Regime Documents which were drafted by the Declarants. Now, they argue that the Declarant funding obligations should be defined by other criteria and that the POA just does not need the money.

In sum, their arguments about funding are largely premised on the following statement which, in the context of this dispute, is irrelevant:

> *Despite the net zero budget, the POA has operated with a surplus of funds since 2014. In addition to this operating surplus:*
> - *Lot owner dues have stayed consistent from 2006 to date;*
> - *No special assessments have ever been levied from 2006 to date;*
> - *No POA bills have ever gone unpaid; and*
> - *The Reserve Fund of the POA is fully funded.*

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Wild Wing Plantation is a financially sound and well managed community.

See Def. Wild Wing's Memorandum in Opposition, March 19, 2021 at pg. 2.

The issue in this case is whether the Declarants funded the POA in conformance with their funding obligations, which are expressly set forth in the Regime Documents at Article VI Section 2a on Exhibit D of Plaintiffs' March 5, 2021 Memorandum. The funding obligation was either to fund on a per lot basis, like all the other owners, or to take advantage of the Declarant Funding Alternative which states as follows:

"***... the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made by the Association against Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves***.

Nowhere is the Declarant funding obligation dependent on or limited to whether *the dues stay consistent,* whether *special assessments are levied,* or whether the *bills are paid.* Had the Declarants wished to limit their obligations to ensuring that dues did not rise, that special assessments did not occur or ensuring that the bills were paid, they could have done that. They did not. The issue is whether the Declarants complied with the funding formula *they* drafted, which is included in the Regime Documents. The evidence in this case is that they did not.

b. Whether They Like It or Not, the Declarants Must Pay the Bad-Debt Shortfall

Defendants also argue that under Plaintiffs' theory, the Declarants would have to pay sums that the owners themselves did not pay (meaning bad debt). Exactly. If that argument

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is "perverse," as Defendants contend, it is based on the formula that the Declarants created and incorporated into the Regime Documents. Someone must make up the shortfall created by owners who do not honor their obligations. That shortfall is budgeted annually and is spread among all of the other lot owners. The Declarants did not want to shoulder the burden borne by the other lot owners, so they elected to fund via the Declarant Funding Alternative. Though it resulted in substantial savings to the Declarant, the Declarant Funding Alternative expressly requires them to pay the bad debt shortfall. If they did not want to shoulder that debt, the Declarants could have shared that obligation with the other property owners and paid on a per lot basis. As previously noted, the Declarant wants to have its cake and eat it too.

c. <u>The Contention that the POA is "Fully Funded" is Meaningless and Irrelevant</u>

The Defendants also continually assert that the POA was at all times "fully funded". That term has no basis in fact or context. See Def. Wild Wing's Memorandum in Opposition, March 19, 2021 at pg. 2. The Regime Documents do not have a provision which describes what it means for the POA to be "fully funded" and there is no other objective criteria offered by the Defendants to make that statement. The term "fully funded" is also irrelevant to this case. What they are actually saying is that *"the POA does not need the money"*.

Defendants argue that whether they have an obligation to pay the money under the Declarant Funding Alternative should be determined by whether or not the POA needs more money. Obviously, that is not the point. This is a case about the Defendants breach of express funding obligations, not whether the POA needs the money, which if given a moment's thought, is a ridiculous contention on its face. Who can be said not to need money they are owed?

If Party A has a contractual obligation to pay Party B a sum of money, and he fails to pay it, Party A cannot assert as a defense to Party B's claim that Party B already has enough and does

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not need the money. There is no Westlaw keynote reference for the defense of "The Plaintiff has all of the money he needs". The contractual obligation of Party A to pay money to Party B either exists or it does not and has been breached or not. It is irrelevant whether Party B has had to borrow money, whether Party B can pay his bills or whether Party B is already "fully funded," whatever that term may mean.

