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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA**
**IN THE SUPREME COURT**

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Appeal from Dorchester County
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

---

Unpublished Opinion No. 2016-UP-519 (S.C. Ct. App. filed Dec. 21, 2016)

---

Live Oak Village Homeowners Association, Inc.; Jennifer McFarland; Carlton Holcombe; and Ute Holcombe, — Plaintiffs,

Of whom Live Oak Village Homeowners Association, Inc.; Jennifer McFarland; and Carlton Holcombe are — Petitioners,

v.

Thomas Morris; David Hannemann; Sofia Mazell; and Michael Mazell, — Respondents.

Sofia Mazell and Michael Mazell, — Third-Party Plaintiffs,

v.

William McFarland, — Third-Party Defendant.

---

**APPENDIX VOLUME 1**

---

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**THE STATE OF SOUTH CAROLINA**
**IN THE COURT OF APPEALS**

---

Appeal from Dorchester County
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

---

Appellate Case No. 2015-000599
Circuit Court Case No. 2012-CP-18-2583

---

Live Oak Village Homeowners Association, Inc.; Jennifer McFarland; Carlton Holcombe and Ute Holcombe,

Plaintiffs,

Of whom Live Oak Village Homeowners Association, Inc.; Jennifer McFarland and Carlton Holcombe are

Appellants,

v.

Thomas Morris; David Hannemann; Sofia Mazell and Michael Mazell,

Respondents.

Sofia Mazell and Michael Mazell,

Third-Party Plaintiffs,

v.

William McFarland,

Third-Party Defendant.

---

# RECORD ON APPEAL

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SC Court of Appeals

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1802583

CERTIFIED COPY
2015 MAR -3 PM 3:41
CLERK OF COURT
DORCHESTER COUNTY

| PLAINTIFF(S) | | DEFENDANT(S) | |
|---|---|---|---|
| Live Oak Village Homeowners Association | Jennifer McFarland | Thomas Morris | David Hannemann |
| Carlton Holcombe | Ute Holcombe | Sofia Mazell | Michael Mazell |

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

**ORDER INFORMATION**

**This order** ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

**INFORMATION FOR THE JUDGMENT INDEX**

**Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
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If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

| Diane S. Goodstein | 2112 | 3/2/2015 |
|---|---|---|
| **Circuit Court Judge** | **Judge Code** | **Date** |

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SCCA SCRCP Form 4C (Revised 3/2013)

## For Clerk of Court Office Use Only

This judgment was entered on 3/3/2015, and a copy mailed first class or placed in the appropriate attorney's box on 3/3/2015, to attorneys of record or to parties (when appearing pro se) as follows:

Peter Brandt Shelbourne 131 E. Richardson Ave. Summerville, SC 29483
Jason Alan Daigle 25 Calhoun Street Suite 400 Charleston, SC 29401

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Morgan S. Templeton/William ("Trey") Wharton Watkins Jr./ Katherine Anne Stanton PO Box 1200 Charleston, SC 29402

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl P. Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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| | |
|---|---|
| STATE SOUTH CAROLINA<br><br>COUNTY OF DORCHESER<br><br>LIVE OAK VILLAGE HOA, INC., et al.,<br><br>Plaintiffs,<br><br>vs.<br><br>THOMAS MORRIS, et al.,<br><br>Defendants.<br><br>THOMAS MORRIS and DAVID HANNEMANN,<br><br>Third Party Plaintiffs,<br><br>vs.<br><br>WILLIAM McFARLAND,<br><br>Third Party Defendant. | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br>CASE NO.: 12-CP-18-2583<br><br>**ORDER GRANTING MAZELL MOTION FOR PARTIAL SUMMARY JUDGMENT** |

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CLERK OF COURT
DORCHESTER COUNTY

Co-defendants Michael and Sofia Mazell ("Mazell") filed a motion for summary judgment to dismiss the claims brought in this action in the name of the plaintiff Live Oak Village HOA, Inc. (the "HOA") on the basis that there was no prior meeting and majority vote of the members of the Board of Directors for the HOA to have filed claims in the name of the HOA against Mazell in accordance with the HOA's Bylaws. Mazell further alleged that prior unanimous written consent of all members of the Board of Directors for the HOA to have filed claims against Mazell by the HOA was not otherwise obtained or given.

On November 19, 2014, a hearing on Mazell's motion for summary judgment was held before this Court. Defendants Mazell appeared and were represented by William

B. Jung, Esq. of Mount Pleasant, South Carolina. Plaintiffs appeared and were represented by P. Brandt Shelbourne, Esq. of Summerville, South Carolina. For the following reasons, Mazell's motion for partial summary judgment is hereby GRANTED.

In pertinent part, the By-laws for the HOA do empower the HOA to bring legal actions against members of the Association for violations of HOA By-laws, covenants and restrictions. Live Oak Village Bylaws, page 5, par. 6(A)(6). However, to authorize any such action by and on behalf of the HOA, the Bylaws provide for two alternative means. One requires a decision by a majority of BOD Members at a BOD Meeting: "An act or decision done or made a majority of the number of directors present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board." Live Oak Village Bylaws, page 4, par. 5(C). The second means by which action by the HOA may be undertaken is following to advance written approval of all members of the Board of Directors: "The directors shall have the right to take any action in the absence of a meeting of the directors which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors." Live Oak Village Bylaws, page 4, par. 4(E).

At the hearing on this motion, counsel for the plaintiffs conceded that prior unanimous written consent of all members of the Board of Directors for the HOA to have instituted claims against Mazell did not occur. Counsel further conceded that a majority of members of the HOA Board of Directors did not vote at a board meeting to institute claims in the name of the HOA against Mazell.

Under Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that moving party is entitled to a judgment as a matter of law." *Id.* Given that there is no dispute over the fact that the plaintiffs' filing of claims in the name of the HOA against Mazell was not properly made in accordance with the procedures set forth in the governing Bylaws, the HOA was not empowered or authorized to have filed any claims in this action against anyone. In effect, the individual plaintiffs have commandeered the HOA as a co-plaintiff in this action without having requisite prior proper authorization from the Board of Directors. Accordingly, the plaintiffs' filing of claims in the name of the HOA is null and void, and Mazell's motion to dismiss said claims is hereby GRANTED.

**AND IT IS SO ORDERED:**

Dated: December ~~2014~~ March 2, 2015

Hon. Diane S. Goodstein
Judge for the First Judicial Circuit

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SC Court of Appeals
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

**JUDGMENT IN A CIVIL CASE**
**CASE NUMBER 2012CP1802583**

| | | | |
|---|---|---|---|
| Live Oak Village Homeowners Association | Jennifer McFadden | Sofia Mazell | David Hannemann |
| Carlton Holcombe | Ute Holcombe | | Michael Mazell |

PLAINTIFF(S) DEFENDANT(S)

Submitted by: Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

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☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court: _____

**ORDER INFORMATION**

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Diane S. Goodstein — 2112 — 3/13/2015
**Circuit Court Judge** — **Judge Code** — **Date**

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## For Clerk of Court Office Use Only

This judgment was entered on **3/13/2015**, and a copy mailed first class or placed in the appropriate attorney's box on **3/13/2015**, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE DEFENDANT(S)

*A filed copy of attached order was also emailed to all counsel on 3/13/2015

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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| | | |
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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER | ) | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br>C.A. NO.: 2012-CP-18-2583 |
| LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC.; JENNIFER McFARLAND; CARLTON HOLCOMBE and UTE HOLCOMBE,<br><br>Plaintiffs,<br><br>-versus-<br><br>THOMAS MORRIS; DAVID HANNEMANN; SOFIA MAZELL and MICHAEL MAZELL,<br><br>Defendants. | ) | **ORDER GRANTING, IN PART, MORRIS' AND HANNEMANN'S AMENDED MOTION FOR SUMMARY JUDGMENT** |
| SOFIA MAZELL and MICHAEL MAZELL,<br><br>Third-Party Plaintiffs<br><br>-versus-<br><br>WILLIAM McFARLAND,<br><br>Third-Party Defendant | ) | |

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CLERK OF COURT
DORCHESTER COUNTY

On January 29, 2015, Defendants Thomas Morris and David Hannemann (collectively referred to as "Defendants") came before the Court on their Amended Motion for Summary Judgment as to all of the Plaintiffs' claims pursuant to South Carolina Rules of Civil Procedure Rule 56. After considering oral arguments and written briefs, the Court grants Defendants' Amended Motion for Summary Judgment in part based on the following findings:

1. Ute Holcombe lacks injuries and damages to support her claims.

2. The HOA failed to follow conditions precedent before filing suit and therefore lacks standing to bring this claim.

3. Plaintiffs Jennifer McFarland and Carlton Holcombe lack standing to bring their claims pursuant to the Uniform Declaratory Judgments Act.

## BACKGROUND AND RELEVANT FACTS

This action arises out of disputes between homeowners of the Live Oak Village subdivision located in Summerville, South Carolina. The common areas, which include the entrance, cul-de-sac, and two driveway easements, are maintained and owned by the Live Oak Village Homeowners Association, Inc. ("HOA"). The documents governing the HOA and its actions include: the Declaration of Covenants and Restrictions for Live Oak Village, Summerville, South Carolina, which incorporates the By-Laws of Live Oak Village Homeowners Association, Inc., and the Amendments to the Declaration of Covenants And Restrictions for Live Oak Village, Summerville, South Carolina.

The HOA is governed by the Board of Directors ("BOD"), which is comprised of three, elected directors. A majority of the number of directors, or two directors, constitutes a "quorum." Any action taken by the BOD requires a majority vote, or a vote of at least two directors, at a meeting in which a quorum is present. The BOD may take action without a meeting; however, such actions require written approval of all three BOD directors.

The HOA is responsible for "tak[ing] any and all actions necessary to enforce all covenants and restrictions affecting the Subdivision and to perform any of the functions or services delegated to the [HOA] in any covenants or restrictions applicable to the Subdivision." In order to bring suit against any party, the By-laws of the Live Oak Village Homeowners Association requires that a majority vote, or the vote of two (2) of the three (3) directors, to bring

suit. The By-laws create a condition precedent before any act is an official or authorized act of the HOA.

William McFarland, purportedly on behalf of the HOA, and three individual homeowners, Jennifer McFarland, Carlton Holcombe, and Ute Holcombe, brought this action against the Defendants for a declaratory judgment and on allegations of conspiracy. Although this suit was brought by the HOA, neither the HOA nor the BOD followed the By-laws and voted to bring suit. Further, Plaintiffs have not produced any evidence that the three BOD directors gave written approval outside the context of a meeting to bring this suit.

In their declaratory judgment claim, the Plaintiffs seek to enjoin and prohibit "Defendants Thomas Morris and David Hannemann from continuing to act outside their scope of authority" as board members. The Plaintiffs claim that they "will suffer irreparable damage to their ability to reside at their property" if the Defendants are not enjoined. Outside of damages associated with their ability to reside at their property, Plaintiffs claimed no other injury or damages under their declaratory judgment claim. All three individual Plaintiffs admitted that they still have full and uninterrupted access to the common elements and to their property. Further, the individual Plaintiffs testified they all still reside in their Live Oak Village residences.

## SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." Etheredge v. Richland School Dist. One, 534 S.E.2d 275, 277 (S.C. 2000). "In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party." Id. "When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be

granted." Singleton v. Sherer, 659 S.E.2d 196, 202 (S.C. Ct. App. 2008). "The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Richardson v. The State Record Co., Inc., 499 S.E.2d 824-25 (S.C. Ct. App. 1998). "

## LAW AND ANALYSIS

1. Ute Holcombe lack damages to support her claims.

In her deposition, Mrs. Holcombe testified that she had no independent knowledge regarding either of her claims and that she was not seeking any independent injury or damages related to her claims. As Mrs. Holcombe has no independent knowledge of the allegations regarding her claims and is not seeking or alleging any injury or damages related to her claims, the Court holds that Mrs. Holcombe's claims cannot succeed. ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 195-96, 669 S.E.2d 337, 339 (2008); Benedict Coll. v. Nat'l Credit Sys., Inc., 400 S.C. 538, 545, 735 S.E.2d 518, 521 (Ct. App. 2012). Therefore, the Court grants Defendants' Motion for Summary Judgment as to all of Ute Holcombe's claims and dismiss Ute Holcombe as a party Plaintiff.

2. The HOA failed to follow the requirements as set forth in the By-Laws and therefore, the HOA lacks standing to bring suit against Defendants.

"A condition precedent entails something that is essential to a right of action, as opposed to a condition subsequent, which is something relied upon to modify or defeat the action." Worley v. Yarborough Ford, Inc., 317 S.C. 206, 210, 452 S.E.2d 622, 624 (Ct.App.1994) (citing 4 S.C. JURIS. Actions § 25 (1991)). A right of action does not arise until such conditions precedents are met. Id.; see also Metal Serv. Corp. v. Indus. Elec. Co., 253 S.C. 507, 510, 171 S.E.2d 703, 704 (1970); Floyd v. St. Paul Fire & Marine Ins. Co., 285 S.C. 148, 149, 328 S.E.2d 132, 132 (Ct. App. 1985). The HOA failed to follow its own By-Laws and condition precedents

before instituting this suit. Any official action by the HOA requires a majority vote, or the vote of two (2) of the three (3) directors. (Ex. C §5(C)) Mr. McFarland, as the 30(b)(6) deponent for the HOA, testified that no such discussion or vote occurred prior to bringing suit. As no such vote occurred, the conditions precedent set out in the By-Laws were not met and the HOA's right of action did not arise. Therefore, the Court holds that the HOA lacked standing to bring this lawsuit and dismisses the HOA as a Plaintiff. Worley, at 210, 452 S.E.2d at 624.

3. **Jennifer McFarland and Carlton Holcombe lack standing to bring their declaratory judgment claim as they have not suffered an injury in fact and lack a justiciable controversy**

a. **Plaintiffs have not suffered and "injury in fact"**

The Supreme Court has provided a three-part test to establish constitutional standing:

> First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical,' " Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 195-96, 669 S.E.2d 337, 339 (2008) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130 (1992)). The Court finds that Plaintiffs Mrs. McFarland and Mr. Holcombe fail to satisfy the three part test for standing.

First, Mrs. McFarland and Mr. Holcombe claim that they "will suffer irreparable damage to their ability to reside at their property" unless the Court "enjoins and prohibits Defendants Thomas Morris and David Hannemann from continuing to act outside their scope of authority." In fact, both Mrs. McFarland and Mr. Holcombe testified that the only injury they were claiming related to the declaratory judgment action was their the ability to reside at their residences:

> Q. And as part of that cause of action, it says: The Plaintiffs will suffer irreparable damage to their ability to reside at their property. Is that the – is that the only injury that you are claiming in this case?
> A. With reference to Hannemann and Morris?
> Q. For the declaratory judgment action, yes ma'am.
> A. Yes I believe so.

J. McFarland dep. 25:6 – 15.

> Q. But my question to you is: Is there any other – the only injury that's been alleged is that the plaintiffs have suffered irreparable damage to their ability to reside at their property. Is there any other injury that you are claiming as a result of these actions?
> A. Not at this time.

C. Holcombe Dep. 44:7- 13. However, both Plaintiffs still have full and uninterrupted access to the common elements and to their property and continue to reside in their homes at Live Oak Village. Thus, the Court finds that Plaintiffs Mrs. McFarland and Mr. Holcombe have not suffered an "injury in fact" but instead allude to a conjectural or hypothetical injury.

As to the second requirement, Plaintiffs Mrs. McFarland and Mr. Holcombe failed to allege how Defendants' actions hinder Mrs. McFarland and Mr. Holcombe's ability to reside at their property. With no traceable or alleged connection between actions of the Defendants and the alleged injury, the Court finds that Plaintiffs Mrs. McFarland and Mr. Holcombe fail to meet the second element required for standing. ATC S., at 195-96, 669 S.E.2d at 339.

Lastly, a declaration by the Court regarding whether or not the Defendants are acting outside the scope of their authority will not change or redress Plaintiffs' ability to reside at their residence as they are all currently residing, unimpeded at their residence.

As Plaintiffs Mrs. McFarland and Mr. Holcombe fail to satisfy all three prongs of the test to establish standing, this Court finds that Mrs. McFarland and Mr. Holcombe have not suffered an injury in fact, so they lack standing to bring the declaratory judgment claim in their individual capacities. ATC S., at 195-96, 669 S.E.2d at 339.

**b. Plaintiffs lack a justiciable controversy**

"Before a court may render a declaratory judgment, an actual, justiciable controversy must exist. A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." Carolina Alliance for Fair Employment v. S. Carolina Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 488, 523 S.E.2d 795, 801 (Ct. App. 1999). "A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party. Graham v. State Farm Mut. Auto. Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing Power, at 153-54, 177 S.E.2d at 553). "An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the Uniform Declaratory Judgments Act." Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) (citing Power, at 154, 177 S.E.2d at 553).

A declaratory judgment action does not require financial damages; but it does require a justiciable controversy. Plaintiffs Mrs. McFarland and Mr. Holcombe claim that unless the Court "enjoins and prohibits [Defendants] from continuing to act outside their scope of authority," Plaintiffs "will suffer irreparable damage to their ability to reside at their property" Yet Plaintiffs Mrs. McFarland and Mr. Holcombe's access to their property has not been impeded and they both continue to reside at their residences. Plaintiffs Mrs. McFarland and Mr. Holcombe also fail to state how their rights have been impacted as they testified that their right to reside at their residences has not been hindered, threatened, or impeded. Thus, any declaration by the Court would only be advisory in nature and is beyond the intended purpose and scope of the Uniform Declaratory Judgments Act. Sunset Cay, at 423, 593 S.E.2d at 466. As such, the

Court finds no justiciable controversy exists, and grants Defendants' Motion as to Plaintiffs Mrs. McFarland and Carlton Holcombe's declaratory judgment claim.

THEREFORE, the Court finds that Ute Holcombe has neither suffered nor pled any injury or damages to support her claims and therefore she cannot maintain any of her claims. The Court grants summary judgment as to all of Ute Holcombe claims and she is dismissed as a party Plaintiff. The Court finds that the HOA failed to follow conditions precedent to bring any claims and as such lacked standing to bring this suit. The Court grants summary judgment as to all of the HOA claims and the HOA is dismissed as a party Plaintiff. Lastly, the Court finds that Jennifer McFarland and Carlton Holcombe lack standing to bring a declaratory judgment action, as they have not suffered an injury in fact and any declaration would only be advisory. The Court grants summary judgment for all of the declaratory judgment actions. As such, the only remaining claim against Mr. Morris and Mr. Hannemann is a claim for conspiracy asserted by Mrs. McFarland and Mr. Holcombe.

IT IS THEREFORE ORDERED that pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendants Thomas Morris and David Hannemann's Amended Motion for Summary Judgment is GRANTED in part.

Honorable Diane Schafer Goodstein
First Judicial Circuit

St. George, South Carolina
This 12 day of March, 2015

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

FILED-RECORDED
2015 MAR 13 AM 9:25
CHERYL GRANT
CLERK OF COURT
DORCHESTER COUNTY

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1802583

| | | | |
|---|---|---|---|
| Live Oak Village Homeowners Association | Jennifer McFarland | Thomas Morris | David Hannemann |
| Carlton Holcombe | Ute Holcombe | Sofia Mazell | Michael Mazell |

PLAINTIFF(S) | DEFENDANT(S)

Submitted by: | Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

**Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

| Diane S. Goodstein | 2112 | 3/13/2015 |
|---|---|---|
| **Circuit Court Judge** | **Judge Code** | **Date** |

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

## For Clerk of Court Office Use Only

This judgment was entered on **3/13/2015**, and a copy mailed first class or placed in the appropriate attorney's box on **3/13/2015**, to attorneys of record or to parties (when appearing pro se) as follows:

**Peter Brandt Shelbourne** 131 E. Richardson Ave. Summerville, SC 29483
**Jason Alan Daigle** 25 Calhoun Street Suite 400 Charleston, SC 29401

**William B. Jung** 1156 Bowman Rd. Ste. 200 Mt. Pleasant, SC 29464
**Lydia Pruitt Davidson/Lydia Pruitt Brooks/Leonard Krawcheck** 9 State Street Charleston, SC 29401
**Morgan S. Templeton/William ("Trey") Wharton Watkins Jr./Katherine Anne Stanton** PO Box 1200 Charleston, SC 29402

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*A filed copy of attached order was also emailed to all counsel on 3/13/2015

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER<br><br>LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC., JENNIFER MCFARLAND, CARLTON HOLCOMBE AND UTE HOLCOMBE<br><br>PLAINTIFFS<br><br>V.<br><br>THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL AND MICHAEL MAZELL<br><br>DEFENDANTS | IN THE COURT OF THE COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br>CASE NO: 2012-CP-18-2583<br><br>ORDER GRANTING SUMMARY JUDGMENT |
| THOMAS MORRIS AND DAVID HANNEMANN<br><br>THIRD PARTY PLAINTIFFS<br><br>V.<br><br>WILLIAM MCFARLAND<br><br>THIRD PARTY DEFENDANT | |

FILED-RECORDED
2015 MAR 13 AM 9:26
CHERYL D. COURT
CLERK OF COURT
DORCHESTER COUNTY

This matter is before the court on motion of Plaintiffs, Live Oak Village Homeowners Association, Inc., Jennifer McFarland, Carlton Holcombe, and Third-Party Defendant William McFarland (collectively referred to as the "Live Oak Parties") for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on Defendants'/Third-Party Plaintiffs', Thomas Morris and David Hannemann (collectively referred to as "Defendants"), counterclaims and third-party claims. After considering the written briefs and hearing oral arguments on January 29, 2015, the Court grants the Live Oak Parties' Motion for Summary Judgment on Defendants' counterclaims and third-party claims. This judgment is based on the following findings:

1. Live Oak Parties have provided an accounting current through the date of the oral

arguments;

2. Defendants lack standing to bring the conversion cause of action;

3. The Live Oak Parties have complied with any right of indemnification Defendants may have;

4. Defendants are unable to prove any damages related to any of their causes of action.

## Background

The parties to this action live in a seven home gated community in Summerville, South Carolina known as Live Oak Village. There were certain disputes between the parties as residents of the neighborhood and as officers and/or directors of the Live Oak Village Homeowners Association. These disputes lead to the Live Oak Parties, save William McFarland, filing a complaint against Defendants. Defendants subsequently filed counterclaims as well as third-party claims against William McFarland. Defendants' counterclaims and third-party claims set forth five causes of action: Breach of Fiduciary Duty, Negligence/Negligence *Per Se*, Conversion, Accounting, and Indemnification.

## Standard

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." SSI Medical Services, Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990). "In ruling on a motion for summary judgment, the evidence and the inferences which

can be drawn therefrom should be viewed in the light most favorable to the nonmoving party." Id.

"When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted." Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct.App.2004). "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." Bradley v. Doe, 374 S.C. 622, 649 S.E.2d 153 (Ct.App.2007). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct.App.2003). "The nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct.App.2005).

## Law and Analysis

### I. Accounting

During the course of this litigation the Live Oak Parties have provided an accounting to Defendants. The Live Oak Parties have agreed to continue to provide Defendants with an on-going accounting as new relevant documents may become available, and the Live Oak Parties are hereby ORDERED to do so.

There is no question of fact related to the Accounting cause of action. Any judgment or verdict for this cause of action will be duplicative to what the Live Oak Parties have already provided and have been ordered to continue to provide. Therefore, the Court grants the Live Oak Parties Motion for Summary Judgment on Defendants' Accounting cause of action.

Nothing in this order should be interpreted to bar Defendants from instituting another lawsuit against the Live Oak Parties' should future accountings indicate wrongdoing on the part of the Live Oak Parties.

## II. Indemnity

Defendants have claimed a right to indemnity based on the Bylaws of the Association and the South Carolina Nonprofit Corporations Act. S.C. Code Ann. §§ 33-31-101, *et seq.* (the "Act").

The Covenants and Restrictions of the Association only allow for indemnity to be awarded to the Developer or the Association itself. The By-laws of the Association only allow for indemnity to be awarded to the Declarant or the Association itself. Defendants are not developers or declarants. Therefore, Defendants are not entitled to indemnity under the Covenants and Restrictions or the By-laws.

The Act indicates that only the corporation itself, in this case Live Oak Village Homeowners Association, Inc., has the authority to indemnify. Therefore, Defendants are not entitled to indemnification under the Act as to Jennifer McFarland, Carlton Holcombe, Ute Holcombe, and/or William McFarland. Live Oak Village Homeowners Association, Inc. has already indemnified Defendants by purchasing liability insurance for its officers and directors using Association funds. Therefore, any duty the Association may have to indemnify Defendants has been met.

Based on the testimony of Defendants it is apparent that there is no evidence of damages related to their indemnification cause of action. Therefore, the Court grants the Live Oak Parties' Motion for Summary Judgment on Defendants' Accounting cause of action.

## III. Conversion of HOA Funds

Conversion is defined as the unauthorized assumption in the exercise of the right of

ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990). To establish the tort of conversion, the [Defendants] must establish either title to or right to the possession of the personal property. Crane v. Citicorp Nat'l Servs., Inc., 313 S.C. 70, 72, 437 S.E.2d 50, 52 (1993) (superseded by statute on other grounds).

Defendants have alleged that the Live Oak Parties have converted HOA funds for their own uses. Defendants are suing in their personal capacity for the conversion of funds that do not belong to them. Defendants cannot establish a right of ownership over the funds or a right to possession of the HOA funds as required to bring an action for conversion.

Based on the testimony of Defendants it is apparent that they can present no evidence that the Live Oak Parties converted any funds to their own uses. It is also apparent from their testimony that Defendants can present no evidence of damages related to their conversion cause of action. Therefore, the Court grants the Live Oak Parties' Motion for Summary Judgment on Defendants' Conversion cause of action.

**IV. Breach of Fiduciary Duty**

To establish a claim for breach of fiduciary duty, the [Defendants] must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the [Defendants] by the [Plaintiffs], and (3) damages proximately resulting from the wrongful conduct of the [Plaintiffs].

It is apparent from Defendants' testimony that the damages being alleged are speculative and conjectural in nature. It is also apparent from Defendants' testimony that Defendants have no evidence of concrete or particularized damages related to their Breach of Fiduciary Duty cause of action. Additionally, Defendant Morris can present no evidence that the Live Oak Parties breached any duty. Therefore, the Court grants the Live Oak Parties' Motion for Summary Judgment on Defendants' Breach of Fiduciary Duty cause of action.

## V. Negligence and Negligence *Per Se*

"In a negligence action, a [Defendant] must show the (1) [Plaintiffs] owe a duty of care to the [Defendants], (2) [Plaintiffs] breached the duty by a negligent act or omission, (3) [Plaintiffs'] breach was the actual and proximate cause of the [Defendant's] injury, and (4) [Defendants] suffered an injury or damages." Sabb v. S.C. State Univ., 350 S.C. 416, 429, 567 S.E.2d 231, 237 (2002). "Liability encompasses all elements of a negligence claim, including damages proximately caused by the alleged negligence." Hinds v. Elms, 358 S.C. 581, 585, 595 S.E.2d 855, 857 (Ct.App.2004).

It is apparent from Defendants' testimony that Defendants have no evidence of concrete or particularized damages related to their Negligence and Negligence *Per Se* cause of action. Additionally, Defendant Morris can present no evidence that the Live Oak Parties breached any duty of care. Therefore, the Court grants the Live Oak Parties' Motion for Summary Judgment on Defendants' Negligence and Negligence *Per Se* cause of action.

THEREFORE, the Court finds that the Live Oak Plaintiffs have provided an accounting to Defendants. The Court grants Summary Judgment as to the Accounting cause of action and ORDERS the Live Oak Parties to continue to provide Defendants with an on-going accounting as new relevant documents become available.

The Court finds that Defendants may not seek indemnity against Jennifer McFarland, Carlton Holcombe, Ute Holcombe, and/or William McFarland. The Court finds that Live Oak Village Homeowners Association, Inc. has satisfied any indemnity obligation to it may have to Defendants by purchasing liability insurance for its officers and directors using Association funds. The Court finds that Defendants have no damages related to their Indemnity cause of action. The Court grants Summary Judgment as to the Indemnity cause of action.

The Court finds that Defendants may not bring a cause of action for the conversation of HOA funds in their individual capacity. The Court finds that there is no evidence that the Live Oak Parties converted any HOA funds. The Court finds that Defendants have no damages related to their Conversion Cause of Action. The Court grants Summary Judgment as to the Conversion cause of action.

The Court finds that Defendants have no damages related to their Breach of Fiduciary Duty Cause of Action. The Court finds that Defendant Morris has presented no evidence that the Live Oak Parties breached any fiduciary duty they may have had. The Court grants Summary Judgment as to the Breach of Fiduciary Duty cause of action.

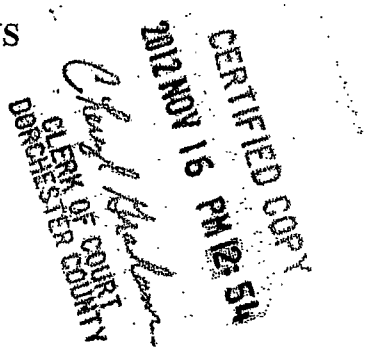
The Court finds that Defendants have no damages related to their Negligence and Negligence *Per Se* Cause of Action. The Court finds that Defendant Morris has presented no evidence that the Live Oak Parties breached any duty of care they may have had. The Court grants Summary Judgment as to the Negligence and Negligence *Per Se* cause of action.

IT IS THEREFORE ORDERED that pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Plaintiffs', Live Oak Village Homeowners Association, Inc., Jennifer McFarland, Carlton Holcombe, and Third-Party Defendant's William McFarland Motion for Summary Judgment is GRANTED. This order shall not limit the ability of these parties to bring a subsequent action if evidence presentments itself in the future.

Honorable Diane Schafer Goodstein
First Judicial Circuit

Dorchester, South Carolina
This 12 day of March, 2015

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FIRST JUDICIAL CIRCUIT |
| COUNTY OF DORCHESTER | ) | |
| | ) | CASE NO.: 2012-CP-18-2583 |
| LIVE OAK VILLAGE HOMEOWNERS' ASSOCIATION, INC., JENNIFER MCFARLAND, CARLTON HOLCOMBE, and UTE HOLCOMBE | ) | **SUMMONS** |
| Plaintiffs, | ) | |
| VS. | ) | |
| THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL, and MICHAEL MAZELL | ) | |
| Defendants. | ) | |




TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day or such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relied demanded in the complaint.

By:

P. Brandt Shelbourne, Esq. (SCB 15143)
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210

**ATTORNEY FOR PLAINTIFFS**

Summerville, South Carolina
November 13, 2012

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FIRST JUDICIAL CIRCUIT |
| COUNTY OF DORCHESTER | ) | |
| | ) | CASE NO.: 2012-CP-18-2583 |
| LIVE OAK VILLAGE HOMEOWNERS' ASSOCIATION, INC., JENNIFER MCFARLAND, CARLTON HOLCOMBE, and UTE HOLCOMBE | ) | **COMPLAINT** |
| Plaintiffs, | ) | **(Declaratory Judgment, Conspiracy, Slander, Defamation)** |
| VS. | ) | |
| THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL, and MICHAEL MAZELL | ) | |
| Defendants. | ) | |

TO DEFEDANTS, ABOVE-NAMED:

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CLERK OF COURT
DORCHESTER COUNTY

Plaintiffs Live Oak Village Homeowners' Association, Inc., Jennifer McFarland, Carlton Holcombe, and Ute Holcombe (hereinafter "Plaintiffs") hereby complain of Defendants Thomas Morris, David Hannemann, Sofia Mazell and Michael Mazell (hereinafter "Defendants") as follows:

1. Plaintiff Live Oak Village Homeowners' Association, Inc. is a corporation organized in accordance to existing laws in the state of South Carolina. At all times relevant to this lawsuit, it has been operating in Dorchester County

2. Plaintiffs Jennifer McFarland, Carlton Holcombe, and Ute Holcombe at all times relevant have resided in the Live Oak Village subdivision located in Dorchester County, South Carolina and are members of the Live Oak Village Homeowners' Association.

3. Individual Defendants at all times relevant have resided in the Live Oak Village subdivision located in Dorchester County, South Carolina and are members of the Live Oak Village Homeowners, Association.

**AS AND FOR A FIRST CAUSE OF ACTION**
**(Declaratory Judgment as to Defendants Thomas Morris and David Hannemann)**

4. Upon information and belief Defendants Thomas Morris and David Hannemann report to be officers of the Live Oak Village Homeowner's Association.

5. Upon information and belief Defendants Thomas Morris and David Hannemann have been acting outside the scope of their authority as members of the Board of Directors of Live Oak Village Homeowner's Association and should be prohibited from doing so.

6. Upon information and belief, Defendants Thomas Morris and David Hannemann have willfully operated and continue to willfully operate outside of the scope of their authority by taking action or failing to take action as required by the covenants and restrictions, including but not limited to the following acts:

A. voting to waive fines that applied to themselves;

B. failing to hold timely or properly noticed Home Owners Association or Board of Directors meetings;

C. allowing unauthorized persons to vote and participate in Board of Directors meetings;

D. voting on matters in which they have a personal financial interest;

E. voting in violation of South Carolina Code § 33-31-83;

F. failing to properly handle HOA funds;

G. failing to enforce covenants and restrictions in a uniform and unbiased manner;

H. violating the covenants and restrictions.

7. Said aforementioned acts and omissions are willful and intentional misconduct.

8. Unless this Court enjoins and prohibits Defendants Thomas Morris and David Hannemann from continuing to act outside their scope of authority, Plaintiffs will suffer irreparable damage to their ability to reside at their property and have no adequate remedy at law.

9. Plaintiffs are entitled to Declaratory Judgment declaring that Defendants Thomas Morris and David Hannemann are acting outside of the scope of their authority and injunctive relief prohibiting Defendants from taking further action and/or serving on the Board of Directors of the Live Oak Village Homeowner's Association.

**AS AND FOR A SECOND CAUSE OF ACTION**
**(Conspiracy as to all Defendants)**

10. Plaintiffs reallege and reincorporate each and every allegation above as if set out fully verbatim herein.

11. That at all times all Defendants have conspired against Plaintiffs for the purpose of injuring Plaintiffs.

12. As a direct and proximate result, Plaintiffs have incurred special damages including, but not limited to attorney's fees and costs in defending against Defendants' actions and loss of Homeowners' Association fees.

**AS AND FOR A THIRD CAUSE OF ACTION**
**(Slander and Defamation as to Defendants Sofia Mazell and Michael Mazell)**

13. Plaintiffs reallege and reincorporate each and every allegation above as if set out fully verbatim herein.

14. Upon information and belief Defendants Sofia Mazell and Michael Mazell have committed slander and defamation against Plaintiff Jennifer McFarland by alleging she is unchaste and having extra-marital relations; that she committed criminal acts by stealing her father's

business; that she is racist; and that she invades Defendants privacy by peering into their windows, all of which are untrue and amount to slander per se and defamation.

15. As a direct and proximate result of Defendants Sofia Mazell and Michael Mazell's slander, slander per se and defamation Plaintiff Jennifer McFarland has been damaged and suffered actual damages and is entitled to the same and to punitive damages in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiffs pray for:

(a) Declaratory Judgment against Defendants Thomas Morris and David Hannemann declaring that Defendants are acting outside of their scope of authority on the Live Oak Village Homeowner's Association Board of Directors;

(b) Injunctive Relief prohibiting Defendants Thomas Morris and David Hannemann from taking further action and/or serving on the Live Oak Village Homeowner's Association Board of Directors contrary to the express terms of the covenants and by-laws;

(c) Special damages incurred as a result of Defendants' conspiracy;

(d) Actual and punitive damages as allowed by law;

(e) Attorney's fees and costs in bringing this action; and

(f) Any such other and further relief this Court deems just and proper.

By: _____

P. Brandt Shelbourne, Esq. (SCB 15143)
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210

**ATTORNEY FOR PLAINTIFFS**

Summerville, South Carolina
November 13, 2012

STATE OF SOUTH CAROLINA )
) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER )
) CASE NO.: 2012-CP-18-2583
LIVE OAK VILLAGE HOMEOWNERS' ASSOCIATION, INC., JENNIFER MCFARLAND, CARLTON HOLCOMBE, and UTE HOLCOMBE )
Plaintiffs, )
VS. )
THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL, and MICHAEL MAZELL ) **AMENDED SUMMONS**
Defendants. ) **(Jury Trial Demanded)**
SOFIA MAZELL and MICHAEL MAZELL, )
Third Party Plaintiffs, )
VS. )
WILLIAM MCFARLAND, )
Third Party Defendant. )

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2014 OCT 31 PM 1:46
CLERK OF COURT
DORCHESTER COUNTY

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the amended complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day or such service, and if you fail to answer the amended complaint, judgment by default will be rendered against you for the relied demanded in the complaint.

By: _____

P. Brandt Shelbourne, Esq. (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
**ATTORNEY FOR PLAINTIFFS**

Summerville, South Carolina
October 15, 2014

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER<br><br>LIVE OAK VILLAGE HOMEOWNERS' ASSOCIATION, INC., JENNIFER MCFARLAND, CARLTON HOLCOMBE, and UTE HOLCOMBE<br>Plaintiffs,<br><br>VS.<br><br>THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL, and MICHAEL MAZELL<br>Defendants.<br><br>SOFIA MAZELL and MICHAEL MAZELL,<br>Third Party Plaintiffs,<br><br>VS.<br><br>WILLIAM MCFARLAND,<br>Third Party Defendant. | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br><br>CASE NO.: 2012-CP-18-2583<br><br>**AMENDED COMPLAINT**<br>**(Declaratory Judgment, Conspiracy, Slander, Defamation and Breach of Covenants and Restrictions)** |

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CLERK OF COURT
DORCHESTER COUNTY

TO DEFEDANTS, ABOVE-NAMED:

Plaintiffs Live Oak Village Homeowners' Association, Inc., Jennifer McFarland, Carlton Holcombe, and Ute Holcombe (hereinafter "Plaintiffs") hereby complain of Defendants Thomas Morris, David Hannemann, Sofia Mazell and Michael Mazell (hereinafter "Defendants") as follows:

1. Plaintiff Live Oak Village Homeowners' Association, Inc. is a corporation organized in accordance to existing laws in the state of South Carolina. At all times relevant to this lawsuit, it has been operating in Dorchester County

2. Plaintiffs Jennifer McFarland, Carlton Holcombe, and Ute Holcombe at all times relevant have resided in the Live Oak Village subdivision located in Dorchester County, South Carolina and are members of the Live Oak Village Homeowners' Association.

3. Individual Defendants at all times relevant have resided in the Live Oak Village subdivision located in Dorchester County, South Carolina and are members of the Live Oak Village Homeowners, Association.

**AS AND FOR A FIRST CAUSE OF ACTION**
**(Declaratory Judgment as to Defendants Thomas Morris and David Hannemann)**

4. Upon information and belief Defendants Thomas Morris and David Hannemann report to be officers of the Live Oak Village Homeowner's Association.

5. Upon information and belief Defendants Thomas Morris and David Hannemann have been acting outside the scope of their authority as members of the Board of Directors of Live Oak Village Homeowner's Association and should be prohibited from doing so.

6. Upon information and belief, Defendants Thomas Morris and David Hannemann have willfully operated and continue to willfully operate outside of the scope of their authority by taking action or failing to take action as required by the covenants and restrictions, including but not limited to the following acts:

A. voting to waive fines that applied to themselves;

B. failing to hold timely or properly noticed Home Owners Association or Board of Directors meetings;

C. allowing unauthorized persons to vote and participate in Board of Directors meetings;

D. voting on matters in which they have a personal financial interest;

E. voting in violation of South Carolina Code § 33-31-830;

F. failing to properly handle HOA funds;

G. failing to enforce covenants and restrictions in a uniform and unbiased manner;

H. violating the covenants and restrictions.

7. Said aforementioned acts and omissions are willful and intentional misconduct.

8. Unless this Court enjoins and prohibits Defendants Thomas Morris and David Hannemann from continuing to act outside their scope of authority, Plaintiffs will suffer irreparable damage to their ability to reside at their property and have no adequate remedy at law.

9. Plaintiffs are entitled to Declaratory Judgment declaring that Defendants Thomas Morris and David Hannemann are acting outside of the scope of their authority and injunctive relief prohibiting Defendants from taking further action and/or serving on the Board of Directors of the Live Oak Village Homeowner's Association.

**AS AND FOR A SECOND CAUSE OF ACTION**
**(Conspiracy as to all Defendants)**

10. Plaintiffs reallege and reincorporate each and every allegation above as if set out fully verbatim herein.

11. That at all times all Defendants have conspired against Plaintiffs for the purpose of injuring Plaintiffs.

12. As a direct and proximate result, Plaintiffs have incurred special damages including, but not limited to attorney's fees and costs in defending against Defendants' actions and loss of Homeowners' Association fees.

**AS AND FOR A THIRD CAUSE OF ACTION**
**(Slander and Defamation as to Defendants Sofia Mazell and Michael Mazell)**

13. Plaintiffs reallege and reincorporate each and every allegation above as if set out fully verbatim herein.

14. Upon information and belief Defendants Sofia Mazell and Michael Mazell have committed slander and defamation against Plaintiff Jennifer McFarland by alleging she is unchaste and having extra-marital relations; that she committed criminal acts by stealing her father's business; that she is racist; and that she invades Defendants privacy by peering into their windows, all of which are untrue and amount to slander per se and defamation.

15. As a direct and proximate result of Defendants Sofia Mazell and Michael Mazell's slander, slander per se and defamation Plaintiff Jennifer McFarland has been damaged and suffered actual damages and is entitled to the same and to punitive damages in an amount to be determined by the trier of fact.

**AS AND FOR A FOURTH CAUSE OF ACTION**
**(Breach of Covenants and Restrictions as to Defendants Sofia Mazell and Michael Mazell)**

16. Plaintiffs reallege and reincorporate each and every allegation above as if set out fully verbatim herein.

17. As home owners within Live Oak Village subdivision, Defendants Sofia Mazell and Michael Mazell were at all times required to abide by and adhere to the Covenants and Restriction applicable to their home and on record with Dorchester County, South Carolina.

18. Upon information and belief, the Live Oak Village Covenants and Restrictions specifically prohibit residents from having tenants residing in Live Oak Village houses.

> "No business activity including, but not limited to, a rooming house, boarding house, gift shop, antique shop, professional office or beauty/barber shop or the like or any trade of any kind whatsoever shall be carried on upon or in any Lot."

19. Upon information and belief, Defendants Sofia Mazell and Michael Mazell had renters in their home while they owned and resided in property subject to the Live Oak Village Home Owner's Association's Covenants and Restrictions and, therefore, breached the Covenants and Restrictions and are liable to Live Oak Village Home Owner's Association for fines, costs and fees related to that breach in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiffs pray for:

(a) Declaratory Judgment against Defendants Thomas Morris and David Hannemann declaring that Defendants are acting outside of their scope of authority on the Live Oak Village Homeowner's Association Board of Directors;

(b) Injunctive Relief prohibiting Defendants Thomas Morris and David Hannemann from taking further action and/or serving on the

Live Oak Village Homeowner's Association Board of Directors contrary to the express terms of the covenants and by-laws;

(c) Special damages incurred as a result of Defendants' conspiracy;

(d) Fines, costs and fees incurred as a result of Defendant Sofia Mazell's and Michael Mazell's breach of the Covenants and Restrictions;

(e) Actual and punitive damages as allowed by law;

(f) Attorney's fees and costs in bringing this action; and

(g) Any such other and further relief this Court deems just and proper.

P. Brandt Shelbourne, Esq. (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210

**ATTORNEY FOR PLAINTIFFS**

Summerville, South Carolina
June 4, 2014

| | |
|---|---|
| STATE SOUTH CAROLINA ) | IN THE COURT OF COMMON PLEAS |
| ) | FIRST JUDICIAL CIRCUIT |
| COUNTY OF DORCHESER ) | CASE NO.: 12-CP-18-2583 |
| LIVE OAK VILLAGE HOA, INC., et al., ) | **ANSWER OF DEFENDANTS SOFIA AND MICHAEL MAZELL TO AMENDED COMPLAINT** |
| Plaintiffs, ) | |
| vs. ) | **JURY TRIAL DEMANDED** |
| THOMAS MORRIS, et al., ) | |
| Defendants. ) | |

Co-defendants Sofia Mazell and Michael Mazell (Collectively, "Mazell" or "defendants"), appearing by their attorney, William B. Jung, Esq., as and for their Answer to the plaintiffs' Amended Complaint dated June 9, 2014 (the "Complaint"), allege the following:

1. Defendants admit the allegations of paragraph 1 of the Complaint.

2. Defendants deny the allegations in Paragraph 2 of the Complaint.

3. Defendants admit that the individual plaintiffs are property owners and have resided within the Live Oak Village Association but deny that any individual plaintiffs are members of the Board of Directors or Officers of the plaintiff Live Oak Village HOA, Inc.

4. Defendants admit the allegations in Paragraph 4 of the Complaint.

5. Defendants deny the allegations contained in Paragraph 5 of the Complaint and demand strict proof thereof.

6. Defendants deny the allegations of paragraph 6 of the Complaint and demand strict proof thereof.

7. Defendants deny the allegations contained in Paragraph 7 of the Complaint and demand strict proof thereof.

8. Defendants deny the allegations contained in Paragraph 8 of the Complaint and demand strict proof thereof.

9. Defendants deny the allegations contained in Paragraph 9 of the Complaint and demand strict proof thereof.

10. No response is required in response to Paragraph 10 of the Complaint.

11. Defendants deny the allegations contained in Paragraph 11 of the Complaint and demand strict proof thereof.

12. Defendants deny the allegations contained in Paragraph 12 of the Complaint and demand strict proof thereof.

13. No response is required in response to Paragraph 13 of the Complaint.

14. Defendants deny the allegations contained in Paragraph 14 of the Complaint and demand strict proof thereof.

15. Defendants deny the allegations contained in Paragraph 15 of the Complaint and demand strict proof thereof.

16. No response is required in response to Paragraph 16 of the Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Complaint and demand strict proof thereof.

18. Defendants deny the allegations contained in Paragraph 18 of the Complaint and demand strict proof thereof.

19. Defendants deny the allegations contained in Paragraph 19 of the Complaint and demand strict proof thereof.

## AFFIRMATIVE DEFENSES

20. Plaintiffs have failed to state any claims upon which relief can be granted against defendants Mazell.

21. Plaintiffs' claims against Mazell are barred by application of the South Carolina Statute of Limitations governing such claims.

22. While Mazell deny that they published any defamatory statements as alleged, any such statements would have been provoked by the wrongful conduct, intimidation, harassment, defamatory statements made against Mazell, as well as, the general interference with Mazell, all committed by plaintiffs and William McFarland.

23. While defendants Mazell deny that they published any defamatory statements as alleged, any such statements may be substantially true.

24. While defendants Mazell deny that they published any defamatory statements as alleged, any such statements would be qualifiedly or conditionally privileged under South Carolina law and the application of the First Amendment of the United States Constitution.

25. While defendants Mazell deny that they published any defamatory statements as alleged, any such statements would be absolutely privileged under South Carolina law and the application of the First Amendment of the United States Constitution.

26. The plaintiffs, Jennifer McFarland, Carlton Holcombe and Ute Holcombe, each lack standing to assert claims on behalf of or in the name of the Live Oak Village HOA, Inc. as neither of these parties are officers or members of the Board of Directors for the Live Oak Village HOA, Inc. and the Board of Directors for the Live Oak Village HOA, Inc. has not authorized the institution of this action or any action against defendants Mazell.

27. The claims for civil conspiracy and for the alleged breach of the Live Oak Village HOA covenants and restrictions (Counts II and IV of the Complaint) brought by the plaintiff Live Oak Village HOA, Inc. against defendants Mazell should be dismissed on account of the failure of the plaintiff Live Oak Village HOA, Inc. to receive proper and prior authorization to assert such claims from a vote of a majority members of the Board of Directors for the Live Oak Village HOA, Inc. authorizing such actions. Accordingly, the Live Oak Village HOA, Inc. lacks standing to make allegations against defendant Mazell or bring any claims against Mazell as are improperly plead in the Complaint.

28. The plaintiffs' claims in Count IV of the Complaint are barred by application of the doctrine of accord, satisfaction and release

29. Plaintiffs' claims against defendants Mazell are barred by application of the doctrines of waiver, estoppel and latches.

30. Plaintiffs have acted with unclean hands and in bad faith, and, as a direct consequence, should not be afforded any relief against the defendants Mazell.

31. Plaintiffs have acted in willful disregard of the covenants and bi-laws governing the operation of the Live Oak Village HOA, Inc., and, as a direct consequence, the institution of the plaintiffs' claims in Counts II and IV against defendants Mazell are illegal, null and void and should be barred or denied entitlement to any relief thereby.

**WHEREFORE**, having answered plaintiffs' Amended Complaint, defendants Mazell pray that the Honorable Court grant the following relief:

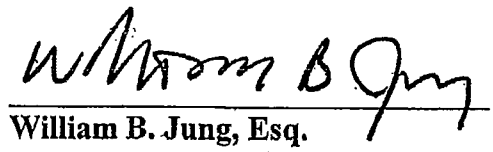
1. Dismiss the plaintiffs' Amended Complaint; and

2. Award defendants Mazell recovery of their costs, disbursements and a reasonable attorney's fee where allowable under South Carolina law; and

3. Grant such other and further relief as is just and proper.

Dated: October 21, 2014

**WILLIAM B. JUNG, ESQ.**
Attorney for the Defendants
Sofia and Michael Mazell



**William B. Jung, Esq.**
1156 Bowman Road, Ste. 200
Mount Pleasant, S.C. 29464
(843) 416-1104

**Demand for Jury Trial**

Defendants Mazell demand trial by jury on all such issues properly tried to a jury.

Dated: October 21, 2014

**William B. Jung, Esq.**
Attorney for the Defendants
Sofia and Michael Mazell

**Proof of Service**

I, William B. Jung, Esq., served a copy of defendants Mazell's Answer to the plaintiffs' Amended Complaint by mailing a true and complete copy on October 21, 2014 to the following counsel of record for the parties, first class U.S. Postal Service postage paid by the undersigned:

P. Brandt Shelbourne, Esq.
131 E. Richardson Ave.
Summerville, S.C. 29483

Jason Daigle, Esq.
Young Clement Rivers
P.O. Box 993
Charleston, S.C. 29402

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER | )<br>:<br>) | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br>C.A. NO.: 2012-CP-18-2583 |
| LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC.; JENNIFER McFARLAND; CARLTON HOLCOMBE and UTE HOLCOMBE;<br><br>Plaintiffs,<br><br>-versus-<br><br>THOMAS MORRIS; DAVID HANNEMANN; SOFIA MAZELL and MICHAEL MAZELL,<br><br>Defendants. | ) | **DEFENDANTS THOMAS MORRIS' AND DAVID HANNEMANN'S ANSWER TO AMENDED COMPLAINT, COUNTERCLAIMS AND THIRD-PARTY COMPLAINT** |
| SOFIA MAZELL and MICHAEL MAZELL,<br><br>Third-Party Plaintiffs<br><br>-versus-<br><br>WILLIAM McFARLAND,<br><br>Third-Party Defendant | ) | |

Defendants Thomas Morris and David Hannemann (collectively referred to as "Defendants") answering the Amended Complaint of Plaintiffs, asserting Counterclaims, and asserting a Third-Party Complaint, allege and say:

**FOR A FIRST DEFENSE**

Defendants deny each and every allegation of the Amended Complaint not hereinafter specifically admitted.

## AS TO THE PARTIES

1. Defendants admit the allegations of Paragraphs 1,2, and 3 of the Amended Complaint.

## AS TO THE FIRST CAUSE OF ACTION
(Declaratory Judgment as to Defendants)

2. Defendants admit the allegations of Paragraph 4 of the Amended Complaint.

3. Defendants deny the allegations in Paragraphs 5, 6, 7, 8, and 9 and all of their subparts in the Amended Complaint and demand strict proof thereof.

## AS TO THE SECOND CAUSE OF ACTION
(Conspiracy as to Defendants and Sofia Mazell and Michael Mazell)

4. Defendants reallege and reaver Paragraphs 1 through 3 above as set forth herein.

5. Defendants deny the allegations as to Defendants in Paragraphs 11 and 12 of the Amended Complaint and demand strict proof thereof. Defendants lack sufficient knowledge or information to either admit or deny the remaining allegations in Paragraphs 11 and 12.

## AS TO THE THIRD AND FOURTH CAUSES OF ACTION

6. Paragraphs 13 through 19 of the Amended Complaint assert no claims against Defendants and thus no response is required. To the extent the allegations in Paragraphs 13 through 19 imply a claim against Defendants, they are denied.

## FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A FIRST AFFIRMATIVE DEFENSE THERETO
**(Failure to State a Claim)**

7. Defendants reallege and reaver Paragraphs 1 through 6 above as if set forth herein.

8. Plaintiffs' claims fail to state facts sufficient to constitute causes of action against Defendants pursuant to Rule 12(b)(6), *SCRCP*, and Plaintiffs' claims should be dismissed.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A SECOND AFFIRMATIVE DEFENSE HERETO (Statute of Limitations)**

9. Defendants reallege and reaver Paragraphs 1 through 8 above as if set forth herein.

10. That all claims asserted against Defendants are barred by the applicable statute of limitations and/or the applicable statute of repose.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A THIRD AFFIRMATIVE DEFENSE HERETO (Acts of Third-Parties)**

11. Defendants reallege and reaver Paragraphs 1 through 10 above as if set forth herein.

12. Plaintiffs' claims, if any, are the result of acts and omissions of other entities over whom Defendants had no control, barring all claims against Defendants.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A FOURTH AFFIRMATIVE DEFENSE HERETO (Laches)**

13. Defendants reallege and reaver Paragraphs 1 through 12 above as if set forth herein.

14. Defendants allege that Plaintiffs' claims are barred under the equitable doctrine of laches.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A FIFTH AFFIRMATIVE DEFENSE THERETO (Unconstitutional Punitive Damages)**

15. Defendants reallege and reaver Paragraphs 1 through 14 above as if set forth herein.

16. Plaintiffs' claim for punitive damages, and any award thereof, would violate the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution and the due process clause of Article I, Section 3 of the South Carolina Constitution.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A SIXTH AFFIRMATIVE DEFENSE THERETO (Lack of Standing)**

17. Defendants reallege and reaver Paragraphs 1 through 16 above as if set forth herein.

18. The allegations contained in the Plaintiffs' Amended Complaint fail to state facts upon which relief may be granted pursuant to the legal theory and doctrine known as standing and are therefore barred.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A SEVENTH AFFIRMATIVE DEFENSE THERETO (Causation)**

19. Defendants reallege and reaver Paragraphs 1 through 18 above as if set forth herein.

20. Defendant alleges that any alleged conduct or omission by this defendant was not the cause in fact or proximate cause of any injury alleged by Plaintiffs.

**FURTHER ANSWERING THE AMENDED COMPLAINT AND AS AN EIGHTH AFFIRMATIVE DEFENSE THERETO (Incorporation of Defenses Raised by Others )**

21. Defendants reallege and reaver Paragraphs 1 through 20 above as if set forth herein.

22. Defendants hereby incorporate the defenses of any other parties as they may be applicable to Defendants.

**RESERVATION AND NON-WAIVER**

23. Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the South Carolina Rules of Civil Procedure, the Defendants demand trial by jury in this action of all issues so triable.

**FURTHER ANSWERING PLAINTIFFS' AMENDED COMPLAINT AND BY WAY OF COUNTERCLAIMS TO PLAINTIFFS JENNIFER MCFARLAND, CARLTON HOLCOMBE, AND UTE HOLCOMBE AND THIRD-PARTY COMPLAINT AGAINST WILLIAM MCFARLAND**

24. Defendants reallege and reaver Paragraphs 1 through 23 above as if set forth herein.

25. Plaintiffs Jennifer McFarland, Carlton Holcombe, and Ute Holcombe at all times relevant have resided in the Live Oak Village subdivision located in Dorchester County, South Carolina and are members of the Live Oak Village Homeowners' Association.

**FOR A NINTH DEFENSE, COUNTERCLAIM AS TO PLAINTIFFS, AND THIRD-PARTY CLAIM AS TO WILLIAM MCFARLAND**
(Breach of Fiduciary Duty)

26. Defendants reallege and reaver Paragraphs 1 through 25 above as if set forth herein.

27. At all relevant times, Plaintiffs Jennifer McFarland, Carlton Holcombe and Ute Holcombe as well as Third-Party Defendant William McFarland, agreed to serve, act and conduct themselves as members of the Board of Directors for the Association, and, in doing so, accepted a fiduciary duty owed to Defendants to act equitably, in good conscience, in good faith, and with due regard to the best interest of Defendants as members of the Association and owners in the Live Oak Village community.

28. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland breached the fiduciary duty owed to Defendants by intentionally abusing the offices of President and Treasurer of the Association Board of Directors, by refusing to operate the Board of Directors in a manner consistent with fairness and equity to all Association members, by usurping powers and exercising authority that Third-Party Defendant William McFarland and Plaintiff Jennifer McFarland had no authority to exercise, and by their general

conduct.

29. As the direct and proximate result of the breach of fiduciary duty committed by Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland, Defendants have been damaged and suffered actual, incidental and consequential damages and are further entitled to recover punitive damages against Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland, jointly and severally.

**FOR A TENTH DEFENSE, COUNTERCLAIM AS TO PLAINTIFFS, AND THIRD-PARTY CLAIM AS TO WILLIAM MCFARLAND**
(Negligence and Negligence *Per Se)*

30. Defendants restate and reallege each and every allegation in Paragraphs 1 through 29 above as if set forth herein.

31. Defendants are informed and believe that, at all relevant times, Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland, as members of the Board of Directors for the Association, owed Defendants a continuing duty to exercise due care in the discharge of their responsibilities as members of the Board of Directors of the Association.

32. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe, and Third-Party Defendant William McFarland breached the duty of care owed to Defendants and were negligent, careless, grossly negligent, reckless, willful, and wanton in the exercise of authority and their actions as members of the Board of Directors purported to be on behalf of the community association for the Live Oak Village. Such negligence, carelessness, gross negligence, recklessness, willfulness and wantonness include, but are not limited to, the following particulars, to wit:

a. In unauthorized usurpation of the positions on the Association's Board of Directors and authority and committing actions in violation of the provisions of the Bylaws of the Association; and the South Carolina Nonprofit Corporations Act;

b. In expending Association funds without having approval and authorization of the members or of a properly constituted Association Board;

c. In refusing and failing to abide by and conduct the actions of the Association and its members and officers in accordance with the Association Bylaws;

d. In using funds belonging to the Association for the personal benefit of Plaintiffs Jennifer McFarland, Carlton Holcombe, and Ute Holcombe, as well as Third-Party Defendant William McFarland, when the expenditures of said funds were not properly authorized by a majority of votes of a properly constituted Board of Directors, or such votes were conducted inconsistent with the requirements of the Association Bylaws;

e. In acting in enforcing the Live Oak: Village covenants and restrictions in an arbitrary and capricious manner to the detriment of the Defendants;

f. In failing to exercise the degree of care and prudence which a reasonable person should exercise under the same or similar circumstances;

g. In refusing to supply an accounting of Association funds after repeated requests from the Defendants; and

h. Other deficiencies or failures as will be proven at trial.

33. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland knew or should have known that their negligent acts and omissions could cause damages and injuries to Defendants.

34. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland have exhibited a conscious disregard for the interests of Defendants and other members of the Association.

35. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness, willfulness, and wantonness of Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third -Party Defendant William McFarland, Defendants have suffered actual, direct, incidental and consequential damages.

36. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness, willfulness, and wantonness of Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland, Defendants are entitled to recover actual, incidental, consequential, and punitive damages in an amount to be determined at trial, as well as for the costs and disbursements of this action.

**FOR AN ELEVENTH DEFENSE, COUNTERCLAIM AS TO PLAINTIFFS, AND THIRD-PARTY CLAIM AS TO WILLIAM MCFARLAND**
(Conversion of HOA Funds)

37. Defendants restate and reallege each and every allegation in Paragraphs 1 through 36 above as if set forth fully herein.

38. At all relevant times, Defendants had a pecuniary interest in having their annual Association dues expended for such community purposes as set forth in the governing documents and as authorized by a properly constituted Board of Directors for the Association.

39. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland converted the Association dues paid by the residents of the Live Oak Village community, including those paid by Defendants, for their own uses, projects and works

which were not authorized by a properly constituted Board of Directors acting consistently with Bylaws for the Association.

40. The actions of Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland in expending Association dues collected from the Live Oak Village community residents, including Defendants, were in violation of the Bylaws for the Association and were otherwise wrongful, inequitable, illegal, fraudulent, and effectuated by tortuous and wrongful misconduct and misrepresentations made to community members.

41. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland disregarded and ignored Defendants' objections to the use and expenditure of Association funds.

42. The use and expenditures of Association funds by Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland used and spent Association funds without permission ofthe members including Defendants.

43. As a direct and proximate result of the conversion of Association dues by the Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland, Defendants are entitled to recover all annual Association dues paid by Defendants from Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland, jointly and severally, as well as such other actual, incidental, consequential and punitive damages in an amount to be determined at trial and Defendants costs and disbursements incurred in this action.

**FOR A TWELFTH DEFENSE, COUNTERCLAIM AS TO PLAINTIFFS, AND THIRD-PARTY CLAIM AS TO WILLIAM MCFARLAND**

(Accounting)

44. Defendants restate and reallege each and every allegation in Paragraphs 1 through 43 above as if set forth fully herein.

45. In violation of the Bylaws and the South Carolina Nonprofit Corporation Act, Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland failed and refused as Directors of the Association to supply any financial records of the Association to the members of the Association, including the Defendants after repeated requests for such records.

46. The Defendants are entitled to such information under the provisions of the Bylaws and the South Carolina Nonprofit Corporations Act.

**FOR A THIRTEENTH DEFENSE, COUNTERCLAIM AS TO PLAINTIFFS, AND THIRD-PARTY CLAIM AS TO WILLIAM MCFARLAND**

(Indemnification)

47. Defendants restate and reallege each and every allegation in Paragraphs 1 through 46 above as if set forth fully herein.

48. Defendants are entitled to indemnification for their expenses incurred as an incident to this suit to the extent the allegations against Defendants are based on Defendants' actions as Directors of the Association pursuant to the provisions of the Bylaws and the SouthCarolina Nonprofit Corporations Act.