Here, the Declarants failed to pay the POA what the Declarants owed under the Declarant Funding Alternative. Their payment shortfall totals $891,241.00 (before interest) and there is no argument that should convince the court that the POA would not be better off if it had that money. Both Barry Dykes and Roy Strickland have offered testimony that establishes that failure to pay by the Declarant was a damage to the POA and materially impacted the financial condition of the POA. As a matter of Law, the POA has been damaged since it has not received the money it was owed.

Statute of Limitations

The Pre-Founders Defendants argue that the Statute of Limitations bars all claims, citing *Walbeck* in support. Setting aside the equitable tolling argument which has already been extensively briefed, the arguments of the Defendants fail for two reasons. First, the affidavits of Eisenhardt and Dykes establish that the Defendants did not disclose the basis of the Declarant funding, or other back-up financial data, until Barry Dykes requested it in 2014. As Dykes' affidavit makes clear, even when the disagreement over the Declarant funding was discovered by Dykes and raised, it was not until 2016 that he was told that the POA (under the complete control of the Declarants), would not even acknowledge the dispute until a lawsuit was filed. Dykes' affidavit states:

> 22. By early 2016, the Board of Directors and Declarant had retained a new accountant/auditor, Deborah Weir. Ms. Weir met with the Finance Committee (of which I

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was still a member) and the Board of Directors to review the draft audit for 2015. I reviewed the audit and noted that there was no footnote about the erroneous treatment of excluding bad debt that was used for the calculations of Declarant contributions. Since I had not gotten a response from my earlier meeting with the Board of Directors and Mr. Schultz, I asked Ms. Weir if there should at least be a footnote in the audit memorializing the dispute about the bad debt issue and the Declarant underfunding. She told me that she would not include such note unless a lawsuit was pending regarding the issue. At that point I asked the members of the Board of Directors who were present including Mr. Plankers, what the Board of Directors intended to do about the Declarants historic underfunding of the POA. Mr. Plankers, who at that time was the president of the Board of Directors, told me that the Board of Directors was not going to do anything to address our concerns or remedy the underfunding of the POA by the Declarants. At that point, I knew that I must act to protect my interests and those of the non-Declarant members of the POA.

See Aff. Barry Dykes, March 2, 2021.

Regarding the 2011 amendment, Eisenhardt's affidavit makes it clear that the Declarants and their agent directors misrepresented the basis for the 2011 amendment and failed to disclose the effects of the amendment on the POA. Her affidavit states:

10. I attended a meeting in 2011, when the Board of Directors proposed amending the Regime Documents to extend the Declarant Funding Alternative, which had previously expired on December 31, 2010. Again, at the time, my recollection is that there were less than 50 homes in Wild Wing. The proposal was to extend it until December 31, 2016. At that meeting the Declarant appointed Board of Directors representative, Graeme T. Black, explained to the few residents in attendance that the amendment was necessary for the financial health of the POA. He told us that if the proposed amendment did not pass, then *all* of the expenses of the POA would have to be paid by the few non-declarant property owners and that the Declarant would no longer fund any of the POA obligations.

11. Mr. Black did not explain to us how much the Declarant would pay if the amendment did not pass and the Declarant was forced to pay on the same basis as the other property owners, He did not explain to us that with the passage of the amendment, and an extension of the Declarant Funding Alternative, the Declarant would actually contribute much less, that year and thereafter, than if the Declarant paid on a per-lot basis as the other owners.

12. Based on those representations, which I now know to be false and incomplete, the property owners and the Declarant voted. I have not seen and do not know what the vote was among the non-declarant property owners, but it was immaterial. The Declarant did and still does control enough votes to carry any measure it chooses.

See Aff. Barbara Eisenhardt, March 2, 2021.

These Affidavits create at least a question of fact regarding when Eisenhardt and Dykes knew or should have known that the Declarants were underfunding the POA under the Declarants Funding Alternative and that the Declarants had advanced their own financial interests at the direct expense of the POA with the 2011 amendment.

Because it is a derivative action, Defendants must also establish the date that a potential representative of the POA, such as Eisenhardt, would have known that the POA would not have acted in its own interests, and thus required a derivative action in the first place. That has not been established at all.

Walbeck, while controlling on the issue of fiduciary obligations, is factually inapposite with respect to the statute of limitations. At issue in that case was a developer's failure to turn over common areas/assets, that the developer acknowledged belonged to the HOA. Rather than turning the assets over to the HOA when promised, the developer sold the assets to another party. The claims against the developer were not filed until six years after the assets were supposed to have been turned over to the HOA by the developer and were not, which the Court of Appeals held should have been known by the representatives.

A question of fact exists as to when the Plaintiffs should have known of the developer's failure to abide by their duties and obligations under the Regime Documents, and the developer's actions benefitting their own self-interests at the expense of the POA and its members. Because of that and the equitable tolling arguments previously raised, the Defendants' Motion for Summary Judgement as to the Statute of Limitations should fail.

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Conclusion

For the reasons herein and the reason illustrated in Plaintiffs' March 5, 2021 Memorandum, the Defendants' Motions for Summary Judgement should fail.

LYLES & ASSOCIATES, LLC

s/ Robert T. Lyles, Jr.
Robert T. Lyles, Jr., Esq. (SC Bar No. 10299)
Emily C. Sheets, Esq. (SC Bar No. 78768)
1037 Chuck Dawley Boulevard, Suite G100
Mount Pleasant, South Carolina 29466-4162
T: (843) 577-7730 | F: (843) 577-7172
rtl@lylesfirm.com | ecs@lylesfirm.com
ATTORNEYS FOR PLAINTIFFS

Mount Pleasant, South Carolina
April 6, 2021

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ELECTRONICALLY FILED - 2017 Jun 30 10:50 AM - HORRY - COMMON PLEAS - CASE#2017CP2604187

C. Barry Dykes
1423 Whooping Crane Drive
Conway, SC 29526
(843) 234-0013

January 23, 2017

Board of Directors
Wild Wing Property Owners Association
C/O Founders Wild Wing LLC
1000 Wild Wing Boulevard
Conway, SC 29526

RE: Wild Wing POA/Funding Shortfall

Dear Board Members:

I am hereby writing in my personal capacity as a member of the Wild Wing Property Owners Association ("POA").

As you know, a review of financial records of the POA clearly establishes that the developers, as declarants, failed to utilize generally accepted accounting procedures (GAAP) in calculating the difference between income and expenses of the POA for a number of years, which has resulted in a significant underfunding of the POA. The financial records of the POA establish that the amount of the underfunding totals $519,801 through 2015.

This issue has been raised to you, the relevant accounting has been provided, and you informed me verbally that a decision has been made by the Board not to pursue an action against the declarant based upon the discovery of this erroneous accounting practice. Given the amount of money at issue, I disagree with the decision not to pursue recovery of the funds. I am also concerned that the Board's actions have been dictated by a conflict of interest between the Board, the prior developer and the current developer, both developers having declarant rights and responsibilities under the terms of Wild Wing's governing documents.

I hereby urge the Board to reconsider its decision not to pursue recovery of these funds. If the Board does not, I will have no choice but to file suit myself, on behalf of the Board, pursuant to Rule 23, *South Carolina Rules of Civil Procedure*, and will seek all legal remedies available.

Please let me have your response, in writing, no later than February 6, 2017.

Sincerely,

C. Barry Dykes

CC: Paul Skirchak, Community Association Manager,
Waccamaw Management, P.O. Box 51558, Myrtle Beach, SC 29579

Exhibit A

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LYLES & ASSOCIATES, LLC
ATTORNEYS AT LAW
www.lylesfirm.com

Robert T. Lyles, Jr.
Member

Reply to: Main Office
E-mail: rtl@lylesfirm.com

May 25, 2021

The Honorable R. Markley Dennis, Jr.
Active/Retired Circuit Court Judge
300 B California Avenue
Berkeley County Courthouse
Moncks Corner, SC 29461-1800
MDennisLC@sccourts.org
Law Clerk: Alexandra Carlson

Re: *C. Barry Dykes, et al. vs. Wild Wing Company, LLC, et al.*
Case Number: 2017-CP-26-04187

Dear Judge Dennis:

On May 4, 2021, you heard arguments relating to numerous cross-motions for summary judgment filed by all parties to the case. At the end of the arguments, you denied all of my clients' motions for summary judgment and indicated that you are granting all of the Defendants' motions for summary judgment. Last week, counsel for the Defendants sent proposed orders and you allowed me this opportunity to respond, which I appreciate. This letter is my response to your ruling and the proposed orders.