WHEREFORE, having answered Plaintiffs' Amended Complaint, having alleged Counterclaims against Plaintiffs Jennifer McFarland, Carlton Holcombe and Ute Holcombe, and having alleged Third-Party claims against Third-Party Defendant William McFarland, Defendants

pray that this honorable Court grant the following relief:

1. Dismiss the Plaintiffs' Amended Complaint;

2. Award Defendants actual, incidental, consequential, and punitive damages against Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland, jointly and severally, in an amount to be awarded at trial;

3. Award Defendants recovery of the costs, disbursements and a reasonable attorney's fee where allowable under South Carolina law;

4. Order the Plaintiffs to provide an accounting to the Defendants;

5. Award prejudgment interest against Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland where allowable under South Carolina law; and

6. Grant such other and further relief as is just and proper.

Dated this 11 day of November 2014.

Respectfully submitted,

WALL TEMPLETON & HALDRUP, P.A.

Morgan S. Templeton
William W. Watkins, Jr.
Katherine A. Stanton
145 King Street, Suite 300
Post Office Box 1200
Charleston, South Carolina 29402
(843) 329-9500
**Attorneys for Defendants Thomas Morris and David Hannemann**

STATE OF SOUTH CAROLINA — COURT OF COMMON PLEAS

COUNTY OF DORCHESTER — 2012-CP-18-2583

LIVE OAK VILLAGE HOA, ET AL.
VS.
THOMAS MORRIS, ET AL.

TRANSCRIPT OF RECORD

NOVEMBER 19, 2014
ST. GEORGE, SC

B E F O R E:

HONORABLE DIANE S. GOODSTEIN

A P P E A R A N C E S:

P. BRANDT SHELBOURNE, ESQUIRE
Attorney for the Plaintiffs

WILLIAM W. WATKINS, JR., ESQUIRE
Attorney for Defendants Hannemann and Morris

WILLIAM B. JUNG, ESQUIRE
Attorney for Defendants Mazell

Ruth L. Mott, RPR, CRR
Official Court Reporter

CLERK OF COURT: Live Oak Village versus Thomas Morris. Judge, this is a motion for summary judgment to dismiss certain counts of the amended complaint.

THE COURT: Okay. Mr. Shelbourne.

MR. SHELBOURNE: Good morning, Your Honor.

THE COURT: Did you happen to receive a telephone call either on Saturday or Monday from a couple of lawyers?

MR. SHELBOURNE: I did -- well, yes, but not with regard to what you're talking about, I don't think. I received an email from Mr. Stuckey.

THE COURT: Yes.

MR. SHELBOURNE: And I received a phone call but it was left as a message on my answering machine about Mr. Holcombe disappearing or going *ultra mare*. I learned that word this morning. *Ultra mare* is beyond the sea. So he is apparently on a cruise, but I don't know that in the context of that case. I just know it from this case, in passing conversation he said, oh, I'm going on a cruise, I can't be available for a deposition this week. So I knew that, but I have -- aside from that, that's all I know. And Mr. Stuckey informed me that it was some issue with subpoenas for trial.

THE COURT: The only thing I wanted to establish is, because when I spoke with Mr. Stuckey and Mr. Cleveland about that case on Saturday, I asked them both to please notify you, since they both reminded me that you represented the

gentleman, I thought you needed to be in the loop.

MR. SHELBOURNE: Thank you.

THE COURT: And I guess in a hypertechnical sense maybe not, but I just thought that it was fair to do that because that's a matter that's going to have to be dealt with, I guess he gets back on Friday, so on Friday.

MR. SHELBOURNE: And, Your Honor, I have no idea. I will say for the record, I do not represent Mr. Holcombe in that action. I am happy to be here and be of assistance and help him, should he so desire to be represented.

THE COURT: I understand. I thought it was just in the interest of justice that that was something that you needed to be apprised of. My only reason for asking is just I wanted to know if they had contacted you. Apparently you know that, and that is good.

Okay. What is this matter? Whose motion do we have?

MR. JUNG: Good morning, Your Honor, Brad Jung. It's my motion, Your Honor. This is a motion, if it please the Court, for summary judgment to dismiss one of the particular named plaintiffs from the causes of action that have been alleged against my clients, which are two. Specifically, we are seeking the dismissal of this action of the plaintiff, Live Oak Village HOA, Incorporated, which is an HOA for a seven property or seven member -- okay. Your Honor's familiar. And we do not have any objection to the remaining

plaintiffs, which are the individuals, Mrs. Jennifer McFarland, Mr. Holcombe and Ms. Ute Holcombe, remaining as defendants (sic), so again, we're just dealing with the HOA. The basis of our motion refers to the bylaws of the company. If I may approach, and I appreciate that I have only filed this this morning. Mr. Shelbourne has a copy. This is a copy of my memorandum, and there's three documents to that, Your Honor. One is the summons and complaint, the amended summons and complaint, which shows the cause of action that the HOA has alleged against the Defendants Mazell. And I apologize. I represent the Mazells.

THE COURT: Okay.

MR. JUNG: The second -- Exhibit 2 is the bylaws, and the bylaws are very clear, and they provide that a board of directors may take action, or the HOA may take legal action by a vote of the board of directors or by authority, excuse me, authority of the board of directors under two separate means. One is by a majority vote of two of the three board of director members at a duly held meeting. The second is by written consent, prior written consent of all three board of directors. Now, the only question of fact which is really before the Court in support of my motion, which I submit there is no question of fact, is that there has been no vote by any board of directors to institute the filing of claims on behalf of the HOA against Mr. and Mrs. Mazell. And,

second, there has been no written consent signed by all three of the board of director meetings (sic).

Just for reference, Your Honor, there are three members of the board of directors. It's Mr. William McFarland, who is a third-party defendant, but he's not a plaintiff; and then the two other codefendants besides the Mazells, David Hahnemann and a Thomas Morris. The third exhibit to my motion is the deposition of Mr. Hahnemann which took place a couple weeks ago, and in that I asked a few questions. Number one, did you ever vote to sue the Mazells? No. Did you ever vote to sue yourself? No. Well, how did this lawsuit get started on behalf of the HOA? I have no idea. I've asked for discovery. I'm going to represent to the Court that no minutes have been provided to me of any meetings. No corporate consents by all the board of directors are here.

Mr. Trey Watkins is here. He represents Mr. Hahnemann and Mr. Morris. He can tell the Court as easily as I can, there has been no consent, written or otherwise, or vote by any of the board of directors, so that this plaintiff, the HOA, should be a part of this lawsuit. I submit, Your Honor, that they've essentially just usurped the HOA and made it a plaintiff.

Now, this might be a technical thing, but this can result in real prejudice to my clients for two different

ways. First of all, if a jury hears this case, they're going to see, well, the plaintiff is Jennifer McFarland, Mr. and Mrs. Holcombe and the HOA. They're going to assume that the HOA speaks for all the majority of the people and that the whole association is behind and on the side of the plaintiffs, and that's simply not the case. There has been no vote. There has been no authorization provided by the board of directors so this HOA should be a plaintiff.

And second, the issue of attorney fees, Your Honor, under the bylaws the HOA is entitled to attorney fees in the event they're successful. These individuals, in their individual claims, don't have that right, so I submit that they're taking undue advantage by naming the plaintiff HOA to this lawsuit. They shouldn't be part of this lawsuit. There is no authorization for them to be part of the lawsuit. The board of directors obviously hasn't authorized that, and that's the basis of my motion.

THE COURT: Got it. Mr. Shelbourne.

MR. SHELBOURNE: Thank you, Your Honor. I'm going to address the last two arguments first, Your Honor, on the technical side of it. Mr. Jung is very eloquent, and he can argue that issue in front of the jury as to who's on which side. As far as the attorney fees issue, Your Honor, that's not before the Court at this time, so I don't even think that's relevant. Your Honor, this is a South Carolina

nonprofit corporation. It's an HOA. The South Carolina Code Section 33-31-304 deals with *ultra vires* actions, and it specifically says that, except as provided in Subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

THE COURT: The corporation lacks --

MR. SHELBOURNE: Power, lacks or lacked power to act. Essentially what Mr. Jung is saying is the corporation doesn't have the authority to act because they didn't have this board meeting that the bylaws, as he says, say it should be. Mr. Bill McFarland is the president of the association. Under the bylaws the president has the -- is the chief executive officer. The president shall have the -- shall have all powers and duties which are usually vested in the office of the president of an association. It's not specifically, just saying he has the authority of an association, usually vested. So there would be an issue as to what is usually vested in the offices of ay president.

But more importantly, Your Honor, the Mazells are not members of this HOA. They've moved out of this HOA. They don't live there anymore. So the authority of the HOA to bring them -- they're not members. Subsection (b) of 33-31-304 limits the proceeding -- who can bring those proceedings to the Attorney General, a director, or by a member or members in a derivative proceeding. I would

submit, Your Honor, that's not what we have here. They're not members. At the time they were members they were not members in good standing because they hadn't paid their dues on time, and that's one of the underlying issues of the case, so that would be -- before we can even get to summary judgment there would have to be a determination, were they members in good standing to even bring that action, but there's no question now that they're not members anymore.

Theoretically, Your Honor, I think Mr. Hahnemann and Mr. Morris, who are codefendants, could perhaps bring an action to challenge whether the corporation has the authority to act; but that's, again, not before you at this time, Your Honor. That hasn't really even been alleged in this case, that they're acting *ultra vires.* There's no specific affirmative defense to that or any kind of defense as to *ultra vires.* They're saying that Mr. McFarland didn't have the authority to do that. That's not the same argument. It's close but not the same. So I don't think that Mr. Jung on behalf of the Mazells has the authority to say, hey, this corporation can't sue me. You don't have authority to. It's kind of like a bank suing --

THE COURT: Well, I think that the corporation has the authority to sue them. What he's saying is that there was never -- that this corporation never acted in accordance with its bylaws to in fact sue, so talk to me about that.

MR. SHELBOURNE: But essentially that is saying, you're acting outside -- the corporation is not acting within its authority. That's an *ultra vires* argument.

THE COURT: No, the corporation, if it is a corporation, can sue and be sued.

MR. SHELBOURNE: Correct.

THE COURT: Set that aside. As I understand his argument, what he is saying is this corporation never made that decision. In other words, we've got somebody who has -- who has commandeered the corporation for their own individual purposes and has filed a lawsuit in the name of the corporation, and the corporation itself never acted.

MR. SHELBOURNE: Correct. And I think that's what -- I'll address both things. I do think that that's what --

THE COURT: Speak to that.

MR. SHELBOURNE: -- Section (b) deals with.

THE COURT: Okay. Which says?

MR. SHELBOURNE: It says that that action, where a third party has not acquired rights, in other words, Mr. McFarland has not acquired rights to bring suit on behalf of the corporation, I think that's what section --

THE COURT: You're talking about where it says that the president has the same powers as the president of an association.

MR. SHELBOURNE: No, Your Honor. I'm sorry. I'm

referring back to the statute. It says that the corporation's power to act may be challenged by -- where a third party has not acquired those rights, as I understand it saying that Mr. McFarland doesn't have the right to bring -- have the corporation file a lawsuit because he didn't get the votes, so to speak. That action could be challenged by the Attorney General, a director, or member or members in a derivative proceeding, and the Mazells are not members. So saying that, Your Honor, Mr. McFarland is the president of the association, and under the bylaws there is the issue --

THE COURT: But they were at the time of the filing of the lawsuit, is that what you're telling me?

MR. SHELBOURNE: They were at the time they filed the lawsuit, yes; but our position is they were not in good standing, and under the bylaws and the covenants and restrictions, had no say in what's in the handling of the corporation, so there's a question of fact as to whether they have the standing to argue our standing if that makes sense but --

THE COURT: What if they do? Assume for the moment that they got sued, that at the time they were homeowners, at the time that they got sued, and they are challenging the failure or they are challenging the corporation's --

MR. SHELBOURNE: Right to sue them?

THE COURT: They have the right to sue and be sued, but

that there was ever any action taken in accordance with the bylaws of the corporation to in fact sue them.

MR. SHELBOURNE: Assuming that they have --

THE COURT: That somebody commandeered the corporation and that this corporation by virtue of someone having paid a filing fee chose to sue them, and that suit fails to have the direction as dictated by the bylaws, is that correct -- first of all is that correct?

MR. SHELBOURNE: I'm sorry, Your Honor.

THE COURT: Was there consent by the three people, or was there a meeting held in which two people on the board of directors out of three said, we're going to sue the Mazells?

MR. SHELBOURNE: It's correct, Mr. Jung is correct, that that meeting did not happen. There was never anything like that.

THE COURT: Okay.

MR. SHELBOURNE: Which goes to our underlying claims overall in that there's a conspiracy between the Hannemanns and the Morrises and the Mazells to prevent that from happening, but that's part of our -- that's part of our special damages as to that conspiracy, but addressing that, Your Honor, under the bylaws, Section 7(b) of the bylaws states that the president, who's Bill McFarland, shall be the chief executive officer of the association. The president shall have the powers and duties which are usually vested in

the office of the president of an association.

THE COURT: Which is an unincorporated group of people.

MR. SHELBOURNE: Correct.

THE COURT: Yes.

MR. SHELBOURNE: And we would argue that as the president he has the right to initiate the lawsuit.

THE COURT: In the name of an association.

MR. SHELBOURNE: That's correct, Your Honor.

THE COURT: What authority do you have for that?

MR. SHELBOURNE: I do not -- other than -- I have no --

THE COURT: There's a whole body of law in South Carolina with regards to associations.

MR. SHELBOURNE: I received the memo last night at 5:21, Your Honor. And working on that and getting that done, I don't have any body of law to address that one way or another, Your Honor. I'm happy to provide something. I realize it would be late, but I don't think Mr. Jung has anything to counter that either.

THE COURT: Well, an association can sue and be sued, but they have to sue and be sued, again, by proper direction of the members of the association to bring a lawsuit.

MR. SHELBOURNE: Correct. I don't think the language Mr. Jung quoted, Your Honor, prohibits it. It states that -- some of the ways that it can happen, how a lawsuit can be brought, but it doesn't necessarily prohibit them from acting

alone. That's all I have, Your Honor.

THE COURT: Got it.

MR. JUNG: Your Honor, and I wanted to reiterate my distinction. We're not claiming that the individual homeowners don't have the right to bring this lawsuit. They do. In fact, the articles of incorporation say the association or any owner shall have the right to enforce by proceedings at law and equity all the violations that may occur, so these individuals --

THE COURT: This is not an association. This is a corporation. So tell me what you're telling me.

MR. JUNG: The homeowners association is what this is referring to.

THE COURT: I gotcha.

MR. JUNG: The HOA has not been empowered to act, but these other individual plaintiffs, including Mr. McFarland, although he's not -- he might be the president, but he's not the plaintiff, but his wife, Mr. and Mrs. Holcombe, they have the right to bring these claims against the Mazells, and we're not disputing that. That's not what we're here for. Again, we're here to say that the HOA has not been empowered to act.

THE COURT: That's what I said.

MR. JUNG: Yes, Your Honor, I just wanted to bring out the distinction that the individuals may have this right, and

we're not seeking dismissal of their right to bring these claims.

THE COURT: We're not dealing with that issue.

MR. JUNG: Yes, Your Honor. The only other point I'd make, Your Honor, is that if there weren't any bylaws, then it would be okay to fall back on general corporate law, but the bylaws are in hand here. The bylaws do control, and the bylaws do provide for specific ways that a board can act, and there's only two. I don't have any objection to Mr. Shelbourne submitting further briefing, as long as I'm given an opportunity to reply. I didn't mean to handcuff him by giving him late service of the papers. I got his brief 30 minutes before after he got mine.

THE COURT: Gotcha. You all want to submit -- it's up to you guys, but it's going to be on the issue of -- it seems to me that based upon your argument today, in order for the suit by the homeowners association to survive, you're going to have to be able to show that there's some ability of the president of the association, the homeowners association, which is a corporation, to individually bring a lawsuit and that the bylaws don't dictate. Mr. Shelbourne, do you want to brief that?

MR. SHELBOURNE: I think I do, Your Honor. If you would give me a little bit of time.

THE COURT: Sure.

MR. SHELBOURNE: I would appreciate that.

THE COURT: You've got it.

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

I, the undersigned Ruth L. Mott, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the matter of the above-captioned case, relative to appeal, in the 1st Judicial Circuit Court for Dorchester County, South Carolina, on the 19th of November, 2014.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

April 13, 2015

Ruth L. Mott

Official Court Reporter

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS
)
COUNTY OF DORCHESTER ) CASE NO. 2012-CP-18-2583

Live Oak Village HOA, et. al.,
)
Plaintiffs,
) Transcript of Record
vs.
)
Thomas Morris, et. al,
) Date: January 29, 2015
Defendants.

* * * * * * * * * * * * * * * * * *

B E F O R E:

The Honorable DIANE S. GOODSTEIN

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ORIGINAL

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Denise J. Lauder, RPR

Ninth Judicial Circuit

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(No exhibits were offered or marked for identification.)

(The following proceedings were held January 29, 2015, 11:03 a.m., Dorchester County Common Pleas.)

MR. WATKINS: May it please the Court, Your Honor. Trey Watkins on behalf of the Defendants, Mr. Morris and Mr. Hannemann. And Mr. Hannemann is here in the courtroom today.

For the Court's record, you have our motion for summary judgment with attachments, you have the Plaintiffs' memorandum in opposition to our motion, and I have also handed up today a reply to that memorandum as well. So you have all of that information.

There are two causes of action that have been asserted against Mr. Morris and Mr. Hannemann; there's a declaratory judgment action and a conspiracy action. We're moving on both of those claims for complete summary judgment as it relates to all causes of action against Mr. Morris and Mr. Hannemann.

The facts we're relying on in the case are the Plaintiffs' own testimony, the covenants and restrictions, and the pleadings in this case. We don't believe there are issues of fact associated with that and have relied simply on

their testimony.

The legal arguments that we're presenting are essentially two arguments, one is standing and the second one is damages. There are total lack of damages or lack of special damages to support the conspiracy claim. For background purposes, it's all in there. I think the Court is familiar with the case; as you'll recall, this is a seven-member HOA. These are seven single-family homes.

My clients, Mr. Hannemann and Mr. Morris, are two of the three board of directors members. And, essentially, this action got started when the third board member, Mr. Bill McFarland's, term was expiring and he was rolling off the board. And it's our position, essentially, that he is using this action and these claims as a way to help establish power and control over this homeowner's association.

And that gets us to the first argument, HOA standing issue. You've heard some of this earlier; I think you have still pending before you this argument. Essentially, as the Court is aware, the members of a homeowners association elect their board of directors. Those board of directors have

the power and authority to govern the action of the homeowners association.

In this case, three board members -- it requires a quorum of two in order for the association to act and then, of course, a majority vote which would be two. So it takes at least two board of directors members present, plus two of them voting in order to bind the association. The association of course operates through its board, and under the covenants and restrictions, the powers for the association to act are vested with the board.

A right action does not arise until conditions precedents are met. That's Metal Services Corp versus Industrial Electric Company. In this case, the HOA failed to follow its bylaws conditions precedents before initiating suit. Essentially, Bill McFarland has signed the pleadings and said he's bringing the action. We talked to him about that in his deposition and asked him if there was any authority for the board to institute litigation.

Question: So the board has never authorized any litigation, correct? Answer: Exactly.

There is no authorization for this suit; the HOA does not have standing. Mr. McFarland is attempting to use the association to prosecute this action, and if doing so -- and he's successful in doing so, he of course is binding all of the homeowners who have not signed up for this action. There's only two of the seven homes that are represented in the case that are listed as Plaintiffs.

Their testimony is they have incurred attorney's fees on behalf of the association. So, of course, if that is true and the association does have the power to bring this, that is setting forth attorney's fees to all these other homeowners out here who haven't had a proper board action to institute the suit and haven't signed up for this lawsuit.

The association simply does not have standing in order to bring the lawsuit, so they should be dismissed completely from the case.

THE COURT: Now, who is going to handle that one? Who opposes that?

MR. SHELBOURNE: I am.

THE COURT: All right. Mr. Shelbourne, let me hear from you about that.

MR. SHELBOURNE: Thank you, Your Honor. We've addressed this a little bit in the motion that was similar that Mr. Jung made previously that, as Mr. Watkins alluded to, has not been ruled on yet, but we take the same position; and that is, that our cause of actions are essentially that the Defendants are conspiring to prevent the HOA from operating as a viable entity, and that our conspiracy goes directly -- our claims go directly to that, which is why they're being sued. Because we're alleging that they are conspiring to stop that entity from operating.

If you have to have two votes to have a board meeting and an election, and they won't cooperate, nothing ever gets done. And that's exactly where we are. Nothing is done, fines aren't being able to -- enforcement is not being able to be made of the covenants and restrictions, and so the lawsuit was brought by Mr. McFarland.

For purposes of summary judgment, Your Honor, the two board members have not tendered or not paid their assessments -- their annual assessments. Now they've given them to their attorney, Ms. Davidson, so I don't want to misrepresent that. They've tendered them to Ms.

Davidson, but they haven't been paid to the HOA. So they are not in good standing under the express terms of the covenants and restrictions and, therefore, they're not entitled to vote, they're not entitled to serve as board members.

So, therefore, having a board meeting is impossible with two people who are not able to vote. So that leaves only Bill McFarland who -- there's no question that he was a board member and he essentially is the board, therefore, authorizing the lawsuit to be brought in this action.

THE COURT: And is that -- was that in existence at the time that the lawsuit was brought?

MR. SHELBOURNE: Yes.

THE COURT: Okay.

MR. SHELBOURNE: As I understand it, Your Honor.

THE COURT: Okay.

MR. SHELBOURNE: And so we do believe there's standing, but there's also standing -- Mr. Watkins moved for summary judgment as to all the parties. Certainly the individual parties, Mrs. McFarland, Mr. Holcombe, Mrs. Holcombe, have a right as homeowners to bring the lawsuits themselves. It clearly allowed -- the law clearly

allows, and the covenants allow, homeowners to act on their own behalf.

So even if the HOA does not have authority, there's still -- it would be inappropriate to grant summary judgment against the individuals. They're homeowners, they have a right to move to enforce the covenants and restrictions. They have a right to bring a lawsuit if they believe conspiracy, just like I have a right to bring a lawsuit.

So we would argue that, at the very least, Mr. Watkins' summary judgment is not appropriate to the individuals. We also don't believe it's appropriate to the -- on the standing issue for the board at this point, Your Honor. I don't think there's really any question as to the facts. I think it's just --

THE COURT: I got you.

Yes, sir.

MR. WATKINS: Your Honor, where we are on this, the only issue before the Court for this one is the HOA itself, and I'll address the individuals momentarily.

THE COURT: All right. Let me ask you this question: Talk to me a little bit about --

Mr. Shelbourne's position is that your clients were not in good standing, therefore, they could not be on the board, and because they could not be on the board, that leaves the board with one board member. What is the procedure -- what do you believe the procedure to be if that, in fact, occurred?

Is there some -- do you then move to have a homeowners association meeting and act in that regard? Do you move to have the Court dissolve that homeowners association and start another one? What do you -- what do you believe the appropriate response would be?

Or it is Mr. Shelbourne's position that because your clients were not on the board, they -- there was one board member and, therefore, he could bring the lawsuit.

MR. WATKINS: Sure. Well, let me address that. For the board -- for any board to act, there has to be a quorum. So taken in the light most favorable to the Plaintiffs -- and we certainly dispute that they are not in good standing because of the -- I don't believe the bylaws actually state that.

THE COURT: Right.

MR. WATKINS: Let's assume that he's

there, the bylaws do require there to be a quorum, and they contemplate there not being a quorum, all business is suspended unless there's a quorum. And so without a quorum, they have to either get new board members in place or -- of course, there could be, potentially, action by a majority of the homeowners; if the board is dysfunctional, then a majority of the homeowners.

So if they could get four members of the eight of the homeowners -- four of the seven, they would have a majority of the homeowners and then do something about that. But to simply use one board member to then bind an association that none of the homeowners has signed off for and the board has not signed off for, it fails in the face of any corporation law. It's not how a corporation should act. It doesn't make sense.

THE COURT: I got it. Any response?

MR. SHELBOURNE: Just briefly, Your Honor. The board covenants designate Mr. McFarland as chief executive officer with all rights and privileges normally and reasonably associated with that position. And I would argue that presents a question of fact. Is that something that he reasonably would have a right to do? If a jury

says, no, then I agree that they would be entitled to a judgment on that issue.

But I think that's the question. When you see the word, reasonable, in there, I think that's a question for a jury to determine whether he's acting reasonable. So I think that raises the question of fact.

THE COURT: Got you. Got you. All right. Who is next?

MR. WATKINS: Next issue?

THE COURT: Yes.

MR. WATKINS: All right. Moving on then, we're talking about the -- still on standing. We're talking about the Plaintiffs' standing as it relates to the declaratory judgment action.

THE COURT: Okay.

MR. WATKINS: Essentially, we're dealing with, is there a case of controversy here? Before a Court may render a declaratory judgment, an actual justiciable controversy must exist. A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination as distinguished from a contingent hypothetical or abstract dispute. That's Carolina Alliance For Fair Employment versus

South Carolina Department of Labor.

Further, justiciable controversy exists when a concrete issue is present, there is a distinct assertion of legal rights and a positive legal duty which is denied by an adverse party. An adjudication would not settle the legal rights of the parties, but only be an advisory opinion, not allowed under a declaratory judgment action and beyond the intended purpose of the scope of the Uniform Declaratory Judgment Act.

Here the justiciable controversy is that there does not exist in this action. The Plaintiffs' claim, and this is their claim, is that unless the Court enjoins and prohibits the Defendants, Mr. Morris and Mr. Hannemann, from continuing to act outside their scope of authority, then the Plaintiffs will suffer irreparable damage to their ability to reside at their properties.

So they want the Court to declare that Mr. Morris and Mr. Hannemann are acting outside the scope of their authority, and thus by declaring that, they're saying that they are injured in their ability to reside at their property. That's what they're claiming their injury in fact is.

The Supreme Court of the United States

has set forth a three-part test to determine what an injury in fact is to -- in order to have constitutional standing. First, there must be a concrete particularized actual or imminent, not conjectural or hypothetical injury; second, there must be a causal connection between the injury and the conduct complained of; and then third, it must be likely that the injury will be redressed by favorable decision. Right? So we don't want an advisory opinion from the Court.

Here, the individual Plaintiffs claimed that they will suffer, again, irreparable damage to their ability to reside in the property. They're saying that the actions of Morris and Hannemann are going to prevent them from residing at their property, unless the Court enjoins or prohibits them from continuing to act outside the scope of their authority.

So we asked the Plaintiffs in the depositions about this. Jennifer McFarland; this is the question. As part of that cause of action, it says the Plaintiffs will suffer irreparable damage to their ability to reside at their property. Is that the only injury that you're claiming in this case?

Answer: With reference to Morris and Hannemann?

Question: For the declaratory judgment action, yes, ma'am.

Answer: Yes.

Carlton Holcombe, question: The only injury that's been alleged is that Plaintiffs have suffered irreparable damage to their ability to reside at their property. Is there any other injury that you're claiming as a result of these actions?

Answer: Not at this time.

Further, Ute Holcombe, question: As part of the cause of action, the allegations and injury is that the Plaintiffs will suffer irreparable damage to their ability to reside at their property. Is that the injury that you're claiming in this case?

Answer: I think it's something you just need to discuss with my husband. I really don't even want to -- I don't know anything about that.

Question: So you don't have any evidence or testimony about anything associated with the declaratory judgment action; is that true?

Answer: Yes.

All three individual Plaintiffs still have full uninterrupted access to the common elements and to their property. We served Request For Admissions. They have all admitted that all of the individual Plaintiffs are able to access their residence freely and uninterrupted. That was admitted.

Further, Jennifer McFarland, Carlton Holcombe, and Ute Holcombe all testified in their depositions that they continue to reside at their homes at Live Oak Village. So there is no injury in fact. If the Court even were to declare what they're asking the Court to declare, it doesn't do anything. It doesn't help them. And, therefore, under constitutional standing, they don't have an injury in fact.

We'll run through them again real quick, the elements, they can't be conjectural or hypothetical; they still have access to their property, their ability to reside at their property has not been affected; they haven't suffered an injury in fact. They cannot satisfy the first element.

The second element; the individual

Plaintiffs failed to state how the Defendants' alleged actions hinder the individual Plaintiffs' ability to reside at their property. They're still living there. They were living there when the case was filed, they were living there when the depositions were taken, and presumably they're living there today.

Then, finally, I think this is important, the decision of the Court will not change the issues or address this alleged injury because they're still there. There's nothing that the Court -- by granting their declaratory judgment action, it doesn't -- it doesn't redress it.

So the individual Plaintiffs have suffered -- have not suffered nor alleged a particularized actual injury in fact, and such lack standing for their declaratory judgment claim.

THE COURT: Got it. Thank you.

MR. SHELBOURNE: Me again, Your Honor, Brandt Shelbourne. Your Honor, we believe we do have standing. The parties in this are contractually bound through the covenants and restrictions. They have contractual rights through those covenants and restrictions.

What the parties are asking for is the

determination that -- in paragraph 6 of the Amended Complaint, that the Defendants are willfully operating and continue to willfully operate outside the scope of their authority by taking action, or failing to take action as required by the covenants, and then we list out A through H allegations of that failure do.

What the McFarlands and the Holcombes are asking and the HOA are asking us to do is to determine that these violations are occurring. We have no other way of getting to a determination as to whether this is -- we could sue for breach of contract, but there aren't any theoretically damages as a result of the breaches of contract, other than they're not doing what they're supposed to be doing.

They're not enforcing the covenants and restrictions, and we need them enforced, otherwise -- that's why it goes to the whole conspiracy argument; they're not doing what they're supposed to be doing and so we can't get any traction. We can't move to enforce the covenants and have the HOA and the living environment that they contracted to have. And so I believe they do have standing to do that.

We're not asserting that there were financial damages. We're just asking for the Court's judgment, which I believe under the Declaratory Judgment Act this is an appropriate --

THE COURT: What is it that they want him enjoined from doing, specifically?

MR. SHELBOURNE: Well, voting to waive fines that apply to themselves, failing to hold timely or properly noticed HOA meetings -- we list them out in A through H of the Amended Complaint. Allowing unauthorized persons to vote and participate in board of directors meetings, voting on matters which they have personal financial interests, voting in violation of South Carolina Code Section 33-31830, failing to properly handle HOA funds, failing to enforce covenants and restrictions in a uniform and unbiased manner, and violating those covenants and restrictions.

We're asking for a determination that that, in fact, is exactly what is going on. The Court's determination of that will then affect -- if they are, in fact, violating those covenants and restrictions, then they will not be able to serve on the board because of violations. You can't be on the board and be violating the covenants and

restrictions. So it does have a result that would have an effect on this HOA.

THE COURT: Okay.

MR. WATKINS: Just a brief reply, Your Honor.

THE COURT: Yes.

MR. WATKINS: What he's listed is in their Complaint A through H. Let's assume, taken in the light most favorable to the Plaintiff, that all of those are true. We certainly deny that, but even if all of those actions by Mr. Morris and Mr. Hannemann are true and they have done these things that are outside the scope of their authority, there's still no injury in fact to the Plaintiffs themselves.

They're complaining that they've done some stuff, but they haven't been injured. There is nothing for the Court to declare whether they're acting outside of their scope or not, because it doesn't redress anything. It's nothing more than an advisory opinion. Even if the Court were to say, yes, they were doing that and grant it, it doesn't -- there's no injury. There's no redress. There is nothing left to address these claims because they don't have an injury in fact. There

is no constitutional standing for it.

THE COURT: Okay. Got it. Yes.

MR. SHELBOURNE: Beg the Court's indulgence.

THE COURT: Yes.

MR. SHELBOURNE: I would direct the Court to South Carolina Code Section 15-53-30, which is part of the Declaratory Judgment Act. And that goes on to say, a person interested under a deed, will, contract, et cetera, has a right to obtain a declaration of rights, status, and other legal relations thereunder. That's what we're asking for, a declaration of rights, or status, or legal relations thereunder.

We're asking for the Court to declare -- make a declaratory judgement as to the legal status of the Defendants in this case vis-à-vis the covenant and restrictions. So I believe under the -- and I put that in my memorandum, Your Honor, that we filed. It's all in the statute.

THE COURT: Okay. Yes.

MR. WATKINS: All right. Again, no injury in fact, no standing. Even -- they haven't done -- there's -- it's all hypothetical. It's all speculative in terms of the injury that they've

alleged in this case due to the actions of Mr. Morris and Mr. Hannemann taken in the light most favorable to them that they actually did that stuff.

So let's move over then to kind of the second phase, which is damages. And two arguments; Ute Holcombe has no damages, has no claims and should be dismissed, and then I'll deal with special damages for the conspiracy claims. So starting with her. This is her testimony; she essentially testified that she has no independent knowledge regarding either of her claims.

Question: So you don't have any evidence or testimony about anything associated with the declaratory judgment action; is that true?

Answer: Yes.

Do you have any information or testimony that you can offer as it relates to your conspiracy claim? Do you have any knowledge related to that?

Answer: No, I do not.

Question: My understanding of the conspiracy claim, it's related to the handling of the collection of Bill's checks. Is that your understanding of what this claim in?

Answer: That's what my understanding is, yes, but, like I said, I don't -- I'm just a bystander.

Question: So you don't have any independent knowledge related to that?

Answer: No, I do not.

Further, she goes on to testify she's not seeking any independent injury or damages related to her claims.

Question: As part of the cause of action, the allegations and injury, the Plaintiff will suffer irreparable damage to their ability to reside at their property. Is that the injury you're claiming in this case?

Answer: I think it's something you just need to discuss with my husband. I really don't even want to -- I don't know anything about it. Are you seeking any damages as it relates to -- referring to the conspiracy claim?

Answer: No.

Ms. Holcombe has no independent knowledge regarding the allegations or claims. She's not seeking any damages, she doesn't have an injury, and we're seeking summary judgment as it relates to all of her claims.

THE COURT: Okay.

MR. WATKINS: Do you want to move on?

THE COURT: I don't know.

MR. SHELBOURNE: Your Honor, Mrs. Holcombe is a homeowner, she's a property owner in there. The fact that she may not be even aware that she's damaged, she's part of the lawsuit. She's authorized this lawsuit and she is basically saying, I defer to my husband, but certainly her husband can testify and other people can testify as to how she has been damaged, even if she doesn't know.

A person may have an injury and they're not aware of it. A class action would be a similar analogy, Your Honor, where you may not even be aware that you've had something happen, but you're entitled to damages as a result of being exposed to something, or something like that. So we would argue that Mrs. Holcombe is an appropriate party here, even if she admittedly is deferring to her husband on what's happened in this case and what's going on.

THE COURT: Okay. All right.

MR. WATKINS: On to the next one. The last piece, this is a conspiracy claim.

THE COURT: Yes.

MR. WATKINS: Special damages is an element of conspiracy claim. Based upon the Plaintiffs' reply, the special damages that they've set forth that they are seeking, my understanding of them now is attorney's fees, and they're claiming diminution in value to property as it relates to this conspiracy claim.

So I'll address the attorney's fees first. Of course, attorney's fees are only allowed through contract or statute. There are -- there's no contract or statute that would allow the individual Plaintiffs to collect attorney's fees in this case. So attorney's fees aren't even an element to damages; they're not even available to the individual Plaintiffs.

So I think that ends the inquiry, but moving on, case law on special damages. The cost and expenses associated with prosecuting a plaintiff's civil conspiracy claim are not special damages if the cost of prosecuting the civil conspiracy claim are not distinct from the prosecution of other claims against the defendant. That's A. J. G. Hollings, LLC versus Dunn, Court of Appeals 2011 decision. And in this case, the only

evidence -- there's no evidence that any of the attorney's fees in this case are distinct, are just to the conspiracy claim.

The Amended Complaint, at the wherefore clause, section F, Plaintiffs' attorney's fees for all of the causes of action. Also talked to some of the Plaintiffs about this issue.

Mr. Holcombe testified. Question: You're claiming cause of action, declaratory judgment action, conspiracy action, slander and defamation action, and a breach of covenants and restrictions. Are those your claims in this case?

Answer: Right.

Question: For which one of those claims are you claiming attorney's fees?

Answer: All, but for defamation.

So the attorney's fees in this case are not distinguishable to a conspiracy claim. They've prosecuted the entire action.

Further, the individual Plaintiffs themselves have testified that they have not incurred any attorney's fees or costs. Their testimony is essentially that they had loaned money to the HOA, without a note or anything else, and that the HOA is actually incurring the attorney's

fees and costs.

The second issue is on property damage. They're claiming diminution in value of the property. A couple cases on that, Gall V. O'Shaughnessy Realty Company, that's 380 SC 548 -- and all of these are in my memos. But this was a Court of Appeals 2008 decision. And it says, quote, bald allegations of diminution in property value are insufficient to create a genuine issue of fact regarding damages absent any competent evidence showing the existence, amount, or causation of damages.

And that's what we have in this case. It's just bald allegations of it. There's no affidavits before the Court. There's nothing in the record to show what -- if there's the existence of one that was caused by this conspiracy, the amount of it, or if there was any causation related to -- from the conspiracy claim of these particular damages. The bald allegations of diminution of property value are not enough to overcome a motion for summary judgment.

So I will let him reply to those and then I will conclude.

THE COURT: Thank you, Mr. Watkins.

Yes, sir.

MR. SHELBOURNE: Your Honor, thank you. Make sure that I have the right list here.

THE COURT: Yeah.

MR. SHELBOURNE: I believe the attorney's fees portion, there are some that are distinct, and that would certainly be an issue that the Court would take up I think after the trial, as to whether they're distinct or not, which we would be happy to submit an affidavit. But that would come at the end of the case, not prior to the case going on.

THE COURT: Well, which of the causes of action would allow you attorney's fees?

MR. SHELBOURNE: Well, I think the special damages would be the attorney's fees in bringing the conspiracy.

THE COURT: Right.

MR. SHELBOURNE: And the conspiracy action is distinct from seeking the declaratory judgment action and distinct from the slander action and the breach of contract action under the covenants. There are distinct causes of action, Your Honor, and distinct acts that went along --

THE COURT: Let me ask you this

question: When you have those kinds of damages, such as attorney's fees, are you -- it's your position that attorney's fees can be awarded for bringing the underlying cause of action, as opposed from being a damage -- let me give you a for instance.

I don't know, people -- I learned very early on that with $25 and a hungry lawyer, you can sue Santa Clause for trespassing. And let's just presume for purposes of my question that that happened. And Santa Clause was kind of upset about it; you know, what I mean? Because there's been a conspiracy; four people got together and Santa Clause had to defend the cause of action for trespass.

And so Santa Clause then brings a new action under conspiracy, and his special damages are those attorney's fees that he had to pay to defend himself for the trespass action, for civil and criminal, and his bond monies he had to pay.

So I guess my question is: Is attorney's fees allowable for the underlying cause of action, for bringing the civil conspiracy cause of action, or were they talking about special damages -- the special damages that I'm referring

to; in other words, the conspiracy itself caused the person to have to spend money for fees, that's where the damages are coming from?

MR. SHELBOURNE: Yes, I think I understand, Your Honor. The conspiracy itself has caused the need to do this. There are other -- there are other issues that grow out of the conspiracy that the McFarlands got to be involved with, that the HOA has had to be involved with, they all involve lawyers. And we believe that the testimony and the evidence will show over the course of their dealings, the years they've gone through, there's this conspiracy.

And, unfortunately, conspiracy, as you know, is often only proved through circumstantial evidence. And that's really what we've got is a lot of little dots to connect, as opposed to -- you know, it's not a car accident. It's not one or two big events; it's a series of things. And we believe that's what the evidence will show when we get in front of a jury. So, yes, that's part of the damages.

I would also go on, if I may, Your Honor, to talk about one of the special damages, that -- that the HOA is rendered ineffective as a

result of the conspiracy, that that is a different, unique damage. And I use the word, unique, because it's not a monetary damage, per se, but it's special in that this HOA because of the conspiracy has been rendered ineffective.

It's not able to function. It's not able to get its assessments. It's not able to maintain its gate. It's not able to maintain -- you know, pay the light bill. The money is not being paid in, fines aren't being administered. It's just all -- in our opinion, and again, taken in the light most favorable to the Plaintiff, as a result of the Defendant's actions. And those are special unique damages to this case, to this conspiracy.

THE COURT: Are we talking about the HOA or to the individuals?

MR. SHELBOURNE: Directly to the HOA, but then also passing down to the other homeowners who were in there. The fact that all the other homeowners haven't been involved aren't -- the other -- the three homeowners aren't involved in the lawsuit, I don't think it's necessarily relevant one way or the other. It's just that they choose for one reason or the other not to be

involved.

THE COURT: Let me ask you this: Do your clients maintain that this conspiracy is a conspiracy against them individually, as opposed to the HOA?

MR. SHELBOURNE: I think both, Your Honor. I think both. It has an effect on both of them.

THE COURT: Okay. Got it.

MR. WATKINS: All right. Just kind of to wrap it up. And I think Your Honor's got that, based on your questions, but assuming the HOA is rendered effective, that would certainly be only a damage as it relates to the HOA, which I don't believe has standing in this case at all. It would not be a damage to the individual Plaintiffs.

So basically in conclusion, no standing, no damages for any of these claims, as it relates to Mr. Morris and Mr. Hannemann. The HOA doesn't have authority to act, so it shouldn't be a party Plaintiff.

Ute Holcombe, she doesn't have any damages, and as an individual Plaintiff she can't support her actions --

THE COURT: Let me ask you this

question, Mr. Watkins: When you go back to the bylaws of the HOA, how is it that the new members are elected?

MR. WATKINS: New board of directors are elected?

THE COURT: I'm sorry, yes.

MR. WATKINS: All right. Sure. It's at the annual meeting. There has to be a duly noticed annual meeting.

THE COURT: To whom does that responsibility fall?

MR. WATKINS: That would fall to the board or to the president to notice the meeting, and then a new board would be elected of course by the owners. The owners want to empower a board of directors because they're going to act on their behalf. So it happens at the annual meeting.

THE COURT: So have they had annual meetings?

MR. WATKINS: That's how this case got started. There was attempts to have the annual meeting as Mr. McFarland was rolling off. Each board member has a three-year term, so a new member is added every year. So his term was expiring and they needed to have a new homeowners meeting. That

was attempted which led to him filing the Temporary Retraining Order which stopped the HOA's annual meeting to go forward.

So, essentially, business has stopped for the HOA and Mr. McFarland has stayed in power because we haven't been able to have an annual meeting to elect a new HOA board member.

THE COURT: Now, you're going to -- I'm sorry, now you're going to wrap up before you were so rudely interrupted.

MR. WATKINS: That's okay. So the association doesn't have standing, Mr. McFarland's hijacked it. Ute Holcombe, no damages; she shouldn't be a party Plaintiff.

THE COURT: Who is that?

MR. WATKINS: Ute, U-T-E, Holcombe. She's, I think, the last person listed on the pleadings. And then, essentially, that leaves us with Jennifer McFarland and Carlton Holcombe as Plaintiffs. And the arguments are that they lack standing for the declaratory judgment action because they don't have an injury in fact; there's nothing the Court can declare. I would dismiss that action for those two individual Plaintiffs.

And then it comes down to those two

individual Plaintiffs' claim on the conspiracy, and the argument is they lack special damages to support the conspiracy claim.

THE COURT: All right. Let me ask you this question on that issue: Mr. Shelbourne tells me that as a -- not as a result of the underlying cause of action, but as a result of the conspiracy and the actions of the conspiracy, that these folks have had to spend monies for attorney's fees and costs? Now you understand the difference. Tell me why that isn't a special damage.

MR. WATKINS: Well, first off, let's go to the summary judgment standard. Once a party moved for summary judgment meets its initial burden of showing an absence of evidentiary support for the opponent's cause, the opponent cannot simply rest on mere allegations. That's what we have on that. There's no evidence -- there's nothing for this Court to say that there are individualized attorney's fees and costs as it relates to the conspiracy claim.

The only evidence that we have is what we've put in there, that the Plaintiffs have testified that these attorney's fees, one, they all go to the HOA. So the individual Plaintiffs

themselves haven't incurred attorney's fees at all. And, two, they're not particularized. They're not for the conspiracy claim. They're for all of the causes of action.

THE COURT: Okay. Got it. Got it. Yes, sir.

MR. SHELBOURNE: If I may, and I forgot to do this earlier, I handed some copies to Mr. Watkins and Mr. Jung, these are some depositions excerpts --

THE COURT: Thank you, yes.

MR. SHELBOURNE: And I would just point out on the first one, the 30(B)(6) deposition, Your Honor, and I apologize I don't have the cover pages for all of them, but page 212, line 19, Mr. McFarland when he's testifying on behalf of the HOA says, it would be $35,000 in attorney's fees as a result of the conspiracy.

I think that's evidence there, Your Honor. That gets us past what Mr. Watkins is alleging is not --

THE COURT: You say he's testifying for the HOA?

MR. SHELBOURNE: That's correct. This is a 30(B)(6) deposition, Your Honor.

THE COURT: I got you.

MR. SHELBOURNE: And Mrs. McFarland --

THE COURT: How about for the individuals?

MR. SHELBOURNE: Mrs. McFarland also goes on to testify about -- that's the third page in, Your Honor. She testifies I believe -- she goes on to say on page 28 -- the question is: So in your individual capacity, have you incurred any -- have you paid any dollars out to any attorney's fees that you are seeking in this case?

She says, right. No, I believe I fell on the bucket my husband and Mr. Holcombe and the fees that they have paid.

In other words, her husband has paid fees as well. So she's basically saying she hadn't paid out individually from her husband, but it all comes out of the same pot for her and her husband.

THE COURT: I understand. I understand.

MR. SHELBOURNE: Like my wife paying out all our money.

THE COURT: Yes, sir. Thank you. All right. When are you-all up for trial? Coming up soon, right?

MR. SHELBOURNE: I understand that there's a docket for the 23rd of March and that we may be number 8 on that docket, Your Honor.

THE CLERK: It's not published yet, but, yes.

THE COURT: There's not a common pleas term until March?

THE CLERK: We don't have anything in February.

THE COURT: All right. I'm ready to rule. Here we go. I do not believe that Mr. McFarland has standing to bring this action on behalf of the HOA. So I'm going to grant your motion with regards to standing -- his individualized standing to bring this matter on behalf of the HOA. I'm going to grant it with regards to that.

I'm going to grant your motion for summary judgment with regards to Ms. Holcombe on the failure of -- her failure to be able to articulate damages.

With regards to the declaratory judgment action, I concur -- in so far -- let me hold off on that one for a minute.

With regards to the conspiracy cause of

action, I'm going to grant your motion with regards to the HOA, but not with regards to the individuals, because I do think, taking the evidence in light of the most favorable to the McFarlands, that their cause of action for a civil conspiracy is against them to proceed.

And I concur with Mr. Shelbourne that the attorney's fees that they talked about are special damages because it's not -- it's not damages for the underlying cause of action, but damages -- meaning to bring this particular cause of action, but there's special damages as a result of the activity, if you will, as a result of the alleged conspiracy, that those are some of the special damages of that.

Now, talk to me a little bit about the DJ action. The DJ action is brought -- and I apologize, but I'm going to ask you to repeat yourself. The DJ action is brought solely on behalf of the HOA or on behalf of the HOA and the individuals?

MR. WATKINS: By all Plaintiffs. The HOA --

THE COURT: By the individuals?

MR. WATKINS: Correct, and the HOA.

THE COURT: Well, it's clear you can't bring the declaratory judgment. And with regards to the individualized damages, I'm glad for proposed orders on that. Okay. And let me tell you why. Mr. Shelbourne, I heard only -- my concern is, is that I heard speculative damages, but I would like to have that briefed. I'm not going to get it now if -- speculative, like, you know, my life is not wonderful like it was or my home is a difficult place now to live. I can't -- I can't help with that. In other words, I can't -- you know, you understand that.

That is -- as much as my heart might break and I might understand that angst, the Court is not even capable of rendering -- available to deal with that kind of ongoing angst, and that's not appropriate for declaratory judgment. So I'm going to ask for a brief on that one. Don't do a brief. Do a proposed order on that.

And you just put yours -- you'll get it to me in Word and I can excise it or not excise it. But, clearly, conspiracy is in. Individual conspiracy is in.

Now, have I handled all of yours? DJ on the HOA is out? DJ on the individuals, proposed

order on that one. But I think I've dealt with the other ones. Yes?

MR. WATKINS: Yes, ma'am. Essentially, what would be left is a conspiracy claim for the individuals, and then you want proposed orders for the declaratory judgment action as it relates to the individuals?

THE COURT: Yes. Yes.

MR. WATKINS: And all the HOA claims are out?

THE COURT: Yes.

MR. WATKINS: And Ute Holcombe's claims are out?

THE COURT: Correct. Correct. Okay. Hopefully, it makes it a more manageable cause of action.

Now, who else has something?

MR. JUNG: I do, Your Honor. And I would ask Your Honor to -- and I would move that I -- my clients, Mike and Sofia Mazell, that the HOA's claims, the civil conspiracy claims that Your Honor just struck on the -- by the HOA, that we be included in that relief? Our situation is no different than Mr. Hannemann and Mr. Morris, and I would ask Your Honor to include in her order that

the HOA's claims of civil conspiracy against Mr. and Mrs. Mazell also be dismissed.

THE COURT: On the same basis?

MR. JUNG: Yes, ma'am.

THE COURT: Yeah, yeah, yeah, yeah. Yes, of course. Okay.

MR. JUNG: Very good. Thank you.

Your Honor, I have a motion for a partial summary judgment.

THE COURT: Okay.

MR. JUNG: And it relates to the fourth cause of action that the Plaintiffs have brought in their Amended Complaint. And this was filed, I want to say, like in June, it was granted back in November or October, but this is a cause of action to assess fines against the Mazells. The basis is that the Plaintiffs allege that my client had a tenant in the -- in their home and that that violated the bylaws and that they should be fined for that conduct.

Now, I'm not going to argue the facts as to whether or not my client had a tenant in there. There was a situation that existed --

THE COURT: Let me stop you there because that would have been brought by the HOA;

yes?

MR. JUNG: Yes, ma'am.

THE COURT: Haven't I dismissed the HOA's actions?

MR. JUNG: I would think so. My client, though, I think is being brought -- the Plaintiffs are also -- the individual Plaintiffs are also claiming my client should be fined. It's broad. And, again, there was a situation where my client did have a tenant in there. He was notified by the property manager, the man left, and that was it.

My client was at one point in a foreclosure situation and he was seeking modification, and he had a family friend that he employed. And he -- the man paid him a few hundred dollars every other month --

THE COURT: Let me stop you there because that's an HOA action. The Court doesn't turn into an HOA. And so the problem is, is that I made a determination that one person does not an HOA make.

MR. JUNG: Fair enough.

THE COURT: So in the event that there ever is an annual meeting and a board of directors

is, in fact, created, constituted, and then they'll proceed to do whatever they do, and if your clients have violated in some form or fashion the bylaws, then -- then that's not for the Court. That's -- we're a long way from that.

MR. JUNG: That's really what I was getting to, Judge. The point is, in my motion, the cause of action to impose a fine against my client --

THE COURT: No. No.

MR. JUNG: -- based on the bylaws --

THE COURT: That's not for the Court. It's not even an action that's been taken by the HOA.

MR. JUNG: Exactly.

THE COURT: And I'm not going to -- the Court is not going to become the HOA. So, yes, I'll grant your motion.

MR. JUNG: Fair enough.

THE COURT: Yes, sir. Do you understand if you-all have an HOA, I'm not going to be able to respond?

MR. SHELBOURNE: May I just put something on the record?

THE COURT: Please.

MR. SHELBOURNE: As this is a contractual right, the covenants and restrictions provide that a homeowner can actually move to enforce the covenants and restrictions individually, because if the board doesn't do things -- and that happens all the time. The homeowners will sue another homeowner saying, you breached through the covenants.

And that's essentially what the individual Defendants are doing -- excuse me, Plaintiffs are doing in this case as well, saying, look, the HOA said you breached them, but we're also saying you breached them and you owe this money because you're in breach of this contract. They are --

THE COURT: What is their relationship? Does the HOA have to refuse to act and then the individual homeowners can act?

MR. SHELBOURNE: No, Your Honor. It doesn't say one way --

THE COURT: Let me see the section of that because it sounds --

MR. SHELBOURNE: Beg the Court's indulgence.

THE COURT: Let me read that part of

it.

MR. SHELBOURNE: I'm going to refer to Mr. Watkins' memo which I'm happy to hand up.

THE COURT: Mr. Watkins is -- hold on a second. Mr. Watkins' memo.

MR. SHELBOURNE: He just attaches all of the restrictions, Your Honor.

THE COURT: Great. So tell me where I'm going.

MR. SHELBOURNE: You're going to page 27 of the Amended, which is Article 8 of the Covenants and Restrictions.

THE COURT: Got it. Tell me where it is, I'm sorry.

MR. SHELBOURNE: Page 27, Section 8.1, Article 8.

THE COURT: Article 8.1. Enforcement?

MR. SHELBOURNE: Yes, ma'am.

THE COURT: Okay.

MR. SHELBOURNE: The association, or any owner, shall have the right to enforce by proceedings at law, or in equity, all the restrictions, conditions, covenants, easements, reservations --

THE COURT: Okay. Let me read it

because you're reading it too fast for the Court Reporter. Hold on.

MR. SHELBOURNE: And we would reference 8.7 as well.

THE COURT: Here's the applicable sentence. Here's the one you have to handle.

MR. SHELBOURNE: Okay.

THE COURT: The developer will agree that -- your clients are not the developer -- and the association -- they are not the association -- shall have the right to establish, assess, and collect reasonable fines and penalties for violations of this declaration, which shall be liens against dwellings as provided herein. Such fines shall not exceed $100 per violation per day.

That's a lien, at best, assuming that the developer and the association have declared them. I don't know if they have or not. It doesn't mean a homeowner can come to court and say, fine that person over there. It has to be done as a lien.

What else you got?

MR. SHELBOURNE: 8.7, Your Honor.

THE COURT: Uh-huh.

MR. SHELBOURNE: Which is two pages

over.

THE COURT: I'm right there.

MR. SHELBOURNE: In the event of a violation or breach of any of these restrictions by any owner, and the question is, you know, does having a tenant, is it a breach of the restrictions --

THE COURT: I'm going to -- I'm going to -- for my purpose of where we are, we assume it is. Okay. So they have the right to enforce it. In other words, they have the right to enforce the fact that the Mazells not have a tenant. But the Mazells do not even own the house anymore, do they?

MR. SHELBOURNE: That's correct. That's another issue, Your Honor, I agree. I don't think that's what Mr. Jung is arguing right here.

THE COURT: I know.

MR. SHELBOURNE: The -- they are enforcing what the board failed to do. And the covenants say and the bylaws talk about fines if you don't do something. The board is not assessing those fines, and so the homeowner is moving to enforce not only the breach of restriction, but to say, look, we're going to do it because the board's not active.

This gives the homeowner -- our position is, this gives the homeowner the authority to act if the board refuses to act. And that's why we believe that that cause of action is still valid as to the individual homeowners.

THE COURT: Got you.

MR. SHELBOURNE: And I think that at the very least, that could be a question of fact.

MR. JUNG: Only thing I want to point out to Your Honor is look at rule -- paragraph 15C of the bylaws. It sets a procedure that has to be followed before any fines shall be imposed, and they have simply disregarded that procedure.

They basically have commandeered this board or the named to this board to basically file fines against -- or to claim that they're entitled to file fines against my client that they have not even afforded the basis procedurally to get to.

Their cause of action is a creature of the bylaws, and if you're going to allow them to go -- that bylaws, from any -- if they're going to claim that they're entitled to go ahead with that bylaw, they have to follow those bylaws before they can go forward. And they haven't; that's my whole point.

THE COURT: Do they have a fine for having a tenant; yes or no?

MR. JUNG: My client was fined without any due process and that fine was paid. Now they're just trying to fine us again for something that didn't even happen.

THE COURT: Okay.

MR. JUNG: Judge, this is a due process issue. Before somebody can sue somebody under a statute or a cause of action that's created by a bylaw, they've got to follow those bylaws.

THE COURT: Yeah.

MR. JUNG: And they haven't.

THE COURT: Okay. Okay.

MR. SHELBOURNE: May I make a point?

THE COURT: What?

MR. SHELBOURNE: The bylaws Mr. Jung refers to relate to the HOA, which you've already ruled on. So I do not believe they are binding on the individuals as a contractual right. The contractual -- the rights come about -- to the individual homeowners come out of the covenants and restrictions, which then created the HOA board, then creates the bylaws and set up the bylaws, and that's how they govern --

THE COURT: Then you have people just following absolutely no procedure at all. They're going to file a lawsuit and say, I want you to fine that person, and I haven't talked to them about it, hadn't received any notice, they haven't given them an opportunity to respond, but, Judge, go fine them. We don't like them. Fine them.

MR. SHELBOURNE: That's what this case is about, Your Honor. I agree, but that's what -- the due process is this Court system. I mean, if the HOA board refuses to act and --

THE COURT: Okay.

MR. SHELBOURNE: -- then that's what the Court system affords them, is the right to a hearing.

THE COURT: Okay. I got you. All right. Let me ask you this question: Is it your understanding that in fact -- even assuming just for the purpose of argument I'm told that the board did fine these individuals and they paid it, is that your understanding?

MR. SHELBOURNE: I'm not sure if that's accurate. I don't know; I can find it out.

MR. JUNG: Your Honor, the board didn't fine them. Mrs. McFarland just filed a lien on my

client's property, and the bank in its wisdom when they were doing the short sale decided to pay it rather than argue about it. There has never been a board action where the Mazells have been fined for anything. The Mazells have never been given any opportunity to dispute these --

THE COURT: Let me ask you this question: How do you know that, in fact, the lien that was filed -- first of all, is that correct, that Mrs. McFarland filed a lien on these folks' house?

MR. SHELBOURNE: I don't dispute what Mr. Jung said. I don't know off the top of my head, Your Honor.

THE COURT: Okay. That's okay. All right. So what was the amount of the lien?

MR. JUNG: It was $2,000. And the bank when they were doing the short sale said, we don't want to mess with it, we'll just pay it.

THE COURT: Now, was there any description or any reason given for that lien?

MR. JUNG: We didn't even know it existed until they went to the closing. It just was there.

THE COURT: They paid it.

MR. JUNG: They just act as if they're the board.

THE COURT: Okay. I got you. So Mrs. McFarland, when she filed the $2,000 lien on these people's house, do you know if she articulated a reason for the filing of the lien?

MR. SHELBOURNE: Again, Your Honor, I apologize, I do not know off the top of my head.

Beg the Court's indulgence.

THE COURT: Yes. Yes. Yes, of course.

MR. SHELBOURNE: I'm not sure it was Mrs. McFarland. It may have been a property manager that filed it, but I don't know for sure. I would defer to -- if Mr. Jung has first-hand information, I will defer to him. I just don't know off the top of my head.

MR. JUNG: There's a deposition of the property manager and she said, I never fined anybody. So, again, it's -- by virtue of default, it's Mrs. McFarland.

THE COURT: What do you mean?

MR. JUNG: The property manager never fined my client. The property manager never brought any manner against my client. She told my client, hey, he can't stay there anymore. That was

it, he left. It was over and done. Somehow a lien gets filed for $2,000 --

THE COURT: Do you know who filed that?

MR. JUNG: I don't have personal knowledge, but I know the property manager said she didn't do it. I know Bill McFarland said he didn't do it. Who else? I know Mr. Holcombe and Mr. Hannemann didn't do it. The only person that did it is Mrs. McFarland.

THE COURT: Have you done any research in terms of the RMC to make that determination who, in fact, filed the fee and paid for the fee for the filing of the lien?

MR. JUNG: No, I haven't, but it's really not -- with due respect, it's not -- it's already been paid. We're here for some other fine or a duplicate fine for --

THE COURT: I don't know that, sir. That's what I'm trying to ascertain. See what I'm saying? I don't know. I don't know what you folks -- you tell me the house was foreclosed, there's a lien listed on the property. It could have been for a credit card to Lowe's. I don't know why it's there. That's why I'm asking you the questions. Help me.

MR. JUNG: I don't know why it was there either. And the point is, though, we're now being sued to get new fines.

THE COURT: I don't know that.

MR. JUNG: It's in the Complaint, Your Honor.

THE COURT: That's what I'm trying to ascertain. It makes it a whole lot easier if, in fact, they were fined and there was a lien and it got paid, as opposed to that's for a Lowe's credit card. Do you see what I'm saying?

MR. JUNG: There's no dispute about that, Your Honor, it was a lien and it was paid. I'm just talking about the new fines that they're seeking to impose.

THE COURT: I don't know that they're new fines.

MR. SHELBOURNE: It may help the Court, I'm happy to defer this and wait, so we can go pull the RMC records and see. I just -- they are what they are. I have no idea.

MR. JUNG: Judge, I have a Request to Admit that's been admitted. I can hand it up, submit it after the --

THE COURT: Well, do it now.

MR. JUNG: -- admit that the fines for whatever violations were paid at the closing statement, the HUD statement --

THE COURT: Well, that's pretty awesome that you have that. Let me see it.

MR. JUNG: I will send it to Your Honor.

THE COURT: Okay. And that was submitted on behalf of? The Request to Admit?

MR. JUNG: Oh, it was submitted to the Plaintiffs.

THE COURT: Okay.

MR. JUNG: On behalf of the Mazells.

THE COURT: Cool.

MR. JUNG: That's admitted.

THE COURT: Okay. I will leave the record open for that.

MR. JUNG: Very good. Thank you.

THE COURT: Obviously, it should be -- obviously, if that is correct, then that cause of action must be denied. Or dismissed rather.

What else you got?

MR. JUNG: That's all I have, Your Honor.

THE COURT: That's it? Okay. All

right. Mr. Shelbourne? Mr. Daigle? Or, Ms. Davidson, do you have anything separate?

MS. DAVIDSON: I do have, Your Honor, but I am here to oppose --

MR. SHELBOURNE: Your Honor, there is one matter that Mr. -- we filed a Subpoena Duces Tecum on a witness. Mr. Jung filed a motion to quash that Subpoena on behalf of the Mazells. That was filed with the Court less than ten days ago. We're ready to hear it, although we're the defending party to that and Mr. Jung was the moving party. We would ask the Court to consider it, but I understood Ms. Davidson objected.

I just want to make the Court aware of that. I don't want to later come back and you say, why didn't you tell me this when you were here the last time?

THE COURT: And that's exactly probably how I would say it. How old is the motion?

THE CLERK: It was just recently filed. I tried to get it scheduled and Mr. Jung would not consent. The next nonjury motion roster I have is not until March 30th.

THE COURT: Well, that's going to be after the trial date. You all understand -- okay.

So when are the ten days up?

THE CLERK: It was just filed on the 22nd, Judge. So a week ago today.

THE COURT: So seven days. It would be up Monday.

MR. SHELBOURNE: It was served on me on the 19th, so I did have ten days notice.

THE COURT: Okay.

MR. SHELBOURNE: So I have ten days notice.

THE COURT: You have ten days notice.

MR. SHELBOURNE: As far as I'm concerned, I take the position that I have ten days notice.

THE COURT: Who is on the other side of that? Why is that one not right to be heard?

MR. JUNG: I am not prepared. They're trying to depose my client's CPA.

THE COURT: That means you're prepared. You said you're not prepared, but I'm not going to delay the trial so -- we'll hear it tomorrow. What time do you want to hear it tomorrow? I'm here all day. You-all get with Becky and get a time for tomorrow and we'll hear it tomorrow.

MR. SHELBOURNE: Okay.

THE COURT: What's next?

MR. DAIGLE: I believe this is the last motion, Your Honor.

THE COURT: It doesn't have to be.

MR. DAIGLE: I'm Jason Daigle. I'm actually defending --

THE COURT: Are you still Jason Daigle?

MR. DAIGLE: I am.

THE COURT: You were earlier.

MR. DAIGLE: I'm defending the Plaintiffs against the counterclaims of Mr. Morris and Mr. Hannemann. I'm also defending the third-party Defendant of Bill McFarland against the third-party claims of Mr. Morris and Mr. Hannemann.

THE COURT: Okay.

MR. DAIGLE: Do you mind if I stand at the podium? The table is too low.

THE COURT: Sure.

MR. DAIGLE: And just to be clear, I do not represent Ute Holcombe.

THE COURT: You do not represent who?

MR. DAIGLE: Ute Holcombe.

THE COURT: Who?

MR. SHELBOURNE: Ute Holcombe is Mrs. Holcombe.

THE COURT: We've already talked about that. Okay. She's gone. Okay.

MR. DAIGLE: After the Plaintiffs filed their Complaint against Mr. Morris and Mr. Hannemann, Mr. Morris and Mr. Hannemann answered and they also filed counterclaims against all of the Plaintiffs and third-party McFarland, Bill McFarland. The allegations against the HOA, Jennifer McFarland, Carlton Holcombe, and Bill McFarland are all identical.

There's five causes of action. There's negligence, there's a breach of fiduciary duty, there's indemnity, there's conversion, and there is accounting.

THE COURT: Okay.

MR. DAIGLE: I filed a motion for summary judgment. I handed my lengthy brief in support of that up to Ryan earlier and I believe you have a copy.

THE COURT: Okay. Yes.

MR. DAIGLE: What I would like to do is take those in reverse order starting with accounting. We agree; we provided everything we've got. We provided them bank records, we provided receipts, budgets, proposed budgets, ledgers.

Everything that we had, we've given them.

THE COURT: Okay.

MR. DAIGLE: There is nothing that this Court can redress. There's no judgment you can make or there's no judgment a jury can make that can command us to do anything that we haven't already done and that we haven't already agreed to. We are going to continue to give them whatever documents they want. As far as the HOA accounting goes, we'll give it to them. So there's nothing to try.

THE COURT: Okay. So hold up on that one. Who wants to speak to that?

Go on, Ms. Davidson. Go for it.

MS. DAVIDSON: That's fine, Your Honor. What we do have -- I mean --

MR. DAIGLE: I've got another copy of the document.

THE COURT: Mr. Daigle is saying, yes, and we will continue to provide the documentation. He's not saying, yes, and that's all you get. He's saying, yes, we will comply. We will tell you that's everything that we have, but he's -- he's too smart to put that on -- and just say that to you and expect you to accept it until you've had a

chance to look at it or review it, blah, blah, blah. All right.

So, done. Make a note, you have to do that order.

MR. DAIGLE: The next cause of action is indemnity, and the -- Mr. Morris and Mr. Hannemann --

THE COURT: Is it equitable indemnity or --

MR. DAIGLE: You beat me to it. It's statutory, contractual. They're relying on the covenants and restrictions and the bylaws, and they're also relying on the South Carolina Nonprofit Corporation Act.

What I want to talk about first are the covenants and restrictions and the bylaws. They're right, kind of; both the covenants and restrictions and the bylaws allow for indemnity, but it only allows for the developer, the declarant, or the association itself to be indemnified. There is no provision in the covenants, restrictions or bylaws, that allow for individuals or individual homeowners to be indemnified. There's just no mechanism for it.

So the -- any claim for indemnity under

the covenants, restrictions, or bylaws fails.

THE COURT: Mr. Daigle, let me ask you this: HOA is not in this case?

MR. DAIGLE: They're sued. The counterclaim --

THE COURT: Okay. So the HOA did end up actually getting sued?

MR. DAIGLE: Yeah. I'm defending the HOA on the counterclaims.

THE COURT: And you agree that the HOA actually got sued properly?

MR. DAIGLE: They did. I have answered on their behalf.

THE COURT: They're not in as a Plaintiff, but they are in as Defendant?

MR. DAIGLE: I suppose now that you've ruled the HOA is out as a Plaintiff, we -- I guess they are now a third-party Defendant.

THE COURT: Yes, they are a third-party Defendant. Okay.

MR. DAIGLE: Okay.

THE COURT: Sorry. So you're saying that there is a mechanism for an individual -- an individual homeowner to be indemnified pursuant to the bylaws, pursuant to the covenants and --

THE WITNESS: Unless the individual is the developer or a declarant, which these folks are not.

THE COURT: What is a declarant? What is that?

MR. DAIGLE: It's someone that signed the original master deed, I believe. There's a definition in there, but these folks don't -- are not declarants.

THE COURT: Okay.

MR. DAIGLE: Now, let's move to the South Carolina Nonprofit Corporation Act. There's also an indemnity clause in there -- not a clause rather. It's an actual statute that says that you can be indemnified; however, only -- it only talks about the corporation. And in this case, it would be the HOA itself.

And if you look at 33-31-851, it states that a corporation may indemnify an individual made a party to a proceeding -- et cetera. That entire subarticle talks only about the corporation doing the indemnifying. Again, there is no mechanism for the individuals to seek indemnity versus other individuals; in this case, it would be Carlton Holcombe, Jennifer McFarland, and Bill McFarland.

They -- so there is no mechanism to get indemnity against those individuals.

According to the corporation, there is a way -- I'm sorry, according to the statute there is a way to get indemnity against the HOA itself; however, the HOA is already indemnified. Under the act -- under the corporation -- the Nonprofit Corporation Act and under the covenants, registrations, and bylaws, we're allowed -- we, being the HOA, is allowed to purchase insurance, which they did.

HOA funds were extended to purchase a D&O policy to indemnify the officers and directors, and Mr. Morris and Mr. Hannemann are officers and directors. They're being defended by that policy. They have been indemnified. There is no damage to them in this case because of that policy that was purchased with HOA funds. So they've got no claim because they have no damages, nothing to indemnify.

If we go on further, I actually asked Mr. Morris and Mr. Hannemann what they were suing for. Here's what they said.

Question: So -- this is Mr. Morris. So your claim for indemnification has to do with HOA dues spent on items that were not approved by a

majority vote of the board?

Answer: Correct.

Question: Anything else for indemnification? Not that I know of at this time.

So they don't even know what they're suing for. They're trying to sue for indemnification for money the board spent on something else without board approval. That's not indemnification.

THE COURT: Right.

MR. DAIGLE: Going on to Mr. Hannemann's deposition.

Question: And so you're claiming indemnification on your behalf as a homeowner for assessments that you paid that were then spent by the board or by the HOA?

Answer: Yes.

Question: Are you claiming any other damages in the indemnification cause of action?

Answer: No, not to my knowledge.

Again, they don't even know what they're suing for. They're trying to claim, quote, unquote, indemnification for their HOA dues that they're obligated to pay. So not only is there not a mechanism under the statutes or the bylaws,

covenants and restrictions for them to get indemnification, but they can't even articulate what they're trying to be indemnified for that would rise to the cause of action that is indemnification.

THE COURT: Got you. Let me hear about that. And who is going to argue?

MS. DAVIDSON: Me.

THE COURT: Yes, ma'am.

MS. DAVIDSON: Your Honor, the indemnification would be -- the insurance company did not come in to defend -- I mean, to -- right, to defend our clients until, let's see, September 15th, 2014, which was about a year and a half after the beginning of this. I was representing them up until that time, even though we had asked and sent letters and whatever else to the insurance company to provide a defense.

THE COURT: Got you. Got you. And -- okay.

MS. DAVIDSON: So we are -- my clients are -- are entitled to indemnification for --

THE COURT: You're talking about you believe that you are entitled to damages for the cost of them -- of the defense of your clients up

to the point where the insurance came in and, in fact, indemnified.

MS. DAVIDSON: Yes, ma'am.

THE COURT: All right. Let me ask you this question: Can that be -- can those damages --

MS. DAVIDSON: Be determined.

THE COURT: -- be returned in a suit for what's called indemnification, or is that some sort of wrongful failure to defense? Wrongful failure to pay? Is that a different cause of action, I ask?

MS. DAVIDSON: Yes, ma'am, I think it could be. It's a completely different party, uh-huh.

THE COURT: What about that?

MR. DAIGLE: I think it could be. I think their beef is with the insurance company, not with the HOA. The HOA did what they were supposed to do; they've already indemnified them. And not only that, when I asked Mr. Morris and Mr. Hannemann what their damages were, they said, oh, that's just money that we paid to the HOA.

They're not claiming attorney's fees. I asked them, they had a chance to tell me what it was. And now we have these allegations saying, oh,

we have attorney's fees. I asked them that. They had their chance to tell me what they were, and they didn't. There is no evidence.

THE COURT: Okay. And then they had that claim, but that very well may be a different claim.

MR. DAIGLE: Sure.

THE COURT: Okay. All right. I tend to believe you are correct. Make a note.

MR. DAIGLE: I am correct.

Next cause of action is conversion. What I want to do here is look at the Complaint itself and the -- I'm sorry, it's not actually the Complaint. It's the Counterclaims, the third-party claims. Mr. Morris and Mr. Hannemann are suing in their individual capacity for the conversion of HOA funds. They can't do that.

The definition of conversion in South Carolina is the unauthorized assumption of the exercise of the right of ownership over goods belonging to another to the exclusion of the owners' rights. That's the SS Med Services, Inc. versus Cox, 301 SC 493. That's a Supreme Court decision.

They are trying to sue for the

conversion of somebody else's money. That would be like me suing for the conversion of your money. You can't do it. They must -- the Defendants in the Crane versus City Corp National Services goes on to say, to establish a tort of conversion, in this case, Mr. Morris or Mr. Hannemann, must establish title or right to the possession of that property.

THE COURT: Let me ask you this question: How about that language that was just walking through Mr. Shelbourne that says, if the HOA doesn't do it, the homeowners can do it? How about that? Does that change --

MR. DAIGLE: I don't think so. I think that has to do with enforcing the covenants and restrictions. I don't think that has to do with a remedy in law when --

THE COURT: You're talking about a common right to sue.

MR. DAIGLE: Correct. And you can't sue for the conversion -- the HOA -- they're essentially saying the HOA was misspending its own money.

THE COURT: Right.

MR. DAIGLE: Which you can't -- that's

not conversion under -- in South Carolina by definition. Furthermore, they also sued the individual -- the individually named Plaintiffs and Mr. McFarland for that. Not only can they not do it because it's not conversion in South Carolina, they've got exactly zero proof.

What I'm going to do is read you a little bit of the deposition transcript from Mr. Hannemann. We have to just back up a little bit. What I did is, I got Mr. Morris and Mr. Hannemann to admit the HOA can spend money how it wants to spend it and the individual homeowners don't have the right to tell them how to. They're suing as individual homeowners, not as directors.

Question: And, again, it's my understanding that the HOA members have no say on how funds are spent. It's only the directors that have a say on how the funds are spent. Is that right? I will agree with that.

Question: Your conversion cause of action has to do with the homeowner expenditures that were not approved by the board, but do encompass any monies you allege the McFarlands or the Holcombes used for their own personal benefit? Yes.

In paragraph 21, which is the conversion paragraph, you assert that the Holcombes and McFarlands converted or stole association dues paid by the residents of Live Oak village. What proof do you have of that? None.

Mr. Hannemann still. Question: Do you have any proof or documentation Jennifer McFarland used any of the HOA dues for her personal use? No.

Do you have any proof or documentation that Carlton Holcombe used any of the association dues for his personal use? No.

Do you have any proof or documentation that Ute Holcombe used any association dues for her personal use? No.

Do you have any proof or documentation that William McFarland used any association dues for his personal use? No.

Mr. Morris: So as you sit here today, you don't have any proof that the Holcombes or the McFarlands have converted any HOA funds to their own personal use, do you? No.

Not only is it not conversion, there is zero proof. They cannot testify to anything to show that anyone, the McFarlands, the Holcombes, or the HOA itself converted any association funds,

misused any association funds, or used them for their own personal use.

THE COURT: Got it. All right. Who is going to tell me about that?

Yes, ma'am.

MS. DAVIDSON: Okay. Let me think for a minute. Mr. Morris and Mr. Hannemann over and over again as individual -- as owners and as -- as members of the board asked for information on the bank accounts, the accounting, the funds of the association, and Mr. McFarland refused to give it to them for months and months and -- and years now.

We have the information now, and the information that we have does not indicate that there was any conversion of funds or -- not -- there was any mishandling or miss -- things that were paid that were not supposed to be paid.

THE COURT: I understand.

MS. DAVIDSON: So that's where we are and -- but we couldn't get there until after several years of litigation.

THE COURT: I understand. Okay. Got it.

MR. DAIGLE: Yes, ma'am.

THE COURT: It shall be granted.

MR. DAIGLE: All right. The second to last one is the breach of fiduciary duty. And this is a similar argument to the one Mr. Watkins made earlier. There's just an absolute lack of damages in this case as far as breach of fiduciary duty. And the elements of fiduciary duty are the existence of, one, that the duty was breached and that it proximately resulted in the wrongful -- sorry, the damages proximately resulted from that breach. That is a necessary element of -- of breach of fiduciary duty. And, again, these damages cannot be speculative, they cannot be conjecture. They have to be concrete damages.

What -- and what I did is, I went through with Mr. Morris and Mr. Hannemann how are they damaged. And the testimony is as follows:

Question -- this is Mr. Hannemann now.

Question: Have you been damaged as a result of the alleged things you just told me about, the breach of fiduciary duty? Well, I don't know that my credit rating has been affected by the position of liens.

Part of what they're complaining about is that the board breached the fiduciary duty by putting liens on his house for fines that were

unpaid, that were eventually paid, and the liens were released.

Question: Okay.

Answer: They've caused me extreme amount of stress to my wife and myself during the time of additional stress during the death of her parents and our continued trips back and forth to Wisconsin that have spent -- they have spent monies from the homeowners association budget that I am being assessed for and I have no control over what were done improperly.

Question: Any other damages? Not that I can think of.

Have you checked your credit rating since those liens were filed? No.

So as you sit here today, you don't know one way or the other whether that's affected you, do you? No.

And it's my understanding that those liens were filed because you did not pay your dues for 2013 and 2014 to the HOA; is that correct? That's correct. We placed them in escrow.

Mr. Hannemann goes on. Is there anything in the bylaws, the covenants or restrictions, or anything that will allow you to

put your HOA dues in escrow? No.

As a member -- as a homeowner in that neighborhood, you have -- the covenants, restrictions, and bylaws have dominion over you as a homeowner, correct? Yes.

You have to pay your homeowners dues? Yes.

Is it your position that you do or do not owe an assessment of $1,000 for 2013 and 2014? I owe an assessment.

You paid that $1,000 to your attorney in escrow even though nothing in the bylaws or covenants allowed you to do that? Correct. That's why the liens were placed. Okay.

Question: So just to be clear, as far as your breach of fiduciary duty cause of action goes, you do owe assessments, but you also think you don't have any control over how those assessment are spent, you think your credit rating may be affected, but you've never checked it, so you don't know, correct? Yes.

Mr. Hannemann still. You also mentioned stress from breach of the fiduciary duty. Are you attempting to recover monetary compensation for stress related to the issues we talked about

under this cause of action?

Answer: Perhaps.

And what would those monetary --

I don't have an assessment at this point.

Have you seen -- have you sought treatment from any health care professional or any stress related to the breach of fiduciary duty? Perhaps.

Next question; have any of those doctors told you that your lower back, knee, hip issues are related to stress related to this issue? I have not related that issue to them.

He's got no damages. He's claimed that his credit may or may not be affected, but he's never checked. He doesn't know. He is also claiming that perhaps he has a little extra stress, but he has not sought any treatment, and, in fact, has been to the doctor since all of this happened. He hasn't even told the doctor that he has had these issues. Is my back related stress or is this pain-related stress? He hasn't even told the doctors that. He has no damages that he can prove related to -- related to the breach of fiduciary duty.

Now, moving on to Mr. Morris. Not only does Mr. Morris not have damages, he can't even articulate what the particulars are of the breach. So his fails on two accounts; one, he doesn't know what actions caused the breach and, two, he doesn't have any damages resulting there from.

This is Mr. Morris. Question: What I'm trying to get, is there any facts or evidence that support your allegation that the Holcombes and the McFarlands refused to operate the board of directors in a manner consistent with fairness and equality to all association members: Answer: I have no answer.

Question: Do you have any facts or evidence that support your allegation that the McFarlands and the Holcombes usurped power and exercised authority that William McFarland and Jennifer McFarland had no authority to exercise? Answer: It appears that everything has happened without approval of the majority of the board.

Such as what? Answer: Everything. Anything that went on out there.

Question: Can you give me specific examples? I don't recall any right offhand.

Question: Do you have any proof or

evidence that the Holcombes and the McFarland were intentionally abusing the offices of president and treasurer. As I said, there should be a majority of the board approving anything that goes on out there.

Question: So is that a yes or a no, you do or do not have specific facts? Answer: I don't, not at this time.

He's just saying, oh, it's everything. Which is essentially relying on his allegations in the Complaint, which at summary judgment you can't do. You've gotta have him some proof. I gave him four different chances and he finally said, I don't have any at this time. He's just got no proof of any allegation -- he can't prove any allegations beyond what's written in the Complaint.

Going on to his damages, question: So is the damage that you're claiming for breach of fiduciary duty that you didn't know how your money was being spent? That's one of them.

And, again, that goes to Ms. Davidson's issue that because they had not paid their dues, they were not provided with budgets, with financial records, that sort of thing.

What are your other ones? What are

your other damages? I have to think about those.

When can we have an answer? Answer: Not today.

Question: When can I? Whenever I come up with one.

Question: Any idea when that would be? Answer: As soon as I can.

Question: Today, tomorrow? Answer: I'm taking tomorrow off.

And that's how we left it. He has -- the only, quote, unquote, damages he has is he didn't know how his money was being spent. That's not damages under breach of fiduciary. Not only can he not articulate how the duties were breached, he can't articulate any damages that he can recover as a result therefrom. And so we are entitled to summary judgment on Mr. Hannemann and Mr. Morris's breach of fiduciary duty.

THE COURT: Okay.

MS. DAVIDSON: Your Honor, this is the one -- this is the cause of action that -- that there certainly are some facts for the jury on.

THE COURT: Okay.

MS. DAVIDSON: Let me just get this straight because it came out with a remark

Mr. Shelbourne made. Mr. Hannemann and Mr. Morris and Mr. McFarland before this suit began were the three duly-elected members of the board. And at that point, they were trying to work together and -- whatever. But, for whatever reason, at the end of Mr. McFarland's term, things fell apart and the two directors left -- excuse me, Morris and Hannemann tried to call meetings, did call meetings, and Mr. McFarland did not show up, blah, blah, blah.

At any rate, my clients had never been late, had always paid their assessments, wanted to pay their assessments, asked for information from Mr. McFarland. He refused to give them the checkbook, all the information I've already said, and in maybe July of the year after this was -- it was six or eight months into this suit is the first time that dues became due, annual dues, and my clients did not pay them to the association because Mr. McFarland wouldn't even tell them -- wouldn't even tell them where the money was going or what the expenses were, wouldn't show them anything, wouldn't talk to them. So they paid those to me and that's where they are.

And so there was a statement made early

on that all this started because my clients were not in good standing. Well, that's not true. They were always in good standing until this lawsuit and six months or seven months into the lawsuit after -- after mediation hadn't worked and blah, blah, blah.

So now that that's straight, breach of fiduciary duty, the claims of my -- of my client are -- my clients are, Bill McFarland particularly, but maybe also even -- well, Bill McFarland and/or Jennifer and/or Mr. Holcombe failed to -- made decisions without calling meetings of the board with Mr. Hannemann and Mr. Morris.

THE COURT: Let me stop you there, because a fiduciary duty, as I perceive it in this particular instance, would be from the homeowners association to the members of the homeowners association. The homeowners association operates through the board of directors. The question is, is there a fiduciary duty of director to director? That I don't know.

MS. DAVIDSON: But also --

THE COURT: Clearly, from the homeowners association, there very well may be a fiduciary duty that exists between -- okay. I so

apologize. This is a bit of an emergent situation. We'll take a break.

(A recess transpired.)

MR. DAIGLE: I think we were discussing the -- Mr. Morris and Hannemann's claim for breach of fiduciary duty. Our position is Mr. Hannemann cannot prove any damages, and I went through his testimony showing that, and that Mr. Morris cannot articulate what the actions were and then, further, what the damages were. You were inquiring as to whether there was a fiduciary duty between --

THE COURT: Director to director?

MR. DAIGLE: Correct. And just to -- we can put that to bed pretty easily. Under the breach of fiduciary claim, they are suing for breach of fiduciary duty for the Defendants, Morris and Hannemann, as members of the association and owners in Live Oak Village Community, not as directors.

THE COURT: Got you.

MR. DAIGLE: And not only that, I'm not making the argument anyway that there's not a fiduciary duty there. I'm saying there's no breach because Mr. Morris can't prove it and he has no damages, and the argument of Mr. Hannemann is

there's just no damages.

THE COURT: Got you.

So, yes, ma'am, where are the damages?

MS. DAVIDSON: Well, at the time that he took -- these depositions were taken, there were other depositions that were taken, and the damages we believe are the $35,000 obligation for attorney's fees that were spent on behalf of the association without approval of the board members or the owners --

THE COURT: Okay.

MS. DAVIDSON: -- in bringing this case.

MR. DAIGLE: That would be the association's --

THE COURT: Is that not then the association's cause of action back against the individuals?

MS. DAVIDSON: Well, why wouldn't it be -- well, I think that's arguable.

THE COURT: Because if the association -- if the association paid the money as a corporate entity and it has paid monies, then the question is, is the cause of action back -- is against the individual?

MS. DAVIDSON: Let's think about it. There's at least a question of fact here about what -- who loaned what money and what -- this and that and the other.

MR. DAIGLE: The association's paid $0.

MS. DAVIDSON: Yeah, that's right.

THE COURT: Okay. The association has paid nothing.

MR. DAIGLE: Right. Mr. McFarland and Mr. Holcombe didn't pay anything --

THE COURT: Okay. They paid it out of their own pocket. So there's no damages even to the association. Okay. So what about the 35,000 that you were talking about?

MS. DAVIDSON: It was -- that 35,000 for attorney's fees that were -- that -- well, that money was loaned to the association by Mr. McFarland and that is in his testimony. I think you have it.

THE COURT: It was loaned to the association. So who cares? So why does your guy care?

MS. DAVIDSON: Well, my guys care because to be able to repay that -- loaned it -- the association has to repay that loan, and to

repay it they'll have to especially assess seven owners.

THE COURT: Well, how are they going to do that? Because doesn't the homeowners association not have a cause of action against Mr. McFarland for generating that expense? Because I just ruled that he shouldn't have brought this cause of action on behalf of the association; he didn't have the authority to do it. He didn't have the standing to do it.

MS. DAVIDSON: Right. Right.

THE COURT: Okay. So is -- okay. Okay. Got it. I got it. There are no damages.

MR. DAIGLE: Okay. Moving on to the last cause of action, and we're done after this one, is negligence and negligence per se. Again, I'm going on the fact that there are zero damages here. And what I'm going to do is I'm going to short circuit this real quick. The way the negligence cause of action was pled --

THE COURT: Was it pled as corporate negligence?

MR. DAIGLE: It was pled as negligence against Mr. McFarland, Mrs. McFarland, Ute Holcombe, Carlton Holcombe, and the HOA, identical

causes of action.

THE COURT: Okay. You're just talking damages.

MR. DAIGLE: I'm just talking damages, and that's a necessary element of negligence. And the way that it was pled was in paragraph 32, they had subparts A through H, negligence in this manner, this manner, this manner, this manner. What I did is, I went through those in order and asked Mr. Morris and Mr. Hannemann about each one of those. And so with that background, here's what Mr. Hannemann had to say about his damages. Again, there's no context here, so I'm giving you that context right now.

Question: How were you damaged as a result of that? Answer: Personally, I wasn't.

Moving on to the next one. So how are you -- as a homeowner, how are you damaged by the association expending funds without having approval and authorization of the members of a properly constituted association board? Answer: How am I damaged as a homeowner?

Question: Uh-huh. Answer: I can only repeat what I've said before where I don't have -- I'm assessed a certain amount of money and that

money is being spent in a form and manner I don't have any response to.

Question: So as you sit here today, you don't know? Answer: I don't know.

Moving on. Question: Okay. How were you damaged as a result of that? Answer: I don't know.

Question: And how have you been damaged as a result of any actions that you deem arbitrary and capricious? Other than what we've discussed before, nothing. So as you sit here today, you cannot articulate any damages you've suffered as a result of any arbitrary and capricious actions by the Holcombes or the McFarlands that would fall under subparagraph E? Answer: Not that I know of.

Question: How have you been damaged as a result of the actions or inactions that fall under subparagraph F? Answer: Me, personally?

Question: Yes.

Answer: I haven't any.

Question: As you sit here today, can you articulate any damages that you have as a result of the issues raised in subparagraph G?

Answer: No.

Last one: Were you damaged by that?

Answer: No.

That's all Mr. Hannemann's testimony. He's got no damages. He can't articulate one shred of evidence, one anything how he was damaged. Period.

Now, moving on to Mr. Morris, it's more of the same. It's a little more succinct. Again, Mr. Morris doesn't have damages.

Question: So you've been damaged by not being able to discharge your duties as secretary? Correct, stress, undue stress, no harmony and peace, only mass confusion.

Question: Have you suffered a monetary loss as a result of that?

Answer? Yeah, I feel sure I have.

Question: How so? Answer: Working.

Question: Working what? Answer: At my job, trying to work my job, having to take time off to take care of this.

Questions: To take care of the litigation or to take care of the business of the HOA? Answer: All of the above. Can you separate the two? No.

Have you sought any treatment from any

health care professional for the stress that you're claiming? No.

He just doesn't have any damages. That's the entirety of his testimony and the proof in this case as far as Mr. Morris goes on any damages he has. He's trying to say that he can't discharge his duties, but he's suing as an individual, not as a director. He can't articulate any monetary damages that he has or any damages whatsoever.

There's also an allegation in there that's similar to the conversion. In the negligence cause of action, there's also an allegation that the Holcombes and McFarlands were misusing HOA funds, so I asked him about that.

What proof do you have that the McFarlands and the Holcombes used association funds for personal benefit? Answer: I don't have any.

So he doesn't have damages or he doesn't have proof of both. And that's the argument --

THE COURT: Got it. Thank you. I love lawyers. That being an officer of the Court is a tough thing, isn't it? And I would just say this -- and I think, Ms. Davidson, I think part

of -- as I listened to you, there was obviously very much -- it was very important to your clients to get the accounting, if I might make that observation, and it's clear to me that that's really what they were after. That the allegations probably were allegations of concerns that they had.

But it appears to me that the accounting, which they now have, and -- for which they have been successful. And then if they find anything based on the accounting, it's a new day. So it appears to me that that's what they were truly after. I just say that because as an officer of the Court it's very difficult for you to argue that those things existed when you just got the docs.

MS. DAVIDSON: Thank you.

THE COURT: You know, that's just reality. Okay. Now -- yes. Who -- have you got a motion for summary judgment?

MR. SHELBOURNE: No, Your Honor. I will take up Ms. Ute Holcombe's claims and defenses with Ms. Davidson a little bit later. In light of your argument, I would hope that she would cooperate in dismissing that, but we'll --

THE COURT: I understand and -- I understand. Is everybody clear about what I'm looking for? Yeah? Yeah? Orders from everybody.

MR. SHELBOURNE: Yes, Your Honor. I understand -- on Mr. Watkins' motion for summary judgment, do you want us to brief the declaratory judgment issue as to the individuals?

THE COURT: I do.

MR. SHELBOURNE: Well, not brief it, but submit proposed orders.

THE COURT: I do.

MR. SHELBOURNE. And on the Mazells, Mr. Jung's motion, that fourth cause of action, do you want us to do research with the RMC to see who filed the lien --

THE COURT: Please.

MR. SHELBOURNE: -- and was the lien, in fact, paid?

THE COURT: Please.

MR. SHELBOURNE: And we'll check into that and address that.

THE COURT: And civil conspiracy goes forward.

MR. SHELBOURNE: Yes. Individually.

THE COURT: On an individual basis. It

certainly proceeds forward after today.

MR. SHELBOURNE: One issue, Mr. Jung and I talked during the break about his motion for protective order as to the CPA.

THE COURT: Yes.

MR. SHELBOURNE: And you instructed us to come back tomorrow.

THE COURT: Yes.

MR. SHELBOURNE: In light of your ruling, I'm going to call my clients and talk to them, and that may or may not change their position. I tend to think it probably won't, but just knowing what the case is -- how the case is postured, but is it possible to do, if we consent, a phone conference on that issue? If we both consent?

THE COURT: If you consent?

MR. SHELBOURNE: No. If we both consent to --

THE COURT: Oh, to do a phone conference? No. And the reason is, I'm just -- this courtroom when it was designed, it was intentionally designed not to make that particularly easy.

MR. SHELBOURNE: Thank you.

THE COURT: And I'm going to have a courtroom full of folks so we would have to be moving like that. (Indicating)

MR. SHELBOURNE: I understand that 2:00 might be a good time?

THE COURT: That would be perfect.

MR. SHELBOURNE: I'll talk to Mr. Jung and see if we can work it out.

THE COURT: And I would put it into next week, but I'm going to be in Orangeburg and I hate like the dickens to make you come to Orangeburg. It takes so much more out of your day.

MR. SHELBOURNE: Thank you.

---

MR. DAIGLE: Your Honor, are you granting -- with the exception of the accounting, are you granting the other four summary judgment motions?

THE COURT: Yes.

MR. DAIGLE: Okay. Because we've agreed on the accounting and then you're agreeing summary judgment has to be --

THE COURT: Yes.

MR. DAIGLE: -- as to the other four causes of action --

THE COURT: Yes.

MR. DAIGLE: -- and you want a proposed order from me?

THE COURT: Yes. See how good you are?

MR. DAIGLE: I was listening.

THE COURT: Yes. And the reason -- and it really does go to damages. And that's why we were talking about that a little bit. And we don't know where -- and, truly, we don't know where we would go forward for the day -- and I guess if I would want anything in there, I would want -- I would want some language in there -- and you just need to be mindful, because now that the accounting has been given, what -- where these folks were having to proceed is they were having to proceed on innuendo and surmise and concern.

Now they have an accounting. There should be nothing in this order going forward, should evidence present itself, that would keep them from doing anything --

MR. DAIGLE: I understand.

THE COURT: But Ms. Davidson was just put in a position of concerns based on what their observation was without the benefit of an accounting. Now they will have the accounting and there should be nothing in this order that goes

forward and prevents these folks from doing whatever they might believe is appropriate, of course, you know, under their review and under Rule 11 and all that. Yes?

MS. DAVIDSON: Yes, ma'am. And then one more thing. I don't think we have a checkbook.

MR. DAIGLE: I think Bill has it.

MR. SHELBOURNE: We can get copies of that.

MS. DAVIDSON: I can get copies of the checkbook?

MR. DAIGLE: Do you want the proposed order in Word format?

THE COURT: Do what? Yes, he does. Yes, he does. He loves that.

(These proceedings were concluded at 1:19 p.m.)

CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 28th day of April, 2015 at Charleston, Charleston County, South Carolina.

Carol Denise Lauder
Registered Professional Reporter, CP
My Commission expires August 2, 2017

**In The Matter Of:**

*Live Oak Village HOA, Inc., et al vs*
*Thomas Morris, et al*

---

*Kathleen M. Greene*
*December 17, 2014*

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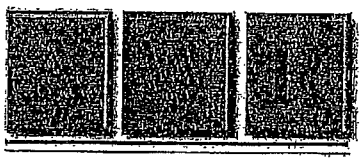

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restrictions?

A. Yes.

Q. And then he would instruct you to send them a letter and fine them?

A. Yes.

Q. Okay. Are you aware of there ever being a -- were you ever involved in any notices for hearings sent out?

A. No.

Q. Okay. Are you aware of any cease and desist letters that were sent out through the property manager?

A. I believe there was one.

Q. One?

A. Yes.

Q. Okay. And what was that related to?

A. Landscaping issue.

Q. Okay. And you seem to be familiar with my term, cease and desist letter. You're aware that that's a very specific letter under the bylaws; right?

A. Yes.

MR. SHELBOURNE: Objection.

BY MR. WATKINS:

Q. Are you aware that there's an

enforcement provision in the bylaws that calls for a cease and desist letter?

A. Yes.

Q. And then now in addition to a cease and desist letter there's also a provision that calls for a notice of a hearing and a hearing. Are you aware of that?

A. Yes, sir.

Q. Was that procedure ever followed for any of the violations that you dealt with as it relates to Live Oak Village?

A. No.

Q. How did you first become involved with Live Oak Village?

A. Put an ad in the newspaper.

Q. Okay. And did someone call you on that ad?

A. Mr. McFarland.

Q. Ms. McFarland.

A. Mr. McFarland.

Q. Mr. Bill McFarland.

A. Bill.

Q. And tell me how that -- what did y'all talk about? How did that conversation go?

A. Well, it was agreed upon -- there's

**In The Matter Of:**

*Live Oak Village Homeowners Association, Inc. et al v. Thomas Morris, David Hanneman, Sofia Mazell et al*

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David Kurt Hannemann
November 4, 2014

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EXHIBIT
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STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER
Case No. 2012-CP-18-2583

LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC., JENNIFER MCFARLAND, CARLTON HOLCOMBE AND UTE HOLCOMBE,

Plaintiffs,

vs.

THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL AND MICHAEL MAZELL,

Defendants,

SOFIA MAZELL AND MICHAEL MAZELL,

Third-Party Plaintiffs,

vs.

WILLIAM MCFARLAND,

Third-Party Defendant.

EXCERPT FROM THE DEPOSITION OF:

DAVID KURT HANNEMANN

DATE: November 4, 2014

LOCATION: Law Offices of
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Charleston, SC

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EXAMINATION BY COUNSEL FOR DFTS & THIRD-PARTY PLFS
BY MR. JUNG:

Q Good afternoon, Mr. Hannemann. As you know, my name is Brad Jung, and I represent Michael and Sofia Mazell.

And I'm sure you've heard or been instructed previous to today that I'm going to ask you some questions, but if you don't understand my questions, I'm going to ask you to tell me. Is that fair?

A That's fair.

Q Okay. I want to take you back to the time, I think it was in late of 2012, when this lawsuit got started.

Was there a board of director meeting prior to the filing of this lawsuit in which the HOA voted on whether or not to pursue a claim against yourself, Mr. Morris, and the Mazells?

A No.

Q Okay.

A My understanding is that the suit filed was not on the behalf of the HOA. It was separate and distinct by Mr. McFarland or by Mrs. McFarland, Mr. Holcombe, and Mrs. Holcombe.

Q My next question is: Do you know who is

acting on behalf of the HOA? Because the HOA most certainly is a Plaintiff to this lawsuit.

A I understand that. And, no, I do not.

Q But you didn't make any vote for that to happen?

A That's correct.

Q Did you conduct any meeting for that to happen?

A No, sir.

Q Did you send out any notice to any HOA members for that to happen?

A No.

Q Okay. Would your answer be the same with regard to the fines that have been levied? And I heard your testimony earlier regarding Mr. Morris. But would your answer be the same, i.e., that there was no vote for the Mazells to be fined?

A Would be yes.

Q Okay.

A There was no -- there were no meetings ever discussed for fines.

Q And there was no votes for fines either?

A No votes. No meetings. No nothing.

Q And there was no vote for the property management company, I believe they were KJ

something, for them to be hired; is that correct?

A There was no board meeting vote for that, as well, yes.

Q And you don't have personal knowledge as to whether or not Mr. Mazell actually had a paying tenant inside his home at any time, do you?

A I was not aware of that at all.

Q Were you aware that the bank that he was -- his mortgagee bank was attempting to give him a loan modification at or about that time?

A No, I was not aware.

Q Okay. If it were the case that his bank, whom he was seeking a loan modification, asked him to prepare a lease for their file as that might assist in the approval process and there was no actual tenancy going on, would that be a material factor in your decision as to whether or not it was appropriate or not?

A Yes.

Q And Mr. Shelbourne was asking you some questions that you were only the secretary of the board, but you were also a board of director member at that time?

A Yes.

Q And did you ever tell Mrs. Mazell that it

would have been inappropriate for her to deliver her check for the HOA dues to you as opposed to the treasurer?

A I did not. I did that out of an act of kindness. She was extremely upset, and her husband who was in the hospital said, Sofia, we've got to get the check to the HOA. She said, would you accept it? And I said, yes.

Q Okay. Thank you. That's all I have.

(End of portion of requested excerpt of transcript.)

August of 2010, Jennifer was serving as the treasurer?

A Yes.

Q Okay. Okay. Let's move to the August 2011 meeting. Is it your understanding that's the last time the meeting was held?

A Yes.

Q Okay. Who was elected then?

A Mr. Morris was elected in absentia.

Q What's that mean?

A He wasn't there present at the meeting.

Q Did he get tricked into doing that, then?

A No. He sent a note indicating that if nominated, he would serve.

Q So in August of 2011, Mr. Morris was elected to the board?

A Yes, replacing Mr. Holcombe.

Q So in August of 2011, the board of directors was comprised of you, Mr. McFarland, and Mr. Morris?

A Yes.

Q Okay. Who were the officers?

A I was the secretary. Mr. McFarland was the president.

Q Did Mr. Morris have -- was Mr. Morris an

saved the 1500 bucks?
A I didn't care.
Q You didn't care one way or the other?
A That's correct.
Q If they fixed it and spent the money, fine. If they didn't, fine?
A Fine.
Q Okay. Do you know how much money is being spent on the P.O. box?
A No.
Q And you believe that $600 a year is being spent on the property manager?
A Her fees are supposed to be according to the contract that we've seen, but it's an older contract. It was $50 a month, but that doesn't include any extra efforts.
Q Okay.
A It could be letter writing and so forth. It could be editing. I don't know anything about it. We've requested her to give us her accountings and letters, but she's not replied.
Q As you sit here today, when is the last time you remember the property manager taking an action on behalf of the board or the HOA?
A She wrote a letter to Mr. Morris about a

hose that she claimed was an electrical wire.
Q When?
A I don't recall.
Q Has it been within the last year?
A No. This all happened two or three years ago.
Q So that would have been --
A It probably was 2012, late 2012.
Q Okay. If you could read paragraph 7 for me to yourself. I will ask you questions about that, too.
A (Complying) Okay.
Q Paragraph 7 is just a claim for damages. How have you been damaged as a result of the alleged things you just told me about?
A Well, I don't know what my credit rating has been affected by the position of liens.
Q Okay.
A They've caused an extreme amount of stress to my wife and myself during a time of additional stress during the death of her parents and our continued trips back and forth to Wisconsin.

They have spent monies from the homeowners association budget that I am being

assessed for that I had no control over that were done improperly.
Q And those are the issues we talked about a minute ago?
A Yes.
Q Any other damages?
A Not that I can think of.
Q Okay. Have you checked your credit rating since those liens were filed?
A No.
Q So you don't -- as you sit here today, you don't know one way or the other whether it's been affected, do you?
A No.
Q And it's my understanding that those liens were filed because you did not pay your dues for 2013 and 2014 to the HOA; is that correct?
A That's correct. We placed them in escrow.
Q Okay. And when you say we, you and your wife?
A Myself.
Q Okay. You put them in escrow with your attorney?
A Yes.

Q Because why?
A We had asked for a physical accounting of homeowners association expenses since 2012.
Q Uh-huh.
A And we wanted an approved budget which is required by the bylaws.
Q Okay. Is there anything in the bylaws, the covenants and restrictions or anything that allow you to put your HOA dues in escrow?
A No.
Q That's just something that y'all did unilaterally?
MR. WATKINS: Object to the form.
THE WITNESS: Yes.
BY MR. DAIGLE:
Q Is that a yes?
MR. WATKINS: Same objection.
BY MR. DAIGLE:
Q You can answer.
MR. WATKINS: You can answer.
THE WITNESS: Yes.
BY MR. DAIGLE:
Q And everyone in the -- all the homeowners pay a thousand dollars a year, right?
A They pay a thousand dollars a year, but

that assessment has never been brought up, discussed, or removed.

The covenants and bylaws say that the budget is supposed to be developed and an assessment made. None of that has occurred.

Q Have you ever seen a budget since you moved into the neighborhood?

A Once.

Q What year was that?

A 2010.

Q And was that a thousand dollars assessment then?

A Yes. It had been up from 750.

Q And it's been a thousand dollars every year since?

A Yes.

Q And as a member, as a homeowner in that neighborhood, you have -- the covenants, restrictions, bylaws have dominion over you as a homeowner, correct?

A Yes.

Q And you have to pay your homeowners dues?

A Yes.

Q And in 2013 and 2014, you didn't?

MR. WATKINS: Object to the form.

BY MR. DAIGLE:
Q You can answer.
A I put them in escrow. That means I paid them, and I asked for information, but I did not receive the information. I asked for reasonable information.
Q Okay. Is there any -- and there's nothing in the -- let me rephrase this. Strike all of that.
Is there anything in the covenants, restrictions, bylaws that allow you to withhold your HOA dues pending requested information?
A I don't know. I don't.
Q That's a pretty big risk doing that, isn't it?
A It seemed reasonable to request information, and what authorities or what options do I have when expenditures are being made without my approval or knowledge using my money when I don't have any input into how that money is being spent? It seemed a reasonable request to put it in escrow.
Q But it's also reasonable to pay the dues that you and everyone else have to pay, correct?
A If you were receiving value for the dues

that you paid, yes.
Q Well, regardless of what value you may or may not have been receiving, the covenants and bylaws require that each homeowner pay dues.
A An assessment.
Q I apologize. An assessment, correct?
A Right. And that assessment has to be approved by the board of directors which was not done.
Q So is it your position that you do or do not owe the thousand dollars from 2013 --
A I owe assessment for 2000 --
Q I'm sorry. Let me rephrase that question. Is it your position that you do or do not owe an assessment of a thousand dollars for 2013 and 2014?
A I owe an assessment. I don't know what the value is because the assessments have to be based upon the budget.
There is no approved budget. So, therefore, I don't know what the assessment is. People have assumed a thousand dollars, but that's not what the covenants say.
Q Okay.
A Bylaws.

Q But you paid a thousand dollars to your attorney in escrow even though nothing in the bylaws or covenants allow you to do that?
A Correct.
Q Expenditures are made by the HOA with the approval of the board, correct?
A Yes.
Q So, as a homeowner, you don't have any control over how that money is spent, anyway, do you?
A As a homeowner, I get to see an approved budget.
Q Not what I asked.
A I'm sorry.
Q As a homeowner, not as a -- I understand you're a director, but as a --
A As a homeowner, I get to see that because the budget has to be presented to us.
Q Right. But as a homeowner, you don't have any control over how that money is spent?
MR. WATKINS: Object to the form.
BY MR. DAIGLE:
Q Is that right?
MR. WATKINS: Same objection. You can answer.

THE WITNESS: Okay. Yes.
BY MR. DAIGLE:
Q Yes, you do, or yes, you don't?
A I don't have any -- I do not have any control over the expenditures of the homeowners association --
Q Okay.
A -- as a homeowner.
Q As a homeowner.
A I suppose I could file lawsuits to request certain injunctions, but --
Q So just to be clear, as far as your breach of fiduciary duty cause of action goes, you do owe assessments, but you also don't have any control over how those assessments are spent.
You think your credit rating may be affected, but you've never checked it. So you don't know, correct?
MR. WATKINS: Object to the form.
THE WITNESS: Yes.
BY MR. DAIGLE:
Q And then you also mentioned stress from breach of the fiduciary duty. Are you attempting to recover monetary compensation for stress related to the issues we talked about under this

cause of action?
A Perhaps.
Q Perhaps yes or perhaps no?
A Perhaps yes.
Q And what would those monetary --
A I don't have an assessment at this point.
Q Have you seen -- have you sought treatment from any health care professional for any stress related to the breach of fiduciary duty?
A Perhaps. I have been having a leg, knee, and hip joint pain related to perhaps lower back issues which is where I believe I hold stress.
Q Okay. And what health care professional have you seen for those?
A I've seen two orthopedic specialists, my primary care physician, and I'm still seeing additional doctors.
Q Who is your primary care physician?
A Otis Engelman.
Q Where does he practice?
A Summerville.
Q How do you spell his last name?
A E-N-G-L-E-M-A-N (sic).
Q And who are the orthopedists?

A David Jaskwhich, J-A-S-K-W-H-I-C-H, and Shane Woolf, W-O-O-L-F.
Q Where do they practice?
A Dr. Woolf is with MUSC. And Shane (sic) is with the sports medicine group.
Q Which one?
A I don't know.
Q Where does he practice?
A It's in Summerville.
Q Are those the only three doctors you've seen for --
A Currently, yes, but I am trying to see another specialist.
Q Another orthopedist?
A No.
Q What kind?
A It has to do with blood work. I have been losing weight.
Q But you haven't seen anybody yet for that?
A Well, I've seen my primary care physician.
Q Did he refer you to somebody else?
A No, but I'm going to seek a second opinion because I don't like the decision that he

has provided.
Q Have any of those doctors, Dr. Engelman, Jaskwhich, or Dr. Woolf told you that your lower back, knee, hip issues are related to stress?
A I have not related that issue to them.
Q Okay. It says also that you're entitled to recover punitive damages in paragraph 7. What facts do you believe give rise to punitive damages?
A Well, expenditures that are not approved by the board of directors, property manager, gate repair, post office box.
Those are expenditures that the homeowner -- that certain individuals in the homeowners association committed the homeowners association to without benefit of approval by the board of directors.
Q So all the facts we talked about previously also fall under your punitive damages claim?
A Yes, sir.
Q If you go to page 3 of exhibit 42, the next several paragraphs, 8 through 14, are claims for negligence and negligence per se against the McFarlands and the Holcombes. If you could, look

and then in conversations with Mr. Mazell, he pointed out that the budgets reflected certain amounts.

Q Do you know which lawyer that $11,000 went to?

A No, I don't. There are letters that are supposed to be in the homeowners association records that would indicate that.

Q But as you sit here today, you don't know the answer to it?

A No.

Q Paragraph 10.

A Okay.

Q Paragraph 10 you go on -- it's got Subparts A through H, but in the main body of paragraph 10 before Subpart A, it has that the Holcombes and the McFarlands were negligent, careless, grossly negligent, reckless, willful, and wanton in their actions as directors.

A Yes.

Q And do Subparts A through H relate back to that accusation or that allegation?

A Yes.

Q Okay. Subpart A --

A Uh-huh.

Q -- how is that negligent, careless, grossly negligent, reckless, willful, and wanton?
A The homeowners association bylaws require electing a president annually. That never occurred.
Q Okay. Is that it?
A Well, that's the big issue, but they still also carelessly spent money --
Q We're not there yet. I'm just talking about A.
A Yeah.
Q Is that the only issue under A, the fact that the --
A Well, they refused to recognize any actions taken by the board of directors. They refused to comply with requests from a majority of the board of directors.
Q Okay. And how were you damaged as a result of that?
A Personally, I wasn't, but for the homeowners association, the monies assessed and the monies spent don't necessarily coincide.
Q Going to B, how is that negligent, careless, grossly negligent, reckless, willful, and wanton?

A They're spending money for a budget that has never been approved.
Q And those are the issues that we talked about --
A Yes.
Q -- or the expenditures, rather, that we talked about earlier?
A Yes.
Q And how have you been damaged as a result of that?
A I don't have an ability to look at the assessment in the income and expenditures in a rational manner to see whether income can be reduced by reducing the assessment or raising the assessment.

I can't do anything without the information being provided. The information was never provided. Therefore, as a member of an organization, I can't have any input as to whether or not those expenses were reasonable.
Q You agreed with me earlier that as a homeowner, you have to pay an assessment, correct?
A Yes.
Q And as a homeowner, you don't have any control over how that money is spent?

MR. WATKINS: Object to the form. You may answer.

THE WITNESS: I don't understand what you're asking.

BY MR. DAIGLE:

Q Earlier when I was asking you as you sit here as a homeowner, not as a director, not as an officer, as a homeowner only, you as a homeowner have to pay an assessment and you as a homeowner have no control over how your assessment is spent, correct?

MR. WATKINS: Object to the form.

THE WITNESS: There is a budget that has to be approved, and as a homeowner, I would have had input into the budget expenses prior to an approved budget.

The board of directors would have -- at least I would have under a board of directors meeting asked homeowners whether or not they thought expenditures were in line or excessive.

BY MR. DAIGLE:

Q But as a homeowner, you don't have control over how the actual money is spent?

A That's correct.

Q So how are you -- as a homeowner, how are you damaged by the association expending funds without having approval and authorization of the members of a properly constituted association board?
A How am I damaged as a homeowner?
Q Uh-huh.
A I can only repeat what I've said before where I don't have -- I'm assessed a certain amount of money, and that money is being spent in a form and a manner I don't have any response to.
Q Okay. So, as you sit here today, you don't know?
A I don't know.
Q Okay. Going to C, Subpart C in paragraph 10: In refusing and failing to abide by and conduct the actions of the association and its members and officers in accordance with the association bylaws. Have we talked about all the instances that fall under Subsection C or --
A I believe so.
Q Okay. How are you damaged as a result of that?
A I don't know.
Q Subpart D, in using funds belonging to

the association for the personal benefit of Plaintiffs, Jennifer McFarland, Carlton Holcombe, and Ute Holcombe, as well as Third-Party Defendant William McFarland, when expenditures of said funds were not properly authorized by a majority of votes of a properly constituted board of directors, or such votes were conducted inconsistent with the requirements of the association bylaws.

What proof do you have that the Holcombes and McFarlands used association funds for personal benefit?

A Well, without having benefit of the expenditures, the actual expenditures, I can't. But in observation, it seems odd when you have individuals performing yard maintenance for the association and then immediately thereafter perform the yard maintenance for other members of the homeowners association.

It seems odd to note -- was that independent, or did they simply just use that money to do their own work, as well?

Q I feel like you're talking about something specific. What specific yard work are you talking about here?

A Well, there was a contractor that worked for the homeowners association and then immediately after doing whatever he was doing for the homeowners association went to work for the McFarlands.
Q And who was that?
A Lance.
Q Oh, Lance -- what's Lance's last name?
A I don't remember.
MR. MORRIS: Johnson.
THE WITNESS: Johnson. That's it.
BY MR. DAIGLE:
Q Okay. So you saw Mr. Johnson performing work for the HOA?
A I was told that he was performing work for the HOA.
Q Who told you that?
A Mr. Johnson.
Q And what work was he performing for the HOA?
A He was doing just routine maintenance, cutting grass, blowing leaves.
Q So there's common elements or a common area that the HOA owns that no individual homeowner owns; is that right?

A I don't know how to answer that question because there are rights of way, but there is no property that I know of deeded to the homeowners association. It's owned by the individuals, but the homeowners association has rights to the property.
Q Okay. So what property was Mr. Johnson --
A He was cleaning the common areas which would contain the gate, the boulevard, in front of the fences, and the circle where the mailboxes are located.
Q And is that a grassy area?
A No, it's mecattle (phonetic).
Q What's that?
A Asphalt.
Q Oh, okay. So Mr. Johnson was hired to perform maintenance for the common areas?
A That's what he said.
Q Okay. And then immediately after that, you saw him go and perform yard work for who?
A Mr. McFarland.
Q And do you know whether Mr. Johnson was paid for that yard work from HOA funds or from Mr. McFarland's personal funds?

Q And is that by the board of directors or by the HOA or by whom?
A It says the architectural control committee.
Q And is the architectural control committee a committee of the HOA, or is that something that's done through the town or county?
A This would be under the HOA, but there is no architectural control committee, to my knowledge.
Q Okay. I see what you're saying.
A (Tendering)
MR. WATKINS: Just for the record, can you just state where we were?
MR. DAIGLE: Yeah. It's Bates stamped Client Docs 0017. It's page 17 of the bylaws.
MR. WATKINS: Of the covenants.
MR. DAIGLE: Covenants. Excuse me.
BY MR. DAIGLE:
Q So circling back around to the arbitrary and capricious enforcement of the covenants, using your tree example, how is that arbitrary and capricious?
A Nobody was informed of my intent to cut a

tree down. In a community association of seven homes, if you're going to do something, it would seem prudent to tell everybody what you're planning to do, not to surprise people.

Q Is there anything in the covenants or bylaws that require the officers or directors to do that?

A No.

Q So any approval or disapproval would come from the directors and not from the homeowners in general, correct?

A I would think you'd have input from the homeowners.

Q But there's nothing in the bylaws or covenants?

A No, but we're only seven homes. Input from an individual would carry some weight.

Q But, again, there's nothing in the restrictions or bylaws that require that, is there?

A No.

Q Any other actions that you deem arbitrary and capricious?

A Well, other than the issues that we've breached before, no.

Q And how have you been damaged as a result of any actions that you deem arbitrary and capricious?
A Other than what we've discussed before, nothing.
Q So as a result -- as you sit here today, you cannot articulate any damages you've suffered as a result of any arbitrary and capricious actions by the Holcombes or the McFarlands that would fall under Subparagraph E?
MR. WATKINS: Object to the form.
THE WITNESS: Not that I know of.
BY MR. DAIGLE:
Q Okay. Let's go to Subparagraph F or Subpart F. In failing to exercise the degree of care and prudence which a reasonable person should exercise under the same or similar circumstances. What do you mean by that?
A If you file -- if you assess a fine against an individual and allow that individual no due process, then you are being arbitrary and capricious.
You don't care what anybody else thinks. You're simply acting from the position of presumed authority.

Q I'm not sure I follow. What --
A If you assess a fine --
Q As a director?
A -- as a director or president --
Q Okay.
A -- and you do not allow the individual to whom you've assessed the fine any right of discussion or recourse, then you've made a decision that is not to the best interest of the homeowners association.

It is a decision that basically, going to the preceding one, is arbitrary and capricious. You don't care what anybody else thinks. You're simply going to follow the rules as you interpret them, not as they're written.

Q So using that example of leveeing a fine or a lien against you, for instance --
A Okay.
Q -- what due process is afforded you under the covenants, restrictions, and bylaws?
A I'm allowed to discuss them and refute the claim. I'm allowed to do anything that would allow me to -- you can't simply state, you're in violation.

Well, how am I in violation? Please

Q Okay. And the landscaping issue and the thousand dollars fine we just talked about?
A Yes.
Q Okay. How have you been damaged as a result of the actions or inactions that fall under Subparagraph F?
A Me personally?
Q Yes.
A I haven't any.
Q Okay. Going to Subparagraph G, in refusing to supply an accounting of association funds after repeated requests from the Defendants. Were those the accountings that you requested after the August 2012 special board meeting?
A No. These were in advance of that.
Q Okay.
A We had asked several times because there's a number of issues that relate. The homeowners association exhibits require the homeowners' annual meeting be in March.

We never had it in March. It was never proposed in March. It was always proposed later. I don't know why.

The -- by doing that, you create some issues relating to budget, no budget's approved.

Don't know what the expenses are going to be. You don't know what anything is happening with respect to the operation of the homeowners association.

So if you don't have an accounting of information, you can't make and approve a new budget.

You can't go look at what expenditures were made and review those as to whether they were warranted or unwarranted.

For instance, the landscaper that may have worked for Mr. McFarland and Mr. -- and for the homeowners association, if you see one check made out to the individual, you don't know what that was for.

You don't know if it was for homeowners association work specifically or for work done on your own personal residence. You don't know that just looking at the records.

Q What is your understanding of how budgets are made?

A Look at the expenditures from the previous year. Look at an increase in inflation or increase -- potential increase of expenses and make a judgment as to how much money you'll need to pay the expenses based on the previous year's

budget.
Q Is that outlined in the governing documents?
A I don't believe so.
Q Is it the responsibility -- whose responsibility is it to set the budgets?
A Board of directors.
Q And is that outlined in the governing documents?
A Yes, it is. The board of directors is to prepare a budget prior to the annual homeowners association meeting.
Q And the budget is approved by the board of directors, not by the association members, correct?
A That's correct.
Q Okay. When was the first time you remember asking for an accounting?
A I believe it was March 29th, 2012 when we requested a board of directors meeting for the 4th of April. That meeting had been postponed and ultimately canceled on the 18th of April.
Q Just so I make sure we're talking about the same thing here, what is the difference between an accounting and a budget?

A An accounting indicates I want to see the check register for every single expenditure for the budget for the homeowners association.
Q Okay.
A Budget is a general category, water, gas and electric, insurance.
Q Okay. Prior to -- well, between the time you moved in in September of '09 and the time you requested a budget or, I'm sorry, requested an accounting in March of 2012, had you ever seen an accounting?
A I did in 2010.
Q Under what circumstances did you see the accounting?
A It was at the annual homeowners association meeting. It was one of the documents that was passed out.
Q When was that meeting?
A August.
Q August of 2010?
A Uh-huh.
Q Oh, the same one you were elected --
A Yes.
Q And you did see an accounting then?
A I did see an accounting, and that's the

Q Okay. And by virtue of you paying your dues into escrow, you don't believe that you lost your right to vote?
A That's correct, because the board of directors didn't take it away from me.
Q Who did?
A I don't know.
Q So going back to where this question originally started, the refusing to supply an accounting would not be -- even if you hadn't paid your dues, do you still think that you had a right to see the budget?
A Certainly.
Q Why?
A Because I have not had my voting rights as a homeowner suspended by the board of directors.
Q For argument's sake, if you had had your voting rights suspended for whatever reason, would you still be entitled to a budget?
A I don't know.
Q What would you need to look at or read in order to answer that question?
A I have no idea. I have no idea what that means. I don't understand all the concepts of

what go into some kind of a decision.
I mean, from a personal perspective, if I'm a homeowners association member, I should have a right to see budgets even though my voting rights have been removed.
I should have a right to see the documents because I am still a part of the association. I cannot leave the association. I cannot remove myself from the association.
Q Okay. Do you think as a homeowner you have a right to an accounting?
A My understanding of under South Carolina state law, I have an absolute right.
Q Okay. And what law is that?
A I don't know, but that's what I've been told by lawyers.
Q That there's a statute saying that a homeowner has a right to see an accounting?
A I believe so, yes.
Q If requested or is it something that is incumbent on the board to provide to the homeowners?
A I don't know.
Q Concerning Subpart G, paragraph 10, how have you been damaged as a result of the refusal

to supply an accounting of the association?
A Well, I don't know what expenditures have been made, whether they're valid or invalid. Therefore, as a homeowner, my monies are being spent for things I have no knowledge about whether they're in conformance with the rules or regulations or bylaws or not.
Q So how have you been damaged?
A My monies have been spent where I don't know where they are.
Q Okay.
A And I have no assessment indicating that that's a valid assessment up or down. It's simply a monetary number.
Q I'm not sure if I follow that.
A The assessments are supposed to be developed annually by the board of directors. They don't have to be a thousand dollars. They can be less, or they can be more.
Q Right.
A But that was never discussed. That was never presented. It was simply, you pay a thousand dollars. That's not what is said here.
Q I understand your position on that. What I'm trying to figure out is by failing to provide

an accounting of monies already spent, how have you been damaged by that?
A Because they've been spent whether or not -- how do I know they're valid expenses? They could have been embezzled. They could have been misused. I don't know.
Q Do you have any proof --
A No.
Q -- of any of that?
A No.
Q As you sit here today, can you articulate any damages that you have as a result of the issues raised in Subparagraph G?
A No, because I don't have an accounting. Lunchtime?
Q Give me --
MR. WATKINS: Let's finish this portion.
BY MR. DAIGLE:
Q Yeah. We're almost done. In paragraph 12 --
A Yeah.
Q -- you say that the Holcombes and the McFarlands had a conscious disregard for the interests of the Defendants and other members of

the association. How do they have a conscious disregard for their interests and your interests?
A Failure to respond to e-mails requesting basic information.
Q Are you talking about the accounting again?
A Yes, and there were other questions asked. For instance, I made a dues payment on the 1st of June. I put it into the mailbox.
I noticed as I dropped it in that the envelope was not sealed. I sent a notice to Mr. McFarland indicating the actions and asked him to provide me information when that check was received by the homeowners association.
That was a Friday. On a Monday I looked in the homeowners association mailbox and saw my envelope in there sealed. I got no response from Mr. McFarland.
I sent him approximately a week later an e-mail again requesting information regarding whether he received or did not receive the check. He took two or three days to respond.
Q Okay. And you think that's a conscious disregard for your interests and the members of the association?