As previously noted, all of the motions, memoranda and accompanying exhibits, in support of and in opposition to all motions, are a part of the record. I know and appreciate that you carefully read all of the submissions. For that reason, I will not cite to the record in this letter.

Briefly, the motions before you were ones for summary judgment. You know the standard for that better than I, but for completeness, "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC v. Cnty. of Richland,* 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). Further, "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-South Management Co., Inc.*,

381 S.C. 326, 331, 673 S.E.2d 801, 803 (S.Ct. 2009). Finally, "Since it is a drastic remedy, summary judgment should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Baughman v. AT & T*, 306 S.C. 101, 410 S.E.2d 537 (1991).

To be clear, I object to all of the proposed orders submitted by my defense counsel colleagues, including the factual basis that they each assert and the law cited by them all. As set forth below, ample evidence has been submitted (more than the scintilla of evidence required by *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 331, 673 S.E.2d 801, 803 (S.Ct. 2009)) to support the claims filed by my clients against all of the Defendants on all remaining causes of action. For that reason, I ask that you reconsider your decision, pursuant to Rule 59, *SCRCP*, and deny all of the motions for summary judgment filed by the Defendants.

I acknowledge that this is a non-jury matter, and that you are the trier of fact, but at this stage, the summary judgment standard still applies. Given the gravity of the harm done to the POA in this case, I ask that you have a trial at which you can hear all of the testimony and see all of the evidence before you consider and weigh it and make a decision on the merits. Doing this not only comports with the law, it also gives all parties a complete record of the evidence and testimony to the extent they wish to file an appeal.

While trying to be brief, I have set forth below some additional facts which must be accepted at this stage of the case, when the evidence is taken in the light most favorable to my clients:

1. The Declarants completely controlled the POA with respect to all of the actions at issue in this case:

    a. Full Declarant Control of the POA.

        i. The Declarants for Wild Wing, from 2006 until 2015, were a series of shell entities controlled by a group of developers from Myrtle Beach along with entities related to Stratford Land, their business partner after 2010;

        ii. Those Declarants controlled the POA through controlling voting rights and an appointed Board of Directors, some of whom were the developers themselves (Ralph Teal, Edward Benton, and Gilford Edwards) and one of whom (Graeme Black) was an employee of a management company (Sunstar) with long-standing business ties to the developers. Others (Rick Shultz, Tom Plankers and Rick Taylor) were appointed by and acted on behalf of, Founders Group.

2. The first three Declarants were intentionally left insolvent after their assets were siphoned off by the Defendants in this case:

    a. No consideration was given to the first two Declarants, Wild Wing Company, LLC and SLF IV/SBI Wild Wing, LLC in exchange for their assets, including the declarant rights, they were left insolvent;

b. Upon the sale of its assets to Founders Group in 2015, the assets of the final pre-Founders Declarant, Wild Wing Residential, LLC, which had a total value of $11,000,000, were siphoned off by the "JV" and related entities who are parties to the action[1];

c. The effort to leave Wild Wing Residential and the other two pre-Founders Declarants insolvent was intentional.