A It was a reasonable request. Why wouldn't he respond?
Q Were you damaged by that?
A No.
MR. DAIGLE: That's a good stopping place if you want to break for lunch.
MR. WATKINS: Sounds good.
(A luncheon recess transpired.)
BY MR. DAIGLE:
Q All right. Mr. Hannemann, I want to move next to your third counterclaim. It's the conversion of HOA funds. It starts at paragraph 15 on page 4.
A Uh-huh.
Q Paragraph 16 states that you had a pecuniary interest in having your annual association dues expended for such community purposes as set forth in the governing documents and as authorized by a properly constituted board of directors. Are you claiming that interest as a director or as a homeowner?
A Can you define pecuniary?
Q That was going to be my next question.
A No, I don't know what that is.
Q Okay. I assume these are lawyer words.

A You would be assuming correctly.
Q Okay. As you sit here today, you don't know what pecuniary interest means in that context?
A No.
Q Okay. Let's move on to paragraph 17 then. If you could read that to yourself, and I'll ask you a couple of questions about it.
A (Complying) Okay.
Q Actually, let me start with this. What is your understanding of what a conversion cause of action is for?
A I don't know.
Q Okay. For the sake of my questions, I'm going to just give you the simplest definition I know how. It's basically a civil remedy for stealing.
A Okay.
Q Okay? And hearing no objection, I think that I got it mostly right, anyway. In paragraph 17, you assert that the Holcombes and the McFarlands converted or stole association dues paid by the residents of Live Oak Village. What proof do you have of that?
A None, other than they have made -- paid

expenditures which were not authorized by the board of directors.
Q Okay.
A Which means that in effect they were using unauthorized funds.
Q But if they did that, they were using them -- they were using, to use your terms, unauthorized funds to pay for homeowner association expenses, correct?
A I would define -- there are two different things. Routine maintenance expenses such as water, light, gas, so forth, those I wouldn't have an issue with.

But anything over and above that which was not normally associated in the budget or would be an expenditure that I would class as a capital expenditure like a gate repair.
Q Okay.
A I don't agree with that.
Q And I understand your position on that. But if the -- even if the funds were not approved as you would say, those funds were still spent on HOA expenses. They were --
A How do I know?
Q That's what I'm asking you.

A I don't know. I don't know. I can't -- I don't see the bills. I don't see the checks. I don't see the records. I don't see any of that information. So I can't make an assessment.

Q Okay. Do you have any proof or documentation that Jennifer McFarland used any of the HOA dues for her personal use?

A No.

Q Do you have any proof or documentation that Carlton Holcombe used any association dues for his personal use?

A No.

Q Do you have any proof or documentation that Ute Holcombe used any association dues for her personal use?

A No.

Q Do you have any proof or documentation that William McFarland used any association dues for his personal use?

A No, other than the expended monies that were not authorized or approved by the board of directors.

And any expenditures that would have been spent were not approved by the board of directors because there is no approved budget.

Q I understand. Going to paragraph 18 --
A Okay.
Q -- you said that the Holcombes and McFarlands were expending association dues in violation of the bylaws.
Are we just talking about expenditures that were not approved by the board or a budget that was not approved by the board, or is there something else?
A No, just the budget.
Q Okay. And that those expenditures were otherwise wrongful, inequitable, illegal fraudulent and effectuated by tortuous and wrongful misconduct and misrepresentations made to community members?
A Yes.
Q Tell me about that.
A Well, if you can't see what the expenditures were made for and you don't have an approved budget, how can you make an assessment of whether the expenditures were in conformance with the rules and covenants? You have to have some sort of an ability to review the expenses.
Q Okay.
A Not having an accounting of the expenses

expended, you don't know..
Q Other than the fact -- or your -- other than your contention that the budgets were not approved, were any other bylaws violated by the Holcombes or the McFarlands in making any of these expenditures?
A I don't know.
Q Do you have any proof that any of the expenditures were wrongful, inequitable, illegal, fraudulent, or effectuated by tortuous and wrongful misconduct?
A I can't answer because I haven't seen an accounting of the expenditures.
Q So, as you sit here today, you have no proof of that?
A I don't have an accounting. I have no proof, but I don't have an accounting. If I had an accounting, I might be able to find discrepancies.
Q Okay. And the last part says: And misrepresentations made to community members. What misrepresentations were made, by whom, and to whom?
A I don't understand what that means. So I don't know.

Q Okay. You don't know of any misrepresentations?
A Not that I know of.
Q Okay. Paragraph 19 --
A Okay.
Q -- tell me about that.
A Well, it all goes back to an approved budget. If you're not going to have an approved budget, then any expenditures made are not authorized.
Q Did you make objections to the use and expenditures of association funds?
A I asked for an accounting. I didn't -- and I can't object to something I don't know anything about. I have no data, nothing.
Q Okay. So the fact that the -- the allegation that the Holcombes and the McFarlands disregarded and ignored your objections to the use and expenditure of association funds is not an accurate statement?
A No. I think it's accurate that they simply spent monies for what they chose to do with disregard to any of my information or input or requests for information.
Q I think we're talking about two different

things. I understand that you've requested an accounting, requested a budget that you did not receive.

But that paragraph 19 says -- makes an affirmative allegation that they disregarded and ignored your objections to expenditures.

A I mean, if you request information -- it depends upon what you identify as an objection. I mean, if I ask for information and I'm not afforded that information, am I making an objection?

If I'm not receiving a response in any way, shape, or form, how can I make an objection because I haven't got a response?

Q I understand. What I'm trying to get to the bottom of is if you did, in fact, make an objection because it's alleged in the complaint, and that's what I'm trying to figure out.

A Not that I know of.

Q Okay. Paragraph 20 --

A Uh-huh.

Q -- says that the association -- that the McFarlands and the Holcombes used the association funds without permission of the members including the Defendants. When you say members, are you

talking about members of the board or members of the HOA?
A Board.
Q Okay. And, again, it's my understanding that the HOA members have no say on how funds were spent. It's only the directors that have the say on how funds are spent; is that right?
A I will agree with that. But if you are a homeowner and you objected to expenditures, you would have the right to raise that objection whether you are on the board or not.
And you would generally -- in my understanding, you would raise an objection to the board of director which then would raise the question to the board itself.
Q Okay. But a homeowner has no -- expenditures do not require the permission of homeowners. It merely requires the permission of the board of directors, correct?
A The board of directors approve the budget.
Q That's a yes?
A It's a qualified yes.
Q What's the qualification?
A The expenditures must be approved.

Q By the board?
A By the board.
Q But the expenditures do not have to be approved by the homeowners, in general?
A In general, yes.
Q What damages are you claiming as a result of the alleged conversion?
A I don't know.
Q Sorry?
A I don't know.
Q You don't know? When will you know?
A If I get to see an accounting of the expenses, then I should be able to identify whether they were spent in accordance with the covenants and bylaws.

If there were extraneous expenses that were approved or that were made that weren't approved by the budget, then I believe that those making those expenditures should be responsible and repay the homeowners association.

Q Just so I'm clear, your cause of action for conversion does not encompass monies you're alleging were used for the Holcombes' or the McFarlands' personal use. Rather, it is expenditures on items that may not have been

approved by the board?
A It doesn't include items, but it includes every expenditure because none of the expenditures that were made on behalf of the homeowners association were approved under the budget.
Q Okay. I think we said the same thing. Your conversion cause of action has to do with homeowner expenditures that were not approved by the board --
A Yes.
Q -- but do not encompass any monies you allege the McFarlands or the Holcombes used for their own personal benefit?
A That I know of, yes.
Q Okay. Going to your accounting cause of action.
A Page 5? 6?
Q 6. I'm sorry. It's your fourth cause of action.
A Okay.
Q We've talked about this at length. Generally speaking, what do you expect to get in an accounting?
A A listing of the expenditures and how my money along with six other individuals is spent.

Q For what years?
A Since 2012.
Q So the fiscal year of 2012?
A Okay. You may have a different definition of fiscal year than I do.
Q Okay. Well, how about calendar year? Can we agree on calendar year?
A Calendar year is what is outlined in the bylaws.
Q Fair enough. Let's use that then. So do you -- or in that cause of action, do you expect an accounting from January 1, 2012 through today?
A Yes.
Q What would you expect to be in that accounting?
A Well --
Q Let me -- I --
A You opened the door.
Q Yeah. No. What I mean is: What format, I mean, would you expect --
A Check register.
Q A check register?
A Or a check statement from the bank.
Q That's what I was trying to get at. So essentially a check or a printout from the bank

that has the checking account showing every dollar in and every dollar out?
A Yes.
Q Okay. Or a check register from the -- or the paychecks and deposits and that sort of thing?
A Yes.
Q Okay. It says in that cause of action that the bylaws -- excuse me. That the bylaw says you have a right to the accounting; is that right?
A That's what I understood.
Q Where in the bylaws does it say that?
A I don't think it says that. It says in the South Carolina Nonprofit Corporation Act. So I'm assuming that it's in the corporation act, not in the bylaws.
Q Even though that --
A I'm making an assumption. I don't know. It's not in the bylaws that I know of.
Q And you're assuming that it's in the South Carolina Nonprofit Corporation Act?
A That's what my lawyer told me.
Q Fair enough. Moving on to indemnification, your last cause of action.
A Okay.
Q I guess we're just looking at paragraph

26 here. It says that you're entitled to indemnification for expenses incurred. What are you basing that indemnification on?
A Expenses not approved in a budget.
Q Okay.
A Not approved in a budget. Not approved by a board of directors. I have no issue with expenditures made for routine expenses, lighting, gas, so forth.
When you get outside of that, that's where I have an issue because I think -- no, I don't think. I believe that the board of directors had a right to know what you were spending the money on.
Q Okay. And so you are claiming indemnification on your behalf as a homeowner for the assessments that you paid that were then spent by the board or by the HOA?
A Yes.
Q Okay. Do you know what you -- do you believe you're entitled to be paid back for every expenditure that was not approved in a budget or approved by the board?
A No. I said previously that I don't expect to be paid for things like water, light,

gas, telephone.
Q Okay. But if monies were spent on maintaining the common areas like with Mr. Johnson, would you expect to be reimbursed for that?
A No, because we do have an obligation to maintain the common areas. The question is: How many times? Repetitive nature.
There are times when there is no reason, earthly reason for a maintenance contractor to come in and cut grass because the town has already come by and cut the grass and blowing pebbles, give me a break.
Q Okay. You said a couple of times now that the homeowners have no right to tell the board how to spend those association dues.
A I don't think I would characterize it that way. I said they have a right to make comments to the board because we're acting on their behalf. And any comment that they make the board should take under its consideration.
Q But, ultimately, the homeowners themselves have no say in how the money is spent, that the board of directors makes those decisions?
A Yes.

Q So as a homeowner, you cannot -- and I understand you can do it as a director, but as a homeowner, you cannot direct how that money is spent, can you?

A We're playing games with words. As a homeowner, you have a right to complain about something to the board of directors.

You do not have a direct input on the expenditure of monies to satisfy that complaint, but the complaint is acted upon based upon your information in the beginning and the board's decision.

Q I understand that. But the board of directors has no obligation to make expenditures according to Mr. Cummings' complaints about the expenditures.

Y'all can still -- y'all, being the board, can still make expenditures despite his protestations, correct?

A We have the authority to do that, yes.

Q Okay.

A But the board of directors would not be fulfilling its fiduciary responsibilities if they did so.

Q Are you claiming any other damages in the

indemnification cause of action?
A No, not to my knowledge. Are we finished with this?
Q Most likely, yes.
(Mr. Jung entered the room at this time.)
MR. DAIGLE: Trey, I've just got one copy. I can make copies of them. It's like maybe 15 pages or so of stuff I've previously produced. I should probably go make a copy of that.
(Off-the-record conference.)
MR. DAIGLE: Would you mark that as 43?
(EXHIBIT 43, Multipage document entitled Proposed Budget June 1, 2013 - May 31, 2014, Bates stamp numbers Client Docs 0079 through Client Docs 0094, was marked for identification.)
MR. DAIGLE: It's Bates stamped Client Docs 0079 through 0094, 15 pages.
BY MR. DAIGLE:
Q Could you just take a quick look at that? I'm going to ask you some questions about it.
A (Complying)

Q Have you had a chance to look at exhibit 43?
A Uh-huh.
Q Have you seen any of those documents before?
A No.
Q These were produced in discovery, I believe, sent to your attorney. Those were not shared with -- these were not shared with you?
A I haven't seen them.
Q Okay. Going to the page that's -- I guess it's the fifth page in. It's Bates stamped 0083. When I say Bates stamped, it's that tiny, little number down there.
A Yeah. That you're going to make me try and read, aren't you?
Q Okay. That page and then the two following it, so Bates stamp 0083 through 0085, does that satisfy your request for an accounting for the time period indicated in the upper left-hand corner from June 1, 2012 through May 31, 2013?
A Didn't you and I just discuss the fact that the year started January 1st?
Q I did. We did. I'm just asking for the

dates indicated above for that one-year time period.
A I don't see the expenses for 2011, 2012.
Q Okay. I'm not talking about prior to this. I'm talking about only for what this shows, for that one year, for those 365 days.
A All right.
Q For those 365 days only, does this satisfy your request for an accounting for that time period?
A I'd have to look at it and study it.
Q Could you take a minute and do that?
A (Complying) For the most part, yes.
Q When you say for the most part, is there anything in there --
A I don't know what a debit means, the second page.
Q Okay.
A Debit, $9, postage. Debit, Lowe's, landscape.
Q Okay. I'm sorry.
A I don't know what that means.
Q So if you go to the top, you have I guess the fourth entry, debit, 11-14-2012, USPS postage/mailing supplies for $9?

Q Okay. I want to take you back to the time, I think it was in late of 2012, when this lawsuit got started.

Was there a board of director meeting prior to the filing of this lawsuit in which the HOA voted on whether or not to pursue a claim against yourself, Mr. Morris, and the Mazells?

A No.

Q Okay.

A My understanding is that the suit filed was not on the behalf of the HOA. It was separate and distinct by Mr. McFarland or by Mrs. McFarland, Mr. Holcombe, and Mrs. Holcombe.

Q My next question is: Do you know who is acting on behalf of the HOA? Because the HOA most certainly is a Plaintiff to this lawsuit.

A I understand that. And, no, I do not.

Q But you didn't make any vote for that to happen?

A That's correct.

Q Did you conduct any meeting for that to happen?

A No, sir.

Q Did you send out any notice to any HOA members for that to happen?

**In The Matter Of:**

*Live Oak Village HOA, Inc., et al vs*
*Thomas Morris, et al*

---

*William McFarland, 30(b)(6)*
*December 2, 2014*

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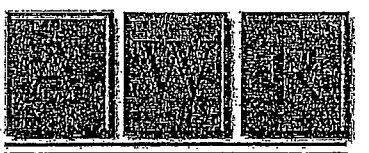

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Q. Yeah, please do.

(DFT. EXH. 2, Declaration of Covenants and Restrictions, was marked for identification.)

(DFT. EXH. 3, Amendments to the Declaration of Covenants and Restrictions, was marked for identification.)

BY MR. WATKINS:

Q. Let me -- let me hand you what's been marked Exhibit No. 2, and if you'll just take a reference and tell us for the record what that is, and then I'm also going to hand you Exhibit No. 3.

So my first question -- that was a compound question, but the first question was, just so that we have it for the record, Exhibit No. 2, can you tell us what that is?

A. Yes. That's the declaration of covenants and restrictions for Live Oak Village.

Q. And does it also contain the bylaws?

A. I believe so, in the back, yes.

Q. Okay. And Exhibit No. 3, can you tell us what those are?

A. Amendments to the declaration and restrictions for Live Oak Village.

Q. Okay. Are those the governing documents for Live Oak Village, Exhibits No. 2

and 3?

A. Yes, I believe so, yes.

Q. Okay. And so my pending question was: Are you aware of anyone else, other than Oak Village Development, LLC, that is defined as the declarant under any of those documents?

A. Okay. This document here supersedes this document, so if I were to look at this document as who the declarants are --

MR. SHELBOURNE: Which one is that?

THE WITNESS: It's the amendment.

BY MR. WATKINS:

Q. Exhibit No. 3 is the amendment to the covenants, correct?

A. Correct.

Q. You're referring now to Exhibit No. 3?

A. Yes, I am. I'm looking at the signature page, and it would be Mr. John Payne, Scott S. Drummond, and John Payne is a managing member of Oak Village Development, LowCountry Signature Homes president, which would be John Payne again, managing member, John Payne Homes, Village Development Corporation, which I believe was David Willis, my name, and then my wife's name.

my personal expense, from my attorney to Hannemann and Morris notifying them of various infractions and other areas of how they were conducting meetings.

Q. And you said these were done at your expense. Is this you were doing this in your individual capacity, or is this being done in the capacity of the HOA?

A. It is being done in the capacity of the HOA, but it would require me to get approval to spend the money on it, so I felt I would donate to the cause, so to speak, to try to have some type of civil order in our governing of the HOA.

Q. All right. Let me just get this straight, then. Has the HOA incurred any attorneys fees in this litigation?

A. I would say yes.

Q. How much attorneys fees has the HOA paid out in this litigation?

A. I would say we're up to, if I'm not mistaken -- it's just a guess, but I would say maybe $35,000.

Q. So the HOA, through all of its members, through dues assessments and everything that's been paid, has paid to Mr. Shelbourne

$35,000?

A. Right. The homeowner Holcombe and myself, McFarlands, have lent the money to the HOA to fund the lawsuit.

Q. Is there any note or agreement that has been entered into by the HOA for this loan?

A. No. It was a verbal agreement.

Q. Okay. Was there any board action to take this loan?

A. No. It was impossible to have a board action.

Q. Is there any note that substantiates this loan?

A. No.

Q. So you just took it upon yourself to take an indebtedness for the HOA of $35,000? Is that how that worked?

A. Well, it was brought to my attention that several homeowners were very disturbed about what was happening with several of the members not following the bylaws, and being that those members were board of directors, it was impossible for me to do anything else to preserve the HOA.

Q. We'll get into the specifics, but what my question is -- I just want to make sure I'm

Q. Okay. Well, we'll go through each of those when we get there.

Am I correct also the HOA, nor the board of directors, has ever held a meeting to authorize the HOA to bring suit against any of the defendants in this case, correct?

A. No. That'd have been impossible. The defendants in the case are board of directors.

Q. Right. So the board has never authorized any litigation, correct?

A. Exactly. My answer stands. It would have been impossible, as the defendants in this case are board of directors.

Q. And so you have acted unilaterally as one board member to do --

A. As the president of the HOA, I did act in order to preserve the HOA, to preserve the corporation.

Q. I jumped into this, but I know you've been to -- been present for a number of depositions in this case, correct?

A. Of this case? No. This would be my first deposition, I believe.

Q. Okay. Have you ever attended any other depositions?

that.

Q. Were you aware of it?

A. I was aware that -- the attorney informed me that they may have done that, yes.

Q. The attorney informed you they may have done that?

A. That's correct.

Q. What attorney?

A. I believe it was Jason and Brandt.

Q. Well, don't tell me about conversations with them, but I want to know whether or not the HOA had knowledge that Hannemann and Morris' dues were paid into escrow for their annual assessments?

A. I believe that that was told, yes.

Q. All right. And the reason they were placed into escrow is that they, as board of director members, had asked for certain items. Is that right?

A. I don't know the circumstances that they were asking for.

Q. You don't know?

A. Yeah.

Q. As president, you had no idea?

A. Right.

attorneys and expend legal fees and --

Q. You've said that that was associated with the restraining order hearing that the HOA had --

A. As to my duties as an HOA president.

Q. Anything else?

A. Relating to the check, no. I would say that's definitely for the conspiracy issue.

Q. What damages are you claiming as a result of the conspiracy, which my understanding is ultimately related to the same check issue?

A. Well, the conspiracy, again, that we're alleging is that favors were being given back and forth between Mazells and Hannemann and Morris. For example, right after the October 4th meeting, Hannemann immediately issued email to the property manager claiming that he is now the president, and he wants the property manager to cease and desist all investigation into the Mazells renting out their home, where the property manager was confused. And so I would say how was the HOA damaged? Well, there was an outstanding fine that the property manager assigned to that code, that violation, so I would say that we missed out on that.

Q. Should the HOA even decide to use a property manager. They're not required to use a property manager, are they?

A. They're not required, no, but we are all required to follow the bylaws.

Q. I agree. All right.

So in terms of any damages for this conspiracy claim --

Well, we didn't ask -- I didn't ask about is there any dollar figure or any other damages that the HOA has obtained for favor -- for these alleged favors between Hannemann and Morris?

A. I would say the cost of the litigation, the HOA would want its legal fees back, asking Hannemann and Morris to follow the bylaws.

Q. And the HOA legal fees that you're referring to relate to this temporary restraining hearing. Is that right?

A. No. That's just where it started, but I would say into this suit itself that the HOA's a party to.

Q. So you believe that under the conspiracy claim, the HOA -- what dollar figure do you believe the HOA is entitled to as it relates

to attorneys fees?

A. Whatever the outstanding attorneys fees are. I think I gave you a number earlier, somewhere around 35.

Q. All right. And those are the damages of the HOA?

A. More or less, yes.

Q. Well, more or less. I mean, there's multiple plaintiffs involved in this case, right?

A. Right.

Q. There are multiple defendants?

A. But we haven't got into other issues, but yes. I'm trying to -- without going into new issues, for example, yes, that's it.

Q. Has the HOA issued a special assessment to the owners for these attorneys fees?

A. No.

Q. When is it planned -- how is it planned to pay these attorneys fees?

A. By going to court and getting a judgment.

Q. In the event that it doesn't get a judgment, then it would be the responsibility of the members of the association to pay those fees?

A. That's one option.

decision?

A. Just me. I had no board at that time.

Q. And from late 2012 until today, you have not informed any of the homeowners that the association has incurred a debt so far that you claim to be $35,000 for attorneys fees for this litigation, correct?

A. Correct.

Q. All right. Are there any other damages that you're claiming as a part of the conspiracy claim that we haven't already discussed?

A. No.

Q. All right. So if I understand your conspiracy claim, and from a damages standpoint, it's the fines related to the Mazells, which you believe to be $5,000 or less, and attorneys fees. Is that right?

A. And any other potential fines that may have been collected as a result of bylaws not being filed.

Q. So you're claiming potential speculative-type fines that may occur in the future?

A. Well, no. I'm talking about actual

conspiracy claim, if any?

A. I couldn't quantify it. Maybe the property manager could; I could not.

Q. Can you tell me what the -- these violations or potential fines are? What is the list of violations that the HOA is claiming leads it to damages under the conspiracy claim?

A. You mean what violations have occurred right now, up to this point, is what you mean? Is that what you're asking me?

Q. Well, I'm trying to understand your claim. Your claim is a conspiracy claim, right?

A. Right.

Q. And I want to know what damages, if any, have arisen from that conspiracy to the HOA.

A. Okay. I think I've already explained the other ones, but at this point, that would be it.

Q. Okay. And that would be it is $35,000 in attorneys fees, fine by the property manager for the Mazells at $5,000 or less, and then these potential fines?

A. Right.

Q. And you can't give me a number on these potential fines?

A. No.

Q. Can you tell me -- can you give me a list of what the violations are that give rise to the potential fines that have -- that arose because of the alleged conspiracy?

A. Yes.

Q. Okay. Great. What are they?

A. So we have -- we have violations of bringing prohibited vehicles in the HOA, the bylaws.

Q. All right. Let's stop there. If you don't mind, can I interrupt you?

A. Sure.

Q. Violation of prohibited vehicles, how is that part of the conspiracy?

A. Oh, no. Well, I understood your question to be what were the potential violations, or maybe we should say there are none and get to H. I don't know, you know.

Q. Well, H is under your declaratory judgment action.

A. Right.

Q. And you're seeking different relief under that.

A. Right.

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF DORCHESTER

LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC., JENNIFER MCFARLAND, CARLTON HOLCOMBE, and UTE HOLCOMBE,

Plaintiffs,

vs. CASE NO. 2012-CP-18-2583

THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL, and MICHAEL MAZELL,

Defendants.

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(Caption Continues on Page 2)

VIDEOTAPE 30(b)(6) DEPOSITION OF: LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC., through its designated representative, WILLIAM MCFARLAND, Vol. II

DATE: December 3, 2014

TIME: 9:10 AM

LOCATION: Young Clement Rivers
25 Calhoun Street, Suite 400
Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: MARIE H. BRUEGGER, Registered Professional Reporter, CRR

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begun coming up with this plan sometime probably mid-May, if I had to put a date on it, two thousand -- I'm sorry, 2012.

Q. And what evidence do you have of them getting together in May of 2012 to come up with a common scheme or plan to injure the plaintiffs?

A. That's when I believe that the whole issue with the check started arising, sometime in that time frame.

Q. What do you believe their common scheme or plan was?

A. I believe that there was a plan to use an issue with a check to make some type of claim against me, as the president of the HOA, that I mishandled the check, and then use that issue to present it to all the homeowners and also to file a restraining order and use that issue to try to remove me and to basically humiliate and embarrass me in the community and remove me off the board of the HOA.

Q. So in mid-May, it's your belief that all four of these defendants got together and came up with a plan to create issues with a check for the Mazells so that they could then claim that the president has mishandled the check. They could

then use that information to make you go to a restraining order hearing and then have you removed from the board?

A. Yeah, more or less. It was more of a favor for a favor-type issue; whereas, they could get the property manager off the Mazells' back for his infractions, and in turn, they could use Mazells' issue with the check to bite me with, and then, of course, we saw the issue in the magistrate court where -- all this occurred at the October 4th meeting and certainly before the October 4th meeting, October 3rd, where they would use these issues where he could testify against me in a magistrate court to say I mishandled funds, send letters to homeowners, et cetera, making these accusations. And obviously, the intent was to remove me from the board and president, as that was their intent in the October 4th meeting, of which Michael Mazell participated.

Q. Anything else as it relates to the common scheme or plan that you believe these defendants --

A. As it regards to the HOA, that would be -- as I represent the HOA, that would be my --

Q. Okay. You believe they had this

Q. All right. And also in that meeting, you nominated Mr. Morris for a board position, correct?

A. Yes.

Q. Okay. That nomination was seconded and unanimously approved, right?

A. Yes, it was.

Q. So that's when -- so then in 2011, Mr. Morris is now on the board. Is that right?

A. That's correct.

Q. So at this point, it's you, Mr. Hannemann, and Mr. Morris?

A. Correct.

(DFT. EXH. 29, 4/27/12 Letter to Mr. McFarland from Mr. Morris and Mr. Hannemann, Bates Hannemann/Morris 57, 59, and 50, was marked for identification.)

BY MR. WATKINS:

Q. I'm handing you Exhibit No. 29. This is related to a request for a special meeting of board of directors for Live Oak Village for a May 2nd homeowner -- May 2nd special board of directors meeting.

MR. SHELBOURNE: What's the date on that?

property manager, from other homeowners, et cetera, and I guess it culminated from that point on.

Q. You've taken a position throughout this lawsuit -- I keep seeing things from -- signed by you, William McFarland, comma, president. Are you still the president, though, even though the board's not in existence anymore?

A. I would regard myself as the only member in good standing on the board.

Q. Oh, okay, right, right. And let's go to that whole good standing point. Let's go back to Paragraph -- what is it? -- 15C of the bylaws on Page 17. You agree with me -- I know this has been covered, but I just want to make sure I understand your answers very clearly.

Do you agree with me that nobody's ever had a hearing, whether it's the Mazells, the McFarlands -- excuse me -- the Holcombes, Hannemann, Morris, Knight, anybody, has anybody ever been given a hearing to defend some fine or some revocation of rights that has been threatened against them? Has any meeting -- hearing ever been held?

A. Not to my knowledge, no.

**In The Matter Of:**

*Live Oak Village HOA, Inc., et al vs*
*Thomas Morris, et al*

---

*Carlton Roy Holcombe*
*December 4, 2014*

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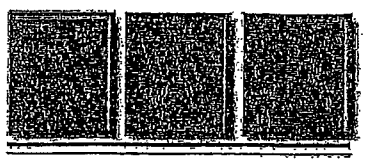


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STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent reserves reading and signing of this deposition.

* * * * * * * * * * * * *

CARLTON ROY HOLCOMBE

being first duly sworn, testified as follows:

EXAMINATION

BY MR. WATKINS:

Q. Good morning, Mr. Holcombe. We've just met formally here this morning. Again, my name's Trey Watkins, and I'm representing Mr. Morris and Mr. Hannemann related to allegations by you and others in this lawsuit, and I'm here today to take your deposition on those issues.

For the record, can you please give us your full name?

A. Carlton Roy Holcombe.

Q. And where do you reside?

A. 104 Oak Village Lane, Summerville, 29483.

Q. And how long have you resided at that residence?

A. We bought that home in 2008.

Q. Have you ever given a deposition before?

A. Yes.

Q. How many other times have you given a deposition?

A. Once.

Q. And in what matter was that?

A. That was with the McFarlands' case against their neighbor behind them. I forgot his name.

Q. Is that Mansour?

A. Yes.

Q. Have you ever been deposed or given any other sworn testimony under oath, other than in that case?

A. Not to my recollection.

Q. Do you understand that your testimony here today is the same as if it were live in court?

A. Yes.

y'all are seeking the court to declare that they have done that and then issue an injunction so that they do not -- seeking that they do not serve on the board of directors any further. Is that right?

A. Yes.

Q. And you have alleged that the injury as a result of these actions is that you will suffer irreparable damage to your ability to reside at your property. Is that right?

A. Yes.

Q. Is there any other injury that you're alleging in this case?

A. Are you referring to damages?

Q. I'm referring to how you have been injured as a result of the actions of Mr. Morris and Mr. Hannemann such that you're seeking the court to declare that they no longer serve in their official capacity as board of directors members.

A. Well, presently, they're breaking the bylaws, with no regard of any other homeowner in there.

Q. And y'all have listed in No. 6, A through H, a number of items where you feel they

have broken those bylaws or those covenants and restrictions. And I've spoken to Mr. McFarland about those, and I think I understand them. Mrs. McFarland has confirmed his testimony as it relates to those, and we'll have an opportunity to go through those.

But my question to you is: Is there any other -- the only injury that's been alleged is that the plaintiffs have suffered irreparable damage to their ability to reside at their property. Is there any other injury that you are claiming as a result of these actions?

A. Not at this time.

Q. The actions, I do want to go through those and give you an opportunity to give me your testimony as it relates to these actions. The first action under 6A, it says: Voting to waive fines that apply to themselves.

A. Yes.

Q. Are you aware of any votes that were taken --

Well, let me back up, first off, and make sure I've got the world that we're dealing with. As it relates to the declaratory judgment action, we're talking about the actions of

reduce fines if the Mazells would vote for them?

A. That's correct.

Q. And they would vote for them how?

A. In any manner they wanted.

Q. And none of the Mazells were on the board of directors?

A. That's correct.

Q. So they were homeowners within the association?

A. That's correct.

Q. Anything else as it relates to allegations on the conspiracy claim?

A. No.

Q. It's part of your complaint that the plaintiffs have incurred special damages, including, but not limited to, attorneys fees and costs in defending against defendants' actions and loss of homeowners association fees. Are attorneys fees and costs and loss of homeowners association fees the damages -- the world of damages that you're claiming related to this conspiracy claim?

A. There are several damages. One of them is the ability to inflict fines for not following the covenants or bylaws, the loss of the

money from the Mazells' fine. If we had a functional board right now, we would be fining the Morrises for their breach already and also Hannemann for his breach already.

And then we're functioning without their dues, which the covenants doesn't allow them to, per se, put them in escrows, so we're functioning with trying to take care of the neighborhood without their dues for the last two years.

Q. Anything else?

A. That's it.

Q. Are you claiming attorneys fees and costs --

A. Yes.

Q. -- to you personally?

A. Yes.

Q. Have you provided a loan to the homeowners association for attorneys fees and costs?

A. No.

Q. Have you personally incurred any attorneys fees and costs in this matter?

A. Yes.

Q. How much have you incurred in

attorneys fees and costs?

A. Approximately 15- to $20,000 to date.

Q. And have those been paid by you personally?

A. That's correct.

Q. And you are claiming those attorneys fees and costs as a part of your conspiracy claim?

A. Yes.

Q. Are you claiming attorneys fees and costs as a part of any other damages in this lawsuit?

A. No.

Q. Are you claiming attorneys fees and costs as it relates to the defamation cause of action that you've claimed or the breach of covenants and restrictions against the Mazells that you've claimed?

A. Say that again, please.

Q. Sure. In this lawsuit, just so that we're clear, you've asserted -- you're claiming -- you've got causes of action, at least my understanding is causes of action, declaratory judgment action, conspiracy action, slander and defamation action, and a breach of covenants and restrictions action. Are those your claims in

this case?

A. Right.

Q. For which ones of those claims are you claiming attorneys fees?

A. All but the defamation.

Q. All but the defamation?

A. That's correct.

Q. And so that I'm clear, you have never agreed to provide the homeowners association a loan for attorneys fees and costs in this matter, correct?

A. What we think we did was front the homeowners association money, and if the homeowners association received their attorneys fees back, we would get ours back.

Q. You think you've done that?

A. Well, we think if we're successful in our suit, that's what we would get.

Q. What happens if you're not successful?

A. Well, I'm out some money.

Q. You're going to what?

A. I'll be out some money.

Q. So in reality, you've never actually given a loan to the homeowners association, have you?

# In The Matter Of:

*Live Oak Village HOA, Inc., et al vs*
*Thomas Morris, et al*

---

*Ute Johanna Holcombe*
*December 4, 2014*

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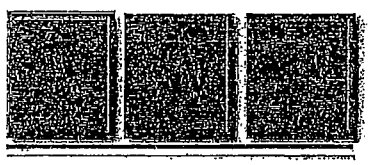

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same thing, and that way we can have a question-and-answer session for the record. Is that fair?

A. Yes.

Q. Great. Thank you.

Are you under the influence of any medication, alcohol, drugs, or anything that would impair your ability to testify here today?

A. No.

Q. I am going to be asking you some questions. If I ask you a question, I'm going to assume that you understood that if you provide me an answer. Is that fair?

A. Yes.

Q. To start out, I'd like to just get some -- you're a plaintiff in this action, right?

A. Yes.

Q. And you've brought a cause of action against Mr. Morris and Mr. Hannemann. You understand that, right?

A. Yes.

Q. Can you give us your full name for the record, please?

A. Ute Johanna Holcombe.

Q. And Mrs. Holcombe, where do you

reside?

A. 104 Oak Village Lane.

Q. And I took testimony from your husband as to where he has resided. Have you resided in the same residences with your husband?

A. Yes, I have.

Q. Since --

A. All of the above.

Q. Right. Thank you. I've tried to avoid some additional extra testimony here. Just to make sure we're clear, throughout y'all's transitions between Live Oak Village, other residences in Summerville, and other places, you've resided with your husband? That's correct?

A. Yes.

Q. Have you resided in any other residences that he did not list while you've been married to your husband?

A. No.

Q. And what's your date of birth?

A. January 6th, 1955.

Q. And what's your phone -- do you have a cell phone?

A. (843)442-2625.

Q. Your husband had a few documents. Did

A. Yes.

Q. One of those actions is a declaratory judgment action?

A. I don't understand what that means.

Q. Essentially, my understanding of it is that because of the actions of Mr. Morris and Mr. Hannemann, y'all are seeking, through a declaratory judgment action, an injunction against Mr. Morris and Mr. Hannemann for serving on the board of directors.

A. Yes.

Q. Is that a fair recollection of your understanding?

A. Yes.

Q. And as part of that cause of action, the allegations and injury is that the plaintiffs will suffer irreparable damage to their ability to reside at their property. Is that the injury that you're claiming in this case?

A. I think it's something you just need to discuss with my husband. I really don't even want to -- I don't know anything about that.

Q. And we just did. We discussed that, and I did ask him that question, and my recollection of his testimony was that that was

the only injury that he is claiming as related to the declaratory judgment action. Do you know of any other injury that you're claiming?

A. No.

Q. Do you have any information that you can provide to me regarding your allegation of voting to waive fines that apply to themselves as part of the declaratory judgment action?

A. Huh-uh. I can't tell you anything. You'd have to ask my husband.

Q. Would that be true for all of the allegations outlined in Item 6 of the declaratory judgment action?

A. Yes. Again, you'd have to talk to my husband about that. I don't know anything about that.

Q. So you don't have any evidence or testimony about anything associated with the declaratory judgment action. Is that true?

A. Yes.

Q. Do you have any information or testimony that you can offer as it relates to your conspiracy claim? Do you have any knowledge related to that?

A. No, I do not.

Q. My understanding of the conspiracy claim is related to the handling and collection of the Mazells' check. Is that your understanding of what that claim is?

A. That's what the understanding is, yes, but like I said, I don't -- I am just a bystander.

Q. So you don't have any independent knowledge related to that?

A. No, I do not.

Q. Are you seeking any damage as it relates to that?

A. No.

Q. I think those are the questions I have for you at this time. I'll let some other lawyers, if they have questions, ask you, and then I may follow up or have additional questions.

EXAMINATION

BY MR. JUNG:

Q. Good morning, Mrs. Holcombe. My name is Brad Jung, and I represent Mike and Sofia Mazell.

Similar to what Mr. Watkins instructed you, I'm going to ask you a couple of questions, and if you don't understand my question, can I rely upon you to tell me you don't understand?

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF DORCHESTER

LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC., JENNIFER MCFARLAND, CARLTON HOLCOMBE, and UTE HOLCOMBE,

Plaintiffs,

vs. CASE NO. 2012-CP-18-2583

THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL, and MICHAEL MAZELL,

Defendants.

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(Caption Continues on Page 2)

VIDEOTAPE
DEPOSITION OF: JENNIFER MCFARLAND

DATE: December 3, 2014

TIME: 4:10 PM

LOCATION: Young Clement Rivers
25 Calhoun Street, Suite 400
Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: MARIE H. BRUEGGER, Registered Professional Reporter, CRR

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let us know.

Are you under the influence of any alcohol, drugs, or medications that would impair your memory or ability to truthfully answer the questions here today?

A. No.

Q. Okay. Can I get your full name, please?

A. Yes. Jennifer McFarland.

Q. And what is -- do you have a middle name?

A. No, I do not.

Q. Do you have a maiden name?

A. Yes, Moffa, M-O-F-F-A, M-O-F-F-A.

Q. Have you ever been married prior to being married to Mr. McFarland?

A. No.

Q. Ever been known by any other names, any aliases or anything else, other than Jennifer Moffa or Jennifer McFarland?

A. No.

Q. What's your date of birth?

A. June 23rd, 1964.

Q. What's your current address?

A. 105 Oak Village Lane, in Summerville.

authority on the board, it would be the -- your testimony would be the same testimony as he has already testified to on behalf of the HOA. Is that right?

A. Yes.

Q. And as part of that cause of action, it says: The plaintiffs will suffer irreparable damage to their ability to reside at their property. Is that the -- is that the only injury that you are claiming in this case?

A. With reference to Hannemann and Morris?

Q. For the declaratory judgment action, yes, ma'am.

A. Yes, I believe so.

Q. Okay, all right. On the conspiracy cause of action, is there any additional testimony that you can add that your husband hasn't already testified to as it relates to the conspiracy cause of action as to what my clients, Mr. Morris, Mr. Hannemann, and, for that matter, any of the other defendants in this case, did?

A. Well, there's some on a more personal level where there's -- I just -- I feel like -- I just don't feel comfortable living in my home

individually?

A. Yes. For me individually, I feel that the defendants conspired together to make our lives so uncomfortable that we did not want to live in Live Oak Village anymore. I've had people taking pictures of me on my front porch. Mr. Hannemann, he goes in our mailbox, which I had to get a no trespass. The Mazells, we could spend a day on that.

Just recently, with Mr. Hannemann's invitee crashing through the HOA fence on the perimeter of the Knights' home -- they live directly next door to me -- one morning I'm in my own backyard, fenced-in backyard, at 7:00 in the morning, and Donna Knight drives out, and she screeches back and comes down the driveway and starts yelling at me, whom I'm not responsible for this gate -- I'm not even on the board -- about who the heck is lying, and who's screwing who, and, I mean, I just feel like I'm not even comfortable going outside anymore, because I don't understand why I'm being yelled at for things that absolutely have nothing to do with me.

And it's just -- it's a culmination of things like that. I just -- I'm just not even

comfortable anymore. I go to the mailbox, I feel people are watching what I'm doing. I just don't know -- I just -- I feel uncomfortable.

Q. Okay. And do you believe that that has any -- those actions there, do they have anything to do with your conspiracy cause of action?

A. I think that they conspired together to make our lives miserable, to try to get us to leave the neighborhood. That's my personal part of this.

Q. Have you attempted to sell your home since the filing of this lawsuit?

A. No, we have not attempted to sell it.

Q. Have you looked at any other real estate or any other property in attempt to make a purchase?

A. Not in attempt to make a purchase, but I look all the time.

Q. So does my wife.

Are there -- other than -- we've talked about kind of the check issue, and y'all believe that there was a conspiracy in order to prevent the HOA from getting the Mazells' check, right?

**In The Matter Of:**

*Live Oak Village Homeowners Association, Inc. et al v. Thomas Morris, David Hanneman, Sofia Mazell et al*

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Thomas Ostavus Morris, Jr.
November 5, 2014

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EXHIBIT
C

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a board, by a majority of the board of directors.
Q What is?
A Anything that's carried on, any business.
Q And I understand generally speaking. What I want are specific facts that give rise to those allegations.
A Well, the paying of the bills.
Q What bills?
A Any of the bills, really, because we hadn't seen any -- we hadn't voted on or hadn't passed anything to pay any of the bills.
Q So you think paying the electric bill is a breach of fiduciary duty?
A Well, I would think that the board should know about it. I don't think that that just should happen. I don't think that the president can just take it and run with it.
Q Okay.
A This is governed by the board of directors, all of this.
Q What is governed by the board of directors?
A The whole thing, the homeowners association.
Q I understand that. I'm talking just

about the cause of action for breach of fiduciary duty. And what I'm trying to get is specific facts that give rise to the allegations in exhibit 6.

A I don't know that I can answer that in a manner that would be appropriate.

Q How do you mean?

A Just what I said.

Q How would it be inappropriate to answer that question?

A I don't know how I might could answer.

Q Okay. Let's do it this way, then.

A All right.

Q Do you have any -- breaking down paragraph 6, do you have any facts or evidence to support the allegation that the Holcombes and the McFarlands were operating the board of directors in a manner consistent with --

MR. DAIGLE: Can we go off the record for a second? Never mind. Back on. I completely misread.

BY MR. DAIGLE:

Q Do you have any evidence or facts to support the allegation that the McFarlands and the Holcombes were refusing to operate the board of

directors in a manner consistent with fairness and equity to all association members?

A Well, there's a lot that I disagree with in this, and I don't know that this even pertains to this, and I don't know whether I'm answering your question correctly.

But this 30-day waiting period, I mean, we can sit in the garage and drink a beer and have a board meeting, and in 30 days it's free to do whatever you wanted to.

And that was not known to everybody out there. I didn't know that. I found out later after the fact, but it goes back to the fixing of the fence. I didn't vote on that.

Q The gate?

A Yeah, the gate. Kathleen Greene, I did not vote to hire her.

Q And I'm happy to talk about all of those in a minute, but right now what I'm trying to get is any facts or evidence that support your allegation that the Holcombes and the McFarlands refused to operate the board of directors in a manner consistent with fairness and equity to all association members.

MR. WATKINS: Object to the form.

THE WITNESS: I have no answer.
BY MR. DAIGLE:
Q Okay. Do you have any facts or evidence that support your allegation that the McFarlands and the Holcombes usurped power and exercised authority that William McFarland and Jennifer McFarland had no authority to exercise?
MR. WATKINS: Object to the form.
THE WITNESS: It appears that everything has happened without approval of the majority of the board.
BY MR. DAIGLE:
Q Such as what?
A Everything. Anything that went on out there.
Q Can you give me specific examples?
A I don't recall any right offhand, but I think Mr. Hannemann listed probably a pretty good bit of them yesterday.
Q Okay. Do you have any proof or evidence that the Holcombes and the McFarlands were intentionally abusing the offices of president and treasurer?
MR. WATKINS: Object to the form.
THE WITNESS: As I said, should be a

majority of the board approving anything that goes on out there.
BY MR. DAIGLE:
Q So is that a yes or no you do or do not have specific facts?
MR. WATKINS: Object to the form.
THE WITNESS: I don't -- not at this time.
BY MR. DAIGLE:
Q Moving on to paragraph 7, it's your claim for damages, breach of fiduciary duty. How have you been damaged as a result of the alleged breach of fiduciary duty by the Holcombes and the McFarlands?
A Spending homeowners association money without the approval of two thirds of the board.
Q And how does that damage you?
A That's my money, part of it.
Q And you would agree with me that, as a homeowner, you are obligated to pay your dues to the HOA, correct?
A Correct.
Q Okay. And, as a homeowner, you don't have any control over how those dues are spent?
A That is probably correct, also, but we

are -- we should be entitled to know --
Q Okay.
A -- before the fact.
Q But the money that you're obligated to pay and the fact that you have no control over how it's spent, your only damage is that you didn't know how it was spent; is that right?
MR. WATKINS: Object to the form.
THE WITNESS: Well, not knowing, not having any board meetings or not having anything, you don't know about it.
BY MR. DAIGLE:
Q Okay. So is the damage you're claiming for breach of fiduciary duty that you didn't know how your money was being spent?
A That's one of them.
Q What are the other ones?
A I'll have to think about those.
Q When can we have an answer to that?
A Not today.
Q When can I?
A Whenever I come up with it.
Q Any idea when that will be?
A As soon as I can.
Q Today? Tomorrow?

A I'm going to take tomorrow off.
Q What other information do you need in order to come up with the answer to that question?
A I don't need any. I just need to think about it and dig back through some of my notes. I have a lot more to do than this.
Q I'm sorry?
A I said, I have a lot more to do in my life than just going through all this stuff for the last two to three years.
Q I understand. What notes do you have to go back through?
A The same notes y'all got.
Q The stuff you've already produced?
A Yeah, you got it.
Q Okay.
A It was in discovery.
Q Notwithstanding any correspondence you've had with your attorneys, have you turned over all the documents and other tangible things related to any claim or defense in this litigation?
A I have.
Q Moving on to your next claim, the negligence and negligence per se, specifically paragraph 10 and Subparts A through H, you claim

that the McFarlands and the Holcombes were negligent, careless, grossly negligent, reckless, willful, and wanton in Subpart A, the unauthorized usurpation of the positions on the association's board of directors' authority and comitting actions in violation of the provisions of the bylaws of the association and the South Carolina Nonprofit Corporations Act.

What evidence or facts do you have to support that allegation?

A Anything that they did that was not approved by a majority of the board of directors.

Q Okay. So you think paying the light bill for the HOA without the majority vote of the board of directors is negligent, grossly negligent, careless, reckless, willful, and wanton?

A I think that should have been voted on by the association and the board of directors or whatever. They should have had knowledge of all of this, not after the fact.

Q Do you think that action gives rise to the negligent, careless, reckless conduct that you're alleging in paragraph 10?

A In my opinion.

Q I know you said everything they did. Can

you give me specific examples of actions of negligence, carelessness, gross negligence, recklessness, willful, and wantonness of the Holcombes or the McFarlands?

A As I said, approval of two thirds of the board, anything that was done.

Q And I understand you're saying anything that's done. I want specific examples, if you can give them to me.

A There again, paying whatever they paid, anything they paid, gates, whatever.

Q So it's your allegation that any bills that were paid by the HOA without two thirds of the board's vote amounts to negligence or negligence per se?

A Yeah, in my opinion.

Q And you can't give me specific examples? You can just give me generally everything they did without --

A Yeah, basically.

Q Would the same be true for Subpart B, expending association funds without having approval and authorization of the members of a properly constituted association board?

A Sure would.

Q What about C?
A Yes.
Q What about D?
A Yes.
Q What proof do you have that the McFarlands and the Holcombes used association funds for personal benefit?
A I don't have any because I have no access to the records.
Q As you sit here today, you have no proof that either the Holcombes or the McFarlands used any association funds for personal benefit?
A Not going to have any proof because I don't have the -- I hadn't gotten any of the finances.
Q Page 4, Subpart E, what proof do you have that the Holcombes or the McFarlands were enforcing the Live Oak Village covenants and restrictions in an arbitrary and capricious manner to the detriment of you?
A Well, it goes back to this 30-day deal on some of it.
Q Let's talk about that. You mentioned that 30-day deal earlier. Tell me about that.
A Well, all's you had to do, my

understanding after the fact is whatever you want to do, you give it to the president and let him sit on it for 30 days and then you do it, and none of the homeowners know anything about it.

Q Okay.

A So it's okay to do it because that makes it okay.

Q How does that affect you?

A I don't like it.

Q Have you been damaged by that?

A Well, I would say so.

Q How so?

A Garden, which was before the fact, but I would assume a garden would be an annual thing, not an ongoing, year-to-year thing.

Q I'm not sure I follow you. Whose garden?

A Pardon me?

Q Whose garden?

A Holcombe.

Q What about Mr. Holcombe's garden?

A It was approved, but in the readings that I saw, it was approved by sitting on it for 30 days.

So none of the homeowners knew it was going to be done. After 30 days, they could do

the garden. Yeah, that damaged me because it's a sore eye.

My wife is scared to death of snakes. Snakes had come out of there when he was not living there, and it was not attended like it should have been. Snake skins were found all from -- in our yard.

I don't think a 30-day waiting period is a way to do it. If all of us in the room wanted to do something, I said, well, I want to knock that building down over there, and you're the president, and I give it to you.

Thirty days later it's okay for me to knock it down whether these folks want it or not. That's not fair.

Q Is that what the bylaws, covenants, and restrictions set forth?

A That's what it says. That's what I read, now.

Q So you just don't like that?

A That's correct. It's unfair.

Q But you would agree with me that the governing documents --

A Oh, yeah, set forth.

Q -- set forth that process exactly,

correct?
MR. WATKINS: Object to the form.
BY MR. DAIGLE:
Q By governing documents, I mean the covenants, restrictions, bylaws.
A Yes.
Q So going back to the 30-day waiting period in and of itself, the president, I guess in this case it was Bill McFarland, was acting in compliance with the covenants, restrictions, and bylaws in abiding by that 30-day waiting period?
A Yes. And, in my case, I tore down steps, and he came to me and told me, you know, Tom, you can't do this.
I'm just an old, country boy. I came here to relax and enjoy life. I said, no, I didn't know that.
After I started tearing them down, he said, just write me something down, and I'll approve it. I guess that's fair after the fact. Cut down trees.
He said, man, you can't do that. I had approval from the town. Just give me something in writing after the fact, after the fact, after the fact. We can drink a beer, board of directors,

and decide something. After the fact, you can do it.

Q And how have you been damaged by that 30-day waiting period?

A Well, if I had been there and that garden was there and I had known about it, definitely I would have complained because it's not on Mr. Billy's side. It's on our side.

He doesn't have to look at it. We do. We have to contend with whatever comes out of that garden other than fruits, which I don't want any.

Q So you're claiming that you were damaged by Mr. Holcombe's garden because you had to look at it, and you don't like the way it looked?

A Exactly.

Q But the approval for that garden was done in compliance with the covenants and restrictions and bylaws?

A Yeah, because in the bylaws and covenants, I think you can't have gardens.

Q Can you show me where that is?

A You might can. You've probably got it there. I don't have it.

Q But you would agree with me that the approval for that garden was done in compliance

with the covenants, restrictions, and bylaws?
A I don't know. I wasn't there.
Q It was approved before you moved in?
A Yeah. I was sent something by Kathleen Greene saying that it was.
Q Okay. Was Mr. Holcombe's garden there when you moved into your home in 2010?
A Yeah. I believe he might have not been there when I moved in, and the garden was in disarray.
Q So you knew the garden was there prior to purchasing your home?
A Yeah, but we didn't like it, and we made that statement to Ms. Jennifer McFarland that if the next people that came back in there, we did not want that garden. We were totally opposed to it. And she didn't do a lot of disagreeing, I don't think.
Q Going back to exhibit E -- I'm sorry. Not exhibit E. Subpart E of paragraph 10, can you give me specific examples of how the McFarlands or the Holcombes enforced the covenants and restrictions in an arbitrary, capricious manner to your detriment?
A Well, I thought we've already discussed

that. I have no more discussion on that.
Q Okay. What's your understanding of what arbitrary and capricious means?
A I don't know. You tell me.
Q I'm not the one who wrote this.
A I'm not really sure what is meant by that.
Q Okay. Just so I'm clear, the actions you're complaining about in Subpart E have to do with the 30-day waiting period, or is there something else that we haven't talked about?
MR. WATKINS: Object to the form.
THE WITNESS: That may be basically it.
BY MR. DAIGLE:
Q Okay. Going to Subpart F, what proof or evidence do you have that the McFarlands and Holcombes failed to exercise a degree of care and prudence which a reasonable person should exercise under the same circumstances?
A Well, it seems like everybody is not treated equal out there.
Q Can you give me specific examples of that?
A I've already given you those.

Q Has to do with Mr. Holcombe's garden?
A That would be one of them.
Q What are the other ones?
A Well, my after-the-fact steps and my after-the-fact tree.
Q Okay.
A I mean, everybody else hadn't been treated like that.
Q Your steps got approved, though, didn't they?
A After the fact.
Q Okay. And your tree got -- you were removing a tree; is that right?
A Yeah.
Q And your tree removal got approved, also, didn't it?
A After the fact.
Q So how are you damaged by that?
A I wasn't. I'm just saying everybody was not created equal and treated equal.
Q Okay.
A Why should I have gotten -- you know, I shouldn't have been treated like that.
Q Okay. So you think that you got favorable treatment to the detriment --

A Exactly.
Q -- of the other --
A Like that.
Q -- of the other homeowners?
A Yeah.
MR. SHELBOURNE: Let me make sure for the record that we're not talking over each other.
You're anticipating his questions, but we got to have a clear record. So if you can sort of make sure only one person is talking at a time.
BY MR. DAIGLE:
Q Going to Subpart G, that's the refusing to supply an accounting. Do you specifically remember asking for an accounting, or was that done by Mr. Hannemann?
A Mr. Hannemann.
Q Okay. Am I mispronouncing that?
A Yeah.
Q It's Hannemann?
A Hannemann.
Q Okay. Any request for an accounting was done by Mr. Hannemann and not by you; is that correct?

A Right. We discussed it, naturally.
Q Okay.
A Because we both -- we were on the board of directors.
Q Sure. But the actual request was not done by you?
MR. WATKINS: Object to the form.
BY MR. DAIGLE:
Q Or was it?
A I probably signed the letters, yeah.
Q Okay. Do you remember when that was done?
A I have no idea. You probably could show it to me, and I could refresh my memory.
Q Do you remember how many times you made a request for --
A I have no idea.
Q Was it more than once?
A You probably -- yeah, probably.
Q Okay.
A I feel sure.
Q Was it done -- were your requests always in writing, or did you make verbal requests for the accounting?
A I don't recall.

Q Paragraph 12 says that the McFarlands and the Holcombes exhibited a conscious disregard for your interests.

How did they exhibit a conscious disregard for your interests?

MR. WATKINS: Object to the form.

THE WITNESS: Well, we kept requesting the finances, never got them. I bought a -- and this is a -- no, that's all. That's it.

BY MR. DAIGLE:

Q Okay. How were you damaged by not having the accounting or the finances?

A Because we couldn't proceed as president and secretary without finances like we should have done, been able to do. We had nothing to base it on.

Q Nothing to base what on?

A The budget.

Q Okay. How were you personally damaged by that?

A Well, it's held up the whole process. This is costing me money. That's how I'm damaged. That's part of it.

Q What is?

A This. I'm supposed to be working today and yesterday. How am I damaged? I'm having to pay money out of my pocket.
Q For litigation?
A Yeah.
Q Okay. Notwithstanding the time and costs associated with litigation, how have you been damaged by the failure to turn over accounting, an accounting?
A Well, we couldn't get ahold of the ship, and that's our fiduciary duties as president and secretary. We could not carry them out due to the lack of information not provided, asked for many times over.
Q So you've been damaged by not being able to discharge your duties as secretary?
A Correct. Stress. Undue stress. No harmony and peace. Only mass confusion.
Q Have you suffered a monetary loss as a result of that?
A Yeah, I feel sure I have.
Q How so?
A Working.
Q Working what?
A At my job, trying to work my job, having

to take time off to take care of this.
Q To take care of the litigation or to take care of the business of the HOA?
A All of the above.
Q Can you separate the two?
A No.
Q Have you sought treatment from any health care professional for this stress that you're claiming?
A No. I'm a pharmacist, and I just try to live with it because I have a lot of stress, anyway, and this is just added stress.
Q Okay. Going to paragraph 15, it's a claim for conversion, conversion of HOA funds. Do you know what conversion is?
A Yeah.
Q What proof or evidence do you have that the Holcombes or the McFarlands converted any HOA funds?
A I don't have any because I don't have any of the finances.
Q Okay. Do you think that the -- do you think that the Holcombes or the McFarlands stole HOA money and used it for their own benefit?
A I don't know that because I don't have

any records.
Q What would you need to come to --
A All the financials, everything.
Q Which would include what?
A Everything.
Q Which would include what?
A Any book work, all of it. Homeowners association back since when, when it started. It would be kind of like an audit, I would assume.
Q Okay.
A And I don't think there's ever been an audit of the books. Most homeowners associations, LLCs, whatever, they have audits.
Q Is that required by the --
A I have no idea.
Q So, as you sit here today, you don't have any proof that the Holcombes or the McFarlands have converted any HOA funds to their own personal use, do you?
A No.
Q Going to page 6, your claim for an accounting, I understand -- we've talked briefly about this, that y'all have requested the accounting and have not received it. What do you need in order to satisfy your request for an

accounting?
A I would assume we would need the accounting from whenever this homeowners association started to have a complete audit to see what has happened, not only with who is there now, but who was there before.
Q Okay. So even prior to your moving into the neighborhood, you feel like --
A It's really none of my business prior to the -- really, all I honestly care about probably is what happened from the time I moved in because I didn't have anything to do with the other monies that were spent uncalled for.

That was not my baby. That gate, that was not my baby. I didn't pay for it, don't need it, don't want it, don't care about it.
Q Okay. So what do we need -- let's --
A We just need all the accounting that the McFarlands would have, all of it, receipts, whole nine yards.
Q So you'd need a ledger?
A Everything, whatever they have, any accounting.
Q Any accounting related to HOA funds?
A Correct.

Q Or the HOA bank account?
A Correct.
Q Okay. When you and Mr. Hannemann requested the accounting, did you ever get a response one way or the other from the McFarlands?
A Not to my knowledge.
Q They never gave you a reason why they weren't providing it?
A No, not to my knowledge.
Q I understand. Did they tell you that they were going to provide it and just didn't?
A No, they didn't tell us they were going to provide it.
Q They just didn't respond at all?
A Right.
Q Going to your last cause of action for indemnification, for what are you claiming indemnification?
A Well, I would think anything that we get that was not approved by the board, a majority of the board would be their responsibility.
Q Help me understand that.
A Well, any monies that were spent that were not approved by the board I think they would be responsible for.

Q Okay. So if they paid the electric bill and that wasn't approved, you think you should be reimbursed the electric bill?
A Yeah. I think, yeah, it should be approved. The budget should be approved. The past budget should be approved -- the old budget and the new budget also should be approved.
Q Okay. So your claim for indemnification has to do with HOA dues spent on items that were not approved by a majority vote of the board?
A Correct.
Q Anything else for indemnification?
A Not that I know of at this time.
Q Okay. And yesterday Mr. Hannemann was talking about a fine that you had levied against you?
A Correct.
Q And what was that fine for?
A For supposedly failing to pay -- I mean, yeah, having my landscaping finished in a timely manner.
Q Tell me when that was.
A I don't recall the date.
Q Was it 2010, the first year you moved in, or was it sometime after that?

A I'm not sure.
Q What were you doing in your yard, or what were you doing for the landscaping?
A Replacing the front.
Q Like hedges and bushes or whatever?
A Yeah.
Q And what did you not do that led to the fine?
A They claim that I did not give them the plan, landscaping plan.
Q Okay. Are you required to do that under the covenants, restrictions, and bylaws?
A Probably so. But the plan was given, and we did have the plan, but Mr. McFarland didn't come to the meeting.
Q Okay. Was this landscaping issue before or after the issue with your stairs and your tree?
A After.
Q Okay. So the stairs you didn't get approval of, but then Bill told you about the 30-day thing. You didn't get fined for replacing your stairs or repairing your stairs?
A Right.
Q And the same thing with the tree? Didn't get fined for that either?

A Just go in and write me up a letter and everything will be okay.
Q And did you do that?
A Oh, yeah. Definitely, I did what the president said.
Q Sure. And then for your landscaping, you didn't --
A We had a death in the family, had a lot going on, and the landscaping plans, we had them.
Q Who is we?
A David and I.
Q Okay.
A At a meeting that Mr. McFarland was invited to to approve the plan.
Q Was that a special board meeting?
A Yeah.
Q Do you remember when that was?
A No, I don't.
Q Okay. Was it the same board meeting that -- the same special board meeting that you and Mr. Hannemann elected yourselves president and secretary?
A No.
MR. WATKINS: Object to the form.
BY MR. DAIGLE:

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| STATE SOUTH CAROLINA )<br>)<br>COUNTY OF DORCHESER ) | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br>CASE NO.: 12-CP-18-2583 |
| LIVE OAK VILLAGE HOA, INC., et al., )<br>)<br>Plaintiffs, )<br>)<br>vs. )<br>)<br>THOMAS MORRIS, et al., )<br>)<br>Defendants. )<br>)<br>THOMAS MORRIS and DAVID HANNEMANN, )<br>)<br>Third Party Plaintiffs, )<br>)<br>vs. )<br>)<br>WILLIAM McFARLAND, )<br>)<br>Third Party Defendant. ) | **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT TO DISMISS COUNTS II AND IV OF THE AMENDED COMPLAINT** |

**TO: P. BRANDT SHELBOURNE, ESQ., COUNSEL FOR PLAINTIFFS:**

**PLEASE TAKE NOTICE** that defendants Sofia Mazell and Michael Mazell ("Mazell"), by their attorney, William B. Jung, Esq., will move this Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, at such time as may be noticed by the Court at a duly noticed hearing at least ten (10) days after the service of this Motion, for an Order granting summary judgment dismissal those claims brought by the plaintiffs Live Oak Village HOA, Inc., Carlton Holcombe and Ute Holcombe against defendants Michael and Sofia Mazell as set forth in Counts II and IV of the Amended Complaint, dated June 9, 2014. In this Motion, defendants Mazell seek dismissal of said causes of action based upon, *inter alia*, the affirmative defenses set forth in

paragraphs 20, 21, 26, 27, 28, 29, 30 and 31 of Mazell's October 21, 2014 Answer to the Amended Complaint, as well as, based upon the deposition of testimony of co-defendants David Hannemann and/or Thomas Morris, deposition testimony of the plaintiffs and other discovery responses from the plaintiffs.

As grounds for this relief, Mazell will demonstrate that there is no evidentiary basis or genuine issue of a material fact in dispute which supports the standing of the plaintiffs, including, but not limited to, plaintiff Live Oak Village HOA, Inc., to have brought claims against defendants Mazell acting on authorization from the Live Oak Village HOA, Inc. following a vote of a majority of its board members. Plaintiffs' claims are further asserted in violation of the applicable HOA By-Laws. As further grounds for said relief, plaintiffs cannot have failed to provide any evidence which would support the claims made against Mazell on purported behalf of plaintiffs Live Oak Village, Carlton Holcombe and Ute Holcombe; consequently, Mazell is entitled to dismissal of said claims as a matter of law.

Dated: Mount Pleasant, S.C.
November 6, 2014

**WILLIAM B. JUNG, ESQ.**
Attorney for Defendants
Michael and Sofia Mazell

**William B. Jung, Esq.**
1156 Bowman Road, Ste. 200
Mount Pleasant, S.C. 29464
(843) 416-1104

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| STATE SOUTH CAROLINA<br><br>COUNTY OF DORCHESER<br><br>LIVE OAK VILLAGE HOA, INC., et al.,<br><br>Plaintiffs,<br><br>vs.<br><br>THOMAS MORRIS, et al.,<br><br>Defendants.<br><br>THOMAS MORRIS and DAVID HANNEMANN,<br><br>Third Party Plaintiffs,<br><br>vs.<br><br>WILLIAM McFARLAND,<br><br>Third Party Defendant. | ) | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br>CASE NO.: 12-CP-18-2583 |

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DORCHESTER COUNTY

**MEMORANDUM IN SUPPORT OF MAZELL SUMMARY JUDGMENT MOTION TO DISMISS CLAIMS BROUGHT IN NAME OF PLAINTIFF HOA**

Co-defendants Michael Mazell and Sofia Mazell ("Mazell") submit this memorandum in support their motion for to dismiss the claims filed against Mazell in the name of plaintiff Live Oak Village HOA, Inc. (the "HOA") on the grounds that said claims have been brought in violation of the Bylaws governing the HOA's authority to act and, consequently, the HOA has no standing to be a plaintiff in this action.

**The HOA's Claims against Mazell**

In the Amended Complaint, two claims are brought against Mazell in the name of the HOA: (1) a claim of civil conspiracy set forth in Count II; and (2) a claim for

breach of the covenants and restrictions set forth in Count IV. A copy of the plaintiffs' Amended Complaint is attached as Exhibit "1." The civil conspiracy claim states that Mazell and the other co-defendants, Board of Director Members David Hannemann and Thomas Morris formed a conspiracy to injury the plaintiff HOA and association property owners, Jennifer McFarland, Ute Holcombe and Carlton Holcombe. Count IV alleges that Mazell had renters in the Mazell home in violation of the HOA By-laws, covenants and restrictions. While Mazell denies the facts supporting these alleged claims, it is not necessary to determine said facts in order to determine whether the plaintiff HOA has standing to assert such claims against Mazell.

**The Applicable HOA By-laws**

In pertinent part, the By-laws for the HOA undoubtedly empower the HOA to bring legal actions against members of the Association for violations of the By-laws, covenants and restrictions:

6. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

(A) ... The Board of Directors shall exercise such duties and responsibilities as shall be incumbent upon it by law, ... and shall include ... the following:

(6) To enforce by legal means the provisions of the Certificate of Incorporation and By-laws of the Association ...

Live Oak Village HOA By-laws, page 5 (Attached as Exhibit "2").

However, to authorize any action on behalf of the HOA, the By-laws provide for two alternative means. One requires a decision by a majority of BOD Members at a BOD Meeting: "An act or decision done or made a majority of the

number of directors present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board." Exhibit "2;" page 4, par. 5(C). The second means to authorize BOD action is by "Actions Taken Without a Meeting." Herein, any action taken without a meeting requires **advance written consent** of all the BOD Directors to such action: "The directors shall have the right to take any action in the absence of a meeting of the directors which they could take at a meeting **by obtaining the written approval of all the directors**. Any action so approved shall have the same effect as though taken at a meeting of the directors." Exh. "2", page 4, par. 4(E) (Emphasis added).

**Summary Judgment Standard and Burden on Opposing Party**

Under Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that moving party is entitled to a judgment as a matter of law." *Id.* Under well established law, "Summary judgment is inappropriate when further inquiry into the facts is desirable to clarify proper application of the law. Summary judgment is not appropriate if the facts are conflicting, or if the inferences to be drawn from the facts doubtful. Summary judgment should not be granted even when the evidentiary facts are not in dispute, if there is dispute as to the conclusion to be drawn from those facts. In deciding a motion for summary judgment, the evidence and all of its inferences must be viewed in a light most favorable to the non-moving party. Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will

be improperly deprived of a trial on the disputed factual issues." *Wade v. Berkeley County*, 339 S.C. 513, 518, 529 S.E.2d 743, 746 (Ct. App. 2000) (citations omitted).

In *Hancock v. Mid-South Management Co.*, 381 S.C.326, 330-31, 673 S.E.2d 801, 803 (2009), the Supreme Court upheld the application of the "scintilla standard" governing the determination of motions for summary judgment where, as here, a plaintiff's claims must be met by the preponderance of the evidence:

> "[W]e hold that in 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 summary judgment."

*Id.* South Carolina has defined the evidence which meets the scintilla standard as "any material evidence that, if true, would tend to establish the issue in the mind of a reasonable juror." *Young v. Hyman Motors, Inc.*, 199 S.C. 233, 242-43, 19 S.C.2d 109, 113 (1942).

Rule 56(e) dictates the evidence that a party opposing summary judgment must meet. In pertinent part, Rule 56(e) provides:

> "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in affidavits shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment has been made and supported as provided in this rule, an adverse party may not rest on the mere allegations or denials in his pleading, but his response by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

*Id.*

**Lack of Proper BOD Action for Claims filed in the HOA's Name**

At his recent deposition, HOA Board of Director and co-defendant David Hannemann ("Hannemann") confirmed that the Board of Directors for Live Oak Village HOA never met or voted to institute the claims which have been filed against Mazell in the name of the HOA. Excerpts from Hannemann's November 4, 2014 relevant deposition testimony is attached as Exhibit "3." Furthermore, plaintiffs have failed to produce any Minutes for any meeting of the HOA Board of Directors where said actions were discussed or voted upon. Plaintiffs also cannot deny that there is no written consent signed by all of BOD members authorizing the HOA to bring any claims against Mazell.

At his deposition, Hannemann was further questioned as follows:

Q: OK, I want to take you back to the time, I think it was in late of 2012, when this lawsuit got started.

Was there a board of directors meeting prior to the filing of this lawsuit in which the HOA voted on whether or not to pursue a claim against yourself, Mr. Morris and the Mazell's?

A: No.

Q: Okay.

A: My understanding is that the suit filed was not filed on behalf of the HOA. It was separate and distinct by Mr. McFarland or Mrs. McFarland, Mr. Holcombe and Mrs. Holcombe.

Q: My next question is: Do you know who is acting on behalf of the HOA? Because the HOA most certainly is a Plaintiff to this lawsuit?

A: I understand that. And, no I do not.

Q: But you didn't make any vote for that to happen?

A: That's correct.

Q: Did you conduct any meeting for that to happen?

A: No, sir.

Q: Did you send out any notice to any HOA members for that to happen?

A: No.

Exhibit "3"

Both co-defendants Hannemann and Morris, who collectively form a majority of the HOA Board of Directors, have also filed an Answer to the Amended Complaint similarly asserting that the HOA lacks standing to the assert claims against Hannemann and Morris following prior requisite BOD meeting or written consent from all BOD members. Accordingly, there is no dispute that no meeting or vote was taken to authorize the claims that have been filed against Mazell in the name of the HOA.

**Argument**

There is no dispute that the HOA was and is not authorized to have filed any claims against Michael and Sofia Mazell. As set forth, no meeting of the Board of Director of the HOA was held for this purpose or discussed therein. It also cannot be denied that written consent of all Board of Director members was not given for any such action. Consequently, the filing of claims purportedly on behalf of the HOA by the individual plaintiffs (or their counsel) is an illegal and unauthorized act made in contravention of the HOA By-laws and by usurpation of the duties which, by law, are

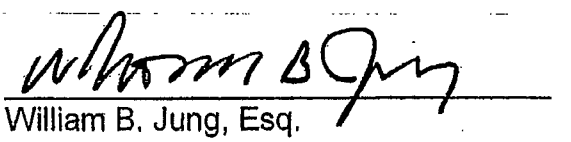
reserved solely to the consideration and vote of a majority of the Board of Directors for the HOA. The plaintiffs have no right, authority or power to claim that they speak for the HOA. Simply put, the HOA has not been empowered or authorized to have filed any claims in this action against anyone. The filing of said claims against Mazell is, therefore, null and void and the HOA's claims asserted in the plaintiffs' Amended Complaint should be dismissed.

**Conclusion**

Based upon the foregoing argument and evidence in the record before this Court, Mazell respectfully submits that summary judgment is appropriate to dismiss the claims filed against Mazell by the plaintiff Live Oak Village HOA, Inc.

Dated: November 19, 2014

Respectfully submitted,



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Attorney for Sofia and Michael Mazell

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER<br><br>LIVE OAK VILLAGE HOMEOWNERS' ASSOCIATION, INC., JENNIFER MCFARLAND, CARLTON HOLCOMBE, and UTE HOLCOMBE<br>Plaintiffs,<br><br>VS.<br><br>THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL, and MICHAEL MAZELL<br>Defendants.<br><br>SOFIA MAZELL and MICHAEL MAZELL,<br>Third Party Plaintiffs,<br><br>VS.<br><br>WILLIAM MCFARLAND,<br>Third Party Defendant. | ) | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br><br>CASE NO.: 2012-CP-18-2583<br><br>**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS SOFIA AND MICHAEL MAZELL'S MOTION FOR SUMMARY JUDGMENT TO DISMISS COUNTS II AND IV OF THE AMENDED COMPLAINT** |

TO THE DEFENDANTS SOFIA AND MICHAEL MAZELL AND THEIR ATTORNEY OF RECORD WILLIAM JUNG, ESQUIRE:

Defendants Sofia Mazell's and Michael Mazell's (hereinafter sometimes referred to collectively as "Mazells") Motion for Summary Judgment to Dismiss Counts II and IV of the Amended Complaint should be denied.

Taking the facts and inferences therefrom, there is evidence that the Mazells conspired amongst themselves and with the Co-Defendants Thomas Morris (hereinafter sometimes referred to as "Morris") and David Hannemann (hereinafter sometimes referred to as "Hannemann") to harm the Plaintiff Live Oak Village Homeowners' Association, Inc. (hereinafter sometimes referred to as "LOVHOA" or "HOA") and that they were in breach of their contractual

obligations under the Covenants and Restrictions for Live Oak Village Subdivision (hereinafter sometimes referred to as "LOV").

## I. STANDARD

"Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011); *see also* Rule 56(c), SCRCP. "To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party." *McLaughlin v. Williams*, 379 S.C. 451, 455-56, 665 S.E.2d 667, 670 (Ct.App.2008). To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). If triable issues exist, those issues must go to the jury. *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App.2005).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Gadson v. Hembree*, 364 S.C. 316, 613 S.E.2d 533 (2005); *Montgomery v. CSX Transp., Inc.*, 362 S.C. 529, 608 S.E.2d 440 (Ct.App.2004). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991); *Nelson v. Charleston County Parks & Recreation Comm'n*, 362 S.C. 1, 605 S.E.2d 744 (Ct.App.2004). Summary judgment is a drastic remedy and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues.

*Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 594 S.E.2d 455 (2004); *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct.App.2004).

**II. Discovery Not Complete**

As the Mazells are aware, discovery is not complete. Defendant Michael Mazell's deposition has not been completed. It started on March 14, 2014, but was adjourned by agreement and left open for continuation. The continuation is scheduled for December 16, 2014. As a result, it is inappropriate to consider Summary Judgment on factual issues until the parties have an opportunity to complete Michael Mazell's deposition.

**III. There Are Factual Issues as to Civil Conspiracy**

In Plaintiffs' second cause of action, Plaintiff LOVHOA alleges that the Defendants, including the Mazells, engaged in Civil Conspiracy. To prove Civil Conspiracy Plaintiff must demonstrate (1) the combination of two or more people; (2) for the purpose of injuring the plaintiff; (3) causing special damages. *Pye v. Estate of Fox*, 369 S.C. 555, 566-67, 633 S.E.2d 505, 511 (2006). "In order to establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App.2005) (quoting *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 575, 511 S.E.2d 372, 383 (Ct.App.1998)); *see also Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct.App. 1987). Conspiracy may be inferred from the nature of the acts committed, the relationship of the parties, the interests of the alleged conspirators, and other relevant circumstances. *Id.* Because civil conspiracy is "by its very nature covert and clandestine," it is usually not provable by direct evidence. *Id.*

As members of the LOVHOA, the Mazells were obligated to pay their regime fees in a timely fashion. Without paying their fees they were not allowed to vote at HOA meetings. Additionally, the Mazells needed the HOA to verify to their mortgage company that they were in good standing with the HOA.

Pursuant to their obligation to pay their 2012 HOA dues, on or about June 2, 2012, the Mazells gave a personal check for One Thousand and No/100 ($1,000.00) Dollars payable to the LOVHOA to Co-Defendant Hanneman for delivery to the LOVHOA. Rather than put the check in the LOVHOA mail box, or mail or hand deliver it directly to the LOVHOA President William McFarland as Hanneman did with his own dues payment, Hanneman mailed the check via certified mail, return receipt requested, to the HOA mail box on or about June 14, 2012. Prior to this, the LOVHOA had instructed members not to send certified mail to the HOA mail box as there was no house associated with that mail box number and therefore no one to sign for the certified mail. As a result of the mailing, the check was not delivered and the HOA was left with the impression that the Mazells had not tendered their HOA dues as the funds had not been received. According to both Sofia Mazell's and Michael Mazell's deposition testimony, there was an apparent communication between the Mazells themselves as well as between them and Hanneman regarding the alleged payment and instructions for delivery.

The Mazells finally picked up the check from the Post Office on or about July 19, 2012, but rather than delivering it to the HOA via its President William McFarland, the Mazells gave the check still in the envelope, to Hanneman. Hanneman then mailed the check via priority mail to William McFarland directly who received the check on or about July 22, 2012.

On July 27, 2012, the HOA notified the Mazells via email that it had the check. Approximately 18 minutes later the Mazells put a stop payment request on the check, but never

informed the HOA that the check was no longer good or that they stopped payment on the check. On July 31, 2012, unaware of the stop payment, the HOA sent the Mazells a certificate/statement showing that the Mazells' 2012 dues were paid, but there was still owed Fifty and 08/100 ($50.08) Dollars in interest.

Without being informed that the Mazells stopped payment on the check, the HOA deposited the check on or about August 9, 2012. On August 14, 2012 the HOA's bank notified the HOA that the check had a stop payment placed on it and that it did not clear. On August 28, 2012 the Mazells released the stop payment without informing the HOA. Then on September 5, 2012 Michael Mazell sent his first and only email about his dues to the HOA asking about his check clearing. Without waiting for a reply or informing the HOA, Mazell then stopped payment on the check a second time approximately three (3) hours after his email. By writing the check and then stopping payment without informing the HOA, the Mazells were able to obtain an HOA statement showing that their dues were paid in full which assisted them with their mortgage foreclosure issues, but deprived the HOA of the dues owed. The Mazells were then able to sell their house at a short sale and repaid the LOVHOA of the fines owed for failing to timely pay the LOVHOA fees.

The Mazells, Hanneman and Morris combined and worked together to cause the delay of the payment of the Mazells' 2012 HOA dues and to cause the LOVHOA to deposit a check on which the Mazells stopped payment without informing the LOVHOA. The stop payment caused the check to be returned. When it was returned, the LOVHOA turned the check over to the Dorchester County Bad Check office for prosecution. The Solicitor subsequently decided not to prosecute. However, as a result of the check being turned over to the Solicitor's office, the Mazells used that as a pre-text to file for and obtain a Restraining Order against William

McFarland, President of the LOVHOA Board of Directors. The Dorchester County Magistrate's Court subsequently granted mutual Restraining Orders against both William McFarland and the Mazells. Morris and Hanneman used the fact that the Solicitor decided not to prosecute the stop payment as a pre-text for numerous disparaging letters to the LOVHOA and its members that William McFarland was somehow operating in bad faith and exposing the LOVHOA to legal damages.

Subsequently Morris, on or about October 4, 2012 supposedly without any request by the Mazells, obtained a cashier's check for the amount of the Mazells' HOA dues using Morris' own funds. Morris testified that he did this on his own initiative and without any input from the Mazells. However, Sophia Mazell testified that they obtained the cashier's check. Supposedly the check was present at the specially called board meeting on October 4, 2012, but not delivered to the HOA until October 16, 2012.

On October 4, 2012, before the Mazells' dues were paid or any late fees or other fines were paid, Hanneman and Morris attempted to hold a special meeting of the LOVHOA Board of Directors to remove William McFarland from his position as President of the LOVHOA Board of Directors. Upon information and belief, they allowed Michael Mazell to participate in the board meeting despite not being a board member or being a member in good standing of the LOVHOA.

As Conspiracy is often difficult to prove by direct evidence, it can be proved by circumstantial evidence. The fact that the Mazells gave the check for the LOVHOA dues to Hanneman; the fact that Hannemann held the check for twelve (12) days when the HOA dues were past due; mailed the check via certified mail to an address where the United States Postal Service would not be able to obtain a signature for the receipt, and then delayed in mailing the

check via priority mail; the fact that Morris used his funds, supposedly on his own initiative to pay the Mazells' HOA dues; and the fact that these funds were not tendered until October 2012 indicate that there was a "joint assent of the minds" of the Mazells, Hanneman and Morris. This conspiracy deprived the LOVHOA of dues for a temporary period and allowed the LOVHOA to believe that the Mazells had timely paid the dues and allowed Hanneman and Morris to lambast William McFarland for taking lawful steps to collect the LOVHOA dues. The evidence indicates an intent to harm or cause damage to the LOVHOA. Further, at no time did the Mazells, Hanneman or Morris notify the LOVHOA that the Mazells stopped payment on the check; not the first time, nor the second time.

Additionally, the Mazells had a tenant residing in their residence with them in violation of the LOVHOA Covenants and Restrictions. The Mazells were asked by the LOVHOA property manager, KLM Enterprises, to stop renting their property. The Mazells continued to rent the property and the property manager issued a fine against the Mazells. At the October 4, 2012 meeting Hanneman and Morris alleged that they had authority to override the property manager and delete the fines assessed against the Mazells for renting rooms at their home. Upon information and belief, the Mazells were present at this alleged meeting, and voted as a property owner despite not being in good standing with the LOVHOA for failure to pay the balance of their fines. This deprived the HOA of the fine levied against the Mazells.

In a civil conspiracy claim, injury to the plaintiff need not be the only purpose behind the tortfeasor's conduct; many conspiracies will be at least partly motivated by the tortfeasor's desire to protect or benefit the tortfeasor's own lot. To be actionable, therefore, a conspiracy's "primary purpose or object" must be "to injure the plaintiff." *Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct.App.1986); *see also Pye v. Estate of Fox*, 369 S.C. 555, 567, 633

S.E.2d 505, 511 (2006). Special damages "are the natural, but not the necessary or usual, consequence of the" tortfeasor's conduct. *Id.* at 116-17, 682 S.E.2d at 875.

"Concert of action, amounting to a conspiracy, may be shown by circumstantial as well as direct evidence. In order to establish a civil conspiracy, direct or circumstantial evidence must be produced from which one may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise. A conspiracy is actionably only if overt acts pursuant to the common design proximately cause damage to the party bringing the action." Ralph King Anderson, Jr., South Carolina Requests to Charge - Civil, 2009, § 12-1.

"The gravamen of a civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se." Id. at § 12-2. Further, "it is not necessary for the plaintiff in a civil conspiracy cause of action to allege an unlawful act in order to state a claim, although a civil conspiracy may be furthered by an unlawful act. An action for civil conspiracy may exist even though defendants committed no unlawful act and no unlawful means were used. Lawful acts may become actionable as a civil conspiracy when the object is to ruin or damage the business of another. A conspiracy to injure may give rise to liability even though the end was brought about by conduct and acts which by themselves and apart from the element of combination or concerted action could not be regarded as a legal wrong. If the acts are sufficient to accomplish the wrongful object of the conspiracy, it is immaterial whether singly those acts would have been innocent or wrongful for they have, in their combination, brought about the intended mischief. The essential consideration is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the conspiracy or combination is to injure the plaintiff." Id. at § 12-3.

The Mazells conspired between themselves to stop payment on the check and to deprive the HOA of the dues owed. They further conspired with the other Defendants to stop the HOA from obtaining fines owed due to the Mazells having a tenant on their property.

**IV. Mazells are in breach of the Covenants and Restrictions**

As Live Oak Village homeowners the Mazells were bound by the Covenants and Restrictions for the HOA. The Mazells leased their property to a tenant Delburt Fritz as is evidenced by the Rental Agreement, a copy of which is attached to the Affidavit of William McFarland as Exhibit "A." By renting their property or having tenants the Mazells specifically violated Section 7.6 of the Covenants and Restrictions of the LOVHOA. Even Co-Defendants Hanneman and Morris admitted that if the Mazells were renting part of their property they would be in breach of their obligations under the Covenants and Restrictions. Therefore, the Mazells are not entitled to Summary Judgment on this issue.

By: _____

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**ATTORNEY FOR PLAINTIFFS**

Summerville, South Carolina
November 18, 2014

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br>C.A. NO.: 2012-CP-18-2583 |
| LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC.; JENNIFER McFARLAND; CARLTON HOLCOMBE and UTE HOLCOMBE,<br><br>Plaintiffs,<br><br>-versus-<br><br>THOMAS MORRIS; DAVID HANNEMANN; SOFIA MAZELL and MICHAEL MAZELL,<br><br>Defendants. | **DEFENDANTS THOMAS MORRIS AND DAVID HANNEMANN'S MOTION FOR PARTIAL SUMMARY JUDGMENT** |
| SOFIA MAZELL and MICHAEL MAZELL,<br><br>Third-Party Plaintiffs<br><br>--versus-<br><br>WILLIAM McFARLAND,<br><br>Third-Party Defendant | |

2012 DEC -8 AM 11:56
CHERRY W. ... RECORDS
CLERK OF COURT
DORCHESTER COUNTY

TO: P. BRANDT SHELBOURNE, ESQ., COUNSEL FOR PLAINTIFFS:

PLEASE TAKE NOTICE that Defendants Thomas Morris and David Hannemann (collectively referred to as "Defendants") will move before the presiding Judge, First Judicial Circuit, Dorchester County, at such place and time as the Court may appoint, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an order granting Defendants summary judgment as to all of the HOA's claims and to Plaintiffs Jennifer McFarland, Carlton Holcombe, and Ute Holcombe's declaratory judgment claims.

## BACKGROUND

This action arises out of disputes between homeowners of the Live Oak Village subdivision located in Summerville, South Carolina. The community is comprised of seven lots and the common areas. The common areas, which include the entrance, cul-de-sac, and two driveway easements, are maintained and owned by the Live Oak Village Homeowners Association, Inc. ("HOA"). (Ex. A - Amendments to the Declaration of Covenants And Restrictions for Live Oak Village, Summerville, South Carolina, § 3.1).

The HOA is governed by the Board of Directors ("BOD"), which is comprised of three, elected directors. (Ex. B - By-laws of Live Oak Village Homeowners Association, Inc. § 4(A)). A majority of the number of directors, or two directors, constitutes a "quorum." Ex. B §5(C). Any action taken by the BOD requires a majority vote, or a vote of at least two directors, at a meeting in which a quorum is present. Id. ("Every act or decision done or made by a majority of the directors present at a duty (sic) held meeting at which a quorum is present shall be regarded as the act of the [BOD]."). The BOD may take action without a meeting; however, such actions require written approval of all three BOD directors. Ex. B §4(E). The last time the HOA voted in a new director was at the August of 2011 meeting. Hannemann Dep. 67:4 - 9, Nov. 4, 2014. As no other election has taken place since August of 2011, the three directors are William McFarland, David Hannemann, and Thomas Morris. Id. 67:18 – 21.

The HOA is responsible for "tak[ing] any and all actions necessary to enforce all covenants and restrictions affecting the Subdivision and to perform any of the functions or services delegated to the [HOA] in any covenants or restrictions applicable to the Subdivision." Ex. A §3.1(h). This includes the BOD "enforc[ing] by legal means the provisions of the

Certificate of Incorporation and By-laws of the Association, the Declaration and the regulations hereinafter promulgated governing use of the property in the Subdivision." Ex. B § 6(A)(6).

Due to disputes between the homeowners of the Live Oak Village, the HOA and three individual homeowners, Jennifer McFarland, Carlton Holcombe, and Ute Holcombe (collectively referred to as "Individual Plaintiffs"), brought this action against the Defendants for a declaratory judgment and on allegations of conspiracy. Defendants Thomas Morris and David Hannemann move this Court to grant its Motion for Partial Summary Judgment as to all the claims brought by the HOA and as to the declaratory judgment claim brought by Individual Plaintiffs as the Plaintiffs lack the requisite standing to bring these claims.

## SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." Etheredge v. Richland School Dist. One, 534 S.E.2d 275, 277 (S.C. 2000). "In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party." Id. "When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted." Singleton v. Sherer, 659 S.E.2d 196, 202 (S.C. Ct. App. 2008).

"The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Richardson v. The State Record Co., Inc., 499 S.E.2d 824-25 (S.C. Ct. App. 1998). "With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by "showing" –that is, pointing out to the [trial] court – that there is an absence of evidence to support the nonmoving party's case.'" Id. at 825. "The moving party need not 'support its motion with affidavits or

other similar materials negating the opponent's claim.'" Id.; see Milligan v. Liberty Life Ins. Co., 443 S.E.2d 381, 382 (S.C. 1994) (nothing that where record is devoid of evidence, moving party is entitled to summary judgment as a matter of law). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." Singleton, 659 S.E.2d at 203. "It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine." Thompkins v. Festival Centre Group, I, 410 S.E.2d 593, 594 (S.C. Ct. App. 1991).

## ARGUMENT

**1. The HOA failed to follow the requirements as set forth in the By-Laws and therefore, the HOA lacks standing to bring suit against Defendants**

In order to bring suit against any party, the By-laws of the Live Oak Village Homeowners Association requires that a majority vote, or the vote of two (2) of the three (3) directors, to bring suit. (Ex. B §5(C)). The By-laws create a condition precedent before any act is an official or authorized act of the HOA. (Id.) A right of action does not arise until such conditions precedents are met. Metal Serv. Corp. v. Indus. Elec. Co., 253 S.C. 507, 510, 171 S.E.2d 703, 704 (1970); Floyd v. St. Paul Fire & Marine Ins. Co., 285 S.C. 148, 149, 328 S.E.2d 132, 132 (Ct. App. 1985).

The HOA failed to follow its own By-Laws and condition precedents before instituting this suit. The meeting minutes and meeting agendas show that filing a suit on behalf of the HOA against the Defendants was never discussed or mentioned at an HOA or BOD meeting. See BOD Meeting Minutes from July 27, 2010, Aug. 30, 2011, May 2, 2012, May 31, 2012 and Oct. 4, 2012 (attached hereto as Exhibit C); see also Hannemann Dep. 270:21 - 271:1 (Q. Did you conduct any meeting for that to happen? A. No, sir. Q Did you send out any notice to any HOA

members for that to happen? A. No.). As it was never discussed, the BOD never voted to bring a suit against the Defendants. See id.; see also Hannemann Dep. 270:4-8, 15 - 20 (Q. Was there a board of director meeting prior to the filing of this lawsuit in which the HOA voted on whether or not to pursue a claim against yourself, Mr. Morris, and the Mazells? A No....Q. Do you know who is acting on behalf of the HOA? Because the HOA most certainly is a Plaintiff to this lawsuit. A. I understand that. And, no, I do not. Q. But you didn't make any vote for that to happen? A. That's correct.). Further, Plaintiffs have failed to produce any evidence that the three BOD directors gave written approval outside the context of a meeting to bring this suit.

As no vote was had or written approval given regarding filing a suit on behalf of the HOA, the conditions precedent set out in the By-Laws were not met. (Ex. B §5(C)). The HOA's right of action does not arise until such conditions precedents are met. Metal Serv. Corp., at 510, 171 S.E.2d at 704. Thus, the HOA's right of action has not arisen and a suit cannot be brought by the HOA against the Defendants. (Ex. B §§5(C), 6(A)(6)).

**2. The Individual Plaintiffs have not suffered any damages or injury in fact, therefore they lack standing to bring their declaratory judgment claim.**

The Supreme Court has provided a three-part test to establish standing:

> First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical,' " Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 195-96, 669 S.E.2d 337, 339 (2008) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130 (1992)).

The Individual Plaintiffs claim that they "will suffer irreparable damage to their ability to reside at their property" unless the Court "enjoins and prohibits Defendants Thomas Morris and David Hannemann from continuing to act outside their scope of authority." Compl. ¶ 8. However, all three Individual Plaintiffs admitted that they still have full and uninterrupted access to the common elements and to their property. (Exhibit D - Pls.' Resp. to Req. for Admis. 8, 10, and 12). They have not suffered an "injury in fact" but instead allude to a conjectural or hypothetical injury. As the Individual Plaintiffs admitted they still have access to their property and that their ability to reside at their property has not been affected, they have not suffered an "injury in fact" and cannot satisfy the first element required for standing on the declaratory judgment claim. ATC S., at 195-96, 669 S.E.2d at 339.

Second, the Individual Plaintiffs fail to state how Defendants' alleged actions hinder the Individual Plaintiffs' ability to reside at their property. The Individual Plaintiffs allege that the Defendants acted outside the scope of their authority by

A. voting to waive fines that applied to themselves;

B. failing to hold timely or properly noticed Home Owners Association or Board of Directors meetings;

C. allowing unauthorized persons to vote and participate in Board of Directors meetings;

D. voting on matters in which they have a personal financial interest;

E. voting in violation of South Carolina Code §33-31-830;

F. failing to properly handle HOA funds;

G. failing to enforce covenants and restrictions in a uniform and unbiased manner;

H. violating the covenants and restrictions.

Compl. ¶ 6. There are no allegations that Defendants prevented or impeded access to the Individual Plaintiffs' property. Id.; see also Pls.' Resp. to Req. for Admis. 8, 10, and 12. Thus, the Individual Plaintiffs' alleged injury is not "fairly ... trace[able] to the challenged action[s] of the [D]efendant[s]" and therefore, Individual Plaintiffs fail to meet the second element required for standing . ATC S., at 195-96, 669 S.E.2d at 339.

Lastly, a decision of the Court will not change the issues or redress the alleged injury. The Individual Plaintiffs admit that they have use of their respective properties and that their use has not been impeded. (Exhibit D - Pls.' Resp. to Req. for Admis. 8, 10, and 12). Thus, the Court's declaration regarding whether or not the Defendants are acting outside the scope of their authority will not change or redress the Individual Plaintiffs' ability to reside at their residence. As such, the Individual Plaintiffs also fail to satisfy the third element required for standing. ATC S., at 195-96, 669 S.E.2d at 339.

Thus, the Individual Plaintiffs have not suffered nor alleged a particularized and actual injury in fact. They have not provided evidence of how the alleged injury in fact was caused by the Defendants and have not shown how a decision by the Court would redress the alleged injury. As Plaintiffs fail to satisfy all three prongs of the test to establish standing, they lack the requisite standing to bring the declaratory judgment claim in their individual capacities. ATC S., at 195-96, 669 S.E.2d at 339.

## CONCLUSION

Based on the above law and reasoning, Defendants Thomas Morris and David Hannemann ask this Court grant their Motion for Partial Summary Judgment as to all the claims

brought by the HOA and as to the declaratory judgment claim brought by Individual Plaintiffs as the Plaintiffs.

This Motion may be further supported by deposition testimony to be filed in a subsequent memorandum prior to the hearing on this matter.

Dated this 4th day of December2014.

Respectfully submitted,

WALL TEMPLETON & HALDRUP, P.A.

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**Attorneys for Defendants Thomas Morris and David Hannemann**

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| STATE SOUTH CAROLINA<br><br>COUNTY OF DORCHESER<br><br>LIVE OAK VILLAGE HOA, INC., et al.,<br><br>Plaintiffs,<br><br>vs.<br><br>THOMAS MORRIS, et al.,<br><br>Defendants.<br><br>THOMAS MORRIS and DAVID HANNEMANN,<br><br>Third Party Plaintiffs,<br><br>vs.<br><br>WILLIAM McFARLAND,<br><br>Third Party Defendant. | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br>CASE NO.: 12-CP-18-2583<br><br>**NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT TO DISMISS COUNT IV OF AMENDED COMPLAINT** |

FILED-RECORDED
12/11/14
Cheryl Graham
Clerk of Court
Dorchester County

**TO: P. BRANDT SHELBOURNE, ESQ., COUNSEL FOR PLAINTIFFS:**

**PLEASE TAKE NOTICE** that defendants Sofia Mazell and Michael Mazell ("Mazell"), by their attorney, William B. Jung, Esq., will move this Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, at such time as may be noticed by the Court at a duly noticed hearing at least ten (10) days after the service of this Motion, for an Order granting partial summary judgment in favor of Mazell by dismissing Count IV of the Amended Complaint, dated June 9, 2014. As grounds for this relief, Mazell will demonstrate that there is no genuine issue of a material fact in dispute that the plaintiffs to have failed to take and afford to defendants Mazell the procedures set forth in Paragraph 15(c) of the Bylaws for the Live Oak Village Homeowners

Association, Inc., which govern and require such procedures to occur as conditions precedent before any "fine" can be imposed upon a homeowner in the Live Oak Village for the alleged violation of the Covenants and Restrictions and/or Bylaws of the Live Oak Village HOA. As a result, the claims in Count IV of the Amended Complaint, which seeks "fines, costs and fees" for Mazell's alleged violations of the Live Oak Village HOA Covenants and Restrictions and/or Bylaws, have been improperly brought against defendants Mazell in violation of the Live Oak Village HOA Covenants and Restrictions and/or Bylaws. Therefore Count IV of the Amended Complaint should be dismissed.

Dated: Mount Pleasant, S.C.
December 9, 2014

**WILLIAM B. JUNG, ESQ.**
Attorney for Defendants
Michael and Sofia Mazell

William B. Jung

**William B. Jung, Esq.**
1156 Bowman Road, Ste. 200
Mount Pleasant, S.C. 29464
(843) 416-1104

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER | ) | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br>C.A. NO.: 2012-CP-18-2583 |
| LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC.; JENNIFER McFARLAND; CARLTON HOLCOMBE and UTE HOLCOMBE,<br><br>Plaintiffs,<br><br>-versus-<br><br>THOMAS MORRIS; DAVID HANNEMANN; SOFIA MAZELL and MICHAEL MAZELL,<br><br>Defendants. | ) | **DEFENDANTS THOMAS MORRIS AND DAVID HANNEMANN'S AMENDED MOTION FOR SUMMARY JUDGMENT** |
| SOFIA MAZELL and MICHAEL MAZELL,<br><br>Third-Party Plaintiffs<br><br>-versus-<br><br>WILLIAM McFARLAND,<br><br>Third-Party Defendant | ) | |

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CLERK OF COURT
DORCHESTER COUNTY

TO: P. BRANDT SHELBOURNE, ESQ., AND JASON DAIGLE, ESQUIRE, COUNSEL FOR PLAINTIFFS:

PLEASE TAKE NOTICE that Defendants Thomas Morris and David Hannemann (collectively referred to as "Defendants") will move before the presiding Judge, First Judicial Circuit, Dorchester County, at such place and time as the Court may appoint, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an order granting Defendants summary judgment as to all of the Plaintiffs' claims. Defendants previously filed a Motion for Partial Summary Judgment on December 8, 2014 ("Previous Motion"). The Previous Motion is now

moot and replaced with this Amended Motion for Summary Judgment as to all of Plaintiffs' claims.

## SUMMARY OF ARGUMENT

Defendants base this motion on the following:

1. The Plaintiffs do not have standing to bring their claims pursuant to the Supreme Court of the United States and the Master Deed.
2. The Plaintiffs lack damages and/or special damages to support their claims.

## BACKGROUND & FACTS

This action arises out of disputes between homeowners of the Live Oak Village subdivision located in Summerville, South Carolina. The community is comprised of seven lots and the common areas. The common areas, which include the entrance, cul-de-sac, and two driveway easements, are maintained and owned by the Live Oak Village Homeowners Association, Inc. ("HOA"). (Ex. A - Declaration of Covenants and Restrictions for Live Oak Village, Summerville, South Carolina § 3.1; Ex. B - Amendments to the Declaration of Covenants And Restrictions for Live Oak Village, Summerville, South Carolina § 3.1). The documents governing the HOA and its actions include: the Declaration of Covenants and Restrictions for Live Oak Village, Summerville, South Carolina, which incorporates the By-Laws of Live Oak Village Homeowners Association, Inc., and the Amendments to the Declaration of Covenants And Restrictions for Live Oak Village, Summerville, South Carolina. Live Oak Village Homeowners Ass'n, through its designated representative, William McFarland Dep. 14:12 – 15:2, Dec. 2-3, 2014 (hereinafter referred to as "30(b)(6) of HOA Dep.").

The HOA is governed by the Board of Directors ("BOD"), which is comprised of three, elected directors. (Ex. C - By-laws of Live Oak Village Homeowners Association, Inc. § 4(A)).

A majority of the number of directors, or two directors, constitutes a "quorum." Ex. C §5(C). Any action taken by the BOD requires a majority vote, or a vote of at least two directors, at a meeting in which a quorum is present. Id. ("Every act or decision done or made by a majority of the directors present at a duty (sic) held meeting at which a quorum is present shall be regarded as the act of the [BOD]."). The BOD may take action without a meeting; however, such actions require written approval of all three BOD directors. Ex. C §4(E). The last time the HOA voted in a new director was at the August of 2011 meeting. Hannemann Dep. 67:4 - 9, Nov. 4, 2014. As no other election has taken place since August of 2011, the three directors are William McFarland, David Hannemann, and Thomas Morris. Id. 67:18 – 21; see also 30(b)(6) of HOA 286:8 - 13.

The HOA is responsible for "tak[ing] any and all actions necessary to enforce all covenants and restrictions affecting the Subdivision and to perform any of the functions or services delegated to the [HOA] in any covenants or restrictions applicable to the Subdivision." Ex. A §3.1(h); Ex. B §3.1(h). This includes the BOD "enforc[ing] by legal means the provisions of the Certificate of Incorporation and By-laws of the Association, the Declaration and the regulations hereinafter promulgated governing use of the property in the Subdivision." Ex. C § 6(A)(6). In order to bring suit against any party, the By-laws of the Live Oak Village Homeowners Association requires that a majority vote, or the vote of two (2) of the three (3) directors, to bring suit. Ex. C §5(C). The By-laws create a condition precedent before any act is an official or authorized act of the HOA. Id.

William McFarland, purportedly on behalf of the HOA, and three individual homeowners, Jennifer McFarland, Carlton Holcombe, and Ute Holcombe (collectively referred to as "Individual Plaintiffs"), brought this action against the Defendants for a declaratory

judgment and on allegations of conspiracy. Although this suit was brought by the HOA, neither the HOA nor the BOD followed the By-laws and voted to bring suit, as evidenced by the meeting minutes and meeting agendas. See BOD Meeting Minutes from July 27, 2010, Aug. 30, 2011, May 2, 2012, May 31, 2012 and Oct. 4, 2012 (attached hereto as Exhibit D). Mr. McFarland, as the 30(b)(6) deponent for the HOA, testified that no such discussion or vote occurred prior to bringing suit:

> Q. Am I correct also the HOA, nor the board of directors, has ever held a meeting to authorize the HOA to bring suit against any of the defendants in this case, correct?
> A. No. That'd have been impossible. The defendants in the case are board of directors.
> Q. Right. So the board has never authorized any litigation, correct?
> A. Exactly. My answer stands. It would have been impossible, as the defendants in this case are board of directors.

30(b)(6) Dep. of HOA 24:3 – 13. Further, Plaintiffs have not produced any evidence that the three BOD directors gave written approval outside the context of a meeting to bring this suit.

In their declaratory judgment claim, the Plaintiffs seek to enjoin and prohibit "Defendants Thomas Morris and David Hannemann from continuing to act outside their scope of authority" as board members. Am. Compl. ¶ 8[1]. They allege that the Defendants acted outside the scope of their authority by:

A. voting to waive fines that applied to themselves;

B. failing to hold timely or properly noticed Home Owners Association or Board of Directors meetings;

C. allowing unauthorized persons to vote and participate in Board of Directors meetings;

[1] "A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records." Freeman v. McBee, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984).

D. voting on matters in which they have a personal financial interest;

E. voting in violation of South Carolina Code §33-31-830;

F. failing to properly handle HOA funds;

G. failing to enforce covenants and restrictions in a uniform and unbiased manner;

H. violating the covenants and restrictions.

Am. Compl. ¶ 6.

Based on the above alleged acts, the Plaintiffs claim that they "will suffer irreparable damage to their ability to reside at their property." Am. Compl. ¶ 8; J. McFarland dep. 25:6 – 15, Dec. 3, 2014; C. Holcombe Dep. 43:7 – 11, 44:7- 13, Dec. 4, 2014. Outside of damages associated with their ability to reside at their property, Plaintiffs claim no other injury or damages under their declaratory judgment claim:

> Q. And as part of that cause of action, it says: The Plaintiffs will suffer irreparable damage to their ability to reside at their property. Is that the – is that the only injury that you are claiming in this case?
> A. With reference to Hannemann and Morris?
> Q. For the declaratory judgment action, yes ma'am.
> A. Yes I believe so.

J. McFarland dep. 25:6 – 15.

> Q. But my question to you is: Is there any other – the only injury that's been alleged is that the plaintiffs have suffered irreparable damage to their ability to reside at their property. Is there any other injury that you are claiming as a result of these actions?
> A. Not at this time.

C. Holcombe Dep. 44:7- 13. In fact, Ute Holcombe claims no damages at all related to the declaratory judgment action.

> Q. And as part of that cause of action, the allegations and injury is that the plaintiffs will suffer irreparable damage to their ability to reside at their property. Is that the injury that you're claiming in this case?
> A. I think it's something you just need to discuss with my husband. I really don't even want to -- I don't know anything about that.

...

Q. So you don't have any evidence or testimony about anything associated with the declaratory judgment action. Is that true?
A. Yes.

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U. Holcombe Dep. 19:15 – 22, 20:17 – 20, Dec. 4, 2014. All three Individual Plaintiffs admitted that they still have full and uninterrupted access to the common elements and to their property:

> 8., 10. 12. Admit [Jenifer McFarland, Carlton Holcombe, and Ute Holcombe] is able to access [his/her] residence freely and uninterrupted.
>
> RESPONSE: Admitted.

(Exhibit E - Pls.' Resp. to Req. for Admis. 8, 10, and 12). Further, the Individual Plaintiffs testified they all still reside in their Live Oak Village residences. J. McFarland Dep. 9:24-25; C. Holcombe Dep. 5:25-6:2; U. Holcombe Dep. 7:25-8:2.

The conspiracy claim rests on the alleged mishandling of a check by Defendants and co-Defendants Sofia and Michael Mazell (the "Mazells"). 30(b)(6) Dep. Of HOA 251:10 – 252:4. The check in question was for HOA dues owed by Mazells. Mrs. Holcombe testified that she is not seeking any damages related to the mishandling of the check or related to the conspiracy claim. U. Holcombe Dep. 21:10 – 12. The other Plaintiffs claimed they suffered damages due to the Mazells' failure to pay fines to the HOA, the HOA's inability to fine the Defendants for breach, the Defendants' payment of their fees into escrow rather than to the HOA, and attorneys' fees associated with bringing this action. C. Holcombe Dep. 78:18 – 79:12; 30(b)(6) of HOA Dep. 188:9 – 25, 195:7 - 16. In addition, Mrs. McFarland claims "that [all the Defendants] conspired together to make our lives miserable, to try to get us to leave the neighborhood." J. McFarland dep. 30:8-10. She further testified that due to the conspiracy she is "just not even comfortable anymore" in the neighborhood and feels like "people are watching what [she's] doing." Id. 29:25-30:2. Although she claims that she is not comfortable in her own

neighborhood, she has not tried to list her house for sale, nor has she looked to purchase another home. Id. 30:12-18.

Based on Plaintiffs' claims and deposition testimony, Defendants Thomas Morris and David Hannemann move this Court to grant its Motion for Summary Judgment as the Plaintiffs lack requisite standing and/or damages necessary to bring their claims.

## SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." Etheredge v. Richland School Dist. One, 534 S.E.2d 275, 277 (S.C. 2000). "In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party." Id. "When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted." Singleton v. Sherer, 659 S.E.2d 196, 202 (S.C. Ct. App. 2008).

"The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Richardson v. The State Record Co., Inc., 499 S.E.2d 824-25 (S.C. Ct. App. 1998). "With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by "showing" –that is, pointing out to the [trial] court – that there is an absence of evidence to support the nonmoving party's case.'" Id. at 825. "The moving party need not 'support its motion with affidavits or other similar materials negating the opponent's claim.'" Id.; see Milligan v. Liberty Life Ins. Co., 443 S.E.2d 381, 382 (S.C. 1994) (nothing that where record is devoid of evidence, moving party is entitled to summary judgment as a matter of law). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the

opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." Singleton, 659 S.E.2d at 203. "It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine." Thompkins v. Festival Centre Group, I, 410 S.E.2d 593, 594 (S.C. Ct. App. 1991).

## ARGUMENT

**1. The Plaintiffs do not have standing pursuant to the Supreme Court of the United States and the Master Deed to bring their claims.**

**a. Jennifer McFarland, Carlton Holcombe, and Ute Holcombe have not suffered any damages or injury in fact, and therefore they lack standing to bring their declaratory judgment claim.**

The Supreme Court has provided a three-part test to establish constitutional standing:

> First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical,' " Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 195-96, 669 S.E.2d 337, 339 (2008) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130 (1992)).

First, the Individual Plaintiffs claim that they "will suffer irreparable damage to their ability **to reside** at their property" unless the Court "enjoins and prohibits Defendants Thomas Morris and David Hannemann from continuing to act outside their scope of authority." Am. Compl. ¶ 8. (emphasis added). In fact, both Mrs. McFarland and Mr. Holcombe testified that the only damage they were claiming related to the declaratory judgment action was damage to the ability to reside at their residences:

Q. And as part of that cause of action, it says: The Plaintiffs will suffer irreparable damage to their ability to reside at their property. Is that the – is that the only injury that you are claiming in this case?
A. With reference to Hannemann and Morris?
Q. For the declaratory judgment action, yes ma'am.
A. Yes I believe so.

J. McFarland dep. 25:6 – 15.

Q. But my question to you is: Is there any other – the only injury that's been alleged is that the plaintiffs have suffered irreparable damage to their ability to reside at their property. Is there any other injury that you are claiming as a result of these actions?
A. Not at this time.

C. Holcombe Dep. 44:7- 13. Whereas Ute Holcombe has no knowledge of any damages related to the declaratory judgment claim:

Q. And as part of that cause of action, the allegations and injury is that the plaintiffs will suffer irreparable damage to their ability to reside at their property. Is that the injury that you're claiming in this case?
A. I think it's something you just need to discuss with my husband. I really don't even want to -- I don't know anything about that.

Q. So you don't have any evidence or testimony about anything associated with the declaratory judgment action. Is that true?
A. Yes.

U. Holcombe Dep. 19:15 – 22, 20:17 – 20. However, all three Individual Plaintiffs still have full and uninterrupted access to the common elements and to their property:

8., 10. 12. Admit [Jenifer McFarland, Carlton Holcombe, and Ute Holcombe] is able to access [his/her] residence freely and uninterrupted.

RESPONSE: Admitted.

Exhibit E - Pls.' Resp. to Req. for Admis. 8, 10, and 12. Further, Jenifer Mcfarland, Carlton Holcome and Ute Holcombe all testified that they continue to reside in their homes at Live Oak Village. J. McFarland Dep. 9:24-25; C. Holcombe Dep. 5:25-6:2; U. Holcombe Dep. 7:25-8:2.

The Individual Plaintiffs have not suffered an "injury in fact" but instead allude to a conjectural or hypothetical injury. As the Individual Plaintiffs admitted that they still have access to their property and that their ability to reside at their property has not been affected, they have not suffered an "injury in fact" and cannot satisfy the first element required for standing on the declaratory judgment claim. ATC S., at 195-96, 669 S.E.2d at 339.

Second, the Individual Plaintiffs fail to state how Defendants' alleged actions hinder the Individual Plaintiffs' ability to reside at their property. There are no allegations that Defendants prevented or impeded access to their property. (Ex. E - Pls.' Resp. to Req. for Admis. 8, 10, and 12). Thus, the Individual Plaintiffs' alleged injury is not "fairly ... trace[able] to the challenged action[s] of the [D]efendant[s]" and therefore, they fail to meet the second element required for standing. ATC S., at 195-96, 669 S.E.2d at 339.

Lastly, a decision of the Court will not change the issues or redress the alleged injury. The Individual Plaintiffs admit that they have use of their respective properties and that their use has not been impeded. (Exhibit E - Pls.' Resp. to Req. for Admis. 8 and 10). Further the Individual Plaintiffs admit they all still reside in their homes at Live Oak Village. J. McFarland Dep. 9:24-25; C. Holcombe Dep. 5:25-6:2; U. Holcombe Dep. 7:25-8:2. A declaration by the Court regarding whether or not the Defendants are acting outside the scope of their authority will not change or redress their ability to reside at their residence. As such, the Individual Plaintiffs also fail to satisfy the third element required for standing. ATC S., at 195-96, 669 S.E.2d at 339.

The Individual Plaintiffs have not suffered nor alleged a particularized and actual injury in fact. They have not provided evidence of how the alleged injury in fact was caused by the Defendants and have not shown how a decision by the Court would redress the alleged injury. As the Individual Plaintiffs fail to satisfy all three prongs of the test to establish standing, they lack

the requisite standing to bring the declaratory judgment claim in their individual capacities. ATC S., at 195-96, 669 S.E.2d at 339.

**b. The HOA failed to follow the requirements as set forth in the By-Laws and therefore, the HOA lacks standing to bring suit against Defendants**

A right of action does not arise until such conditions precedents are met. Metal Serv. Corp. v. Indus. Elec. Co., 253 S.C. 507, 510, 171 S.E.2d 703, 704 (1970); Floyd v. St. Paul Fire & Marine Ins. Co., 285 S.C. 148, 149, 328 S.E.2d 132, 132 (Ct. App. 1985). The HOA failed to follow its own By-Laws and condition precedents before instituting this suit. Any official action by the HOA requires a majority vote, or the vote of two (2) of the three (3) directors. (Ex. C §5(C)) Mr. McFarland, as the 30(b)(6) deponent for the HOA, testified that no such discussion or vote occurred prior to bringing suit:

> Q. Am I correct also the HOA, nor the board of directors, has ever held a meeting to authorize the HOA to bring suit against any of the defendants in this case, correct?
> A. No. That'd have been impossible. The defendants in the case are board of directors.
> Q. Right. So the board has never authorized any litigation, correct?
> A. Exactly. My answer stands. It would have been impossible, as the defendants in this case are board of directors.

30(b)(6) Dep. of HOA 24:3 – 13. As no such vote occurred[2], the conditions precedent set out in the By-Laws were not met. 30(b)(6) of HOA Dep. 24:3 – 13. As the conditions precedents were not met, the HOA's right of action has not arisen and a suit cannot be brought by the HOA against the Defendants. Metal Serv. Corp., at 510, 171 S.E.2d at 704.

[2] It is important to note that a call to vote was possible as all of the BOD directors maintained a voting right at the time the suit was filed. Testimony confirms that the BOD never satisfied the conditions precedent or followed the due process set forth in the Bylaws prior to imposing fines, suspending voting rights, or infringing upon or suspending any other rights of an Owner. 30(b)(6) of HOA Dep. 390:11-25; Greene Dep. 32:25 – 33:12, Dec. 17, 2014. The Bylaws require 1) a written demand to cease and desist, 2) written notice of a hearing if the violation continues and 3) a hearing prior to imposing fines, suspending voting rights, or infringing upon or suspending any other rights. Ex. C §15(C). As the due process set out in the Bylaws was never followed and thus the conditions precedent were never met, the directors all maintained a voting right and Mr. McFarland could have called for a vote on the issue.

**2. The Plaintiffs lack damages and/or special damages to support their claims.**

**a. The Court must grant summary judgment as to all claims brought by Ute Holcombe because she has not suffered or claimed any damages.**

Mrs. Holcombe testified that she had no independent knowledge regarding either of her claims.

> Q. So you don't have any evidence or testimony about anything associated with the declaratory judgment action. Is that true?
> A. Yes.
> Q. Do you have any information or testimony that you can offer as it relates to your conspiracy claim? Do you have any knowledge related to that?
> A. No, I do not.
> Q. My understanding of the conspiracy claim is related to the handling and collection of the Mazells' check. Is that your understanding of what that claim is?
> A. That's what the understanding is, yes, but like I said, I don't -- I am just a bystander.
> Q. So you don't have any independent knowledge related to that?
> A. No, I do not.

U. Holcombe Dep. 20:17 – 21:9. Mrs. Holcombe also testified that she was not seeking any independent injury or damages related to her claims.

> Q. And as part of that cause of action, the allegations and injury is that the plaintiffs will suffer irreparable damage to their ability to reside at their property. Is that the injury that you're claiming in this case?
> A. I think it's something you just need to discuss with my husband. I really don't even want to -- I don't know anything about that.
> . . .
> Q. Are you seeking any damage as it relates to [the conspiracy claim]?
> A. No.

Id. at 19:15 – 22, 21:10 – 12. As Mrs. Holcombe has no independent knowledge of the allegations regarding her claims and is not seeking or alleging any injury or damages related to her claims, Mrs. Holcombe's claims fail. Therefore, the Court must grant Defendants' Motion for Summary Judgment as to all of Ute Holcombe's claims

**b. The Plaintiffs have not suffered any special damages and thus their conspiracy claim fails.**

"The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage." Benedict Coll. v. Nat'l Credit Sys., Inc., 400 S.C. 538, 545, 735 S.E.2d 518, 521 (Ct. App. 2012). "Unlike other torts, an action for civil conspiracy requires the tortious conduct in question to cause the plaintiff special damage." Id. at 546, 735 S.E.2d at 522. "While general damages 'are the immediate, direct, and proximate result of the' tortfeasor's conduct, special damages 'are the natural, but not the necessary or usual, consequence of the' tortfeasor's conduct." Id. Special damages are the specific, calculable damages that flow from the conspiracy. F.A.A. v. Cooper, 132 S. Ct. 1441, 1451, 182 L. Ed. 2d 497 (2012). Special damages must be particularly alleged and proved. Kline Iron & Steel Co. v. Superior Trucking Co., 261 S.C. 542, 547, 201 S.E.2d 388, 390 (1973).

"[D]ismissal of a claim for civil conspiracy is appropriate when 'a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim.'" Benedict Coll., at 546, 735 S.E.2d at 522. The cost and expenses associated with prosecuting a plaintiff's civil conspiracy claim are not special damages if the costs of prosecuting the civil conspiracy claim are not distinct from the prosecution of other claims against the defendant. See Giraldo v. City of Columbia, No. 3:12-CV-03357-JFA, 2014 WL 4700645, at *11 (D.S.C. Sept. 18, 2014).

The only special damages alleged in the Amended Complaint are attorney fees and costs and loss of HOA fees. Am. Compl. ¶12.

1. Jennifer McFarland

Mrs. McFarland claims "that [all the Defendants] conspired together to make our lives miserable, to try to get us to leave the neighborhood." J. McFarland dep. 30:8-10. She further testified that due to the conspiracy she is "just not even comfortable anymore" in the neighborhood and feels like "people are watching what [she's] doing." Id. 29:25-30:2. Her feelings of discomfort in the neighborhood are at most a general damage, not a special damage. Benedict Coll., at 546, 735 S.E.2d at 522. As Mrs. McFarland claims that the goal of the conspiracy was to get her to move from the neighborhood, feeling uncomfortable would be "the immediate, direct, and proximate result of" any such actions in furtherance of the conspiracy." J. McFarland dep. 30:8-10. If Defendants were trying to conspire to make Mrs. McFarland's life miserable, which Defendants strongly deny, then the immediate, direct, necessary, or usual result would be feeling uncomfortable in the neighborhood. Thus, Mrs. McFarland's alleged damages would be general damages at most and would not qualify as special damages. Benedict Coll., at 546, 735 S.E.2d at 522.

2. Carlton Holcombe and HOA

Both the HOA and Carlton Holcombe testified that due to the civil conspiracy, the only damages are the Mazells' failure to pay fines to the HOA[3], the HOA's inability to fine the Defendants for breach[4], the Defendants' payment of their fees into escrow rather than to the HOA[5], and attorneys' fees.[6] C. Holcombe Dep. 78:18 – 79:12; 30(b)(6) of HOA Dep. 188:9 – 25,

[3] Plaintiffs admit that the Mazells paid the HOA $2,000 for amounts owed by Mazells when the Mazells closed on their former Live Oak Village property. (Exhibit F - Pls.' Resp. to Mazells' Req. for Admis. 9).
[4] These are purely speculative as the fines and violations have not been specifically identified, the fines have not been assessed, and the BOD has not followed the due process required in order to fine owners set forth in the Bylaws. 30(b)(6) of HOA Dep. 200:14 – 21; 212:19 – 213:1; see also Ex. C §15(C).
[5] The HOA is aware that Defendants Morris and Hannemann have both paid their HOA dues into an escrow account being held in trust. 30(b)(6) of HOA Dep. 91:10-15.

195: 7 - 16. All of these alleged damages are damages suffered by the HOA, who does not have standing to assert the same, and are not damages personally suffered by Mr. Holcombe. Further, these damages are general, rather than special damages. Any fines or fees for late payment or failure to pay are immediate and direct damages as authorized in the By-Laws. (Ex. C. §15(B)). If a party fails to pay a fine or fee, the natural and usual damage is loss of money. Thus, any loss of money suffered due to the Mazells' and Defendants' failure to pay fines or fees is simply a general damage, not a special damage. Benedict Coll., at 546, 735 S.E.2d at 522.

Thus, as to the civil conspiracy claim, the HOA and Mr. Holcombe seek general damages allegedly suffered by the HOA; damages that the HOA could have sought if it had met the condition precedent under the Bylaws and had standing to bring suit. As the damages sought are not special damages, the conspiracy claim, allegedly brought by the HOA and Mr. Holcombe, cannot succeed. Id., at 545, 735 S.E.2d at 521.

3. Ute Holcombe

If the Court does not dismiss all of Mrs. Holcombe's claims based on the above arguments, then the Court should dismiss Mrs. Holcombe's civil conspiracy claim for lack of damages. Mrs. Holcombe testified that she had no independent knowledge regarding the conspiracy claim and that she was not seeking any damages related to that claim. U. Holcombe Dep. 20:21 – 21:12. As Mrs. Holcombe is not seeking or alleging any damages related to the civil conspiracy claim, Mrs. Holcombe's claim for civil conspiracy fails. Therefore, the Court must grant Defendants' Motion for Summary Judgment as to Ute Holcombe's conspiracy claim.

[6] Plaintiffs are claiming attorneys' fees and costs incurred to prosecute this action for all of their claims, not just as to their civil conspiracy claim. Thus, the attorneys' fees and costs do not qualify as special damages. See Giraldo, No. 3:12-CV-03357-JFA, 2014 WL 4700645, at *11; see also Am. Compl. Wherefore clause §(f).

4. Attorneys' fees

The Plaintiffs seek attorney fees and costs for all causes of action, not just the conspiracy claim. Am. Compl. Wherefore clause §(f). Plaintiffs further testified that their claims for attorneys' fees relate to at least three of the causes of actions against Defendants.

> Q. Sure. In this lawsuit, just so that we're clear, you've asserted – you're claiming – you've got causes of action, at least my understanding is causes of action, declaratory judgment action, conspiracy action, slander and defamation action, and a breach of covenants and restrictions action. Are those your claims in this case?
> A. Right.
> Q. For which ones of those claims are you claiming attorneys fees?
> A. All but the defamation.

C. Holcombe Dep. 78:14 – 79:12, 80:19-81:5;

> Q. All right. Let me just get this straight, then. Has the HOA incurred any attorneys fees in this litigation?
> A. I would say yes.
> Q. How much attorneys fees has the HOA paid out in this litigation?
> A. I would say we're up to, if I'm not mistaken -- it's just a guess, but I would say maybe $35,000.
> . . .
> Q. So in terms of any damages for this conspiracy claim -- Well, we didn't ask -- I didn't ask about is there any dollar figure or any other damages that the HOA has obtained for favor – for these alleged favors between Hannemann and Morris?
> A. I would say the cost of the litigation, the HOA would want its legal fees back, asking Hannemann and Morris to follow the bylaws.
> Q. And the HOA legal fees that you're referring to relate to this temporary restraining hearing. Is that right?
> A. No. That's just where it started, but I would say into this suit itself that the HOA's a party to.
> Q. So you believe that under the conspiracy claim, the HOA -- what dollar figure do you believe the HOA is entitled to as it relates to attorneys fees?
> A. Whatever the outstanding attorneys fees are. I think I gave you a number earlier, somewhere around 35.

30(b)(6) of HOA 21:14 – 22, 195:7 – 196:4. The attorneys' fees of $35,000 is the total amount the parties have paid in order to prosecute all of their claims, not just the conspiracy claim. As the expenses incurred to prosecute this action apply to more than just the conspiracy claim, attorneys' fees do not qualify as special damages. See Giraldo, No. 3:12-CV-03357-JFA, 2014

WL 4700645, at *11. Therefore, the Plaintiffs have not incurred special damages and cannot sustain a claim for civil conspiracy.