3. The POA was underfunded because the Declarants failed to fund in accordance with the requirements of the Regime Documents:

i. Since 2007, the Declarants failed to properly fund the POA pursuant to the terms of the Declarant Funding Alternative;

ii. That failure resulted in an underfunding of the POA in the total amount of $891,241.00 since 2007;

iii. That underfunding directly benefitted the Declarants, at the expense of the POA;

iv. No effort was made by any member of the Board of Directors to enforce the Declarant funding obligations;

v. The underfunding was brought to the attention of the Board of Directors by Barry Dykes in 2014, 2015, 2016 and 2017;

vi. The Board of Directors affirmatively refused to pursue recovery of the Declarant underfunding shortfall from any of the Declarants;

vii. This suit was commenced only after the Board of Directors and the Declarant failed to address the damages caused to the POA;

viii. The Board of Directors allowed the underfunding to continue after suit was filed and through today.

b. Underfunding from the 2011 Amendment.

i. In 2011, the Board of Directors, acting on behalf of the Declarant, Wild Wing Residential, amended the Regime Documents to extend the Declarant Funding Alternative, which had already expired;

[1] See Elliott Davis Subpoena Response attached as Exhibit A.

ii. The amendment retroactively extended the Declarant Funding Alternative from December 31, 2010, until December 31, 2016;

iii. The POA received no benefit from that amendment. Instead, at the expense of the POA, the Declarant was allowed to continue to utilize the Declarant Funding Alternative (which is failed to comply with) rather than paying on a per lot basis which would have required a significantly greater Declarant contribution;

iv. The extension of the Declarant Funding Alternative right made Wild Wing Residential more valuable to a potential purchaser for the developers;

v. In pursuit of that amendment, the Board of Directors (through Graeme Black) misrepresented the effect of the amendment to the members of the POA and failed to disclose the financial ramifications of the amendment;

vi. The consent of the membership was perfunctory because the Declarant had the votes necessary to pass the amendment;

vii. No evidence of the vote total was presented to the Court;

viii. The effect of the 2011 amendment was that Wild Wing Residential underfunded the POA by the sum of $1,138,604, without interest, from 2011 until 2015.

c. Underfunding from the 2016 Amendment.

i. Having bought the Declarant rights and the unsold lots from Wild Wing Residential, in 2015 Founders was advised that the Declarant Funding Alternative was set to expire;

ii. That expiration meant that Founders was going to be required to pay on a per-lot basis, which would have been a significantly higher Declarant contribution;

iii. To avoid that higher funding obligation, Founders again amended the Regime Documents to extend the Declarant Funding Alternative a second time, to December 31, 2019;

iv. Again, there was no benefit to the POA for that amendment and financial benefit to Founders was paid for entirely by the POA;

v. The shortfall in funding resulting from the 2016 Amendment totals $1,004,530, without interest, from 2016 until 2019.

d. All complained of actions are imputed to the Declarants.

i. The Declarants entirely controlled the operations of the POA through the Board of Directors and voting rights;

ii. The actions of the Board of Directors are imputed to the Declarants.

1. Some Board of Directors members were the developers, acting through shell declarants;

2. Some (e.g., Black) had deep long-standing business ties to those developers; and

3. All Board of Directors members were appointed by and served at the pleasure of the Board of Directors.

iii. Further proof that the actions of the Board of Directors were in effect for the benefit of the Declarant is that all of the actions at issue in this case involving the Board of Directors benefitted the Declarants at the expense of the POA.

e. All complained of actions were "self-dealing" by the Board of Directors and are not protected by the Business Judgment Rule:

i. Given that the actions and inactions of the Board of Directors in this case, without exception, benefitted the Declarants at the expense of the POA, an inference can be drawn that those Board of Directors were acting on behalf of the Declarants, not the POA or its members, and were effectively the result of "self-dealing."

f. The "Related Entity" defendants controlled the Declarants and, by extension, the Board of Directors, and profited from the actions of the Declarants and the Board of Directors;

g. Further, the "Related Entity Defendants" represented by the Bellamy Firm all plead that they have Declarant rights and should be bound by that pleading admission and be deemed to be Declarants for all purposes.

In the hearing, you remarked about the "success" of the Wild Wing "operation." That it was a successful operation is no doubt true, but only for the Declarants. To put the case as simply as possible, at this point in time it must be taken as true that the POA has been damaged by underfunding that occurred over a period of 15 years. Depending on how it is calculated, the underfunding totals between $891,241.00 and $2,293,077 (without interest) according to Barry Dykes and our CPA expert, Roy Strickland. For purposes of the motions, it must be also be accepted as true that the those damages directly and proximately resulting from the actions of the

Declarants and the Boards of Directors. Further, it must be accepted as true that the money that should have been paid by the Declarants to the POA, but was not, was instead kept by the Declarants, which, at all times relevant to this action, had a fiduciary obligation to the POA and its members.