## CONCLUSION

Based on the above law and reasoning, Defendants Thomas Morris and David Hannemann ask this Court grant their Amended Motion for Summary Judgment as to all the claims brought by Plaintiffs.

This Motion may be further supported by other evidence, including deposition testimony, to be filed in a subsequent memorandum prior to the hearing on this matter.

Dated this 16th day of January 2015.

Respectfully submitted,

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**Attorneys for Defendants Thomas Morris and David Hannemann**

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| STATE OF SOUTH CAROLINA ) | IN THE COURT OF COMMON PLEAS |
| : | FIRST JUDICIAL CIRCUIT |
| COUNTY OF DORCHESTER ) | C.A. NO.: 2012-CP-18-2583 |
| LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC.; JENNIFER McFARLAND; CARLTON HOLCOMBE and UTE HOLCOMBE, | |
| Plaintiffs, | **DEFENDANTS THOMAS MORRIS AND DAVID HANNEMANN'S REPLY IN SUPPORT OF AMENDED MOTION FOR SUMMARY JUDGMENT** |
| -versus- | |
| THOMAS MORRIS; DAVID HANNEMANN; SOFIA MAZELL and MICHAEL MAZELL, | |
| Defendants. | |
| SOFIA MAZELL and MICHAEL MAZELL, | |
| Third-Party Plaintiffs | |
| -versus- | |
| WILLIAM McFARLAND, | |
| Third-Party Defendant | |

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DORCHESTER COUNTY

Defendants Thomas Morris and David Hannemann (collectively referred to as "Defendants") submit this Reply responding to the arguments set out in Plaintiffs' Memorandum in Opposition to Defendants' Amended Motion for Summary Judgment.

## SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." Etheredge v. Richland School Dist. One, 534 S.E.2d 275, 277 (S.C. 2000). "The party seeking

summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Richardson v. The State Record Co., Inc., 499 S.E.2d 824-25 (S.C. Ct. App. 1998). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, **the opponent cannot simply rest on mere allegations or denials contained in the pleadings**" (emphasis added). Singleton v. Sherer, 659 S.E.2d 196, 203 (S.C. Ct. App. 2008). "It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine." Thompkins v. Festival Centre Group, I, 410 S.E.2d 593, 594 (S.C. Ct. App. 1991).

## REPLY

1. **The Plaintiffs fail to support their claims with any evidentiary support or law.**

Plaintiffs fail to provide any evidentiary support in the form of testimony or affidavits to support Plaintiffs' case and arguments. See Pls.' Mem. in Opp. Plaintiffs make countless contentions, allegations, and statements of law without any legal or factual support in order to create an inference which is not reasonable or an issue of fact that is not genuine. Id. As such, summary judgment is appropriate.

2. **In order to have standing, Plaintiffs Jennifer McFarland, Carlton Holcombe, and Ute Holcombe's declaratory judgment claims require a justiciable controversy.**

"Before a court may render a declaratory judgment, an actual, justiciable controversy must exist. A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." Carolina Alliance for Fair Employment v. S. Carolina Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 488, 523 S.E.2d 795, 801 (Ct. App. 1999). "A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party. Graham v. State Farm Mut. Auto.

Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing Power, at 153-54, 177 S.E.2d at 553). "An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the Uniform Declaratory Judgments Act." Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) (citing Power, at 154, 177 S.E.2d at 553).

Defendants agree with Plaintiffs that a declaratory judgment action does not require financial damages; but it does require a justiciable controversy that does not exist in this action. Plaintiffs claim that unless the Court "enjoins and prohibits [Defendants] from continuing to act outside their scope of authority," Plaintiffs "will suffer irreparable damage **to their ability to reside** at their property" Am. Compl. ¶ 8; J. McFarland dep. 25:6 – 15, Dec. 3, 2014; C. Holcombe Dep. 44:7- 13, Dec. 4, 2014. Yet Plaintiffs Jennifer McFarland, Carlton Holcombe, and Ute Holcombe's (referred to collectively as "Individual Plaintiffs) access to their property has not been impeded and Plaintiffs all continue to reside at their residence. J. McFarland Dep. 9:24-25; C. Holcombe Dep. 5:25-6:2; U. Holcombe Dep. 7:25-8:2, Dec. 4, 2014; Pls.' Resp. to Req. for Admis. 8, 10, and 12. The Individual Plaintiffs fail to state how their rights have been impacted as all the Individual Plaintiffs testified that the right to reside at their residences has not been hindered, threatened, or impeded. Id. Thus, no justiciable controversy exits. Any decision by the Court would not settle the legal rights of Individual Plaintiffs, would only be advisory in nature, and would beyond the intended purpose and scope of the Uniform Declaratory Judgments Act. Sunset Cay, at 423, 593 S.E.2d at 466. As such, Individual Plaintiffs lack standing to bring their declaratory judgment claim.

**3. Plaintiff HOA provide no evidentiary support for its contention that a question of fact exists as to whether the HOA was authorized to bring suit.**

Plaintiff Live Oak Village Homeowners Association, Inc. (hereinafter "HOA") admit that no formal HOA Board of Director (hereinafter "BOD") action took place in order to initiate this suit on behalf of the HOA. Pls.' Mem. in Opp. p. 3. However, the HOA argues that because one director, William McFarland, wanted to sue the other two BOD directors, South Carolina law and the HOA By-laws allow him to unilaterally sue the Defendants in the name of the HOA. Id. at p. 3. Such contention is preposterous and not supported by the law, HOA By-laws, or evidence presented in this action.

The HOA cites to Talbot v. James to support its contention that if a director has an interest adverse to the corporation, then the director has to sustain from voting on the action. 259 S.C. 73, 82, 190 S.E.2d 759, 764 (1972)(citing Peurifoy v. Loyal, 154 S.C. 267, 151 S.B. 579 (1930); Fidelity Fire Ins. Co. v. Harby, 156 S.C. 238, 153 S.E. 141 (1930)). However, Talbot and the cases it cites are distinguishable from the current action. The cited cases all involve financial transactions between a corporation and another individual or entity, in which one of the corporation's directors has a personal financial interest. If the case law is applied as HOA argues, then anytime one board member of a corporation is adverse to the other members, he could bring suit against all other board members to conflict them out of the vote and create a dictatorship to unilaterally do as the one member pleases. It would be against the intent of the law and public policy to interpret these cases so broadly.

The HOA also makes various claims that seem to amend the By-laws, such as:

- One action taken by the BOD without a board vote set a new precedent and amended the section of the By-laws regarding procedures for taking official HOA action;
- Defendants' payment of their HOA dues into escrow rather to the HOA is a violation of the Covenants and By-laws making them ineligible to serve on the Board;
- Section 7(b) of the By-laws gives the HOA BOD President the powers to act unilaterally and without following the procedures set forth in the By-laws.

See Pls.' Mem. in Opp'n p. 3-4. Section 11 of the HOA By-laws sets forth the procedure to be followed in order to amend the By-laws. See Ex. C to Amended Motion for Summary Judgment §11. The HOA fails to support its contentions and allegations with any evidence that the By-laws were amended to include the above rules. As such, the HOA's claims are nothing more than the HOA's attempt at creating an inference that an issue of fact exists. No such issue exists as the HOA itself admitted that it did not follow the procedure set forth in the By-laws to bring its claim. Pls.' Mem. in Opp'n p. 3. Therefore, there is no issue of fact that the HOA lacked standing to bring this suit.

**4. Plaintiffs fail to produce any evidence of special damages.**

**a. Property Damages**

"Bald allegations of diminution in property value are insufficient to create a genuine issue of fact regarding damages absent any competent evidence showing the existence, amount, or causation of damages." Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, 561, 671 S.E.2d 79, 86 (Ct. App. 2008) (citing Clark v. Greenville County, 313 S.C. 205, 208, 437 S.E.2d 117, 118 (1993)). Plaintiffs generally claim that property values have decreased in the neighborhood, yet

they have not provided any evidence of the decrease in value and/or how the decrease was valuated. As such, their allegations of diminution in property value without any evidence are insufficient to create a genuine issue of fact regarding damages. Id.

**b. Attorneys' fees**

"The general rule is that attorney's fees are not recoverable unless authorized by contract or statute." Blumberg v. Nealco, Inc., 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). The HOA By-laws provides that attorneys' fees and costs are recoverable by the HOA in actions brought to enforce the By-laws. See Defs.' Mot. for Summ. J. Ex. C §15(D). As this is not an action to enforce By-laws, attorneys' fees and costs are not recoverable by the HOA. Further, the By-laws, nor any other contract or statute, authorize the recovery of attorneys' fees by the Individual Plaintiffs. Therefore, the Individual Plaintiffs cannot recover their attorneys' fees and costs.

As to special damage, the cost and expenses associated with prosecuting a plaintiff's civil conspiracy claim are not special damages if the costs of prosecuting the civil conspiracy claim are not distinct from the prosecution of other claims against the defendant. AJG Holdings LLC v. Dunn, 392 S.C. 160, 168, 708 S.E.2d 218, 223 (Ct. App. 2011) aff'd, 410 S.C. 346, 764 S.E.2d 912 (2014); see also Giraldo v. City of Columbia, No. 3:12-CV-03357-JFA, 2014 WL 4700645, at *11 (D.S.C. Sept. 18, 2014). Plaintiffs claim that the costs to prosecute each separate claim are distinct and individual to each claim; however, they once again fail to provide evidentiary proof of such. If Plaintiffs cannot provide proof of the differences in costs related to the conspiracy claim versus the other claims, then the attorneys' fees do not qualify as special damages.

[SIGNATURE INTENTIONALLY ON FOLLOWING PAGE]

Dated this 29 day of January 2015.

Respectfully submitted,

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER<br><br>LIVE OAK VILLAGE HOMEOWNERS' ASSOCIATION, INC., JENNIFER MCFARLAND, CARLTON HOLCOMBE, and UTE HOLCOMBE<br>Plaintiffs,<br><br>VS.<br><br>THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL, and MICHAEL MAZELL<br>Defendants.<br><br>SOFIA MAZELL and MICHAEL MAZELL,<br>Third Party Plaintiffs,<br><br>VS.<br><br>WILLIAM MCFARLAND,<br>Third Party Defendant. | ) | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br><br>CASE NO.: 2012-CP-18-2583<br><br>**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS THOMAS MORRIS' AND DAVID HANNEMANN'S AMENDED MOTION FOR SUMMARY JUDGMENT** |

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DORCHESTER COUNTY

TO THE DEFENDANTS THOMAS MORRIS AND DAVID HANNEMANN AND THEIR ATTORNEYS OF RECORD LYDIA P. DAVIDSON, ESQUIRE AND WILLIAM W. WATKINS, JR., ESQUIRE:

Plaintiffs Live Oak Village Homeowners' Association, Inc. (hereinafter sometimes referred to as "LOVHOA" or "HOA"), Jennifer McFarland, Carlton Holcombe and Ute Holcombe (collectively referred to as "Plaintiffs") filed suit against Defendants David Hannemann and Thomas Morris (hereinafter sometimes referred to collectively as "Morris and Hannemann" or "Defendants") for Declaratory Judgment and for Conspiracy. Defendants' Motion for Summary Judgment on Plaintiffs' claims should be denied and this case should be allowed to proceed to trial.

## I. Summary Judgment on Plaintiffs' Declaratory Judgment is inappropriate

South Carolina adopted the Uniform Declaratory Judgments Act which holds in part that "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree." SC Code Section 15-53-20 (1976). "Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." SC Code Section 15-53-30 (1976). Further "[t]his chapter is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. It is to be liberally construed and administered." SC Code Section 15-53-130 (1976).

In this case, Plaintiffs filed suit and have sought a Declaratory Judgment that the Defendants violated certain obligations that arose or arise under LOVHOA's Covenants and By-laws. See Amended Complaint, para. 6. Covenants are contractual, thus it is appropriate for Plaintiffs, should they so desire, to seek Declaratory Judgment from this Court. Under the Act, Plaintiff is not required to show that it suffered financial damage in seeking Declaratory Judgment. There is no question that the issues alleged between Plaintiffs and Defendants in the Declaratory Judgment portion of the Amended Complaint arise out of the Covenants. Under South Carolina's Declaratory Judgment Act, Plaintiffs are not required to show that they have

suffered financial damage to pursue a Declaratory Judgment. It is only necessary that they show that they are "persons" under a contract and that they are seeking a declaration of rights, status or other legal relations. In this case Plaintiffs meet those requirements.

Further, Declaratory Judgment seeks equitable relief. If Plaintiffs could show that they had suffered legal damages as a result of the alleged actions, then they would have a breach of contract action against Defendants Hannemann and Morris. The nature of equitable relief is that damages cannot be quantified.

**II. It is a question of fact as to whether the Board is authorized to bring suit**

In this case, William McFarland (hereinafter sometimes referred to as "McFarland"), operating as the President of the LOVHOA Corporation, initiated suit against Defendants. While Defendants are correct in that no formal Board action took place, McFarland, as President of the Company, initiated the suit as he contends that he was the only Board member authorized to act.

South Carolina has long held that where a director of a corporation has an interest adverse to the corporation, he is ineligible to participate in the corporate decision. Talbot v. James, 259 S.C. 73, 82, 190 S.E.2d 759, 764 (1972) citing Peurifoy v. Loyal, 154 S.C. 267, 151 S.E. 579 (1930); Fidelity Fire Ins. Co. v. Harby, 156 S.C. 238, 153 S.E. 141 (1930). "He may not even be counted to make a quorum at a meeting where the matter is acted upon, which is the general rule." Id. Thus, because Hannemann and Morris as Co-Defendants had an interest adverse to the HOA, i.e. not having the HOA sue them, as Board members they were disqualified from voting or even making up a quorum of the board. Their disqualification leaves only the President William McFarland as the remaining Board member with authority vote. While it is technically correct that there was not a formal Board meeting, it is not contested that McFarland

initiated the suit. Further, the By-laws and precedent allow the HOA to act without a formal Board meeting.

The Board hired Kathleen Green (hereinafter sometime referred to as "Green") as the property manager without a formal Board meeting and vote. Green was hired after McFarland, Hannemann and Morris discussed hiring a property manager and McFarland located Green and obtained Hannemann's and Morris' verbal approval to contract with Green. Morris and his wife have utilized Green to pursue complaints against Carlton Holcombe and none of the Board members protested paying Green pursuant to the contract, thereby ratifying the Board's informal action.

Additionally, for Summary Judgment purposes, Defendants Hannemann and Morris have not paid their annual assessments to the HOA. While the Defendants take the position that they have placed the fees in escrow by tendering the funds to their attorney, there is no provision within the Covenants or By-laws to do this and thus Defendants are technically in violation of the Covenants and thus ineligible to serve on the Board. At the very least there is a question of fact as to whether they are authorized act. Because for purposes of Summary Judgment, Hannemann and Morris are ineligible to serve on the Board, they cannot be a necessary vote to allow the HOA to initiate legal action.

Lastly, Section 7(B) of the HOA By-laws identifies the HOA President as the Chief Executive Officer (CEO) of the Association with "all the powers and duties which are usually vested in the office of the President of an association." See By-laws, Section 7(B). There is no limitation on this other than the powers "usually vested in the office of the President of an association." What those powers are, including whether the President can initiate suit on the HOA's behalf are arguably questions of fact for a jury to determine based on testimony.

Because Defendants Hannemann's and Morris' interests are adverse to the HOA, they cannot be required to vote and thus McFarland, as the remaining Board member, was the sole Board member that could make the decision to have the HOA file suit. Also, because Defendants have, for purposes of the Summary Judgment Motion, not paid their dues to the HOA, and because there are questions of fact as to what the President can do, Defendants Hannemann's and Morris' Motion for Summary Judgment on this ground should be denied.

**III. Plaintiffs' have suffered special damages as a result of the Conspiracy**

At deposition, Plaintiffs testified that as a result of the Conspiracy between the Defendants Hannemann and Morris and Defendants Sofia and Michael Mazell (hereinafter collectively referred to as "Mazells"), Plaintiffs' property values had depreciated and their homes and property were worth less than they would have been, but for the Defendants' acts, that the HOA's ability to function and assess fines was rendered ineffective. See Live Oak Village 30(b)(6) Depo. pp. 209-212, 253-254. This testimony raises questions of fact as to whether there are special damages. The loss of property values is not something alleged in the other causes of action against Defendants Hannemann and Morris.

Further, the costs of proving the Conspiracy are not the same costs as proving that the co-Defendant Mazells breached their contractual obligations. The costs in establishing a case for Declaratory Judgment do not cover the costs for establishing the Conspiracy which comprises of establishing the acts and conduct of the Defendants Hannemann, Morris and the Mazells in conjunction with each other.

As for Jennifer McFarland and Carlton Holcombe, they testified that their damages were consistent with what William McFarland said in his deposition. Both Jennifer McFarland, Carlton Holcombe and Ute Holcombe are property owners. To the extent that the HOA and its

enforcement of the Covenants has been rendered ineffective due to the Defendants' Conspiracy as William McFarland testified to, they have been damaged as their property values have also been damaged.

By: _____

P. Brandt Shelbourne, Esq. (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
**ATTORNEY FOR PLAINTIFFS**

Summerville, South Carolina
June 1, 2015

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER<br><br>LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC., JENNIFER MCFARLAND, CARLTON HOLCOMBE AND UTE HOLCOMBE<br><br>PLAINTIFFS<br><br>V.<br><br>THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL AND MICHAEL MAZELL<br><br>DEFENDANTS | IN THE COURT OF THE COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br>CASE NO: 2012-CP-18-2583<br><br>NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT |
| THOMAS MORRIS AND DAVID HANNEMANN<br><br>THIRD PARTY PLAINTIFFS<br><br>V.<br><br>WILLIAM MCFARLAND<br><br>THIRD PARTY DEFENDANT | |

**To: LYDIA P. DAVIDSON, ESQ. AND WILLIAM W. WATKINS, JR., ESQ., ATTORNEYS FOR THOMAS MORRIS AND DAVID HANNEMANN.**

PLEASE TAKE NOTICE that the Plaintiffs, Live Oak Village Homeowners Association, Inc., Jennifer McFarland, Carlton Holcombe, and Third-Party Defendant William McFarland by and through their undersigned attorneys, shall, and hereby do, move for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure in that there is no genuine issue of material fact and that Plaintiffs, Live Oak Village Homeowners Association, Inc., Jennifer McFarland, Carlton Holcombe, and Third-Party Defendant William McFarland are

entitled to judgment as a matter of law on Defendants/Third-Party Plaintiffs, David Hannemann and Thomas Morris' Counterclaims and Third-Party claims.

Plain, palpable, and indisputable facts exist on which reasonable minds cannot differ which clearly establish the absence of any genuine issue of material fact. As a result, Plaintiffs, Live Oak Village Homeowners Association, Inc., Jennifer McFarland, Carlton Holcombe, and Third-Party Defendant William McFarland are entitled to summary judgment on Defendants/Third-Party Plaintiffs, David Hannemann and Thomas Morris' Counterclaims and Third-Party claims.

Plaintiffs, Live Oak Village Homeowners Association, Inc., Jennifer McFarland, Carlton Holcombe, and Third-Party Defendant William McFarland may present additional grounds for summary judgment at or before the hearing on this matter and will provide a memorandum in support this Motion.

YOUNG CLEMENT RIVERS, LLP

By: _____

Jason A. Daigle
jdaigle@ycrlaw.com
P.O. Box 993, Charleston, SC 29402
(843) 720-5436
***Attorneys for Live Oak Village Homeowners Association, Inc., Jennifer McFarland, Carlton Holcombe, and William McFarland***

Charleston, South Carolina

Dated: 12-22-14

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 22nd day of December 2014.

_____

| | |
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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER<br><br>LIVE OAK VILLAGE HOMEOWNERS' ASSOCIATION, INC., JENNIFER MCFARLAND, CARLTON HOLCOMBE, and UTE HOLCOMBE<br>Plaintiffs,<br><br>VS.<br><br>THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL, and MICHAEL MAZELL<br>Defendants.<br><br>SOFIA MAZELL and MICHAEL MAZELL,<br>Third Party Plaintiffs,<br><br>VS.<br><br>WILLIAM MCFARLAND,<br>Third Party Defendant. | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br><br>CASE NO.: 2012-CP-18-2583<br><br>**PLAINTIFFS' RESPONES TO DEFENDANTS MICHAEL MAZELL'S AND SOFIA MAZELL'S SECOND REQUEST FOR ADMISSIONS** |

TO DEFENDANTS, MICHAEL MAZELL AND SOFIA MAZELL AND THEIR ATTORNEY OF RECORD, WILLIAM BRAD JUNG, ESQUIRE:

Plaintiffs hereby respond to Defendants Michael Mazell and Sofia Mazell's (hereinafter collectively referred to as "Mazells") Second Request for Admissions as follows:

1. Admit that the Board of Directors for the plaintiff Live Oak Village HOA, Inc. has never convened a meeting to vote to authorize the plaintiff Live Oak Village HOA, Inc. to bring claims against defendants Mazell as set forth in Count IV of the plaintiff's Amended Complaint, dated June 9, 2014, before plaintiffs' attorney filed a motion to amend plaintiffs' original Complaint.

RESPONSE: **Denied. Because Hannemann and Morris are not in good standing for failure to pay HOA dues, they cannot participate in board meetings and, therefore, William McFarland was required to conduct board meetings without Hannemann and Morris.**

2. Admit that the Board of Directors for the plaintiff Live Oak Village HOA, Inc. has never convened a meeting to vote to authorize the plaintiff Live Oak Village HOA, Inc. to bring claims against defendants Mazell as set forth in Count II of the plaintiffs' Amended Complaint dated June 9, 2014, before plaintiffs' attorney filed a motion to amend plaintiffs' original Complaint.

RSEPONSE: Denied. See Plaintiffs' Response to Request to Admit Number 1.

3. Admit that the Board of Directors for the plaintiff Live Oak Village HOA, Inc. has never convened a meeting to vote to authorize the plaintiff Live Oak Village HOA, Inc. to bring claims against defendants Mazell as set forth in Count II of the plaintiffs' Complaint, dated March 4, 2013, before plaintiffs' attorney filed said pleading.

RESPONSE: Admitted.

4. Admit that the Board of Directors for the plaintiff Live Oak Village HOA, Inc. has never convened a meeting to vote to authorize the plaintiff Live Oak Village HOA, Inc. to bring claims against defendants Mazell as set forth in Count II of the plaintiffs' Complaint, dated March 4, 2013, before plaintiffs' attorney filed said pleading.

RESPONSE: Admitted.

5. Admit that K.J. Property Management, acting under direction from the Board of Directors for the plaintiff Live Oak Village HOA, Inc. and/or with its authorization, forwarded the two letters to Michael and Sofia Mazell, dated October 3, 2011 and September 5, 2012, respectively, attached as Exhibit "1," to defendants Mazell.

RESPONSE: Admitted.

6. Admit that Mr. Butch Fritz vacated the then Mazell residence at 107 Oak Village Lane, Summerville, S.C. 29483 within 30 days of the October 3, 2011 letter attached part of Exhibit "1."

RESPONSE: Denied. Plaintiffs are in possession of a Rental Agreement dated

January 1, 2011 that does not have a termination date.

7. Admit that U.S. Department of Housing and Urban Development Settlement attached as Exhibit "2" is a true and accurate copy of the original document executed on June 6, 2013.

RESPONSE: Denied. Plaintiffs have no knowledge as to whether the HUD Statement is true and accurate.

8. Admit that U.S. Department of Housing and Urban Development Settlement attached as Exhibit "2" may be admitted into evidence at trial on proffer by defendants Mazell without objection from the plaintiffs.

RESPONSE: Denied. Plaintiffs do not agree that Exhibit "2" is admissible without Defendants laying the proper foundation and only if the Court deems it relevant.

9. Admit that the plaintiff Live Oak Village HOA, Inc. received payment of $2,000.00 from the past due amounts purportedly owed by defendants Mazell to the plaintiff Live Oak Village HOA, Inc. from the closing proceeds paid from Sellers' funds in the real estate transaction reflected in Exhibit "2."

RESPONSE: Admitted.

10. Admit that at the time of the June 13, 2013 Closing on the premises known as 107 Oak Village Lane, Summerville, S.C. 29483, as reflected in Exhibit "2," defendants Mazell had previously paid the plaintiff Live Oak Village HOA, Inc. for the 2012 annual HOA assessment of $1,000.00.

RESPONSE: Plaintiffs admit the $1,000.00 annual HOA assessment for 2012 was paid but deny that the total owed was paid as interest and fees were not paid.

11. Admit that at the time of the June 13, 2013 Closing on the premises known as 107 Oak Village Lane, Summerville, S.C. 29483, as reflected in Exhibit "2," defendants Mazell had previously paid the plaintiff Live Oak Village HOA, Inc. for the 2011 annual HOA assessment

of $1,000.00.

RESPONSE: Admitted.

12. Admit that the individual identified by plaintiff Jennifer McFarland as "Nikki Richer" has not told Jennifer McFarland that either Michael or Sofia Mazell has stated to Nikki Richer any communication to the effect that Jennifer McFarland was a racist.

RESPONSE: Admitted.

13. Admit that the individual identified by plaintiff Jennifer McFarland as "Nikki Richer" has not told Jennifer McFarland that either Michael or Sofia Mazell has stated to Nikki Richer any communications to the effect that Jennifer McFarland and/or her husband had stolen or otherwise misappropriated a business belonging to Jennifer McFarland's family.

RESPONSE: Admitted.

14. Admit that the individual identified by plaintiff Jennifer McFarland as "Nikki Richer" has not told Jennifer McFarland that either Michael or Sofia Mazell has stated Nikki Richer any communications to the effect that Jennifer McFarland was either an unchaste person or had extramarital relations.

RESPONSE: Admitted.

15. Admit that the individual identified by plaintiff Jennifer McFarland as "Nikki Richer" [sic] has not told Jennifer McFarland that either Michael or Sofia Mazell has stated to Nikki Richer [sic] any communications to the effect that Jennifer McFarland was using a telescope to view the interior of the Mazell residence.

RESPONSE: Denied. Nikki Ricker did so state.

16. Admit that the individual identified by plaintiff Jennifer McFarland as "Terri Morow" has not told Jennifer McFarland that either Michael or Sofia Mazell has stated to Terri Morrow any communications to the effect that Jennifer McFarland was a racist.

RESPONSE: Admitted.

17. Admit that the individual identified by plaintiff Jennifer McFarland as "Terri Morrow" has not told Jennifer McFarland that either Michael or Sofia Mazell has stated to Terri Morrow any communications to the effect that Jennifer McFarland and/or her husband had stolen or otherwise misappropriated a business belonging to Jennifer McFarland's family.

RESPONSE: Admitted.

18. Admit that the individual identified by plaintiff Jennifer McFarland as "Terri Morrow" has not told Jennifer McFarland that either Michael or Sofia Mazell has stated Terri Morrow any communications to the effect that Jennifer McFarland was either an unchaste person or had extramarital relations.

RESPONSE: Admitted.

19. Admit that the individual identified by plaintiff Jennifer McFarland as "Terri Morrow" has not told Jennifer McFarland that either Michael or Sofia Mazell has stated to Terri Morrow any communications to the effect that Jennifer McFarland was using a telescope to view the interior of the Mazell residence.

RESPONSE: Denied. Terri Morrow informed Plaintiffs of this.

20. Admit that the plaintiff Live Oak Village HOA, Inc. has not incurred any special damages due to the actions of Michael or Sofia Mazell as alleged in Count II of the Amended Complaint.

RESPONSE: Denied. Plaintiff Live Oak Village HOA, Inc. has incurred loss of fines and assessments owed to the HOA by Defendants' participation in the conspiracy and incurred attorneys' fees and costs.

21. Admit that the plaintiff Live Oak Village HOA, Inc. has not incurred any special damages due to the actions of Michael or Sofia Mazell as alleged in Count II of the Amended Complaint.

RESPONSE: Denied. See Plaintiffs' Response to Request to Admit Number 21.

22. Admit that the plaintiff Carlton Holcombe has not incurred any special damages due to the actions of Michael or Sofia Mazell as alleged in Count II of the Amended Complaint.

RESPONSE: Denied. As a member of the HOA, Plaintiff has lost assessments and incurred attorneys' fees and costs as a result of Defendants' acts.

23. Admit that the plaintiff Ute Holcombe has not incurred any special damages due to the actions of Michael or Sofia Mazell as alleged in Count II of the Amended Complaint.

RESPONSE: Denied. See Plaintiffs' Response to Request to Admit Number 22.

24. Admit that the plaintiff Jennifer McFarland has not incurred any special damages due to the actions of Michael or Sofia Mazell as alleged in Count II of the Amended Complaint.

RESPONSE: Denied. See Plaintiffs' Response to Request to Admit Number 22.

25. Admit that the plaintiff Live Oak Village HOA, Inc. has not incurred any actual damages due to the actions of Michael or Sofia Mazell as alleged in Count IV of the Amended Complaint.

RESPONSE: Denied. See Plaintiffs' Response to Request to Admit Number 22.

26. Admit that the plaintiff Carlton Holcombe has not incurred any actual damages due to the actions of Michael or Sofia Mazell as alleged in Count IV of the Amended Complaint.

RESPONSE: Denied. See Plaintiffs' Response to Request to Admit Number 22.

27. Admit that the plaintiff Ute Holcombe has not incurred any actual damages due to the actions of Michael or Sofia Mazell as alleged in Count IV of the Amended Complaint.

RESPONSE: Denied. See Plaintiffs' Response to Request to Admit Number 22.

28. Admit that the plaintiff Jennifer McFarland has not incurred any actual damages due to the actions of Michael or Sofia Mazell as alleged in Count IV of the Amended Complaint.

RESPONSE: Denied. See Plaintiffs' Response to Request to Admit Number 22.

INTERLOCKING INTERROGATORY

1. Is your response to each Request for Admission served with this interrogatory an

unqualified admission? If not, for each response that is not an unqualified admission:

a. State all facts upon which you based your response;

b. State the names, addresses and telephone numbers of all persons who have knowledge of those facts upon which your response is based; and

c. Identify all documents and other tangible things that support your response and state the name and address and telephone number of the person who has each document or thing.

RESPONSE:

a. See Plaintiffs' responses to the Requests for Admission;

b. Plaintiffs
Kathleen Greene, Property Manger
Nikki Ricker
Terri Morrow
Plaintiffs also crave reference to their previous Answers to Interrogatories and Responses to Request for Production and incorporate same herein by reference.

c. Plaintiffs also crave reference to their previous Answers to Interrogatories and Responses to Request for Production and incorporate same herein by reference.

INTERLOCKING REQUEST FOR PRODUCTION

1. Any documents or tangible things identified in your response to these requests for admissions and interrogatories served herewith.

RESPONSE: Plaintiffs have produced all documents responsive to this Request for Production with the exception of documents relating to attorneys' fees and costs.

By: _____

P. Brandt Shelbourne, Esq. (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
ATTORNEYS FOR PLAINTIFFS

Summerville, South Carolina
November 20, 2014

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER<br><br>LIVE OAK VILLAGE HOMEOWNERS' ASSOCIATION, INC., JENNIFER MCFARLAND, CARLTON HOLCOMBE, and UTE HOLCOMBE<br>Plaintiffs,<br><br>VS.<br><br>THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL, and MICHAEL MAZELL<br>Defendants,<br><br>SOFIA MAZELL and MICHAEL MAZELL,<br><br>Third Party Plaintiffs,<br><br>VS.<br><br>WILLIAM MCFARLAND,<br><br>Third Party Defendant. | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br><br>CASE NO.: 2012-CP-18-2583<br><br>**PLAINTIFFS' RESPONSES TO DEFENDANTS THOMAS MORRIS AND DAVID HANNEMANN'S REQUESTS FOR ADMISSIONS** |

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CLERK OF COURT
DORCHESTER COUNTY

TO DEFENDANTS, THOMAS MORRIS AND DAVID HANNEMANN AND THEIR ATTORNEY WILLIAM W. WATKINS, JR.:

Plaintiffs Live Oak Village Homeowners Association, Inc. (hereinafter sometimes referred to as "LOVHOA"), Jennifer McFarland, Carlton Holcombe and Ute Holcombe (collectively "Plaintiffs") responding to Defendants Thomas Morris and David Hannemann's (hereinafter jointly referred to as "Morris and Hannemann") Requests for Admissions, answering Morris and Hannemann's interlocking Interrogatory and responding to Morris and Hannemann's interlocking Request for Production herein state as follows:

## RESPONSES TO REQUESTS FOR ADMISSION

1. Admit any injury claimed by the HOA is purely conjectural.

RESPONSE: **Denied. This is a question of fact. The HOA has lost fees and assessments and has been unable to properly function as a result of Defendants' actions all to the HOA's damage.**

2. Admit the HOA has not suffered an "injury in fact."

RESPONSE: **Denied. The HOA has been deprived of HOA dues and assessments and**

Incurred attorneys' fees and costs.

3. Admit the HOA has not suffered an "injury in fact" due to the actions or conduct on the part of Thomas Morris.

RESONSE: **Denied. See Plaintiffs' response to Request to Admit Number 2.**

4. Admit the HOA has not suffered an "injury in fact" due to the actions on the part of David Hannemann.

RESPONSE: **Denied. See Plaintiffs' response to Request to Admit Number 2.**

5. Admit the Plaintiffs' use of the common elements has not been interrupted or impeded due to the actions of Thomas Morris.

RESPONSE: **Denied. Some use of the common elements has been interrupted or impeded by Defendant Morris to include use of the gate and fence**

6. Admit the Plaintiffs' use of the common elements has not been interrupted or impeded due to the actions of David Hannemann.

RESPONSE: **Denied. Some use of the common elements has been interrupted or impeded by Defendant Hannemann to include use of the gate and fence**

7. Admit any interruption or impediment of the use of the common elements is contingent or hypothetical at this time.

RESPONSE: **Denied. Defendants or their agents damaged the gate and fence costing the HOA funds.**

8. Admit Jennifer McFarland is able to access her residence freely and uninterrupted.

RESPONSE: **Admitted.**

9. Admit Jennifer McFarland has not suffered irreparable damage to her ability to reside at her property.

RESPONSE: **Denied. Due to Defendants' conspiracy, Plaintiff Jennifer McFarland has difficulty enjoying the use of her property.**

10. Admit Carlton Holcombe is able to access his residence freely and uninterrupted.

RESPONSE: **Admitted.**

11. Admit Carlton Holcombe has not suffered irreparable damage to his ability to reside at

his property.

**RESPONSE: Denied. Due to Defendants' conspiracy, Plaintiff Carlton Holcombe has difficulty enjoying the use of his property.**

12. Admit Ute Holcombe is able to access her residence freely and uninterrupted.

**RESPONSE: Admitted.**

13. Admit Ute Holcombe has not suffered irreparable damage to her ability to reside at her property.

**RESPONSE: Denied. Due to Defendants' conspiracy, Plaintiff Ute Holcombe has difficulty enjoying the use of her property.**

14. Admit the Homeowners' Association fees from Thomas Morris and David Hannemann have been paid and are being held in trust.

**RESPONSE: Denied. Plaintiffs admit that Defendants and Defendants' counsel have represented that the HOA fees were paid into Defendants' counsel's trust account.**

15. Admit the Homeowners' Association has not incurred special damages.

**RESPONSE: Denied. Plaintiff LOVHOA has incurred attorneys' fees and costs as a result of Defendants' acts and has been deprived of fees and assessments owed.**

16. Admit Plaintiffs have suffered no actual or real damages due to any action by Thomas Morris.

**RESPONSE: Denied. See Plaintiffs' response to Request to Admit Number 15.**

17. Admit Plaintiffs have suffered no actual or real damages due to any action by David Hannemann.

**RESPONSE: Denied. See Plaintiffs' response to Request to Admit Number 15.**

## ANSWERS TO INTERLOCKING INTERROGATORY

1. Is your response to each Request for Admission served with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:

(a) state all facts on which you base your response;

(b) state the names, addresses, and telephone number of all persons who have knowledge of

those facts; and

(c) identify all documents and other tangible things that support your response, and state the name, address, and telephone number of the person who has each document or thing.

ANSWER: a. Plaintiffs crave reference to their Responses to the Request to Admit and to previous responses to discovery and their deposition testimony.

b. Plaintiffs
Kathleene Greene, Property Manager

c. Plaintiffs crave reference to their previous responses to discovery.

RESPONSE TO INTERLOCKING REQUETSS FOR PRODUCTION

1. Any documents or other tangible items identified in your answers to Interrogatories and Requests for Admission served herewith.

RESPONSE: Plaintiffs crave reference to their previous responses to discovery.

By: _____

P. Brandt Shelbourne, Esq. (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
ATTORNEYS FOR PLAINTIFFS

Summerville, South Carolina
November 20, 2014

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STATE OF SOUTH CAROLINA

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COUNTY OF DORCHESTER

CLERK OF COURT
DORCHESTER COUNTY

DECLARATION OF COVENANTS AND RESTRICTIONS FOR LIVE OAK VILLAGE, SUMMERVILLE, SOUTH CAROLINA

This Declaration of Covenants and Restrictions for LIVE OAK VILLAGE is made by and among John R. Payne, Scott S. Drummond, LowCountry Signature Homes, Inc., Payne Homes, LLC and The Village Development Corporation, LLC, a South Carolina Limited Liability Company, from here on known as "Owners", and singularly, an "Owner".

WHEREAS, Oak Village Development, LLC (a South Carolina Limited Liability Company) has been designated as the "Developer".

WHEREAS, Developer proposes to create a subdivision known as Live Oak Village ("Subdivision"), containing detached home site lots and common areas as more fully described herein; and

WHEREAS, Developer is the owner of certain real property located in the Town of Summerville, Dorchester County, South Carolina, more particularly described on Exhibit "A" attached hereto, which Property Developer desires to submit to the plan and operation of this Declaration and which Property shall be deemed a part of the Subdivision; and

WHEREAS, the Developer wishes to accomplish the following objectives for its benefit and the benefit of Owners of Property in the Subdivision by the imposition of the covenants and restrictions set forth herein:

(a) To maintain the value and the residential character and integrity of the residential portions of the Subdivision and to maintain the quality and value of any recreational portions of the Subdivision;

(b) To preserve the quality of the natural amenities of the Subdivision;

(c) To minimize or eliminate the possibility of any disruptions of the peace and tranquility of the residential environment of the Subdivision;

(d) To prevent the abuse or unwarranted alteration of the trees, vegetation, lakes, streams and other bodies of water and natural character of the land in the Subdivision;

(e) To prevent any Owner or any other persons from building or carrying on any other activity in the Subdivision to the detriment of any owner in the Subdivision; and

J. Stanley Langston, PA

(f) To keep Property values in the Subdivision high, stable and in a state of reasonable appreciation.

NOW, THEREFORE, the Developer hereby declares that all of the Property described on Exhibit "A", shall be held, mortgaged, transferred, sold, conveyed, leased, occupied and used subordinate and subject to the following easements, restrictions, covenants, charges, liens and conditions which are hereby imposed for the purpose of protecting the value and desirability of these lands and which restrictions, easements, charges, liens, conditions, and covenants shall touch and concern and run with title to the property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Declaration.

## ARTICLE I

## DEFINITIONS

When used in this Declaration, unless the context shall prohibit or require otherwise, the following words shall have the following meanings, and all definitions shall be applicable to the singular or plural forms of any such term(s):

**Section 1.1.** Assessment shall mean and refer to an Owner's share of the Common Expenses or other charges from time to time assessed against an owner by the Association in the manner herein provided.

**Section 1.2.** Association means Live Oak Village Homeowners Association, Inc. (a South Carolina eleemosynary corporation), its successors and assigns.

**Section 1.3.** Board of Directors shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

**Section 1.4.** By-Laws of the Association shall mean and refer to those By-laws of the Association, attached hereto as Exhibit "B" which govern the administration and operation of the Association, as may be amended from time to time.

**Section 1.5.** Common Areas shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners or designated by the Developer as Common 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, and the general public shall have no easement of use and enjoyment therein. However, nothing herein contained nor any general plan or plat of the Properties shall be deemed to designate any property a Common Areas, nor shall the Association or any Owner be entitled to any right, title, or

interest in such property unless and until such property shall have been transferred to the Association.

Section 1.6. Common Expenses shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of financial, equipment, or material reserves, consistent with the provisions and intent of this Declaration.

Section 1.7. Declaration shall mean this Declaration, together with all supplements and amendments to this Declaration as filed in the R.M.C. Office for Dorchester County, South Carolina.

Section 1.8. Developer means Oak Village Development, a South Carolina Limited Liability Company, its successors and assigns. The Developer shall have the right to assign any or all rights which it may possess as Developer, to the Live Oak Village, Home Owner Association Inc., or any person or entity, including a Sub-Developer, provided, however, that the instrument of assignment shall expressly so provide.

Section 1.9. DHEC/OCRM shall mean and refer to, without limitation, the Department of Health and Environment Control and/or the Office of Coastal Resource Management.

Section 1.10. Foreclosure shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of judicial Foreclosure.

Section 1.11. Institutional Mortgage shall mean a Mortgage held by a bank, trust company, insurance company or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market such as (but not limited to ) Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

Section 1.12. Lease shall mean and refer to any lease, sublease or rental contract, whether oral or written, and for a term of hours, days, months or years.

Section 1.13. Living Space shall mean and refer to enclosed and covered areas within a dwelling on a Lot which are heated, exclusive of garages, rooms over garages, unenclosed porches, porte-cocheres, carports, breezeways, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

Section 1.14. Lot shall mean and refer to: (i) any parcel of Property within the Subdivision intended for use as a single-family Lot; (ii) those portions of the Subdivision identified as "Lots" as shown on the final plat entitled "A New 15' Easement and a New 10' Easement on Land Owned by LOWCOUNTRY SIGNATURE HOMES on Lots 5 and 6 LOCATED IN THE TOWN OF SUMMERVILLE, DORCHESTER COUNTY,

SOUTH CAROLINA" prepared by Ashley Surveying, Inc., as dated August 12, 2002, to be recorded in the RMC Office for Dorchester County, South Carolina.

Section 1.15. Mortgage shall mean and refer to a mortgage, security deed, deed of trust, installment land sales contract and security agreement or other similar security instrument granting, creating or conveying a lien upon, a security interest in, or a security encumbered title to a Lot or Common Area.

Section 1.16. Mortgagee shall mean and refer to the holder of a Mortgage.

Section 1.17. Occupant shall mean and refer to any person including, without limitation, any Owner or any guest, invitee, licensee, lessee, tenant, transient paying guest, or family member of an owner lawfully occupying or otherwise using a Lot within the Subdivision.

Section 1.18. Owner shall mean and refer to one or more persons or entities, including Developer, who or which own(s) fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot 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.

Section 1.19. Person shall mean and refer to a natural person, corporation, partnership, association, proprietorship, trust, or any other legal entity or any combination thereof.

Section 1.20. Property or Properties shall mean and refer to all property which is subject to this Declaration.

Section 1.21. Recreational Amenities shall include such recreational facilities and improvements owned by and so designated by Developer which are, from time to time, located within the subdivision or located within or dedicated to the Common Areas. DEVELOPER MAKES NO REPRESENTATION OR WARRANTY THAT ANY RECREATIONAL FACILITIES WILL BE BUILT.

Section 1.22. Subdivision shall mean and refer to those tracts or parcels of land described on Exhibit "A", together with all improvements presently thereon and subsequently constructed thereon, shall mean and refer to the Property described in Exhibit "A".

Section 1.23. Subdivision Plat shall mean and refer to those certain plats described on Exhibit " A " attached hereto and as described on the final plat entitled "A New 15' Easement and a New 10' Easement on Land Owned by LOWCOUNTRY SIGNATURE HOMES on Lots 5 and 6 LOCATED IN THE TOWN OF SUMMERVILLE, DORCHESTER COUNTY, SOUTH CAROLINA prepared by Ashley Surveying, Inc. as dated August 12, 2002, to be recorded in the RMC Office for Dorchester County, South Carolina, together with any future revisions thereof.

Section 1.24. Builder shall mean and refer to any licensed contractor or residential homebuilder who purchases a Lot for purposes of building a single family dwelling for resale to a third party.

## ARTICLE II

## PLAN OF DEVELOPMENT

Section 2.1. Plan of Development of the Subdivision.

The Subdivision shall consist of the Property described on Exhibit "A" attached hereto. The Developer covenants that the Subdivision consists of 7 lots. The Property shall also include certain improvements to the Common Areas, including utility systems; drainage systems and other improvements serving the Lots to the extent the same are, from time to time, existing and submitted to the provisions hereof. The dimensions of the property constituting the Subdivision are shown on the Subdivision Plat. The property within the Subdivision shall be subject to the covenants, easements and restrictions set forth in this Declaration. For so long as Developer owns any Lot primarily for the purpose of sale of the Lot, Developer shall have the right, but not the obligation, to make improvements and changes to all Common Areas and to any or all Lots or any other property owned by the Developer including but not necessarily limited to the following: (i) installation and maintenance of any improvements in and to the Common Areas, (ii) changes in the location of the boundaries of the Common Areas, and any Lots owned by Developer or of the dedicated or undedicated Common Areas, (iii) installation and maintenance of any water, sewer and other utility systems and facilities, to include, but not limited to, TV, cable and its various attendant services and telephone service to include teletype or computer, telex, news service, or computer or any such like instrument used in the transmittal, reception, or retrieval of messages, facts, or information, (iv) installation of security and/or refuse facilities.

Section 2.2. Development.

The Developer declare that as a part of the development of the subdivision, it will construct and convey to the Association, entrance walls and fencing along Central Avenue as well as subdivision identification sign and mail receptacles. It will further construct and convey to the Association a private road through the Subdivision which is more specifically shown on a plat entitled, "A New 15' Easement and a New 10' Easement on Land Owned by LOWCOUNTRY SIGNATURE HOMES on Lots 5 and 6 LOCATED IN THE TOWN OF SUMMERVILLE, DORCHESTER COUNTY, SOUTH CAROLINA " prepared by Ashley Surveying, Inc. as dated August 12, 2002, to be recorded in the RMC Office for Dorchester County, South Carolina. The Developer will have no obligation to maintain the entrance nor the private road. The owners of any land within the Subdivision do hereby acknowledge and agree that the Developer shall not have any liability for failure to properly construct or maintain the entrance and the private road, regardless of whether such design, construction or maintenance was done in a

proper and reasonable manner. The Owners by the purchase of any Lot agree for himself and his immediate family and invitees that he and/or they will not bring any action or suit against the Developer, its officers, or employees to recover for any damages resulting from the construction or maintenance of the entrance or private road.

## ARTICLE III

## THE ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

### Section 3.1 The Association

The Developer has established (or will establish) the Association for the purpose of exercising powers of (i) owning, maintaining and administering the Common Areas, any recreational amenities and common facilities, (ii) providing common services, (iii) administering and enforcing covenants, conditions and restrictions contained herein, and (iv) levying, collecting and disbursing assessments and charges herein created. Further, the Developer reserves the right to convey to the Association and the Association agrees to accept any or all of its rights and obligations set forth herein. The Association shall be authorized (but not required) to provide the following services:

(a) Clean-up, maintenance, and landscaping of all common areas and open spaces owned by Association within the Subdivision or in a reasonable proximity to the Subdivision such that their deterioration would affect the appearance of the Subdivision as a whole;

(b) Construction, maintenance, landscaping and reconstruction of recreational amenities and other improvements within the Common Areas; to set up and operate the Architectural Control Committee as provided herein;

(c) To construct improvements on open spaces and Common Areas and maintain the entrance, private road and entrance;

(d) To provide or obtain administrative services including, but not limited to, legal, accounting, financial and communication services informing members of activities, notice of meetings, referendums, etc., incident to the above listed services;

(e) to provide liability and hazard insurance covering improvements and activities on the open spaces and the common properties, independently or in collaboration with the Developer;

(f) To provide directors and officers liability insurance for the Association and it's duly elected Directors and Officers;

(g) Landscaping of roads and entrance within the Subdivision and any common properties located therein;

(h) To take any and all actions necessary to enforce all covenants and restrictions affecting the Subdivision and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Subdivision and

(i) To provide any and all services necessary or desirable (in the judgment of the Board of Directors of the Association) to carry out the Association's obligation and business under the terms of this Declaration.

The Association may adopt from time to time additional reasonable rules and regulations governing the use of Common Areas, Recreational Amenities Open Spaces and Lots.

Section 3.2. Membership

Every person or entity who is an Owner of any Lot, which is subjected to this Declaration, 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 assessments.

Section 3.3. Voting Rights.

The Association shall have one class of voting membership, as follows:

Each Owner shall be entitled to one vote for each Lot in which they hold an interest required for membership by Section 3.2 above. When more than one person holds such 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 vote be cast with respect to any such Lot.

Section 3.4. Initial Assessment.

At the time of the closing on the first sale of each platted Lot from the Developer or a Sub-Developer or a Builder to an Owner (other than the Developer, a Sub-Developer or a Builder), there shall be assessed by the Association and collected from each Owner/purchaser an initial assessment equal to at least one-half of the annual assessment for such Lot (Initial Assessment) to establish and maintain a working capital fund for the use and benefit of the Association. The purpose of such working capital fund is to insure that the Association will have cash available to meet projected and unforeseen expenditures or to acquire equipment or service deemed necessary by the Association. Such Initial Assessment shall not be considered as advance payment of the annual assessments and cost of living increases. Said Initial Assessment shall be a lien on the Property and collectable by the Association in the same manner as Annual Assessments.

Section 3.5. Annual Assessment.

The Board of Directors for the Association shall prepare a budget of estimated and expenses relating to the maintenance and repair of common areas owned by the Association. Said budget shall also include administrative costs and insurance required in the management of the Association.

## ARTICLE IV

## PROPERTY RIGHTS IN THE COMMON AREAS AND EASEMENTS

Section 4.1. Owners' Easements of Enjoyment

Subject to the provisions herein, including Section 3.1 and 4.3 below, every Owner shall have a non-exclusive right and easement of enjoyment in and to the dedicated Common Areas owned by the Association, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 4.2. Title to Common Areas.

The Developer hereby covenants for itself and its successors and assigns that it will, on or before December 31, 2022, convey to the Association in accordance with the provisions hereof, by limited warranty deed or deeds, fee simple title to the Common Areas free and clear of all liens and encumbrances of record except, taxes not yet due and payable and standard utility and drainage easements serving the Common Areas and/or the subdivision, and also subject to the following covenant, which shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns:

In order to preserve and enhance the property values and amenities of the community, the Common Areas and all facilities now or hereafter built or installed thereon shall at all times be maintained in good repair and condition by the Association and shall be operated in accordance with high standards. The maintenance and repair of the Common Areas shall include, but not be limited to, the repair of damage to walkways, buildings, recreational equipment, if any, fences, signs, and utility lines, connections and appurtenances.

This Section shall not be amended so as to eliminate or substantially impair the obligation for the maintenance and repair of the Common Areas.

Section 4.3. Extent of Owners' Easements.

The rights and easements created hereby shall be subject to the following:

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

(b) The right of the Developer and of the Association to grant, reserve and accept 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, fuel oil and other utilities and services, including a cable (CATV) or community antenna television system and irrigation or lawn sprinkler systems, and the right of the Developer to grant and reserve easements and rights-of-way through, over, and upon and across the Common Areas for the completion of the Subdivision, and for the operation and maintenance of the Common Areas;

(c) The right of visitors, invitees, etc., to ingress and egress in and over those portions of the Common Areas that lie within the private roadways, parking lots and/or driveways (and over any other necessary portion of the Common Areas in the case of landlocked adjacent Owners) to the nearest public highway;

(d) The right of the Association, as provided in its By-Laws, to suspend the enjoyment rights of any owner for any period during which any assessment remains unpaid and for a period determined by the Board of Directors for any infraction of its published rules and regulations; and

(e) The right of the Association to establish rules and regulations for the Subdivision and to prescribe fees and charges from time to time for use of the Recreational Amenities.

Section 4.4. Delegation of Owner's Rights.

Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Areas and facilities to his tenants and guests.

Section 4.5. Additional Structures.

Neither the Association nor any owner or any group of Owners shall, without the prior written approval of Developer and the Architectural Control Committee, erect, construct or otherwise locate, or permit the existence of, any structure or other improvement in the Common Areas.

Section 4.6. Easements for Developer.

During the period that Developer owns any Common Area, or owns any Lot primarily for the purpose of sale, Developer shall have an inalienable and transferable right and easement on, over, through, under and across the Common Areas for the purpose of constructing or improving Lots, for any improvements to the Common Areas, and for installing, maintaining, repairing and replacing such other improvements to the Subdivision (including the Recreational Amenities and other portions of the Common Areas) as are contemplated by this Declaration or as Developer desires (in its sole discretion) including, without limitation, any improvements or changes permitted and described in this Declaration and for the purpose of doing all things reasonably necessary and proper in connection therewith; provided that, in no event, shall Developer have the obligation to do any of the foregoing.

Section 4.7. Changes in Boundaries: Additions to Common Areas

Developer expressly reserves for itself and its successors and assigns the right to change and realign the boundaries of any Lots or Recreational Areas owned by Developer, including the realignment of boundaries between adjacent Lots and/or other property owned by Developer.

Section 4.8. Easements for Utilities.

There is hereby reserved for the benefit of Developer, the Association and their respective successors and assigns the inalienable, transferable and perpetual right and easement, as well as the power to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person upon, over, under and across: (i) all of the Common Areas; (ii) an area fifteen (15') feet in width along the front boundary line of each Lot; (iii) an area five (5') feet in width along the side boundary line of each Lot; and (iv) an area ten ( 10 ') feet in width along the rear boundary line of each Lot for the purpose of installing, replacing, repairing, maintaining and using master television antenna and/or cable systems, security and similar systems, and all utilities, including but not limited to storm sewers and drainage systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by the Developer, its successors or assigns, or by the Board of Directors of the Association; provided, however, that for so long as Developer owns any portion of the Common Areas or owns any Lot primarily for the purpose of sale, the Board of Directors must obtain the written consent of Developer prior to granting or accepting any such easements. To the extent possible, all utility lines and facilities serving the Subdivision and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Subdivision so encumbered: (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities; (ii) to cut and remove any trees, bushes or shrubbery; (iii) to grade, excavate or fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems. The Developer shall have the right to permit encroachments onto the reserved easements so long as the Developer owns any lots in the Subdivision.

Section 4.9. Easements for Association.

There is hereby reserved a general right and easement for the benefit of the Association, its Directors, officers, agents and employees including, but not limited to, any property manager employed by the Association and any employees of such manager, to enter upon any Lot in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner.

Section 4.10. Maintenance Easement.

Subject to the other terms of this Declaration, there is hereby reserved for the benefit of the Developer, the Association and their respective agents, employees, successors and assigns an inalienable, transferable and perpetual right and easement to enter upon any unimproved portion of any Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Subdivision; provided that such easements shall not impose any duty or obligation upon the Developer or the Association to perform any such actions.

Section 4.11. Environmental Easement.

There is hereby reserved for the benefit of the Developer, the Association and their respective agents, employees, successors and assigns an inalienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Common Areas and Lots for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

Section 4.12. No Partition

There shall be no judicial partition of the Subdivision or any part thereof, nor shall any person acquiring any interest in the Subdivision or any part thereof seek any such judicial partition unless the Subdivision has been removed from the provision of this Declaration.

Section 4.13. DHEC/OCRM (Department of Health and Environmental Control/ Office of Coastal Resource Management).

NOTICE IS HEREBY GIVEN OF THE RESTRICTION THAT AS TO ANY PORTION OF ANY LOT WITHIN THE SUBDIVISION WHICH MAY CONTAIN SUBMERGED LAND OR OTHER CRITICAL AREAS, ALL ACTIVITIES ON OR OVER AND ALL USES OF SUCH LAND OR OTHER CRITICAL AREAS ARE SUBJECT TO THE JURISDICTION OF DHEC/OCRM. ANY OWNER IS LIABLE TO THE EXTENT OF SUCH OWNER'S OWNERSHIP FOR ANY DAMAGES TO, ANY INAPPROPRIATE OR UNPERMITTED USES OF, AND ANY DUTIES OR RESPONSIBILITIES CONCERNING ANY FRESHWATER WETLANDS, BUFFER AREAS, SUBMERGED LAND, COASTAL WATERS OR OTHER CRITICAL AREAS AND JURISDICTIONAL AREAS.

## ARTICLE V

## RIGHT OF ASSOCIATION TO ALTER, IMPROVE, MAINTAIN AND REPAIR COMMON AREAS AND PORTIONS OF LOTS

Section 5.1. Right of Association.

The Association shall have the right to make, or cause to be made, such alterations, modifications, improvements, repairs, maintenances and replacements to the Common Areas and the portions of Lots set forth herein, and the cost thereof shall be assessed as Common Expenses and collected from the owners on an equal basis.

Section 5.2. Responsibilities of Owners.

Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of Lots, together with all other improvements thereon or therein and all lawns, landscaping and grounds on and within a Lot shall be the responsibility of the owner(s) of such Lot. Developer shall be responsible for Developer-owned properties. Each Owner shall be responsible for maintaining such Owner's Lot in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all buildings and other structures. All attendant lawns, trees, shrubs, hedges, grass, natural areas, and other landscaping shall be maintained by the owner(s) thereof. As provided in Section 5.3 (c) hereof, each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any item which is the responsibility of such Owner but which responsibility such owner fails or refuses to discharge. No Owner shall: (i) decorate, change or otherwise alter the appearance of any portion of the exterior of a structure on any Lot unless such decoration, change or alteration is first approved, in writing, by the Architectural Control Committee, as otherwise provided herein; or (ii) do any work which, in the reasonable opinion of the Architectural Control Committee, would jeopardize the soundness and safety of the Subdivision, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the Architectural Control Committee and the owners and Mortgagees of the Lots directly affected thereby or benefiting from such easement or hereditament.

Section 5.3. Association's Responsibility.

(a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include the maintenance, repair and replacement of: (i) all Common Areas, walks, trails, lagoons, ponds, bike trails, jogging paths, landscaped areas/natural areas and other improvements situated within the Common Areas or within easements encumbering Lots, including the entrance and gateway and gate security system and the private road; and (ii) such security systems and utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the Common Areas and which are not maintained by the Developer or a public authority, public service district, public or private utility or other person, and (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within the Common Areas as they may be constituted from time to time.

(b) The Association shall not be liable for injury or damage to any person or property (i) caused by the elements or by any Owner or any other person; (ii) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas; or (iii) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system or utility line or facility (the responsibility for the maintenance of which is that of the Association) becoming out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such owner which may be stored or left in or upon any portion of the Common Areas or any other portion of the Subdivision. No diminution or abatement of assessments or any dues or charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each owner. The Developer intends that the ingress, egress and common areas providing access to Lots within the Subdivision shall be private and maintained by the Association. The Association shall be responsible for driveway easements as shown on plat ("Exhibit A").

(c) In the event that the Developer or the Board of Directors determines that: (i) any Owner has failed or refused to discharge properly his, her or its obligations with regard to the maintenance, cleaning, repair or replacement of property or items for which he or it is responsible hereunder; or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, the Developer or the Association, except in the event of an emergency situation, may give such owner written notice of the Developer's or the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, the Developer or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, and said cost shall be added to and become a part of the assessment to which such owner and his Lot are subject and shall become a lien against such Lot and shall become a lien against such Owner's Lot. In the event that the Developer undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse the Developer for the Developer's costs and expenses.

## ARTICLE VI

## COVENANT FOR MAINTENANCE ASSESSMENTS

### Section 6.1. Creation of the Lien and Personal Obligation of Assessments

Each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges for the maintenance of the Common Areas, including but not limited to the private road, entrance way, security system and such reasonable reserves as the Association may deem necessary, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs of collection, and reasonable attorneys' fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs of collection, and reasonable attorney's fees for the collection thereof, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them; provided, however, the unpaid assessment shall continue to be a lien upon the Lot being conveyed.

### Section 6.2. Purpose of Assessments

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners in the Subdivision (and their respective families, guest, tenants and invitees) and for the improvement, protection, replacement, operation, and maintenance of the Common Areas and for the provision of various forms of insurance for the Association, its property (including the dedicated Common Areas), members, directors, officers, employees and agents, and for the provision of necessary and reasonable services for and other expenses of the Association. The assessment shall be based on an annual budget presented by the Board of Directors of the Association.

Lots owned by the Developer or a Sub-Developer shall be exempt from the payment of annual assessment as long as they are owned by said Developer or Sub-Developer. At such time as a Lot is conveyed from the Developer or a Sub-Developer to an Owner other than the Developer or a Sub-Developer, said Lot will be subject to assessments under this Declaration just like any other Lot.

The foregoing notwithstanding, each Lot subjected to this Declaration which is owned by a Builder and upon which there is no occupied dwelling shall be assessed at 50% of the Annual Assessment provided for herein. At such time as a Lot owned by a Builder is sold or a dwelling is completed and occupied thereon, said Lot will be subject to assessments under this Declaration just like any other Lot.

The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty days in advance of each annual assessment. Written notice of the annual assessments shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors. The Association shall upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance. The Initial Annual Assessment shall be Five Hundred and No/100 ($500.00) Dollars.

Section 6.3. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate equal to the lesser of (i) eighteen (18%) percent per annum or (ii) the maximum rate provided by applicable law. The Board of Directors shall annually determine the amount of the penalty to be added and consistently applied to all delinquent assessments in addition to the interest charge. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the Lot (as in the foreclosure of a mortgage ), or both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.

Section 6.4. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any deed or other proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE VII

## USE RESTRICTIONS AND ARCHITECTURAL REVIEW BOARD

Section 7.1. Conformity and Approval of Structures.

No structure, fence, sidewalk, wall, drive or other improvement shall be placed or altered on any Lot except in accordance with the provisions of this Declaration.

Section 7.2. Prior Review of All Plans -Architectural Control Committee.

There is hereby established an Architectural Control Committee which shall consist of three members. One of the members of the Architectural Control Committee, shall be appointed by the Board of Directors of the Association. The other two members of the Architectural Control Committee will be appointed by the Developer, as long as the

Developer owns a Lot in the Subdivision primarily for the purpose of resale and the construction of new homes in the Subdivision has not ceased for a period of over one year. In the event the number of members of the Architectural Control Committee is expanded, the Developer shall retain the right to appoint a majority of the members of said committee as long as the Developer owns a Lot in the in the Subdivision primarily for purposes of resale and the construction of new homes in the Subdivision has not ceased for a period of more than one year. At such time as the Developer no longer owns a Lot in the Subdivision primarily for resale or the construction of new homes in the Subdivision has ceased for a period of more than two year, the Developer will lose his right to appoint members of the Architectural Control Committee. Thereafter, the Board of Directors of the Association shall appoint all of the members of the Architectural Control Committee. The person or entity that appointed such member may remove any member of the Architectural Control Committee at any time with or without cause. The Developer shall have the right to transfer all or part of its rights of such appointments to the Association at any time prior to the sale of all of its lots.

No building, fence, wall, dock or other structure, and no change in topography, landscaping, grading, filling or any other item shall be commenced, erected or maintained upon any portion of the Subdivision, nor shall any exterior addition to or change be made until the plans and specifications including, but not necessarily limited to, all elevations showing the grading, filling, nature, kind, size, shape, height, materials, color and location 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 Control Committee. 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.

The Architectural Control Committee shall require an application fee in an amount to be determined by the Architectural Control Committee with each request or submission of plans or specifications. The Architectural Control Committee shall have the power and authority to adjust the application fee at any time.

In the event the Architectural Control Committee fails to approve or disapprove any request within thirty (30) days after complete written plans and specifications have been submitted to it, 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 provisions of this Declaration. Refusal or approval of plans, specifications and plot plans or any of them may be based on any grounds, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Architectural Control Committee may deem sufficient. Neither Developer nor any member of the Architectural Control Committee shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any structural defects in any work done according to such plans and specifications approved by the Architectural Control

Committee. Further, neither Developer nor any member of the Architectural Control Committee shall be liable for damages to anyone submitting plans or specifications for approval under this Section, or to any owner of property affected by this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications to the Architectural Control Committee for approval agrees, by submission of such plans and specifications, and every Owner of any Lot agrees, that he will not bring any action or suit against Developer or any member of the Architectural Control Committee, to recover for any such damage. No approval of plans, location, or specifications shall be construed as representing or implying that such plans, specifications or standard will, if followed, result in a properly designed residence. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence or improvement thereto will be built in a good workmanlike manner. Neither the Developer, the Association nor the Architectural Control Committee shall be responsible or liable for any defects in any plan or specification submitted, revised or approved under these covenants nor for any defects in construction pursuant to such plans and specifications. The property owner shall have sole responsibility for compliance with approved plans and does hereby hold the Architectural Control Committee harmless for any failure thereof caused by the property owner's architect or builder.

Section 7.3. Objectives of the Architectural Control Committee.

Architectural and design review shall be directed towards attaining the following objectives for the Subdivision:

(a) Review Board

Compliance with the Architectural Guidelines developed by the Architectural Review Board.

The listing of specific requirements in no way limits the right and authority of the Architectural Review Board to require any other specific requirements to be included in the plans and specifications, including the landscaping plans.

(b) preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, removal of trees and vegetation which could cause disruption of natural water courses or scar natural land forms;

(c) ensuring that the location and configuration of structures are visually harmonious with the terrain, with the vegetation of the residential lot, and with surrounding residential lots and structures and does not unnecessarily block scenic views from existing structures or tend to dominate any general development or natural landscape;

(d) ensuring that the architectural design of structures and their materials and colors are visually harmonious with the Subdivision's overall appearance, history, and cultural heritage, with surrounding development, with natural land forms and native vegetation, and with development plans, officially approved by the Owner, or any governmental or public authority, if any, for the areas in which the structures are proposed to be located;

(e) ensuring the plans for landscaping provide visually pleasing settings for structures on the same lot and on adjoining or nearby lots and blend harmoniously with the natural landscape;

(f) ensuring that any development structure, building or landscaping complies with the provisions of these covenants; and

(g) promoting building design and construction techniques that respond to energy consumption and environmental quality considerations such as heat loss, air emissions and run-off water quality.

Section 7.4. Fences.

No fences whatsoever shall be erected or allowed to remain in the Subdivision except approved fences and set back from Lot lines at such distance as the Architectural Control Committee in its sole discretion may require, or except those erected by the Developer in Common Areas. Said fences and patio fences shall be allowed only after obtaining prior written approval of the Architectural Control Committee. Said fences shall be constructed of treated wood (stained or painted to match the colors of the siding on the principal house structure), brick or wrought iron, or as approved by the Architectural Control Committee. No fences shall be permitted which obstruct the view of any common area, marsh, stream or other body of water when viewed from inside any adjacent Lot. All fencing shall be designed and submitted for review prior to the commencement of installation.

Section 7.5. Residential Use of Lots.

All Lots shall be used for single-family 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; provided, however, that nothing contained herein shall be construed to prevent the Developer or any Sub-Developer from maintaining one or more model homes and/or sales offices in the Subdivision for the purpose of selling, leasing or managing Lots or other property in or near the Subdivision. No accessory structures or outbuildings, whether or not attached to the principal residence (including, but not necessarily limited to carports, storage sheds, dog houses, awnings, breezeways, covered swimming pools and the like) shall be constructed or allowed to remain on any Lot unless approved by the Architectural Control Committee. Provided, however, that the Developer may construct attached storage compartments, screened-in rear porches and rear sunrooms as an integral part of the principal residence. Provided, further however, that an owner, after application to

and written approval by the Architectural Control Committee, may construct attached storage compartments, screened-in rear porches and rear sunrooms as an integral part of the principal residence if, and only if, such construction and improvement is consistent with the design of the principal residence and with the standards of construction prevailing in the Subdivision.

Section 7.6. Prohibition Against Business Activity and "Time Sharing" Use

No business activity including, but not limited to, a rooming house, boarding house, gift shop, antique shop, professional office or beauty/barber shop or the like or any trade of any kind whatsoever shall be carried on upon or in any Lot. Provided, however, that nothing contained herein shall be construed so as to prohibit home occupations (i.e., any occupation on a Lot and clearly incidental thereto, carried on by a member of the family resident of the premises is employed, so long as no stock in trade is kept or commodities sold, no mechanical equipment is used except such that is normally used for family, domestic, or household purposes, and there is nothing on the exterior of the dwelling indicating that the building is being used for any purpose other than a residence), or the construction of houses to be sold on said Lots or the showing of said Lot for the purpose of selling or leasing a Lot in the Subdivision. Nothing herein shall be construed to prevent the Developer from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and sales or lease or management of Lots in the Subdivision. Provided, however, that nothing herein contained shall prevent the Developer from erecting and maintaining sales and marketing signs in Common Areas or on other property owned by the Developer.

Section 7.7. Association Office

Nothing in this Declaration shall be construed to prohibit the Association from constructing, operating and maintaining a facility for use as its offices and headquarters, for the benefit of the Association and its members, provided that such facility shall first be approved in all respects in writing by the Developer.

Section 7.8. 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 approved by the Architectural Control Committee and used by the contractor during construction of a house, it being clearly understood that the latter temporary shelters may not, at any time, be used for residence or permitted to remain on the Lot after completion of construction. No commercial vehicle, trailer, mobile home, doublewide, park model trailer, motor home, or other similar vehicle, out-building, tree house or structure, tent, barn, camper, bus, tree house shall be placed on any Lot or on any portion of the Common Areas at any time either temporarily or permanently.

Section 7.9. Mining and Drilling Prohibition

No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, and no derrick or other structure designed for use in boring for oil or natural gas shall be stored, erected, maintained or permitted in the Subdivision.

Section 7.10. Use and Height Restrictions.

No structure shall be erected, placed or permitted to remain on any single-family Lot other than one detached single-family residential dwelling, not to exceed two and one-half stories in height. For purposes of this Section, the first parking level or deck underneath a building built at or above grade shall not be considered a story.

Section 7.11. Setbacks and Building Lines.

Each dwelling which shall be erected on any Lot shall be situated on such Lot in accordance with the following building setbacks side 10 feet, Wetlands 20 feet, Rear 20 feet, and Front 40 feet. However, in each case individual setbacks and sidelines must be approved by the Architectural Control Committee for its aesthetic value and the Architectural Control Committee may require a more stringent setback so long as the required setback does not violate the setback requirements of the Town of Summerville, South Carolina. The Architectural Control Committee shall have the power and authority to promulgate and publish setback requirements for each Lot. In certain cases, the Architectural Control Committee may require an owner to seek a variance from the Town of Summerville, South Carolina, if necessary to protect important trees, vistas or to preserve aesthetic value.

Section 7.12. Timely Construction Progress.

Once construction of improvements on a residence is started on any Lot, the improvements must be substantially completed within nine (9) months from commencement of construction, and all landscaping must be completed within ninety (90) days after completion of the improvements or residence. All construction sites must be maintained in an orderly fashion and all construction debris must be placed in a trash container or removed within forty-eight (48) hours of occurrence.

Section 7.13. Material Restriction.

All structures constructed or placed on any Lot shall be built of substantially new material, and no used structures shall be relocated or placed on any such Lot. No vinyl or Aluminum siding will be permitted on any structure. Vinyl and Aluminum may be used in the form of trim, fixed shutters, and louvers. The Architectural Control Board will approve color selection and material selection. A copy of construction documents along with samples of siding or brick, roof covering, and trim will be supplied to the Architectural Review Council.

Section 7.14. Re-Building Requirements.

Any dwelling or outbuilding on any Lot which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris removed and the Lot restored to a natural condition with reasonable promptness, Or provided, however, that in no event shall such debris remain longer than three (3) months.

Section 7.15. Elevation and Drainage Changes

No changes in the elevation, topography or drainage characteristics of the Subdivision shall be made on the premises without the prior written approval of the Architectural Control Committee nor shall any fill be used to extend any property beyond any boundary line of any waterfront property.

Section 7.16. Tree Removal

No trees or bushes of any kind having a diameter of six (6") inches or more [measured from a point two (2') feet above the ground level] shall be removed from any Lot without the express written authorization of the Architectural Control Committee. The Architectural Control Committee shall further have the authority to require any owner removing a tree in violation of this clause to replace same at such owner's cost. The Architectural Control Committee reserves the right to have specimen trees preserved and to have building footprint site planning provide for their preservation.

Section 7.17. Prohibition of Accessory Structures.

No clothesline or drying yards, doghouses, tree houses, detached garage, carport, swimming pools, sheds, swing set or other similar play structure, or any other accessory structure shall be constructed or located upon any Lot, unless such structure has been approved in writing by the Architectural Control Committee prior to installation or construction. A maximum of two cars shall be parked upon the driveway of a Lot overnight. No garage on any Lot shall be enclosed to make it a part of a residence or for any other purpose.

The Developer shall have the right to waive this requirement for builders using an enclosed garage as part of a temporary sales center. All garages shall remain operable as a storage area for vehicles. Garage doors are to remain closed at all times except during use and operation.

No individual water supply system shall be permitted upon any Lot with the exception of a shallow well to be used for irrigation purposes only, which shallow well shall be approved in writing all respects, including the pump and the covering or screen thereof and method of operation by the Architectural Control Committee, its successors or assigns, prior to installation. The Owner shall be responsible for connecting the Lot to the central water system, including payment of all tap-in and meter fees in connection therewith. Withdrawing water from the lakes, ponds or lagoons for lot use is prohibited.

Section 7.18. Sewer System

No surface toilets or septic tanks are permitted in the Subdivision (other than those utilized during construction or for a designated model home complex as approved by the Developer. A purchaser of a dwelling assumes responsibility for attaching to public sewer system including all fees associated therewith. All plumbing fixtures, dishwashers, toilets or sewage disposal system shall be connected to the central sewer system of the Subdivision.

Section 7.19. Garbage Disposal.

Each Owner shall provide garbage receptacles or similar facilities in accordance with reasonable standards established by the Architectural Control Committee, 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 or trash on any Lot or within the Subdivision shall be permitted. Provided, however, that the Architectural Control Committee shall modify the requirements of this Section where necessary to comply with orders of governing bodies or their franchisees.

Section 7.20. Sign Controls.

No for sale signs nor signs of any character shall be erected on any Lot or displayed to the public on any Lot without the approval of the Architectural Control Committee.

The Owner's name and Lot number shall not be placed on the front of a home or on signs placed on the Lot unless required by a governmental body or approved by the Architectural Control Committee. The size and lettering of the numbers shall be approved by the Developer and/or the Architectural Control Committee. The Owner's name and house Lot number may only be placed on the mailbox post as prescribed by the Homeowner's Association and approved by the Architectural Control Committee.

Section 7.21. Exclusion of Above Ground Utilities.

All electrical service, wires, pipes, lines, telephone, cable television (CATV) lines and utility services of any type shall be placed in appropriate conduit 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 Subdivision except those approved by the Developer. Service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the Subdivision. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

Section 7.22. Antenna

No exterior radio or communication system antennas of any kind shall be placed, allowed or maintained upon any portion of the Subdivision, including any Lot, without the prior

written consent of the Developer. No freestanding antennas or satellite dishes shall be placed on any Lot without expressed written consent from the Developer.

Section 7.23. Certain Vehicles Prohibited From Lots.

No travel trailers or mobile homes, campers or other habitable motor vehicles of any kind, whether self-propelled or not, school buses, motorcycles, commercial trucks, [pick-up trucks used for family transportation and family use are allowed] or commercial vehicles, or boat trailers or boats shall be kept, stored or parked overnight, either on any Common Area, specifically including streets and guest parking areas, or any Lot. The Association shall have the right to have unauthorized vehicles towed. Permitted vehicles shall not be parked on the street and must be parked in the garage or on the paved portion of the Owner's driveway.

Section 7.24. Junk or Disabled Vehicles.

No stripped, partially wrecked, unlicensed or invalidly licensed, disabled or junk motor vehicle, or part hereof, shall be permitted to be parked or kept in the Subdivision.

Section 7.25. Motorcycles.

The Association shall have the authority to prohibit the use, maintenance or storage of motorcycles in the Subdivision.

Section 7.26. Pets

No animals, livestock, birds, or fowl shall be kept or maintained on any part of the Subdivision except dogs, cats, pet fish and birds which may be kept thereon in reasonable numbers (not to exceed three) as pets for the pleasure and use of the property Owner, but not for any commercial use or purpose. Non-owners (e.g. renters or lessees) may not keep any pets on any part of the Property without prior written approval of the owner, said approval to be filed with the Association.

Section 7.27. Prohibition of Open Outdoor Storage.

No junk, debris or materials of any kind shall be stored on a Lot other than in an approved enclosed structure, which shall be attached to the principal dwelling or in a manner that is visible from any other Lot, Common Area, street, easement or amenity area. Firewood and bicycles may be stored outside in side or rear yards only, provided they are not visible from any Lot, Common Area, easement, street or amenity area.

Section 7.28. Nuisances

No noxious or offensive activity shall be carried on upon or in any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood including Common Areas, other home sites, easement areas or residences. No trash, leaves or rubbish may be burned on any Lot or within the Subdivision nor shall there be maintained any plants, poultry, animals (other than household pets) or device or thing of any sort, the normal activities or existence of which

is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owner thereof.

Section 7.29. Landscaping.

The Architectural Control Committee reserves the right to reasonably restrict the placement of landscaping, fences or other impediments to the enjoyment of views from and of adjoining Common Areas or Recreational Amenity areas.

Section 7.30. Special Hazards.

Each owner accepts and assumes all the risks and hazards of ownership or occupancy attendant to the ownership of such Lot, including but not limited to its proximity to any recreational facility or Common Area or the wetlands.

Section 7.31. Traffic Regulations.

Traffic regulations on all roads and streets with the Subdivision will be enforced under the provisions of the South Carolina Uniform Act for regulating traffic to private roads. A speed limit of 20 MPH is established on all roads and streets and all traffic control signs, including but not limited to speed limit, stop, directional and no parking signs will be enforced.

No Owner or individual shall alter in any way any Common Area except with the written permission of the Association provided that such activity is required for the benefit of the Association or the Subdivision as a whole.

Section 7.32. Subdivision of Lot; Easements and Encroachments.

No Lot shall be subdivided or its boundary lines changed by an Owner except as hereinafter provided, and no building or residence, including porches or projections of any kind, shall be erected so as to extend over or across any of the building lines as hereinafter established.

Section 7.33. Increased Lot Size

Lot(s) may be subdivided provided the effect is to increase the size of the adjoining Lot(s). The resulting Lot(s) shall have one vote and one annual assessment per Lot. In such cases, the Architectural Control Committee may alter the building or set-back lines to conform to the re-subdivided Lot(s). 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, that may be done only if the written consent of the Architectural Control Committee is first had and obtained. In such instances, the adjoining Lot owners, or other owners in the Subdivision shall not have the right to pass on or interfere with such Lot rearrangement. Such rights shall be exclusively that of the Architectural Control Committee, but the purchaser of any Lot in the Subdivision does not, by virtue of this status as a purchaser, become any such successor or assign.

Section 7.34. Building Requirements

The Living Space of the main structure on any Lot shall not be less than 2200 square feet of heated living area. Houses of less than the stated minimum Living Space may be approved by the Architectural Control Committee if, in the opinion of the Architectural Control Committee, the design and construction of such house would be in keeping with the adjoining properties and the lowering of the minimum Living Space requirement for such Lot would not diminish the value of adjoining properties subject to this Declaration.

Section 7.35. Utility Company Requirements

(a) Each Lot Owner, lessor, and/or such Owner's and lessor's heirs, successors and assigns, agree to pay the South Carolina Electric and Gas Company, or any successor or substitute electric utility company regulated by the South Carolina Public Service Commission, a monthly charge, plus applicable State of South Carolina sales tax, for operation and maintenance of street lighting systems.

(b) Each Lot Owner, lessor, and/or such Owner's and lessor's heirs, successors and assigns shall contact the South Carolina Electric and Gas Company three (3) business days prior to any digging or excavation work on said property including, but not necessarily limited to, swimming pool installations, trenching or any type or digging. Upon notification by the Lot Owner, lessor, and/or such owner's and lessor's heirs, successors and assigns, a field survey will be conducted by the South Carolina Electric and Gas Company personnel to insure that there are not conflicts with such utility company's safety requirements. An excavation in violation of such utility company's safety requirements is expressly prohibited.

Section 7.36. Gardens, Basketball Goals, Etc.

Grass, ornamental plants and shrubbery (and only the foregoing) may be planted in the front or side yard of any Lot, except that all other planting in these yards may be done only with the prior written approval of the Developer or Architectural Control Committee or in accordance with guidelines previously established by the Committee. No vegetable garden, hammocks, statuary or recreational equipment may be placed, erected, allowed or maintained upon the front or side yard of any Lot without the prior written consent of the Committee or its designee. Basketball goals may be installed after the type and location have been previously approved in writing by the Architectural Control Committee.

Section 7.37. Lighting.

The following exterior lighting may be installed without the necessity of obtaining the prior approval of the Board or its designee: (i) seasonal decorative lights during the Christmas season to be installed no earlier than December 1 of each year and removed no later than January 31 each year; (ii) illumination of other than the front or side yards or a Lot; (iii) illumination of a model home and entrance features constructed by the Developer; and (iv) other lighting originally installed by the Developer. Plans for all other exterior lighting must be submitted and approved in accordance with Section 7.2.

All exterior lighting shall be lot voltage and installed so as not to disturb neighbors or impair vision of traffic. Low wattage down lights, up lights, stair lights and low voltage lights used in landscaping for accent, safety and appearance are acceptable. The use of exposed spotlights is prohibited.

Section 7.38. Sight Distance at Intersections.

All Lots at street intersections shall be so landscaped as to permit safe sight across the street corners. No fence, wall, hedge or shrub planting shall be placed or permitted to remain at the corner of a Lot where this would create a traffic or sight problem.

Section 7.39. Prohibition of Firearms

The use of firearms in the Subdivision is prohibited guns, pellet guns and small firearms of all types. The term "firearms" includes "B-B guns."

Section 7.40. Solar Devices.

No artificial or manmade device which is designed or used for collection of or heating by solar energy or other similar purposes shall be placed, allowed or maintained upon any portion of the Subdivision, including any Lot, within site of any Common Area and without the prior written consent of the Board or its designee.

Section 7.41. Mailboxes.

Receptacles and posts for the receipt of mail shall be in conformity with the requirements of the United States Postal Service and approved by the Architectural Control Committee. Said receptacles shall be of uniform construction and appearance as prescribed by the Architectural Control Committee. Maintenance, repair and replacement of mailboxes is the responsibility of the lot Owner

Section 7.42. Lawn Care and Other Maintenance Required by Owner.

Each Owner shall keep his Lot(s) and all improvements located thereon in good order and repair including, but not limited to, seeding, watering and mowing of all lawns and grounds, the pruning and cutting of all trees and shrubbery and the painting ( or other appropriate external care) of all such improvements in a manner consistent with proper maintenance and management. No lawns, grass, weeds or underbrush shall be allowed to grow to a height exceeding six (6") inches on any Lot. In the event an Owner violates this Section, the Developer and Association shall have all of the remedies set out in this Declaration including, but not limited to, those set out in Article V, Section 5.3(c) hereof. An entry onto a Lot by the Developer, the Association, or any of their agents, employees, servants, or persons acting on their behalf to remedy a violation of this Section shall not be considered a trespass.

Section 7.43. Window Heating/Cooling Units

No window heating and/or cooling units shall be allowed in the Subdivision

## ARTICLE VIII

## GENERAL PROVISIONS

### Section 8.1. Enforcement

The Association or any owner shall have the right to enforce, by any proceedings at law or in equity, all of the restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Developer, the Association, or any owner to enforce any covenant or restriction herein contained shall in no event be deemed as a waiver of right to do so thereafter. The Developer and the Association shall have the right to establish, assess and collect reasonable fines and penalties for violations of this Declaration, which shall be liens against Dwellings as provided herein. Such fines shall not exceed One Hundred ($100.00) Dollars per violation per day.

### Section 8.2. Severability

Invalidation of any covenants or restrictions or any regulation, phrase or clause of this Declaration by the adjudication of any court or tribunal shall in no way effect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

### Section 8.3. Duration.

The Covenants and Restrictions of this Declaration shall run with and bind the property constituting the Subdivision, and shall inure to the benefit of and be enforceable by the Developer, the Association, or any owner for a period of twenty (20) years from the date hereof and thereafter shall continue automatically in effect for additional periods of twenty (20) years, unless otherwise agreed to in writing by the then Owners of at least seventy-five (75%) percent of the Lots.

The Developer shall have the right to assign to anyone or more persons, firms, corporations, partnerships or associations any and all rights, powers, titles, easements and estates reserved or given to the Developer in this Declaration.

### Section 8.4. Amendment.

(a) Amendments by Developer. The Developer may amend this Declaration to add any portion of the Additional Property to the terms of this Declaration as set out in Section 2.2 and to amend Exhibit A entitled "A New 15' Easement and a New 10' Easement on Land Owned by LOWCOUNTRY SIGNATURE HOMES on Lots 5 and 6 LOCATED IN THE TOWN OF SUMMERVILLE, DORCHESTER COUNTY, SOUTH CAROLINA", prepared by Ashley Surveying, Inc., as dated August 12, 2002, to be recorded in the RMC Office for Dorchester County, South Carolina to include all said

property. The Developer shall also have the right at the time any Additional Property is subjected to this Declaration to amend Section 7.32 hereof to show the property being subjected, the recording information of the plat of said property and setting out the minimum square feet of living space required for a main structure on said property being subjected. All without the approval of any Owner or mortgagee. In addition to the foregoing amendment rights, the Developer shall have the right at any time without a vote of the Owners to amend the Covenants and Restrictions of this Declaration to correct typographical or clerical errors, and as may be required by any governmental authority, institutional or governmental lender, insurer or purchaser of mortgage loans including, for example, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veterans Administration or the Federal Housing Administration.

(b) Other Amendments. Amendments to this Declaration other than those authorized by Section 8.5(a) above, shall be approved as follows:

(1) This Declaration may be amended during the first twenty year period by an instrument signed by not less than 75% of the Lot Owners and thereafter by an instrument signed by not less than 75% of the Lot Owners. Any amendments must be recorded.

Section 8.5. No Dedication of Common Areas, Etc.

Every park, stream, body of water, Common Area, Recreational Amenity, and other amenity within the Subdivision is a private park, facility or amenity and neither the Developer's recording or any such plat nor any other act of the Developer with respect to the Property is, or is intended to be, or shall be construed, as a dedication to the public of any said parks, Common Areas, recreational facilities and amenities other than is reflected therein. An easement for the use and enjoyment of each of said areas designated as parks is reserved to the Developer, its successors and assigns; to the persons who are, from time to time, members of the Association; to the members and owners of any recreational facility; and all other kinds of residential structures that may be erected within the boundaries of the Property and to the invitees of all the aforementioned persons; the use of which shall be subject to such rules and regulations as may be prescribed by the Association, if the Association is the owner of the facility or Property involved.

Section 8.6. Time is of the Essence.

It is agreed that time is of the essence with regard to these restrictions, covenants, limitations and conditions.

Section 8.7. Remedies for Violation of Restrictions

In the event of a violation or breach of any of these restrictions by any owner, or agent of such owner, the Owners of Lots in the Subdivision, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Developer, its successors and assigns, shall have the right, 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. The Developer and Association are hereby granted a perpetual easement across each Lot for the purposes of carrying out its responsibilities under this Section, and 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 right 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 the Developer 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 the Developer's or Association's counsel, shall be paid by the Owner of such Lot(s) in breach thereof.

**Section 8.8. Rule Against Perpetuities, Etc.**

The Developer 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 the event that any of the provisions hereof 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.

WITNESS the execution hereof this 30th day of September, 2002.

John R. Payne

Scott S. Drummond

BK 3268PG256

BY: _____
John R. Payne, Managing Member
Oak Village Development, LLC

BY: _____
President
LowCountry Signature Homes, Inc.

BY: _____
Managing Member
Payne Homes, LLC

BY: _____
The Village Development Co., LLC
By: The Village Construction Company
Managing Member
Through its Managing Member David Willis

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 8th
Day of October 2002
at 10:38 AM and recorded
in book 3268 page 281
LINDA T MESSERVY
REGISTER OF MESNE CONVEYANCES

STATE OF SOUTH CAROLINA )
)
COUNTY OF DORCHESTER )

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named John R. Payne, Scott S. Drummond, Oak Village Development, LLC by Its President John R. Payne, Payne Homes, LLC, by its Manager John R. Payne and The Village Development Co. LLC., BY The Village Construction, CO. LLC., ITS MANAGING MEMBER, by DAVID WILLIS, its MANAGING MEMBER, sign, seal as its act deliver the within instrument: and that (s)he, with the other witness, witnessed the proper execution thereof.

SWORN to before me this 30th
Day of September 2002

(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires:

My Commission Expires
June 21, 2009

# EXHIBIT "C"

## LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC.

1. INTRODUCTION

These are the By-laws of Live Oak Village Homeowners Association, Inc., a nonprofit corporation organized under the laws of the State of South Carolina (herein-after called "the Association"), which is organized for the purpose of managing the business of the homeowners association for the community known as Live Oak Village Subdivision in Dorchester County, South Carolina. The Subdivision (the"Subdivision") is identified more particularly in the stated Declaration of Covenants and Restrictions for the Subdivision for which these By-laws are attached as Exhibit "C" to the Declaration. The developer of this Subdivision is the Declarant, Oak Village Development, LLC, referred to as "Declarant".

(A) The provisions of these By-laws are applicable to any and all land subject to the Declaration, and the terms and provisions of these By-laws are expressly subject to the effect of the terms, provisions, conditions, and authorizations contained in the Declaration. The terms and provisions of the Declaration shall be controlling wherever and whenever, if ever, they are or may be in conflict with these By-laws.

(B) All present or future co-owners, tenants, future tenants, or their employees, invitees, licensees, or any other person that might use the lands of the Subdivision, or any of the facilities thereof in any manner, are subject to the regulations set forth in these By-laws and in the Declaration, as either or both, may be amended or supplemented from time to time.

(C) The office of the Association shall be: OAK VILLAGE DEVELOPMENT, LLC., 1413 Eagle Landing Blvd. Hanahan, SC 29406 or at any other place at the Board of Directors of the Association may designate from time to time.

(D) The fiscal year of the Association shall begin on January 1 and end on December 31 of each year, unless changed by the Board of Directors of the Association as herein provided .

(E) The seal of the Association shall bear the name of the Association and the words "South Carolina" .

(F) There shall be no dividends or profits paid to any members nor shall any part of the income of the Association be distributed to its Board of Directors or officers. In the event there are any excess receipts over disbursements as a result of performing services, such excess shall be applied against future expenses, etc. The Association shall not pay compensation to its members, directors or officers for services rendered. At anyone time, the Board may retain a management firm, and may contract with said firm to provide management for the Association and its subordinate regimes, or operator owned/controlled property, to include, but not be limited to, the following services:

(1) financial services;
(2) administrative and clerical services; and
(3) maintenance, to include providing of goods, materials, labor and equipment, personnel supervision, contract labor, landscaping, and security.

Upon final dissolution and liquidation, the Association may make distribution to its members as is permitted by law or any Court having jurisdiction thereof, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income.

This Association shall issue no shares of stock of any kind or nature whatsoever. Membership in the Association and the transfer of that membership as well as the number of members/votes shall be in accordance with the terms and



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conditions of the Declaration and the By-laws of the Association, and the voting rights of the Owners shall be as set forth in the Declaration and/or these By-laws of the Association.

2. MEMBERSHIP, VOTING, QUORUM, PROXIES

(A) All persons who are Owners as defined in the Declaration shall be members of this Association, provided, however, that no non-owner, tenant, sub-lessee, or assign shall be a member, nor have voting rights in this Association. The rights and privileges of membership, including the right to vote and to hold an office in the Association, may be exercised by a member or a member's spouse, but in no event shall more than one ( 1) vote be cast or more than one (1) office held for each Lot. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Notwithstanding any of the foregoing to the contrary , no Owner, whether one or more persons, shall have more than one membership/vote per Lot. Any membership shall automatically terminate when an Owner, as defined herein, is no longer seized and vested with title to any real property within the Subdivision, and membership and/or voting rights in the Association shall be limited to such Owners.

(B) The quorum at members meetings shall consist of persons entitled to cast or proxy entitled to cast one-half (1/2) of the votes of the membership. The joinder of a member in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such person for the purpose of determining a quorum.

(C) The vote of the Owners of a Lot owned by more than one person or by a corporation or other entity shall be cast by the person named in a certificate or appropriate resolution signed by all of the Owners of the Lot and filed with the Secretary of the Association, and such certificate or resolution shall be valid until revoked by subsequent certificate or resolution. If such a certificate is not on file, the vote of such Owners shall not be considered in determining the requirement for a quorum, nor for any other purpose.

(D) Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time of the meeting for which their use is sought.

(E) Approval or disapproval of an Owner upon any matters, whether or not the subject of an Association meeting, shall be by the same person who casts the vote of such Owner in an Association meeting.

(F) Except where otherwise required under the provisions of the Certificate of Incorporation of the Association, these By-laws, the Declaration, or where the same may otherwise be required by law, the affirmative vote of the Owners holding at least a majority of the total votes cast at a meeting at which a quorum is present, shall be binding upon the members/Owners.

3. ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP

(A) The annual members meeting shall be held at the office of the Association or such other place as may be designated by the Board of Directors, on the first Wednesday in March of each year or at such other time as shall be designated by the Board of Directors, for the purpose of transacting any business authorized to be transacted by the members. The first annual meeting shall be held in 2002.

(B) Special members meetings shall be held whenever called by the President or Vice President, by a majority of the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all votes of the membership, and must be called by such officers upon receipt of a written request from the members of the Association owning a majority of the outstanding votes.

(C) Notice of all members meetings, regular or special, shall be given by the President, Vice President or Secretary of the Association, or other officers of the Association in the absence of said officers, to each member, unless waived in writing, such notice to be written or printed and to state the time and place and object for which the meeting is called. Such notice shall be given to each member not less than ten (10) days nor more than sixty (60) days prior to the date set for such meeting, which notice shall be mailed or presented personally to each member within said time. If presented personally, receipt of such notice shall be signed by the member, indicating the date on which such notice was received by him or her. If mailed, such notice shall be deemed properly given when deposited in the United States mail addressed to the member at his or her post office address as it appears on the records of the Association, the postage thereon prepaid. Proof of such mailing shall be given by the affidavit of the person giving the notice. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. The presence at the meeting of members entitled to cast or proxy entitled to cast one-half (1/2) of the votes in each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation or the Declaration of these By-laws. If any members meeting cannot be organized because a quorum has not been attained, or because the greater percentage of the membership required to constitute a quorum for particular purposes has not attended, whenever the latter percentage of attendance may be required as set forth in the Certificate of Incorporation, these By-laws or the Declaration, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum, or the required percentage of attendance if greater than a quorum, is present.

(D) At meetings of membership, the President shall preside or, in the absence of the President, the membership may select a chairman in the event that the Board does not designate an acting President or presiding officer for any such meeting.

(E) The order of business at annual members meetings, and, as far as practical, at any other members meeting, shall be:

(1) Calling of the roll and certifying proxies
(2) Proof of notice of meeting or waiver of notice
(3) Reading of minutes
(4) Reports of officers
(5) Reports of committees
(6) Unfinished business
(7) New business
(8) Adjournment

4. BOARD OF DIRECTORS

(A) Governing Body; Composition

The affairs of the Association shall be governed by a Board of Directors. Until the first annual meeting of the members, the affairs of the Association shall be managed by a Board of two (2) directors selected by the Declarants. Thereafter, the affairs of the Association shall be managed by a Board of three (3) directors elected as provided herein.

(B) Term of Office

At the annual meeting to be held in the calendar year 2002, the members shall elect one (1) director for a term of one (1) year, one (1) director for a term of two (2) years and one (1) director for a term of three (3) years, and at each annual meeting thereafter, Owners and members shall elect one (1) director for a

term of three (3) years. The directors shall be elected by a majority of the votes cast by members at the meeting called for said purpose. In voting for directors, the membership shall have the number of votes set out in Section 3.4 of the Declaration.

(C) Removal

Any director may be removed from the Board, with or without cause, by a vote of the members holding at least a majority of the votes in the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

(D) Compensation

No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

(E) Action Taken Without a Meeting

The directors shall have the right to take any action in the absence of a meeting of the directors which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

5. MEETING OF DIRECTORS

(A) Regular Meetings

Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

(B) Special Meetings

Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3) days notice to each director mailed or presented personally to such director within such time.

(C) Quorum

A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

If any director's meeting cannot be organized because a quorum has not attended, or because the greater percentage of the directors required to constitute a quorum for particular purposes has not attended, wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these By-laws or the Declaration, the directors who are present may adjourn the meeting from time to time until a quorum, or the required percentage of attendance is greater than a quorum, is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such director for the purpose of determining a quorum.

6. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

(A) Powers

The Board of Directors shall manage and direct the affairs of the Association and may exercise all of the powers of the Association subject only to approval by the Owners, as designated and defined in the Declaration, when such is specifically required by these By-laws. The Board of Directors shall exercise such duties and responsibilities as shall be incumbent upon it by law, the Declaration or these By-laws, or as it may deem necessary or appropriate in the exercise of its powers and shall include, without limiting the generality of the foregoing, the following:

(1) To prepare and adopt a budget, make, levy and collect assessments against members and members Lots to defray the cost of the Common Areas and facilities of the Subdivision, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association;

(2) To carry out the maintenance, care, upkeep, repair, replacement, operation, surveillance and the management of the Common Areas, Recreational Amenities, services and facilities of the Subdivision wherever the same is required to be done and accomplished by the Association for the benefit of its members;

(3) To carry out the reconstruction of improvements after casualty and the further improvement of the property, real and personal;

(4) To make and amend regulations governing the use of the Property, real and personal, in the Subdivision so long as such regulations or amendments thereto do not conflict with the restrictions and limitations which may be placed upon the use of such Property under the terms of the Declaration;

(5) To acquire, operate, lease, manage and otherwise trade and deal with Property, real and personal, including Lots in the Subdivision, as may be necessary or convenient in the operation and management of the Association, except those which may be required by the Declaration to have approval of the membership of the Association;

(6) To enforce by legal means the provisions of the Certificate of Incorporation and By-laws of the Association, the Declaration and the regulations hereinafter promulgated governing use of the property in the Subdivision;

(7) To pay all taxes and assessments which are liens against any part of the Subdivision other than Lots and the appurtenances thereto, and to assess the same against the members and their respective Lots subject to such liens;

(8) To carry insurance for the protection of the Subdivision the members of the Association, and the Association against casualty, liability and other risks;

(9) To pay all costs of power, water, sewer and other utility services rendered to the Association and not billed to the Owners of the separate Lots;

(10) To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association as well as to dismiss said personnel;

(11) To adopt and publish rules and regulations governing the use of the Common Areas and facilities of the Association, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(12) To suspend the voting rights and right to use of the Common Areas and facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(13) To exercise for the Association all powers, duties and authority vested in or delegated to this Association by the Declaration and not reserved to the membership by other provisions of these By-laws, or the Certificate of Incorporation;

(14) To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(15) To employ a manager, a managing agent, an independent contractor, or such other employees or agents as they deem necessary, and to prescribe their duties; and

(16) To make special assessments to the extent provided in the Declaration and these By-laws.

(B) Duties

It shall be the duty of the Board of Directors to:

(1) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one fourth (1/4) of the Class A Members who are entitled to vote;

(2) Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(3) Establish a fiscal year;

(4) Establish the annual assessment period and fix the amount of the annual assessment against each member for each Lot owned, at least thirty (30) days in advance of each annual assessment;

(5) Establish the initial deposit to be made by each member in order to bring his total assessment deposit to the level required to meet his proportional share of the Common Expense;

(6) Send written notice of each assessment to every Lot Owner, at least thirty (30) days in advance to each annual assessment period, and levy all such assessments as liens;

(7) Collect all such assessments at monthly or other regular intervals as may be determined at its discretion;

(8) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same;

(9) Issue, or to cause an appropriate officer to issue, upon demand by any person, a Certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(10) Procure and maintain liability and fire and other hazard insurance on property owned by the Association;

(11) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(12) Cause all of the facilities to be maintained;

(13) Have a management agent for any of the above; and

(14) Procure and maintain officers and directors liability insurance as it may deem appropriate.

(C) Meeting Location

Notwithstanding anything contained in these By-laws to the contrary, any meeting of members of directors may be held at any place within or without the State of South Carolina.

(D) Actions without Meetings

To the extent now or from time to time hereafter permitted by the law of South Carolina, the directors may take any action which they might take at a meeting of directors without a record of any such action so taken, signed by each director, to be retained in the Association's minute book and given equal dignity by all persons with the minutes of meetings led and held.

(E) Indemnity

The Association shall indemnify every director and every officer, their heirs, executors and administrators, against all loss, damages, costs or expenses of any type reasonably incurred by him in connection with any action, suit, or proceeding to which he is made a party by reason of his being or having been a director or officer of the Association, except as to such matters wherein shall be finally adjudged liable of gross negligence or willful misconduct. The Board may obtain for the Association directors and officers liability insurance coverage in such amounts as the Board deems necessary and appropriate.

7. OFFICERS

(A) The executive officers of the Association shall be the President and Secretary, who shall be directors; a Vice President; and a Treasurer, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the directors at any meeting. The Board of Directors shall from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

(B) The President shall be the chief executive officer of the Association. The President shall have all the powers and duties which are usually vested in the office of the President of an association, including, but not limited to, the power to appoint committees from among the members from time to time, as the President may in the President's discretion determine appropriate, to assist in the conduct of the affairs of the Association.

(C) Any Vice President, unless the majority may select a presiding officer, shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors.

(D) The Secretary shall keep the minutes of all proceedings of the directors and the members. He shall attend to the giving and serving of all notices to the members and directors, and such other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an association and as may be required by the directors or President. The Assistant Secretary shall perform the duties of Secretary when the Secretary is absent.

(E) The Treasurer shall have custody of all of the property of the Association, including funds, securities and evidences of indebtedness. He shall keep the assessment rolls and accounts of members; he shall keep the books of the Association in accordance with good accounting practices; and he shall perform all other duties incident to the office of Treasurer.

(F) The compensation of all officers and employees of the Association shall be fixed by the directors. This provision shall not preclude the Board of Directors from employing a director as an employee of the Association, nor preclude the contracting with a director for management of the Association.

8. FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth both in these By-laws and in the Declaration shall be supplemented and complimented by the following provisions:

(A) The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Lot; for each subordinate regime; and for those developer-owned entities. Such an account shall designate the name and address of the Owner(s) or ownership/control entity, the amount of each

assessment against each category set forth immediately hereinabove, the dates and amount in which assessments come due, the amounts paid upon the account and the balance due upon assessments.

(B) The Board of Directors shall adopt a budget for each fiscal year which shall contain estimates of the cost of performing the functions of the Association, including, but not limited to, the following items:

*(1)* Common Expense budget, which shall include without limiting the generality of the foregoing, the estimated amounts necessary for maintenance, repair and/or replacement of: (a) all buildings and other improvements located within the Association's Common Areas; (b) all roads (not dedicated to the public), walks, lagoons, ponds, landscaped areas/natural areas and other improvements situated within the Common Areas or within easements encumbering Lots; (c) such security systems, utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the service district, public or private utility or other person; (d) all lawns, trees, shrubs, hedges, grass and other landscaping situated within the Subdivision (but not on Lots) as it may be constituted from time to time; and (e) all maintenance of landscape and/or buffer easements; and

(2) Proposed Assessments against each member. Copies of the proposed budget and proposed Assessments shall be transmitted to each member at least thirty (30) days prior to the first day of the fiscal year for which the budget is made. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished each member concerned. Delivery of a copy of any budget or amended budget to each member shall not affect the liability of any member for any such assessment, nor shall delivery of a copy of such budget or amended budget be considered as a condition precedent to the effectiveness of said budget and assessments levied pursuant thereto, and nothing herein contained shall be construed as restricting the right of the Board of Directors to at any time in their sole discretion levy an additional Assessment in the event that the budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.

(C) The Board of Directors shall determine the method of payment of such Assessments and the due dates thereof and shall notify the members thereof. The Assessments will initially be on an annual basis unless changed by a vote of the majority of the Board of Directors.

(D) The depository of the Association shall be such bank or banks as shall be designed from time to time by the directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the directors.

(E) An audit of the accounts of the Association may be made annually and a copy of the report shall be furnished to each member not later than ninety (90) days after the last day of the fiscal year for which the report is made.

(F) Fidelity bonds may be required by the Board of Directors from all officers and employees of the Association and from any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the directors, but shall be at least one-half (½) the amount of the total annual assessments against members for common expenses. The premiums on such bonds shall be paid by the Association.

9. PHYSICAL MANAGEMENT

Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair and have jurisdiction over the standards of exterior maintenance over all portions of the Common Areas and all Los, which

responsibility shall include the maintenance, repair and/or replacement of: *(i)* all buildings and improvements located within the Association's Common Areas; (ii) all roads, walks, lagoons, ponds, landscaped areas, natural areas and other improvements situated within the Common Areas or within easements encumbering Lots; (iii) such security systems and utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility or other person; and (iv) all lawns, trees, shrubs, hedges, grass and other landscaping situated within the Subdivision (but not on Lots) as it may be constituted from time to time. The Association shall not be liable for injury or damage to any person or property (a) caused by the elements or by any Owner or any other person, (b) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas, or (c) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system or utility line or facility, the responsibility for the maintenance of which is not that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored or left in or upon any portion of the Common Areas or any other portion of the Property. No diminution or abatement of Assessments or charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under the Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments and charges being a separate and independent covenant on the part of each Owner .

In the event that the Declarants or the Board of Directors determines that: (i) any owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder; or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees, and is not covered or paid for by insurance in whole or in part, then in either event, the Declarants or the Association, except in the event of an emergency situation, may give such Owner written notice of Declarants's or the Association's intent to provide such necessary maintenance, cleaning, repairs or replacement, at the sole cost and expense of such Owner, and cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in good and workmanlike manner, or if replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, the Declarants or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be added to and become a part of the Assessment to which such Owner and his Lot are subject and shall become a lien against such Lot and shall become a lien against such Owner's Lot. In the event that Declarants undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Declarants for Declarants's costs and expenses.

10. PARLIAMENTARY RULES

Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation and these By-laws or with the statutes of the State of South Carolina.

11. AMENDMENTS TO BY-LAWS

Amendments to these By-laws shall be proposed and adopted in the following manner:

(A) Amendments to these By-laws may be proposed by the Board of Directors of the Association acting upon vote of the majority of the directors or by members of the Association holding one-fourth (1/4) of the members in the Association, whether meeting as members or by instrument in writing signed by them.

(B) Upon any amendment or amendments to these By-laws being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the

Association, or other officer of the Association in absence of the President, who shall thereupon call a special joint meeting of the members of the Board of Directors of the Association and the membership for a date not sooner than twenty (20) days or later than sixty (60) days from receipt by such officer of the proposed amendment or amendments, and it shall be the duty of the Secretary to give to each member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the members if required as herein set forth.

(C) In order for such amendment or amendments to become effective, the same must be approved by a vote of the members holding at least a majority of the total votes at a meeting at which a quorum is present. Thereupon, such amendment or amendments to these By-laws shall be transcribed, certified by the President or Secretary of the Association, and a copy thereof shall be recorded in the Register of Mesne Conveyances of Dorchester County, South Carolina, within ten (10) days from the date on which any amendment or amendments have been affirmatively approved by the directors and members.

(D) At any meeting held to consider such amendment or amendments to the By-laws, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting.

(E) No amendment may be adopted or become effective without the prior written consent of the Declarant.

12. INSURANCE AND CASUALTY LOSSES

A) Insurance

1) The Board of Directors or its duly authorized agents shall have the authority to, and shall obtain and continue in effect, adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief. Such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation, to include anticipated costs of demolition and clearing prior to building, but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

2) The Board or its duly authorized agents shall have the authority and may obtain and continue in effect a public liability policy covering all the Common Areas and all damage or injury caused by the negligence of the Association, its members, its directors and officers, or any of its agents. Such public liability policy shall provide such coverages as are determined to be necessary by the Board of Directors.

3) The Board or its duly authorized agents shall have the authority and may obtain: (i) worker's compensation insurance to the extent necessary to comply with any applicable law; and (ii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

4) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for each of the Owners and costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Subdivision shall be vested in the Board of Directors; provided, however, that no Mortgagee or other security holder of the Common Areas having any interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Insofar as permitted by law and reasonably obtainable, the Association shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth:

(a) All policies shall be written with a company holding rating of A + 10 or better in such financial categories as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best rating possible,

(b) All property insurance policies shall be for the benefit of the Association, and/or its subordinate property regimes, Owners and Owner's Mortgagees, if applicable, as their interests may appear .

(c) All policies shall contain a waiver of the insurer's right to cancel without first giving thirty (30) days prior written notice of such cancellation to the Association and to any Mortgagee to which a mortgagee endorsement has been issued.

(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 or their Mortgagees, and all polices shall contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual Owners or their Mortgagees.

(e) All policies shall contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's directors and officers, the Owners and their respective families, servants, agents, tenants, guests and invitees, including without limitation the Association's manager.

(f) All policies shall contain a provision that no policy may be canceled, invalidated or suspended on account of the conduct of one or more of the individual Owners, or their respective families, servants, agents, employees, tenants, guests and invitees, or on account of the acts of any director, officer, employee or agent of the Association or of its 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.

5) It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, public liability, property damage, title and other insurance with respect to his own Lot. The Board of Directors may require all Owners, to include the Declarant, to carry public liability and property damage insurance on their respective Properties and Lots, and to furnish copies of certificates thereof to the Association.

(B) Damage to or Destruction of Common Areas

Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas 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, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction, as used in this Article means repairing or restoring the damages to Property to substantially the same condition in which it existed prior to the fire or other casualty. Within sixty (60) days following any damage or destruction of all or part of the Common Areas, the Association shall use such insurance proceeds as may be available to restore or replace such damaged improvements, to include trees, shrubbery, lawns, landscaping, and natural vegetation. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special assessment against all Owners, in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction, provided that said special assessment is first approved by two-thirds (2/3) of the members of each class of membership present and voting at a meeting duly called to consider said special assessment. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied. Any and all sums paid to the Association under and by virtue of such assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or

reconstruction pursuant to and in accordance with such method of distribution as is established by the Board of Directors. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association.

C) Damage to or Destruction of Lots

In the event of damage or destruction by fire or other casualty to any Lots, such Owner shall, at its/their own expense, promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such Lot in a clean, orderly, safe and sightly condition. Such other Owner shall repair or rebuild such Lot other improvements to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions and provisions of this Declaration (including without limitation Article 10 hereof) and all applicable zoning, Subdivision, building and other governmental regulations. All such work of repair or construction shall be commenced promptly following such damage or destruction and shall be carried through, without interruption, diligently to conclusion.

13. CONDEMNATION OF COMMON AREAS

A) Whenever all or any part of the Common Areas of the Subdivision shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting with the approval by a vote of two-thirds (2/3) of the total votes of the Association who are voting in person or by proxy, at a meeting duly called for such purpose, for as long as Declarants owns any Lot primarily for the purpose of sale, the award of proceeds made of collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

1) If the taking or sale in lieu thereof involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking, Declarants, for so long as Declarant owns any Lot primarily for the purpose of sale, together with at least seventy-five (75%) percent of the total votes of the Association, shall otherwise agree, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available therefor, in accordance with the plans approved by the Board of Directors, the Architectural Control Committee, and by the Declarant, for so long as the Declarant owns any Lot primarily for the purpose of sale. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special assessment against all Owners, provided that said special assessment is first approved by two-thirds (2/3) of the members of each class of membership present and voting at a meeting duly called to consider said special assessment. Such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied, and additional special assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association.

2) If the taking or sale in lieu thereof does not involve any improvements to the Common Areas, or if there are not funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds or net funds shall be retained by and for the benefit of the Association.

3) If the taking or sale in lieu thereof includes all or any part of a Lot and includes any part of the Common Areas, then a court of competent jurisdiction shall apportion such award or proceeds

and such award or proceeds shall be disbursed to the Association and the Owners so affected so as to give just compensation to the Owners of any Lot; provided, however, such apportionment may instead be resolved by the agreement of: (i) the Board of Directors; (ii) the Owners of all Lots wholly or partially taken or sold, together with the Mortgagees for such Lot; and (iii) the Declarant, for so long as the Declarant owns any Lot primarily for the purpose of sale.

14. Assessments

A) Purpose of Assessments

The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of the Subdivision, and maintaining the Subdivision and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.

B) Creation of Lien and Personal Obligation of Assessments

Each Owner of a Lot by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (i) annual Assessments, such Assessments to be established and collected as provided in the Declaration and in Paragraph 14.C hereof; (ii) special Assessments, such assessments to be established and collected as provided in the Declaration and in Paragraph 14.D hereof; and (iii) individual or specific Assessments, against any particular Lot which are established pursuant to the terms of this Declaration, including but not limited to fines as may be imposed against such Lot in accordance with the provisions of these By-laws and of the Declaration. Any such Assessments, together with late charges as provided in the Declaration, together with court costs and reasonable attorneys fees incurred to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon the Lot, the Owner of which is responsible for payment. Each Owner shall be personally liable for Assessments coming due while he is the Owner of a Lot, and his grantee shall take title to such Lot subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however, the lien for unpaid Assessments shall not apply to the holder of any first priority institutional Mortgage or to the holder of any Mortgage securing a loan made by the Declarant, its affiliates, successors or assigns, and who take title to a Lot through foreclosure, or to any purchaser of such Lot at such foreclosure sale until title vests at which time charges for Assessments apply as to any other Owner. In the event of co-ownership of any Lot, all of such co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner that unless otherwise provided by the Board, the annual Assessment shall be paid in equal quarterly installments.

C) Computation of Annual Assessments

It shall be the duty of the Board at least thirty (30) days prior to the commencement of the Association's fiscal year to prepare and adopt a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution of reserve account if necessary for the capital needs of the Association. The total annual Assessments shall be divided among the Lots equally, except as provided in the Declaration, so that each Lot, shall be subject to equal annual Assessments. The Association's budget shall be revisable by the Board without the necessity of approval by the Owners. In the event the Board fails for any

reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and annual assessment in effect for the then current year shall be increased by five (5%) percent, and such increased budget shall be implemented for the succeeding year, until a new budget shall have been approved as provided above. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special assessment as provided in Paragraph 14.D hereof. The Common Expenses to be funded by the annual assessments may include, but shall not necessarily be limited to, the following:

1) Management fees and expenses of administration including legal and accountant fees;
2) Utility charges for utilities serving the Common Areas and charges for other common services for the Subdivision, including trash collection and security services, if any such services or charges are provided or paid by the Association;
3) The cost of any policies of insurance purchased for the benefit of all Owners and the Association as required or permitted by the Declaration, including fire, flood and other hazard coverage, public liability coverage and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners;
4) The expenses of maintenance, operation, repair and replacement of those portions of the Common Areas which are the responsibility of the Association under the provisions of the Declaration;
5) The expenses of maintenance, operation, repair and replacement of other amenities and facilities serving the Subdivision. The maintenance, operation, repair and replacement of which the Board from time to time determines to be in the best interest of the Association;
6) The expenses of the Architectural Control Committee which are not defrayed by plan review charges;
7) Ad valorem real and personal property taxes assessed and levied against the Common Areas;
8) Such other expenses as may be determined from time to time by the Board of Directors of the Association to be Common Expenses, including without limitation taxes and governmental charges not separately assessed against Lots; and
9) The establishment and maintenance of a reasonable reserve fund or funds (a) for maintenance, repair and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be maintained, repaired or replaced on a periodic basis, (b) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (c) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.

D) Special Assessments

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for any other purpose set forth in the By-laws of the Association. So long as the total amount of the special assessments allocable to all of the Lots in the Subdivision does not exceed Seven Thousand and no/100 ($7,000.00) Dollars for the

entire Subdivision in anyone fiscal year, the Board of the Association may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to the entire Subdivision to exceed this limitation shall be effective only if such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose special assessments shall be paid as determined by the Board of Directors, and the Board may permit special assessments to be paid in installments extending beyond the fiscal years in which the special assessment is imposed.

E) Individual Assessments

Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests or invitees of any Owner shall be specially assessed against such Owners and their respective Lots. The individual assessments provided for in this Paragraph shall be levied by the Board of Directors and the amount and due date of such assessment so levied by the Board shall be as specified by the Board.

F) Initial Assessment

The Association shall collect the Initial Assessment as set out in Section 3.5 of the Declaration according to the terms and conditions thereof .

G) All sums assessed against any Lot pursuant to the Declaration, together with court costs, reasonable attorneys fees, and late charges as provided herein, shall be secured by an equitable charge and continuing lien on such Lot in favor of the Association. Such liens shall be superior to all other liens and encumbrances on such Lot except only for: (a) liens of ad valorem taxes; and (b) liens for all sums unpaid on a first priority institutional Mortgage or on any Mortgage to the Declarants, or its affiliates, successors or assigns, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument. Notwithstanding the foregoing to the contrary, the subordination of assessments to the lien of such mortgages shall only apply to such assessments, which have become due and payable prior to a foreclosure. All other person(s) acquiring liens or encumbrances on any Lot after the Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens and encumbrances.

H) Effect of Nonpayment: Remedies of the Association

Any assessments of an Owner or any portions thereof which are not paid when due shall be delinquent. A lien and equitable charge as herein provided for each assessment shall be attached simultaneously as the same shall become due and payable, and if an assessment has not been paid within thirty (30) days, the entire unpaid balance of the annual assessment may be accelerated at the option of the Board and declared due and payable in full. The continuing lien and equitable charge of such assessment shall include all costs of collection (including reasonable attorneys fees and court costs) and any other amounts provided or permitted hereunder or by law. In the event that the assessment remains unpaid after sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Article shall be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association and its agents the right and power to bring all actions against him personally for the collection of such assessments as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the

same. No Owner may waive or otherwise escape liability for the assessments provided herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot, and an Owner shall remain personally liable for assessments and late charges which accrue prior to a sale, transfer or other conveyance of his Lot.

In the event that any Lot is to be sold at the time when payment of any Assessment against the Owner of such Lot to the Association shall be in default (whether or not a claim of lien has been recorded by the Association) then the proceeds of such purchase shall, after payment of those sums given priority by S.C. Code Ann. Section 27-31-200 (1976) be applied by the purchaser first to payment of any then delinquent assessment or installment thereof due to the Association before the payment of any proceeds of purchase to the owner who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of any Lot (other than deed in lieu of foreclosure as set forth above), the Grantee shall be jointly and severally liable with the Grantor for all unpaid assessments against Grantor made prior to the time of such voluntary conveyance, without prejudice to the rights of the Grantee to recover from the Grantor the amounts paid by the Grantee therefor.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by Association which shall prevent its thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed to be an election precluding the institution of suit at law to attempt to effect collection of any sums then remaining owing to it.

I) Certificate

The Treasurer, any Assistant Treasurer or the manager of the Association shall, within ten (10) days of a written request, and upon payment of such fee as is from time to time determined by the Board of Directors, furnish to any Owner or such Owner's Mortgagee which requests the same, a certificate in writing signed by the said Treasurer, Assistant Treasurer or manager of the Association setting forth whether the assessments for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, late charges and other penalty charges. Such certificate shall be conclusive evidence against all but such Owner of payment of any assessments stated therein to have been paid.

J) Date of Common Assessments.

The annual assessments provided for herein shall commence as to each Lot as set forth the Declaration.

15. RULE MAKING

A) Rules and Regulations

Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots and the Common Areas and facilities located thereon, including without limitation the Recreational Amenities. In particular but without limitation, the Board of Directors may promulgate from time to time rules and regulations which shall govern activities which may, in the judgment of the Board of Directors, be environmentally hazardous, such as application of fertilizers, pesticides and other chemicals. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rule or regulation be specifically overruled, canceled or modified by the Board of Directors or in a regular or special meeting of the

Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by the Declarants, for so long as the Declarants owns any Lot or Lot primarily for the purpose of sale.

B) Enforcement

Subject to the provisions hereof, upon the violation of the Declaration, the By-laws or any rules and regulations duly adopted hereunder, including without limitation the failure to timely pay any assessments, the Board shall have the power: (i) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot, the Owners, occupants or guests of which are guilty of such violation; (ii) to suspend an Owner's right to vote in the Association; or (iii) to suspend an Owner's right (and the right of such Owner's family, guests and tenants and of the co-Owners of such Owner and their respective families, guests and tenants) to use any of the Common Areas, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests or tenants **or by his Co-Owners or the family, guests or tenants of his Co-Owners**. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

C) Procedure

Except with respect to the failure to pay assessments, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights of an Owner or other occupant of the Subdivision for violations of the Declaration, By-laws or any rules and regulations for the Association, unless and until the following procedure is followed:

1) Written demand to cease and desist from an alleged violation shall be served upon: the Owner responsible for such violation specifying:

(a) The alleged violation;
(b) The action required to abate the violation; and
(c) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Bylaws or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

2) Within two (2) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

(a) The nature of the alleged violation;
(b) The time and place of the hearing, which time shall be not less than ten ( 10) days from the giving of the notice;
(c) An invitation to attend the hearing and produce any statement, evidence and witnesses on his behalf; and
(d) The proposed sanction to be imposed.

3) The hearing shall be held in executive session of the board of Directors pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard prior to the

effectiveness of any sanction hereunder, proof of notice and the invitation to be heard 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 other individual who delivered such notice. The notice requirement shall be deemed satisfied if an 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 imposed, if any.

D) Enforcement

Each Owner shall comply strictly with the By-laws and the published rules and regulations of the Association adopted pursuant to the declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in the Declaration and in the deed or other instrument of conveyance to his Lot, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the Recreational Amenities, or for instituting an action to recover sums due, for damages and/or for injunctive relief, such actions to be maintainable by the Declarant, the Board of Directors on behalf of the Association or, in a proper case, by an aggrieved Owner. Should the Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of the Declaration, the By-laws and the rules and regulation of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure or omission on the part of the Declarant, the Association or any aggrieved Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto as to the same violation or breach, or as to the enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whomsoever against the Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person under the provisions of the Declaration, the By-laws or any rules and regulations of the Association, however long continued.

16. DEFINITIONS.

All terms defined in the Declaration shall have the same meaning in these By-laws as in the Declaration.

17. CONFLICTS.

In the event of any conflict between the provisions of the Articles of Incorporation and these By-laws, the Articles shall control; and in the case of any conflict between the Declaration and the provisions of these By-laws, the provisions of the Declaration shall control.

Exhibit "A"

All those certain pieces, parcels or lots of land, situate, lying and being in the Town of Summerville, County of Dorchester, known as Lots 1, 2, 3, 4, 5, 6, and 7 Live Oak Village, as shown on a plat dated January 11, 2002 and revised August 12, 2002 entitled PLAT SHOWING A NEW 15' EASEMENT AND A NEW 10' SEWER EASEMENT ON LAND OWNED BY LOWCOUNTRY SIGNATURE HOMES ON LOTS 5 & 6 LOCATED IN THE TOWN OF SUMMERVILLE DORCHESTER COUNTY, SOUTH CAROLINA" prepared by Ashley Surveying, Inc, which plat was recorded on September 10, 2002 in the Register of Deeds Office for Dorchester County in Plat Book (Cabinet) K at page 38.

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Client Docs0275

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LINDA T. MESSERVY

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Cross Reference: Deed Book 3268, Pages 227-257

**AMENDMENTS TO THE DECLARATION OF COVENANTS AND RESTRICTIONS FOR LIVE OAK VILLAGE, SUMMERVILLE, SOUTH CAROLINA**

These Amendments are made this 19th day of November, 2002.

WHEREAS, John R. Payne, Scott S. Drummond, LowCountry Signature Homes, Inc., Payne Homes, LLC and The Village Development Corporation, LLC, a South Carolina Limited Liability Company filed that certain Declaration of Covenants and Restrictions for LIVE OAK VILLAGE on October 8, 2002 in Deed Book 3268, Pages 227-257of Dorchester County, Register of Mesne Conveyances; and

WHEREAS, these Amendments to the Declaration of Covenants and Restrictions for LIVE OAK VILLAGE are made by and among John R. Payne, Scott S. Drummond, William McFarland, Jennifer McFarland, LowCountry Signature Homes, Inc., Payne Homes, LLC and The Village Development Corporation, LLC, a South Carolina Limited Liability Company, from here on known as "Owners", and singularly, an "Owner";

WHEREAS, Oak Village Development, LLC (a South Carolina Limited Liability Company) has been designated as the "Developer".