To sign the orders submitted by the Defendants would mean that, notwithstanding the above facts, as a matter of law the POA has no right to pursue claims for the recovery of any of those damages against any members of the Board of Directors, who not only allowed the damages to occur but facilitated the actions of the Declarants that caused the damages. Signing the orders would also mean that the POA has no claims, as a matter of law, against any of the Declarants who benefitted, on a dollar-for-dollar basis, from the harm caused to the POA, even as they owed fiduciary obligations to the POA. That result is not only not supported by the law, it is grossly unfair.

With respect to the Declarant Funding Alternative and the accounting issue, the proposed orders effectively disregard the plain language of the Regime Documents regarding the Declarant funding obligation, effectively re-writing that funding obligation.

With respect to the 2011 and 2016 amendments, the proposed orders require you to disregard your obligations under *Walback* to ensure, with "zealous vigilance," that the Defendants in this case did not "make use of [their superior, fiduciary position] to benefit [their] own personal interests."

With respect to the claims against the BOD, the proposed orders require you to disregard the evidence that they were "self-dealing," through their action and inaction, on behalf of the Declarants, at the expense of the POA, and insulate them from liability via the Business Judgment Rule.

With respect to the non-Declarant related entities, the proposed orders would have you rule, as a matter of law, that they have no liability even though 1) they were formed and controlled by the same developers and development entities; 2) which siphoned off the assets of the Declarants, including when they received the proceeds of the sale to Founders which totaled $11,000,000; 3) leaving the pre-Founders Declarants insolvent. Finally, the proposed orders ask you to disregard the fact that all of those related non-Declarant entities have pled that they have Declarant rights, for purposes of the spurious counterclaim they filed against Mr. Dykes and Mrs. Eisenhardt (their motion for summary judgment on that cause of action has been denied), meaning those non-Declarant entities are allowed to pursue claims against my clients as Declarants but cannot be held liable for the actions of the Declarants.

In summary, the orders proposed by the Defendants preclude any claim by the POA to recover a significant loss from those who actively participated in the conduct that caused the loss, as a matter of law. The orders allow Declarants, with fiduciary obligations to the POA, to profit at the expense of the POA. The orders also shield members of the Boards of Directors from liability when their actions and inactions advanced the interests of the Declarants at the expense of the POA. Finally, the orders shield related entities and people from liability who not only controlled the Declarants, and by extension the Board of Directors and the POA, but who also

profited from that control and siphoned off the assets of the Declarants. To sign the orders, and dismiss the claims of the POA without a trial would be a miscarriage of justice.

Respectfully submitted,

LYLES & ASSOCIATES, LLC

Robert T. Lyles, Jr.

RTL/cw
Enclosure (Exhibit A)

EXHIBIT A

SLF IV/SBI Wild Wing, LLC
Sale of Remaining Assets
April 14, 2015

		SLF IV/SBI Wild Wing, LLC				Wild Wing Residential Dev., LLC
	Total	**Inventory**	**Equipment**	**Golf Course**	**Raw Land**	**Developed lots**
Sales price	19,000,000.00	82,393.07				
Closing costs:						
Commissions	(419,100.00)					
Deed Stamps	(70,300.00)					
Escrow holdback	(250,000.00)					
Other	(15,000.00)					
Total	(754,400.00)	-				
Net sales price	18,245,600.00	82,393.07	219,275.00	4,280,725.00	2,745,600.00	11,000,000.00
Basis:						
Inventory	82,393.07	82,393.07	-	-	-	-
Equipment	65,864.00	-	65,864.00	-	-	-
Less: A/D	(45,189.67)	-	(45,189.67)	-	-	-
Building	550,000.00	-	-	550,000.00	-	-
Less: A/D	(55,452.36)	-	-	(55,452.36)	-	-
Golf course land	2,621,691.00	-	-	2,621,691.00	-	-
Raw land	266,954.00	-	-	-	266,954.00	-
Development land	5,036,300.00	-	-	-	-	5,036,300.00
CIP	2,958,664.89	-	-	-	-	2,958,664.89
Escrow from closing	53,080.59	-	-	-	-	53,080.59
Estimated add'l CIP	922,875.00	-	-	-	-	922,875.00
REO lots	391,499.00	-	-	-	-	391,499.00
Basis in asset	12,848,679.52	82,393.07	20,674.33	3,116,238.64	266,954.00	9,362,419.48
Gain (loss) on sale	5,396,920.48	-	198,600.67	1,164,486.36	2,478,646.00	1,637,580.52
Tax rate			0.20	0.20	0.20	0.40
Estimated taxes	1,423,378.81		39,720.13	232,897.27	495,729.20	655,032.21

SLF IV/SBI Wild Wing, LLC
AJE to record sale
April 14, 2015

Wild Wing Residential Development, LLC

10040	Bellamy Escrow - Net proceeds	(53,080.59)
11000	CIP - Construction in Prog	(2,958,664.89)
12050	Land	(5,427,799.00)
14100	WW Model Homes	(30,481.87)
21000	Estimated CIP costs	(922,875.00)
40000	Residential lot sales	(11,000,000.00)
50002	COS-Relief of inventory	3,934,620.48
50003	COS-Relief of land	5,427,799.00
60400	Sales & Marketing costs	30,481.87
20150	Due to JV	11,000,000.00

(to record sale of remaining lots)

SLF IV/SBI Wild Wing LLC

10050	Inventory-Pro Shop	(40,209.20)
10060	Inventory-F&B	(14,258.68)
10070	Inventory-Golf Maintenance	(23,090.79)
10075	Inventory-Fuel	(4,834.40)
12100	Furniture & Fixtures	(65,864.00)
12101	Acc Depr - Furn & Fixt	45,189.67
12400	Other depreciable property	(550,000.00)
12401	Acc Depr - Other deprec prop	55,452.36
11500.1	Prepaid ins - worker's comp	(17,153.44)
11500.2	Prepaid ins - property	(5,080.13)
11500.3	Prepaid ins - auto	(717.80)
11500.4	Prepaid ins - umbrella	(2,146.80)
11500.5	Prepaid ins - commercial	(5,192.60)
12050.1	Land: Golf Course	(2,621,691.00)
12050	Land	(266,954.00)
20450	Surety bond - Santee Cooper	20,000.00
80235	Gain/loss on sale of assets	(3,841,733.03)
20150.1	Due to JV #1	7,327,993.07
8075	General & Admin insurance	30,290.77
5175.1	Electric - Club House	(20,000.00)

(to record sale of golf course and remaining land)

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Judge of the South Carolina Business Court

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Case No. 2017-CP-26-04187

C. Barry Dykes and Barbara Eisenhardt, Individually and Derivatively On Behalf Of The Wild Wing Plantation Property Owners' Association, Inc.,.....Appellants,

v.

Wild Wing Company, LLC; Sunstar, LLC; Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development Holdings, LLC; Wild Wing Residential Development, LLC; Stratford Land Manager, L.P. d/b/a Stratford Land; Stratford Land Fund IV, L.P.; SB Investments LLC; Realstar Management, LLC; Graeme T. Black; H. Gilford Edwards; Founders Wild Wing, LLC; Founders Group International, LLC; Dan Liu; Xian "Nick" Dou; Rick Schultz; Rick Taylor And Thomas Plankers, ...Respondents,

Wild Wing Plantation Owners' Association, Inc.,.....Nominal Defendant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not other materials.

July 6, 2022

s/Robert T. Lyles, Jr.

Robert T. Lyles, Jr. (SC Bar # 10299)
Lyles & Associates, LLC
1037 Chuck Dawley Blvd., Suite G-100
Mt. Pleasant, SC 29464
843.577.7730
rtl@lylesfirm.com
Attorneys for Appellants