WHEREAS, Developer proposes to create a subdivision known as Live Oak Village ("Subdivision"), containing detached home site lots and common areas as more fully described herein; and

WHEREAS, Developer is the owner of certain real property located in the Town of Summerville, Dorchester County, South Carolina, more particularly described on Exhibit "A" attached hereto, which Property Developer desires to submit to the plan and operation of this Declaration and which Property shall be deemed a part of the Subdivision; and

WHEREAS, the Developer wishes to accomplish the following objectives for its benefit and the benefit of Owners of Property in the Subdivision by the imposition of the covenants and restrictions set forth herein:

(a) To maintain the value and the residential character and integrity of the residential portions of the Subdivision and to maintain the quality and value of any recreational portions of the Subdivision;

(b) To preserve the quality of the natural amenities of the Subdivision;

Clapp



EXHIBIT A

ALL-STATE LEGAL®

(c) To minimize or eliminate the possibility of any disruptions of the peace and tranquility of the residential environment of the Subdivision;

(d) To prevent the abuse or unwarranted alteration of the trees, vegetation, lakes, streams and other bodies of water and natural character of the land in the Subdivision;

(e) To prevent any Owner or any other persons from building or carrying on any other activity in the Subdivision to the detriment of any owner in the Subdivision; and

(f) To keep Property values in the Subdivision high, stable and in a state of reasonable appreciation.

NOW, THEREFORE, the Developer hereby declares that all of the Property described on Exhibit "A", shall be held, mortgaged, transferred, sold, conveyed, leased, occupied and used subordinate and subject to the following easements, restrictions, covenants, charges, liens and conditions which are hereby imposed for the purpose of protecting the value and desirability of these lands and which restrictions, easements, charges, liens, conditions, and covenants shall touch and concern and run with title to the property subjected to this Declaration and which shall be binding on all parties having, any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Declaration.

## ARTICLE I

DEFINITIONS

When used in this Declaration, unless the context shall prohibit or require otherwise, the following words shall have the following meanings, and all definitions shall be applicable to the singular or plural forms of any such term(s):

**Section 1.1.** Assessment shall mean and refer to an Owner's share of the Common Expenses or other charges from time to time assessed against an owner by the Association in the manner herein provided.

**Section 1.2.** Association means Live Oak Village Homeowners Association, Inc. (a South Carolina eleemosynary corporation), its successors and assigns.

**Section 1.3.** Board of Directors shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

**Section 1.4.** By-Laws of the Association shall mean and refer to those By-laws of the Association, attached hereto as Exhibit "B" which govern the administration and operation of the Association, as may be amended from time to time.

**Section 1.5.** Common Areas shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners or designated by the Developer as Common 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, and the general public shall have no easement of use and enjoyment therein. However, nothing herein contained nor any general plan or plat of the Properties shall be deemed to designate any property a Common Areas, nor shall the Association or any Owner be entitled to any right, title, or interest in such property unless and until such property shall have been transferred to the Association.

**Section 1.6.** Common Expenses shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of financial, equipment, or material reserves, consistent with the provisions and intent of this Declaration.

**Section 1.7.** Declaration shall mean this Declaration, together with all supplements and amendments to this Declaration as filed in the R.M.C. Office for Dorchester County, South Carolina.

**Section 1.8.** Developer means Oak Village Development, a South Carolina Limited Liability Company, its successors and assigns. The Developer shall have the right to assign any or all rights which it may possess as Developer, to the Live Oak Village, Home Owner Association Inc., or any person or entity, including a Sub-Developer; provided, however, that the instrument or assignment shall expressly so provide.

**Section 1.9.** DHEC/OCRM shall mean and refer to, without limitation, the Department of Health and Environment Control and/or the Office of Coastal Resource Management.

**Section 1.10.** Foreclosure shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of judicial Foreclosure

**Section 1.11.** Institutional Mortgage shall mean a Mortgage held by a bank, trust company, insurance company or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market such as (but not limited to ) Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

**Section 1.12.** Lease shall mean and refer to any lease, sublease or rental contract, whether oral or written, and for a term of hours, days, months or years.

**Section 1.13.** Living Space shall mean and refer to enclosed and covered areas within a dwelling on a Lot which are heated, exclusive of garages, rooms over garages, unenclosed porches, porte-cocheres, carports, breezeways, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

**Section 1.14.** Lot shall mean and refer to: (i) any parcel of Property within the Subdivision intended for use as a single-family Lot; (ii) those portions of the Subdivision identified as "Lots" as shown on the final plat entitled "A New 15' Easement and a New 10' Easement on Land Owned by LOWCOUNTRY SIGNATURE HOMES on Lots 5 and 6 LOCATED IN THE TOWN OF SUMMERVILLE, DORCHESTER COUNTY, SOUTH CAROLINA" prepared by Ashley Surveying, Inc., as dated August 12, 2002, to be recorded in the RMC Office for Dorchester County, South Carolina.

**Section 1.15.** Mortgage shall mean and refer to a mortgage, security deed, deed of trust, installment land sales contract and security agreement or other similar security instrument granting, creating or conveying a lien upon, a security interest in, or a security encumbered title to a Lot or Common Area.

**Section 1.16.** Mortgagee shall mean and refer to the holder of a Mortgage.

**Section 1.17.** Occupant shall mean and refer to any person including, without limitation, any Owner or any guest, invitee, licensee, lessee, tenant, transient paying guest, or family member of an owner lawfully occupying or otherwise using a Lot within the Subdivision.

**Section 1.18.** Owner shall mean and refer to one or more persons or entities, including Developer, who or which own(s) fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot 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.

**Section 1.19.** Person shall mean and refer to a natural person, corporation, partnership, association, proprietorship, trust, or any other legal entity or any combination thereof.

**Section 1.20.** Property or Properties shall mean and refer to all property which is subject to this Declaration.

**Section 1.21.** Recreational Amenities shall include such recreational facilities and improvements owned by and so designated by Developer which are, from time to time, located within the subdivision or located within or dedicated to the Common Areas. DEVELOPER MAKES NO REPRESENTATION OR WARRANTY THAT ANY RECREATIONAL FACILITIES WILL BE BUILT.

**Section 1.22.** Subdivision shall mean and refer to those tracts or parcels of land described on Exhibit "A", together with all improvements presently thereon and

subsequently constructed thereon, shall mean and refer to the Property described in Exhibit "A".

**Section 1.23.** Subdivision Plat shall mean and refer to those certain plats described on Exhibit " A " attached hereto and as described on the final plat entitled "A New 15' Easement and a New 10' Easement on Land Owned by LOWCOUNTRY SIGNATURE HOMES on Lots 5 and 6 LOCATED IN THE TOWN OF SUMMERVILLE, DORCHESTER COUNTY, SOUTH CAROLINA prepared by Ashley Surveying, Inc. as dated August 12, 2002, to be recorded in the RMC Office for Dorchester County, South Carolina, together with any future revisions thereof.

**Section 1.24.** Builder shall mean and refer to any licensed contractor or residential homebuilder who purchases a Lot for purposes of building a single family dwelling for resale to a third party.

## ARTICLE II

PLAN OF DEVELOPMENT

**Section 2.1. Plan of Development of the Subdivision.**

The Subdivision shall consist of the Property described on Exhibit "A" attached hereto. The Developer covenants that the Subdivision consists of 7 lots. The Property shall also include certain improvements to the Common Areas, including utility systems; drainage systems and other improvements serving the Lots to the extent the same are, from time to time, existing and submitted to the provisions hereof. The dimensions of the property constituting the Subdivision are shown on the Subdivision Plat. The property within the Subdivision shall be subject to the covenants, easements and restrictions set forth in this Declaration. For so long as Developer owns any Lot primarily for the purpose of sale of the Lot, Developer shall have the right, but not the obligation, to make improvements and changes to all Common Areas and to any or all Lots or any other property owned by the Developer including but not necessarily limited to the following: (i) installation and maintenance of any improvements in and to the Common Areas, (ii) changes in the location of the boundaries of the Common Areas, and any Lots owned by Developer or of the dedicated or undedicated Common Areas, (iii) installation and maintenance of any water, sewer and other utility systems and facilities, to include, but not limited to, TV, cable and its various attendant services and telephone service to include teletype or computer, telex, news service, or computer or any such like instrument used in the transmittal, reception, or retrieval of messages, facts, or information, (iv) installation of security and/or refuse facilities.

**Section 2.2. Development.**

The Developer declares that as a part of the development of the subdivision, it will construct and convey to the Association, entrance walls and fencing along Central Avenue as well as a subdivision identification sign and mail receptacles. It will further construct and convey to the Association a private road through the Subdivision which is more specifically shown on a plat entitled "A New 15' Easement and a New 10' Easement on Land Owned by LOWCOUNTRY SIGNATURE HOMES on Lots 5 and 6 LOCATED IN THE TOWN OF SUMMERVILLE, DORCHESTER COUNTY, SOUTH CAROLINA " prepared by Ashley Surveying, Inc. as dated August 12, 2002, to be recorded in the RMC Office for Dorchester County, South Carolina. The Developer will have no obligation to maintain the entrance nor the private road. The owners of any land within the Subdivision do hereby acknowledge and agree that the Developer shall not have any liability for failure to properly construct or maintain the entrance and the private road, regardless of whether such design, construction or maintenance was done in a proper and reasonable manner. The Owners by the purchase of any Lot agree for himself and his immediate family and invitees that he and/or they will not bring any action or suit against the Developer, its officers, or employees to recover for any damages resulting from the construction or maintenance of the entrance or private road.

## ARTICLE III

THE ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

**Section 3.1 The Association**

The Developer has established (or will establish) the Association for the purpose of exercising powers of (i) owning, maintaining and administering the Common Areas, any recreational amenities and common facilities; (ii) providing common services; (iii) administering and enforcing covenants, conditions and restrictions contained herein; and (iv) levying, collecting and disbursing assessments and charges herein created. Further, the Developer reserves the right to convey to the Association and the Association agrees to accept any or all of its rights and obligations set forth herein. The Association shall be authorized (but not required) to provide the following services:

(a) Clean-up, maintenance, and landscaping of all common areas and open spaces owned by Association within the Subdivision or in a reasonable proximity to the Subdivision such that their deterioration would affect the appearance of the Subdivision as a whole;

(b) Construction, maintenance, landscaping and reconstruction of recreational amenities and other improvements within the Common Areas to set up and operate the Architectural Control Committee as provided herein;

(c) To construct improvements on open spaces and Common Areas and maintain the entrance, private road and entrance;

(d) To provide or obtain administrative services including, but not limited to, legal, accounting, financial and communication services informing members of activities, notice of meetings, referendums, etc. , incident to the above listed services;

(e) to provide liability and hazard insurance covering improvements and activities on the open spaces and the common properties, independently or in collaboration with the Developer;

(f) To provide directors and officers liability insurance for the Association and it's duly elected Directors and Officers:

(g) Landscaping of roads and entrance within the Subdivision and any common properties located therein;

(h) To take any and all actions necessary to enforce all covenants and restrictions affecting the Subdivision and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Subdivision and

(i) To provide any and all services necessary or desirable (in the judgment of the Board of Directors of the Association) to carry out the Association's obligation and business under the terms of this Declaration.

The Association may adopt from time to time additional reasonable rules and regulations governing the use of Common Areas, Recreational Amenities Open Spaces and Lots.

**Section 3.2. Membership**

Every person or entity who is an Owner of any Lot, which is subjected to this Declaration, 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 assessments.

**Section 3.3. Voting Rights.**

The Association shall have one class of voting membership, as follows:

Each Owner shall be entitled to one vote for each Lot in which they hold an interest required for membership by Section 3.2 above. When more than one person holds such 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 vote be cast with respect to any such Lot.

**Section 3.4. Initial Assessment.**

At the time of the closing on the first sale of each platted Lot from the Developer or a Sub-Developer or a Builder to an Owner (other than the Developer, a Sub-Developer or a Builder), there shall be assessed by the Association and collected from each Owner/purchaser an initial assessment equal to at least one-seventh of the cost identified by the Developer as those expenses associated with the construction of the improvements as declared in Section 2.2. This initial assessment shall not exceed three thousand and no/100 ($3,000.00) dollars. Such Initial Assessment shall not be considered as advance payment of the annual assessments and cost of living increases. Said Initial Assessment shall be a lien on the Property and collectable by the Association in the same manner as Annual Assessments.

**Section 3.5. Annual Assessment.**

The Board of Directors for the Association shall prepare a budget of estimated and expenses relating to the maintenance and repair of common areas owned by the Association. Said budget shall also include administrative costs and insurance required in the management of the Association. The total cost identified in the budget will be shared equally by the owners of the lots in the subdivision.

## ARTICLE IV

PROPERTY RIGHTS IN THE COMMON AREAS AND EASEMENTS

**Section 4.1. Owners' Easements of Enjoyment**

Subject to the provisions herein, including Section 3.1 and 4.3 below, every Owner shall have a non-exclusive right and easement of enjoyment in and to the dedicated Common Areas owned by the Association, and such easement shall be appurtenant to and shall pass with the title to every Lot.

**Section 4.2. Title to Common Areas.**

The Developer hereby covenants for itself and its successors and assigns that it will, on or before December 31, 2022, convey to the Association in accordance with the provisions hereof, by limited warranty deed or deeds, fee simple title to the Common Areas free and clear of all liens and encumbrances of record except, taxes not yet due and payable and standard utility and drainage easements serving the Common Areas and/or the subdivision, and also subject to the following covenant, which shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns:

In order to preserve and enhance the property values and amenities of the community, the Common Areas and all facilities now or hereafter built or installed thereon shall at all times be maintained in good repair and condition by the Association and shall be

operated in accordance with high standards. The maintenance and repair of the Common Areas shall include, but not be limited to, the repair of damage to walkways, buildings, recreational equipment, if any, fences, signs, and utility lines, connections and appurtenances.

This Section shall not be amended so as to eliminate or substantially impair the obligation for the maintenance and repair of the Common Areas.

**Section 4.3. Extent of Owners' Easements.**

The rights and easements created hereby shall be subject to the following:

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

(b) The right of the Developer and of the Association, to grant, reserve and accept 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, fuel oil and other utilities and services, including a cable (CATV) or community antenna television system and irrigation or lawn sprinkler systems, and the right of the Developer to grant and reserve easements and rights-of-way through, over, and upon and across the Common Areas for the completion of the Subdivision, and for the operation and maintenance of the Common Areas;

(c) The right of visitors, invitees, etc., to ingress and egress in and over those portions of the Common Areas that lie within the private roadways, parking lots and/or driveways (and over any other necessary portion of the Common Areas in the case of landlocked adjacent Owners) to the nearest public highway;

(d) The right of the Association, as provided in its By-Laws, to suspend the enjoyment rights of any owner for any period during which any assessment remains unpaid and for a period determined by the Board of Directors for any infraction of its published rules and regulations; and

(e) The right of the Association to establish rules and regulations for the Subdivision and to prescribe fees and charges from time to time for use of the Recreational Amenities.

**Section 4.4. Delegation of Owner's Rights.**

Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Areas and facilities to his tenants and guests.

**Section 4.5. Additional Structures.**

Neither the Association nor any owner or any group of Owners shall, without the prior written approval of Developer and the Architectural Control Committee, erect, construct or otherwise locate, or permit the existence of, any structure or other improvement in the Common Areas.

**Section 4.6. Easements for Developer.**

During the period that Developer owns any Common Area, or owns any Lot primarily for the purpose of sale, Developer shall have an inalienable and transferable right and easement on, over, through, under and across the Common Areas for the purpose of constructing or improving Lots; for any improvements to the Common Areas; and for installing, maintaining, repairing and replacing such other improvements to the Subdivision (including the Recreational Amenities and other portions of the Common Areas) as are contemplated by this Declaration or as Developer desires (in its sole discretion) including, without limitation, any improvements or changes permitted and described in this Declaration and for the purpose of doing all things reasonably necessary and proper in connection therewith; provided that, in no event, shall Developer have the obligation to do any of the foregoing.

**Section 4.7. Changes in Boundaries: Additions to Common Areas**

Developer expressly reserves for itself and its successors and assigns the right to change and realign the boundaries of any Lots or Recreational Areas owned by Developer, including the realignment of boundaries between adjacent Lots and/or other property, owned by Developer.

**Section 4.8. Easements for Utilities.**

There is hereby reserved for the benefit of Developer, the Association and their respective successors and assigns the inalienable, transferable and perpetual right and easement, as well as the power to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person upon, over, under and across: (i) all of the Common Areas; (ii) an area fifteen (15') feet in width along the front boundary line of each Lot; (iii) an area five (5') feet in width along the side boundary line of each Lot; and (iv) an area ten ( 10 ') feet in width along the rear boundary line of each Lot for the purpose of installing, replacing, repairing, maintaining and using master television antenna and/or cable systems, security and similar systems, and all utilities, including but not limited to storm sewers and drainage systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by the Developer, its successors or assigns, or by the Board of Directors of the Association; provided, however, that for so long as Developer owns any portion of the Common Areas or owns any Lot primarily for the purpose of sale, the Board of Directors must obtain the written consent of Developer prior to granting or accepting any such easements. To the extent possible, all utility lines and facilities serving the Subdivision and located therein shall be located underground. By virtue of any such easement and

facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Subdivision so encumbered: (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities; (ii) to cut and remove any trees, bushes or shrubbery; (iii) to grade, excavate or fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems. The Developer shall have the right to permit encroachments onto the reserved easements so long as the Developer owns any lots in the Subdivision.

**Section 4.9. Easements for Association.**

There is hereby reserved a general right and easement for the benefit of the Association, its Directors, officers, agents and employees including, but not limited to, any property manager employed by the Association and any employees of such manager, to enter upon any Lot in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner.

**Section 4.10. Maintenance Easement.**

Subject to the other terms of this Declaration, there is hereby reserved for the benefit of the Developer, the Association and their respective agents, employees, successors and assigns an inalienable, transferable and perpetual right and easement to enter upon any unimproved portion of any Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Subdivision; provided that such easements shall not impose any duty or obligation upon the Developer or the Association to perform any such actions.

**Section 4.11. Environmental Easement.**

There is hereby reserved for the benefit of the Developer, the Association and their respective agents, employees, successors and assigns an inalienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Common Areas and Lots for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

**Section 4.12. No Partition**

There shall be no judicial partition of the Subdivision or any part thereof, nor shall any person acquiring any interest in the Subdivision or any part thereof seek any such judicial partition unless the Subdivision has been removed from the provision of this Declaration.

Section 4.13. **DHEC/OCRM** (Department of Health and Environmental Control/ Office of Coastal Resource Management)

NOTICE IS HEREBY GIVEN OF THE RESTRICTION THAT AS TO ANY PORTION OF ANY LOT WITHIN THE SUBDIVISION WHICH MAY CONTAIN SUBMERGED LAND OR OTHER CRITICAL AREAS, ALL ACTIVITIES ON OR OVER AND ALL USES OF SUCH LAND OR OTHER CRITICAL AREAS ARE SUBJECT TO THE JURISDICTION OF DHEC/OCRM. ANY OWNER IS LIABLE TO THE EXTENT OF SUCH OWNER'S OWNERSHIP FOR ANY DAMAGES TO, ANY INAPPROPRIATE OR UNPERMITTED USES OF, AND ANY DUTIES OR RESPONSIBILITIES CONCERNING ANY FRESHWATER WETLANDS, BUFFER AREAS, SUBMERGED LAND, COASTAL WATERS OR OTHER CRITICAL AREAS AND JURISDICTIONAL AREAS

## ARTICLE V

RIGHT OF ASSOCIATION TO ALTER, IMPROVE, MAINTAIN AND REPAIR COMMON AREAS AND PORTIONS OF LOTS

**Section 5.1. Right of Association.**

The Association shall have the right to make, or cause to be made, such alterations, modifications, improvements, repairs, maintenances and replacements to the Common Areas and the portions of Lots set forth herein, and the cost thereof shall be assessed as Common Expenses and collected from the owners on an equal basis.

**Section 5.2. Responsibilities of Owners.**

Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of Lots, together with all other improvements thereon or therein and all lawns, landscaping and grounds on and within a Lot shall be the responsibility of the owner(s) of such Lot. Developer shall be responsible for Developer-owned properties. Each Owner shall be responsible for maintaining such Owner's Lot in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of an buildings and other structures. All attendant lawns, trees, shrubs, hedges, grass, natural areas, and other landscaping shall be maintained by the owner(s) thereof. As provided in Section 5.3 (c) hereof, each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any item which is the responsibility of such Owner but which responsibility such owner fails or refuses to discharge. No Owner shall: (i) decorate, change or otherwise alter the appearance of any portion of the exterior of a structure on any Lot unless such decoration, change or alteration is first approved, in writing, by the Architectural Control Committee, as otherwise provided herein; or (ii) do any work which, in the reasonable opinion of the Architectural Control Committee, would jeopardize the soundness and safety of the Subdivision, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case obtaining the

written approval of the Architectural Control Committee and the owners and Mortgagees of the Lots directly affected thereby or benefitting from such easement or hereditament

**Section 5.3. Association's Responsibility.**

(a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include the maintenance, repair and replacement of: (i) all Common Areas, walks, trails, lagoons, ponds, bike trails, jogging paths, landscaped areas/natural areas and other improvements situated within the Common Areas or within easements encumbering Lots, including the entrance and gateway and gate security system and the private road; and (ii) such security systems and utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the Common Areas and which are not maintained by the Developer or a public authority, public service district, public or private utility or other person; and (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within the Common Areas as they may be constituted from time to time.

(b) The Association shall not be liable for injury or damage to any person or property (i) caused by the elements or by any Owner or any other person; (ii) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas; or (iii) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system or utility line or facility (the responsibility for the maintenance of which is that of the Association) becoming out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such owner which may be stored or left in or upon any portion of the Common Areas or any other portion of the Subdivision. No diminution or abatement of assessments or any dues or charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each owner. The Developer intends that the ingress, egress and common areas providing access to Lots within the Subdivision shall be private and maintained by the Association. The Association shall be responsible for driveway easements as shown on plat ("Exhibit A").

(c) In the event that the Developer or the Board of Directors determines that: (i) any Owner has failed or refused to discharge properly his, her or its obligations with regard to the maintenance, cleaning, repair or replacement of property or items for which he or it is responsible hereunder; or (ii) that the need for maintenance; cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees, and is not

covered or paid for by insurance in whole or in part, then, in either event, the Developer or the Association, except in the event of an emergency situation, may give such owner written notice of the Developer's or the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, the Developer or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, and said cost shall be added to and become a part of the assessment to which such owner and his Lot are subject and shall become a lien against such Lot and shall become a lien against such Owner's Lot. In the event that the Developer undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse the Developer for the Developer's costs and expenses.

## ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 6.1. Creation of the Lien and Personal Obligation of Assessments**

Each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (i) annual assessments or charges for the maintenance of the Common Areas, including but not limited to the private road, entrance way, security system and such reasonable reserves as the Association may deem necessary, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs of collection, and reasonable attorneys' fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Property against which, each such assessment is made. Each such assessment, together with interest, costs of collection, and reasonable attorney's fees for the collection thereof, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them; provided, however, the unpaid assessment shall continue to be a lien upon the Lot being conveyed.

**Section 6.2. Purpose of Assessments**

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners in the Subdivision (and their

respective families, guest, tenants and invitees) and for the improvement, protection, replacement, operation, and maintenance of the Common Areas and for the provision of various forms of insurance for the Association, its property (including the dedicated Common Areas), members, directors, officers, employees and agents, and for the provision of necessary and reasonable services for and other expenses of the Association. The assessment shall be based on an annual budget presented by the Board of Directors of the Association.

Lots owned by the Developer or a Sub-Developer shall be exempt from the payment of annual assessment as long as they are owned by said Developer or Sub-Developer. At such time as a Lot is conveyed from the Developer or a Sub-Developer to an Owner other than the Developer or a Sub-Developer, said Lot will be subject to assessments under this Declaration just like any other Lot.

The foregoing notwithstanding, each Lot subjected to this Declaration which is owned by a Builder and upon which there is no occupied dwelling shall be assessed at 50% of the Annual Assessment provided for herein. At such time as a Lot owned by a Builder is sold or a dwelling is completed and occupied thereon, said Lot will be subject to assessments under this Declaration just like any other Lot.

The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty days in advance of each annual assessment. Written notice of the annual assessments shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors. The Association shall upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance. The Initial Annual Assessment shall be Seven Hundred Fifty and No/100 ($750.00) Dollars.

**Section 6.3. Effect of Nonpayment of Assessments: Remedies of the Association.**
Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate equal to the lesser of (i) eighteen (18%) percent per annum or (ii) the maximum rate provided by applicable law. The Board of Directors shall annually determine the amount of the penalty to be added and consistently applied to all delinquent assessments in addition to the interest charge. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the Lot (as in the foreclosure of a mortgage ), or both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.

**Section 6.4. Subordination of the Lien to Mortgages.**

The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage. The sale or transfer of any Lot shall not affect the assessment lien.

However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any deed or other proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE VII

USE RESTRICTIONS AND ARCHITECTURAL REVIEW BOARD

**Section 7.1. Conformity and Approval of Structures**

No structure, fence, sidewalk, wall, drive or other improvement shall be placed or altered on any Lot except in accordance with the provisions of this Declaration.

**Section 7.2. Prior Review of All Plans -Architectural Control Committee.**

There is hereby established an Architectural Control Committee which shall consist of three members. One of the members of the Architectural Control Committee shall be appointed by the Board of Directors of the Association. The other two members of the Architectural Control Committee will be appointed by the Developer, as long as the Developer owns a Lot in the Subdivision primarily for the purpose of resale and the construction of new homes in the Subdivision has not ceased for a period of over one year. In the event the number of members of the Architectural Control Committee is expanded, the Developer shall retain the right to appoint a majority of the members of said committee as long as the Developer owns a Lot in the in the Subdivision primarily for purposes of resale and the construction of new homes in the Subdivision has not ceased for a period of more than one year. At such time as the Developer no longer owns a Lot in the Subdivision primarily for resale or the construction of new homes in the Subdivision has ceased for a period of more than two year, the Developer will lose his right to appoint members of the Architectural Control Committee. Thereafter, the Board of Directors of the Association shall appoint all of the members of the Architectural Control Committee. The person or entity that appointed such member may remove any member of the Architectural Control Committee at any time with or without cause. The Developer shall have the right to transfer all or part of its rights of such appointments to the Association at any time prior to the sale of all of its lots.

No building, fence, wall, dock or other structure, and no change in topography, landscaping, grading, filling or any other item shall be commenced, erected or maintained upon any portion of the Subdivision, nor shall any exterior addition to or change be made until the plans and specifications including, but not necessarily limited to, all elevations showing the grading, filling, nature, kind, size, shape, height, materials, color and location 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 Control Committee. 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.

The Architectural Control Committee shall require an application fee in an amount to be determined by the Architectural Control Committee with each request or submission of plans or specifications. The Architectural Control Committee shall have the power and authority to adjust the application fee at any time.

In the event the Architectural Control Committee fails to approve or disapprove any request within thirty (30) days after complete written plans and specifications have been submitted to it, 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 provisions of this Declaration. Refusal or approval of plans, specifications and plot plans or any of them may be based on any grounds, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Architectural Control Committee may deem sufficient. Neither Developer nor any member of the Architectural Control Committee shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any structural defects in any work done according to such plans and specifications approved by the Architectural Control Committee. Further, neither Developer nor any member of the Architectural Control Committee shall be liable for damages to anyone submitting plans or specifications for approval under this Section, or to any owner of property affected by this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications to the Architectural Control Committee for approval agrees, by submission of such plans and specifications, and every Owner of any Lot agrees, that he will not bring any action or suit against Developer or any member of the Architectural Control Committee, to recover for any such damage. No approval of plans, location or specifications shall be construed as representing or implying that such plans, specifications or standard will, if followed, result in a properly designed residence. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence or improvement thereto will be built in a good workmanlike manner. Neither the Developer, the Association nor the Architectural Control Committee shall be responsible or liable for any defects in any plan or specification submitted, revised or approved under these covenants nor for any defects in construction pursuant to such plans and specifications. The property owner shall have sole responsibility for compliance with approved plans and does hereby hold the Architectural Control Committee harmless for any failure thereof caused by the property owner's architect or builder.

**Section 7.3. Objectives of the Architectural Control Committee.**

Architectural and design review shall be directed towards attaining the following objectives for the Subdivision:

(a) Review Board

Compliance with the Architectural Guidelines developed by the Architectural Review Board; and

The listing of specific requirements in no way limits the right and authority of the Architectural Review Board to require any other specific requirements to be included in the plans and specifications, including the landscaping plans;

(b) preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, removal of trees and vegetation which could cause disruption of natural water courses or scar natural land forms;

(c) ensuring that the location and configuration of structures are visually harmonious with the terrain, with the vegetation of the residential lot, and with surrounding residential lots and structures and does not unnecessarily block scenic views from existing structures or tend to dominate any general development or natural landscape;

(d) ensuring that the architectural design of structures and their materials and colors are visually harmonious with the Subdivision's overall appearance, history, and cultural heritage, with surrounding development, with natural land forms and native vegetation, and with development plans, officially approved by the Owner, or any governmental or public authority, if any, for the areas in which the structures are proposed to be located;

(e) ensuring the plans for landscaping provide visually pleasing settings for structures on the same lot and on adjoining or nearby lots and blend harmoniously with the natural landscape;

(f) ensuring that any development structure, building or landscaping complies with the provisions of these covenants; and

(g) promoting building design and construction techniques that respond to energy consumption and environmental quality considerations such as heat loss, air emissions and run-off water quality.

**Section 7.4. Fences.**

No fences whatsoever shall be erected or allowed to remain in the Subdivision except approved fences and set back from Lot lines at such distance as the Architectural Control Committee in its sole discretion may require, or except those erected by the Developer in Common Areas. Said fences and patio fences shall be allowed only after obtaining prior

written approval of the Architectural Control Committee. Said fences shall be constructed of treated wood (stained or painted to match the colors of the siding on the principal house structure), brick or wrought iron, or as approved by the Architectural Control Committee. No fences shall be permitted which obstruct the view of any common area, marsh, stream or other body of water when viewed from inside any adjacent Lot. All fencing shall be designed and submitted for review prior to the commencement of instillation.

**Section 7.5. Residential Use of Lots.**

All Lots shall be used for single-family 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; provided, however, that nothing contained herein shall be construed to prevent the Developer or any Sub-Developer from maintaining one or more model homes and/or sales offices in the Subdivision for the purpose of selling, leasing or managing Lots or other property in or near the Subdivision. No accessory structures or outbuildings, whether or not attached to the principal residence (including, but not necessarily limited to carports, storage sheds, dog houses, awnings, breezeways, covered swimming pools and the like) shall be constructed or allowed to remain on any Lot unless approved by the Architectural Control Committee. Provided, however, that the Developer may construct attached storage compartments, screened-in rear porches and rear sunrooms as an integral part of the principal residence. Provided, further however, that an owner, after application to and written approval by the Architectural Control Committee, may construct attached storage compartments, screened-in rear porches and rear sunrooms as an integral part of the principal residence if, and only if, such construction and improvement is consistent with the design of the principal residence and with the standards of construction prevailing in the Subdivision.

**Section 7.6. Prohibition Against Business Activity and "Time Sharing" Use**

No business activity including, but not limited to, a rooming house, boarding house, gift shop, antique shop, professional office or beauty/barber shop or the like or any trade of any kind whatsoever shall be carried on upon or in any Lot. Provided, however, that nothing contained herein shall be construed so as to prohibit home occupations (i.e., any occupation on a Lot and clearly incidental thereto, carried on by a member of the family resident of the premises is employed, so long as no stock in trade is kept or commodities sold, no mechanical equipment is used except such that is normally used for family, domestic, or household purposes, and there is nothing on the exterior of the dwelling indicating that the building is being used for any purpose other than a residence) , or the construction of houses to be sold on said Lots or the showing of said Lot for the purpose of selling or leasing a Lot in the Subdivision. Nothing herein shall be construed to prevent the Developer from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and sales or lease or management of Lots in the Subdivision. Provided, however, that nothing herein contained shall prevent the

Developer from erecting and maintaining sales and marketing signs in Common Areas or on other property owned by the Developer.

**Section 7.7. Association Office**

Nothing in this Declaration shall be construed to prohibit the Association from constructing, operating and maintaining a facility for use as its offices and headquarters, for the benefit of the Association and its members, provided that such facility shall first be approved in all respects in writing by the Developer.

**Section 7.8. 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 approved by the Architectural Control Committee and used by the contractor during construction of a house, it being clearly understood that the latter temporary shelters may not, at any time, be used for residence or permitted to remain on the Lot after completion of construction. No commercial vehicle, trailer, mobile home, doublewide, park model trailer, motor home, or other similar vehicle, out-building, tree house or structure, tent, barn, camper, bus, tree house shall be placed on any Lot or on any portion of the Common Areas at any time either temporarily or permanently.

**Section 7.9. Mining and Drilling Prohibition**

No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, and no derrick or other structure designed for use in boring for oil or natural gas shall be stored, erected, maintained or permitted in the Subdivision.

**Section 7.10. Use and Height Restrictions.**

No structure shall be erected, placed or permitted to remain on any single-family Lot other than one detached single-family residential dwelling, not to exceed two and one-half stories in height. For purposes of this Section, the first parking level or deck underneath a building built at or above grade shall not be considered a story.

**Section 7.11. Setbacks and Building Lines.**

Each dwelling which shall be erected on any Lot shall be situated on such Lot in accordance with the following building setbacks side 10 feet, Wetlands 20 feet, Rear 20 feet, and Front 40 feet. However, in each case individual setbacks and sidelines must be approved by the Architectural Control Committee for its aesthetic value and the Architectural Control Committee may require a more stringent setback so long as the required setback does not violate the setback requirements of the Town of Summerville, South Carolina. The Architectural Control Committee shall have the power and authority to promulgate and publish setback requirements for each Lot. In certain cases, the Architectural Control Committee may require an owner to seek a variance from the Town

of Summerville, South Carolina, if necessary to protect important trees, vistas or to preserve aesthetic value.

**Section 7.12. Timely Construction Progress.**

Once construction of improvements on a residence is started on any Lot, the improvements must be substantially completed within nine (9) months from commencement of construction, and all landscaping must be completed within ninety (90) days after completion of the improvements or residence. All construction sites must be maintained in an orderly fashion and all construction debris must be placed in a trash container or removed within forty-eight (48) hours of occurrence.

**Section 7.13. Material Restriction.**

All structures constructed or placed on any Lot shall be built of substantially new material, and no used structures shall be relocated or placed on any such Lot. No vinyl or Aluminum siding will be permitted on any structure. Vinyl and Aluminum may be used in the form of trim, fixed shutters, and louvers. The Architectural Control Board will approve color selection and material selection. A copy of construction documents along with samples of siding or brick, roof covering, and trim will be supplied to the Architectural Review Council.

**Section 7.14. Re-Building Requirement.**

Any dwelling or outbuilding on any Lot which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris removed and the Lot restored to a natural condition with reasonable promptness, Or provided, however, that in no event shall such debris remain longer than three (3) months.

**Section 7.15. Elevation and Drainage Changes**

No changes in the elevation, topography or drainage characteristics of the Subdivision shall be made on the premises without the prior written approval of the Architectural Control Committee nor shall any fill be used to extend any property beyond any boundary line of any waterfront property.

**Section 7.16. Tree Removal**

No trees or bushes of any kind having a diameter of six (6") inches or more [measured from a point two (2') feet above the ground level] shall be removed from any Lot without the express written authorization of the Architectural Control Committee. The Architectural Control Committee shall further have the authority to require any owner removing a tree in violation of this clause to replace same at such owner's cost. The Architectural Control Committee reserves the right to have specimen trees preserved and to have building footprint site planning provide for their preservation.

**Section 7.17. Prohibition of Accessory Structures.**

No clothesline or drying yards, doghouses, tree houses, detached garage, carport, swimming pools, sheds, swing set or other similar play structure, or any other accessory structure shall be constructed or located upon any Lot, unless such structure has been approved in writing by the Architectural Control Committee prior to installation or construction. A maximum of two cars shall be parked upon the driveway of a Lot overnight. No garage on any Lot shall be enclosed to make it a part of a residence or for any other purpose.

The Developer shall have the right to waive this requirement for builders using an enclosed garage as part of a temporary sales center. All garages shall remain operable as a storage area for vehicles. Garage doors are to remain closed at all times except during use and operation.

No individual water supply system shall be permitted upon any Lot with the exception of a shallow well to be used for irrigation purposes only, which shallow well shall be approved in writing all respects, including the pump and the covering or screen thereof and method of operation by the Architectural Control Committee, its successors or assigns, prior to installation. The Owner shall be responsible for connecting the Lot to the central water system, including payment of all tap-in and meter fees in connection therewith. Withdrawing water from the lakes, ponds, or lagoons for lot use is prohibited.

**Section 7.18. Sewer System**

No surface toilets or septic tanks are permitted in the Subdivision (other than those utilized during construction or for a designated model home complex as approved by the Developer. A purchaser of a dwelling assumes responsibility for attaching to public sewer system including all fees associated therewith. All plumbing fixtures, dishwashers, toilets or sewage disposal system shall be connected to the central sewer system of the Subdivision.

**Section 7.19. Garbage Disposal.**

Each Owner shall provide garbage receptacles or similar facilities in accordance with reasonable standards established by the Architectural Control Committee, 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 or trash on any Lot or within the Subdivision shall be permitted. Provided, however, that the Architectural Control Committee shall modify the requirements of this Section where necessary to comply with orders of governing bodies or their franchisees.

**Section 7.20. Sign Controls.**

No *for* sale signs nor signs of any character shall be erected on any Lot or displayed to the public on any Lot without the approval of the Architectural Control Committee.

The Owner's name, and Lot number shall not be placed on the front of a home or on signs placed on the Lot unless required by a governmental body or approved by the Architectural Control Committee. The size and lettering of the numbers shall be approved by the Developer and/or the Architectural Control Committee. The Owner's name and house Lot number may only be placed on the mailbox post as prescribed by the Homeowners Association and approved by the Architectural Control Committee.

**Section 7.21. Exclusion of Above Ground Utilities.**

All electrical service, wires, pipes, lines, telephone, cable television (CATV) lines and utility services of any type shall be placed in appropriate conduit 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 Subdivision except those approved by the Developer. Service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the Subdivision. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

**Section 7.22. Antenna**

No exterior radio or communication system antennas of any kind shall be placed, allowed or maintained upon any portion of the Subdivision, including any Lot, without the prior written consent of the Developer. No freestanding antennas or satellite dishes shall be placed on any Lot without expressed written consent from the Developer.

**Section 7.23. Certain Vehicles Prohibited From Lots.**

No travel trailers or mobile homes, campers or other habitable motor vehicles of any kind, whether self-propelled or not, school buses, motorcycles, commercial trucks, [pick-up trucks used for family transportation and family use are allowed] or commercial vehicles, or boat trailers or boats shall be kept, stored or parked overnight, either on any Common Area, specifically including streets and guest parking areas, or any Lot. The Association shall have the right to have unauthorized vehicles towed. Permitted vehicles shall not be parked on the street and must be parked in the garage or on the paved portion of the Owner's driveway.

**Section 7.24. Junk or Disabled Vehicles.**

No stripped, partially wrecked, unlicensed or invalidly licensed, disabled or junk motor vehicle, or part hereof, shall be permitted to be parked or kept in the Subdivision.

**Section 7.25. Motorcycles.**

The Association shall have the authority to prohibit the use, maintenance or storage of motorcycles in the Subdivision.

**Section 7.26. Pets**

No animals, livestock, birds, or fowl shall be kept or maintained on any part of the Subdivision except dogs, cats, pet fish and birds which may be kept thereon in reasonable numbers (not to exceed three) as pets for the pleasure and use of the property Owner but not for any commercial use or purpose. Non-owners (e.g. renters or lessees) may not keep any pets on any part of the Property without prior written approval of the owner, said approval to be filed with the Association.

**Section 7.27. Prohibition of Open Outdoor Storage.**

No junk, debris or materials of any kind shall be stored on a Lot other than in an approved enclosed structure, which shall be attached to the principal dwelling or in a manner that is visible from any other Lot, Common Area, street, easement or amenity area. Firewood and bicycles may be stored outside in side or rear yards only, provided they are not visible from any Lot, Common Area, easement, street or amenity area.

**Section 7.28. Nuisances**

No noxious or offensive activity shall be carried on upon or in any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood including Common Areas, other home sites, easement areas or residences. No trash, leaves or rubbish may be burned on any Lot or within the Subdivision nor shall there be maintained any plants, poultry, animals (other than household pets) or device or thing of any sort, the normal activities or existence of which is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owner thereof.

**Section 7.29. Landscaping.**

The Architectural Control Committee reserves the right to reasonably restrict the placement of landscaping, fences or other impediments to the enjoyment of views from and of adjoining Common Areas or Recreational Amenity areas.

**Section 7.30. Special Hazards.**

Each owner accepts and assumes all the risks and hazards of ownership or occupancy attendant to the ownership of such Lot, including but not limited to its proximity to any recreational facility or Common Area or the wetlands.

**Section 7.31. Traffic Regulations.**

Traffic regulations on all roads and streets with the Subdivision will be enforced under the provisions of the South Carolina Uniform Act for regulating traffic to private roads. A speed limit of 20 MPH is established on all roads and streets and all traffic control signs, including but not limited to speed limit, stop, directional and no parking signs will be enforced.

No Owner or individual shall alter in any way any Common Area except with the written permission of the Association provided that such activity is required for the benefit of the Association or the Subdivision as a whole.

**Section 7.32. Subdivision of Lot: Easements and Encroachments.**

No Lot shall be subdivided or its boundary lines changed by an Owner except as hereinafter provided, and no building or residence, including porches or projections of any kind, shall be erected so as to extend over or across any of the building lines as hereinafter established.

**Section 7.33. Increased Lot Size**

Lot(s) may be subdivided provided the effect is to increase the size of the adjoining Lot(s). The resulting Lot( s) shall have one vote and one annual assessment per Lot. In such cases, the Architectural Control Committee may alter the building or set-back lines to conform to the re- subdivided Lot(s) .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, that may be done only if the written consent of the Architectural Control Committee is first had and obtained. In such instances, the adjoining Lot owners, or other owners in the Subdivision shall not have the right to pass on or interfere with such Lot rearrangement. Such rights shall be exclusively that of the Architectural Control Committee, but the purchaser of any Lot in the Subdivision does not, by virtue of this status as a purchaser, become any such successor or assign.

**Section 7.34. Building Requirements**

The Living Space of the main structure on any Lot shall not be less than 2200 square feet of heated living area. Houses of less than the stated minimum Living Space may be approved by the Architectural Control Committee if, in the opinion of the Architectural Control Committee, the design and construction of such house would be in keeping with the adjoining properties and the lowering of the minimum Living Space requirement for such Lot would not diminish the value of adjoining properties subject to this Declaration.

**Section 7.35. Utility Company Requirements**

(a) Each Lot Owner, lessor, and/or such Owner's and lessor's heirs., successors and assigns, agree to pay the South Carolina Electric and Gas Company, or any successor or substitute electric utility company regulated by the South Carolina Public Service Commission, a monthly charge, plus applicable State of South Carolina sales tax, for operation and maintenance of street lighting systems.

(b) Each Lot Owner, lessor, and/or such Owner's and lessor's heirs, successors and assigns shall contact the South Carolina Electric and Gas Company three (3) business days prior to any digging or excavation work on said property including, but not necessarily limited to, swimming pool installations, trenching or any type or digging.

Upon notification by the Lot Owner, lessor, and/or such owner's and lessor's heirs, successors and assigns, a field survey will be conducted by the South Carolina Electric and Gas Company personnel to insure that there are not conflicts with such utility company's safety requirements. An excavation in violation of such utility company's safety requirements is expressly prohibited.

**Section 7.36. Gardens, Basketball Goals, Etc.**

Grass, ornamental plants and shrubbery (and only the foregoing) may be planted in the front or side yard of any Lot, except that all other planting in these yards may be done only with the prior written approval of the Developer or Architectural Control Committee or in accordance with guidelines previously established by the Committee. No vegetable garden, hammocks, statuary or recreational equipment may be placed, erected, allowed or maintained upon the front or side yard of any Lot without the prior written consent of the Committee or its designee. Basketball goals may be installed after the type and location have been previously approved in writing by the Architectural Control Committee.

**Section 7.37. Lighting.**

The following exterior lighting may be installed without the necessity of obtaining the prior approval of the Board or its designee: (i) seasonal decorative lights during the Christmas season to be installed no earlier than December 1 of each year and removed no later than January 31 each year; (ii) illumination of other than the front or side yards or a Lot; (iii) illumination of a model home and entrance features constructed by the Developer; and (iv) other lighting originally installed by the Developer. Plans for all other exterior lighting must be submitted and approved in accordance with Section 7.2. All exterior lighting shall be lot voltage and installed so as not to disturb neighbors or impair vision of traffic. Low wattage down lights, up lights, stair lights and low voltage lights used in landscaping for accent, safety and appearance are acceptable. The use of exposed spotlights is prohibited.

**Section 7.38. Sight Distance at Intersections.**

All Lots at street intersections shall be so landscaped as to permit safe sight across the street corners. No fence, wall, hedge or shrub planting shall be placed or permitted to remain at the corner of a Lot where this would create a traffic or sight problem.

**Section 7.39. Prohibition of Firearms**

The use of firearms in the Subdivision is prohibited guns, pellet guns and small firearms of all types. The term "firearms" includes "B-B guns."

**Section 7.40. Solar Devices.**

No artificial or manmade device which is designed or used for collection of or heating by solar energy or other similar purposes shall be placed, allowed or maintained upon any portion of the Subdivision, including any Lot, within site of any Common Area and without the prior written consent of the Board or its designee.

**Section 7.41. Mailboxes.**

Receptacles and posts for the receipt of mail shall be in conformity with the requirements of the United States Postal Service and approved by the Architectural Control Committee. Said receptacles shall be of uniform construction and appearance as prescribed by the Architectural Control Committee. Maintenance, repair and replacement of mailboxes is the responsibility of the lot Owner.

**Section 7.42. Lawn Care and Other Maintenance Required by Owner.**

Each Owner shall keep his Lot(s) and all improvements located thereon in good order and repair including, but not limited to, seeding, watering and mowing of all lawns and grounds, the pruning and cutting of all trees and shrubbery and the painting ( or other appropriate external care) of all such improvements in a manner consistent with proper maintenance and management. No lawns, grass, weeds or underbrush shall be allowed to grow to a height exceeding six (6") inches on any Lot. In the event an Owner violates this Section, the Developer and Association shall have all of the remedies set out in this Declaration including, but not limited to, those set out in Article V, Section 5.3(c) hereof. An entry onto a Lot by the Developer, the Association, or any of their agents, employees, servants, or persons acting on their behalf to remedy a violation of this Section shall not be considered a trespass.

**Section 7.43. Window Heating/Cooling Units**

No window heating and/or cooling units shall be allowed in the Subdivision.

## ARTICLE VIII

GENERAL PROVISIONS

**Section 8.1. Enforcement**

The Association or any owner shall have the right to enforce, by any proceedings at law or in equity, all of the restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Developer, the Association, or any owner to enforce any covenant or restriction herein contained shall in no event be deemed as a waiver of right to do so thereafter. The Developer and the Association shall have the right to establish, assess and collect reasonable fines and penalties for violations of this Declaration, which shall be liens against Dwellings as provided herein. Such fines shall not exceed One Hundred ($100.00) Dollars per violation per day.

**Section 8.2. Severability**

Invalidation of any covenants or restrictions or any regulation, phrase or clause of this Declaration by the adjudication of any court or tribunal shall in no way effect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

**Section 8.3. Duration.**

The Covenants and Restrictions of this Declaration shall run with and bind the property constituting the Subdivision, and shall inure to the benefit of and be enforceable by the Developer, the Association, or any owner for a period of twenty (20) years from the date hereof and thereafter shall continue automatically in effect for additional periods of twenty (20) years, unless otherwise agreed to in writing by the then Owners of at least seventy-five (75%) percent of the Lots.

The Developer shall have the right to assign to anyone or more persons, firms, corporations, partnerships or associations any and all rights, powers, titles, easements and estates reserved or given to the Developer in this Declaration.

**Section 8.4. Amendment.**

(a) Amendments by Developer. The Developer may amend this Declaration to add any portion of the Additional Property to the terms of this Declaration as set out in Section 2.2 and to amend Exhibit A entitled "A New 15' Easement and a New 10' Easement on Land Owned by LOWCOUNTRY SIGNATURE HOMES on Lots 5 and 6 LOCATED IN THE TOWN OF SUMMERVILLE, DORCHESTER COUNTY, SOUTH CAROLINA", prepared by Ashley Surveying, Inc., as dated August 12, 2002, to be recorded in the RMC Office for Dorchester County, South Carolina to include all said property. The Developer shall also have the right at the time any Additional Property is subjected to this Declaration to amend Section 7.32 hereof to show the property being subjected, the recording information of the plat of said property and setting out the minimum square feet of living space required for a main structure on said property being subjected. All without the approval of any Owner or mortgagee. In addition to the foregoing amendment rights, the Developer shall have the right at any time without a vote of the Owners to amend the Covenants and Restrictions of this Declaration to correct typographical or clerical errors, and as may be required by any governmental authority, institutional or governmental lender, insurer or purchaser of mortgage loans including, for example, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veterans Administration or the Federal Housing Administration.

(b) Other Amendments. Amendments to this Declaration other than those authorized by Section 8.5(a) above, shall be approved as follows:

(1) This Declaration may be amended during the first twenty year period by an instrument signed by not less than 75% of the Lot Owners and thereafter by an

instrument signed by not less than 75% of the Lot Owners. Any amendments must be recorded.

**Section 8.5. No Dedication of Common Areas. Etc.**

Every park, stream, body of water, Common Area, Recreational Amenity, and other amenity within the Subdivision is a private park, facility or amenity and neither the Developer's recording or any such plat nor any other act of the Developer with respect to the Property is, or is intended to be, or shall be construed, as a dedication to the public of any said parks, Common Areas, recreational facilities and amenities other than is reflected therein. An easement for the use and enjoyment of each of said areas designated as parks is reserved to the Developer, its successors and assigns; to the persons who are, from time to time, members of the Association; to the members and owners of any recreational facility; and all other kinds of residential structures that may be erected within the boundaries of the Property and to the invitees of all the aforementioned persons; the use of which shall be subject to such rules and regulations as may be prescribed by the Association, if the Association is the owner of the facility or Property involved.

**Section 8.6. Time is of the Essence.**

It is agreed that time is of the essence with regard to these restrictions, covenants, limitations and conditions.

**Section 8.7. Remedies for Violation of Restrictions**

In the event of a violation or breach of any of these restrictions by any owner, or agent of such owner, the Owners of Lots in the Subdivision, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Developer, its successors and assigns, shall have the right, 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. The Developer and Association are hereby granted a perpetual easement across each Lot for the purposes of carrying out its responsibilities under this Section, and 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 right 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 the Developer 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 the Developer's or Association's counsel, shall be paid by the Owner of such Lot(s) in breach thereof.

**Section 8.8. Rule Against Perpetuities. Etc.**

The Developer 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 the event that any of the provisions hereof 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

WITNESS the execution hereof this_____day of_____,2002.

John R. Payne

Scott S. Drummond

BY:
John R. Payne, Managing Member
Oak Village Development, LLC

BY:
President
LowCountry Signature Homes, Inc.

BY:
Managing Member
Payne Homes, LLC

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 26
day of May 20 02
at 12:25 P M and recorded
in book 3332 page 198
LINDA T MESSERVY
REGISTER OF MESNE CONVEYANCES



104.147
Client Docs0030

BK 3332PG228

BY: _____
The Village Development Co., LLC
By: The Village Construction Company
Managing Member
Through its Managing Member David Willis

William McFarland

Jennifer McFarland



104.147
Client Docs0081

STATE OF SOUTH CAROLINA )
)
COUNTY OF DORCHESTER )

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named John R. Payne, Scott S. Drummond, William McFarland, Jennifer McFarland, Oak Village Development, LLC by Its President John R. Payne, Payne Homes, LLC, by its Manager John R. Payne and The Village Development Co. LLC., BY The Village Construction, CO. LLC., ITS MANAGING MEMBER, by DAVID WILLIS, its MANAGING MEMBER, sign, seal as its act deliver the within instrument: and that (s)he, with the other witness, witnessed the proper execution thereof.

SWORN to before me this 19th
Day of November, 2002

_____(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 03.09.04

CERTIFIED COPY

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CLERK OF COURT
DORCHESTER COUNTY

Live Oak Village Homeowners Association
Annual Meeting Minutes

Meeting Date: Tuesday, July 27, 2010

Attendees: 100 Oak Village Lane – Mr. & Mrs. David Hannemann
REDACTED Oak Village Lane – Proxy Letter for Mr. Norbert Cummings
102 Oak Village Lane – Mrs. Thomas Morris
REDACTED Oak Village Lane – Absent
104 Oak Village Lane – Mr. Carlton Holcombe
105 Oak Village Lane – Mr. & Mrs. Bill McFarland
107 Oak Village Lane – Mr. Michael Mazell.

Calling of Roll:

The meeting was called to order by the President, Mr. Bill McFarland and roll was called. David Hannemann provided the President and other attending members a proxy notification from Norbert Cummings. This letter indicated David Hannemann was to vote for Norbert Cummings and was certified by the President during roll call.

Proof of Notice of Meeting:

The President presented a copy of the meeting notification and certification indicating all members of the Live Oak Village Homeowners Association had received a copy of the letter stating the date, time and place of the annual HOA meeting.

Reading of Minutes:

Carlton Holcombe read the minutes from the previous annual homeowners meeting. The minutes were then opened for discussion. Michael Mazell raised a question regarding replenishment of the rock in the driveway after the storm water drainage construction was completed. A motion was made to revise the previous annual minutes to reflect his understanding that the replenishment of the rocks for the driveway applied to all driveways including those on private property. There was no second for the motion so the President indicated the motion was rejected. There was no further discussion of the minutes. A motion was made and seconded that the minutes as read be accepted. A vote was taken with the following outcome: 100 abstained; REDACTED voted yea; 102 abstained; REDACTED was absent and according to the rules voted with the majority; 104 voted yea; 105 voted yea; 107 voted nay. The minutes were approved as read.

Officer's Reports:

Financials of the previous fiscal year, which runs June 1 to May 31, were presented and reviewed. The previous year's expenses were provided to the attendees and were discussed via a PowerPoint presentation and related paper copies.

104147
Hannemann/Morris0036

The projected budget for the current fiscal year of 2010 - 2011 was presented. A motion was made and seconded for approving the projected budget. This motion was carried unanimously.

Election of New Board Member

Mrs. Thomas Morris nominated David Hannemann for the new Board Member position. This nomination was seconded by Mrs. Bill MacFarland. Since there were no other nominations David Hannemann was elected unanimously by acclamation.

Unfinished Business:

None

New Business:

The President indicated in years past there had been discussion of paving both common and private driveways which are currently graveled. Since the Homeowners Association is prohibited from doing work on private property, paving of the gravel areas would be difficult to undertake under the current covenants. This issue was left open for future discussion and no motion was made.

Carlton Holcombe raised the issue of clarifying the easement for the drainage project which runs through 104 Oak Village Lane to the county drainage easement and the easement for the fence along Flid Street for REDACTED Lane. The President stated the covenants currently permit 5 foot easements on the indicated properties, therefore there is no need for the additional expense of a survey.

Adjournment:

A motion was made and seconded to adjourn the 2010 Live Oak Village Homeowners Association meeting. The motion was unanimously carried.

Respectfully Submitted

David Hannemann

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Hannemann/Morris0097

DRAFT Live Oak Village Homeowners Association DRAFT
Annual Meeting Minutes

Meeting Date: Tuesday, August 30, 2011, 4:30 -6:00 pm at the Dorchester County Public Library.

Attendees: 100 Oak Village Lane – Mr. & Mrs. David Hannemann
REDACTED Oak Village Lane – Proxy Letter for Mr. Norbert Cummings
102 Oak Village Lane – Proxy Letter for Mr. & Mrs. Thomas Morris, Jr.
REDACTED Oak Village Lane – Absent
104 Oak Village Lane – Proxy Letter for Mr. Carlton Holcombe.
105 Oak Village Lane – Mr. & Mrs. Bill McFarland
107 Oak Village Lane – Mr. & Mrs. Michael Mazell

Calling of Roll:

The meeting was called to order by the President, Mr. Bill McFarland and roll was called. The president identified Proxy Letters for: Norbert Cummings REDACTED Oak Village Lane, Mr. & Mrs. Thomas Morris, Jr. – 102 Live Oak Village Lane and Carlton Holcombe – 104 Live Oak Village Lane. These letters indicated David Hannemann was to vote for Mr. Cummings and Mr. & Mrs. Thomas Morris and Bill McFarland was to vote for Mr. Holcombe.

Proof of Notice of Meeting:

The President gave a copy of the meeting notification and certification to the Live Oak Village Homeowners Association (LOVHOA) Secretary indicating all members of the Homeowners Association had received a copy of the letter stating the date, time and place of the annual Homeowners Association meeting.

Reading of Minutes:

David Hannemann, Secretary, read the minutes dated July 27, 2010 for the annual LOVHOA meeting. The minutes were then opened for discussion. Mr. Michael Mazell again made a motion to revise the minutes regarding his 2010 discussion with Mr. Carlton Holcombe on replenishment of the rock in their driveway after the storm water drainage construction. Again, there was no second for the motion so the President indicated the motion was rejected. There was no further discussion of the minutes.

A motion was made and seconded that a member of the LOVHOA can contact any Board of Director member to identify issues relating to LOVHOA business. This motion was approved unanimously.

A motion was then made and seconded to approve the minutes as read. This motion was approved by a majority vote, 6 in favor and 1 opposed.

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Hannemann/Morris0088

Officer's Reports:

Financials of the previous fiscal year, which runs June 1 to May 31, were presented and reviewed. The previous year's expenses were provided to the attendees and were discussed via a PowerPoint presentation and related paper copies.

It was noted that one of the LOVHOA annual assessments was still outstanding and a lien had been placed on the property (104 Oak Village Lane). There was a slight estimated budget surplus which would be significantly increased when the outstanding assessment was paid. Questions were also raised regarding the cost of landscape maintenance, legal fees, etc. which were all addressed satisfactorily.

The projected budget for the current fiscal year of 2011 - 2012 was presented. A motion was made and seconded to approve the projected budget. This motion was approved unanimously.

Election of New Board Member

Mr. Bill McFarland, President nominated Mr. Thomas Morris, Jr. in absentia for the new Board of Director position. Mr. Morris indicated in his Proxy-Letter that he would agree to serve as member of the Board of Directors if elected. This nomination was seconded and unanimously approved.

Unfinished Business:

The meeting was then paused because several members of the LOVHOA were engaged in discussions not related to LOVHOA's business. The President offered to have an open discussion at the end of the annual meeting but this offer was declined. Shortly thereafter order was restored and the meeting resumed.

New Business:

The President showed slides on how any member of LOVHOA could manually open the gate in case of a power failure and indicated he would provide written instructions to all members.

Adjournment:

A motion was made and seconded to adjourn the 2011 Live Oak Village Homeowners Association meeting. The motion was unanimously approved by the remaining members present either physically or through their proxy.

Respectfully Submitted

David Hannemann, Secretary

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Hannemann/Morris0089

*Live Oak Village Homeowners Association Special Board of Directors Meeting Minutes*

Meeting Date:
Wednesday, May 2, 2012 at 102 Oak Village Lane, Summerville, SC 29483.

Attendees: 100 Live Oak Village Lane, David Hannemann, Board of Director
102 Live Oak Village Lane, Thomas Morris Jr., Board of Director

Calling of Roll and Certifying Proxies:
A quorum of Board of Directors of the Live Oak Village Homeowners Association (LOVHOA) being present, this Special Board of Directors meeting was called to order at 7:02 P.M. by Thomas Morris Jr. No proxy was submitted for Bill McFarland, Board of Director.

Proof of Notice of Meeting:

- A copy of the letter mailed to Bill McFarland, Board of Director, indicating the intent to hold a Special Board of Directors meeting in accordance with the covenants and by-laws on Wednesday, May 2, 2012 at 7:00 P.M. was presented. (See attached)
- A copy of the notarized statement certifying that a letter was mailed to Bill McFarland, 105 Oak Village Lane, Summerville, SC 29483, advising him of the Board of Directors Special meeting on April 27, 2012, was submitted. (See attached)

Reading of Minutes:
None available

Reports of Officers:
None available

Reports of Committees:
None Available

Unfinished Business:
The Board of Directors reviewed a request from Thomas Morris Jr. to remove and replace some existing landscape and add lighting sent to the President of the Live Oak Village Homeowners Association on April 1, 2012. Drawings for replacement of the landscaping and lighting additions were presented. The plans were presented and reviewed. There was no farther discussion. (See attached)

A motion was made and seconded to approve Mr. Morris's request. This motion was approved.

Mr. Morris stated to the Board of Directors that completion of the landscaping and lighting additions at 102 Oak Village Lane, Summerville will be finished by May 31, 2012 with work beginning on May 12, 2012. There was no additional discussion.

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Hannemann/Morris0059

A motion was made and seconded to approve Mr. Morris's schedule for replacement of landscaping and addition of lighting. This motion was approved.

New Business:
Thomas Morris Jr. presented a written request dated May 1, 2012 for approval of needed repair, replacement, and addition to the existing gutter system. There was no discussion.

A motion was made and seconded to approve Mr. Morris's request for needed repair, replacement, and addition to the existing gutter system. This motion was approved.

There was no other new business presented.

Adjournment:
A motion was made and seconded to adjourn the Special Board of Directors Meeting at 7:30 P.M., May 2, 2012.

Respectfully Submitted

David Hannemann, Board of Director

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Hannemann/Morris0060

DRAFT LOVHOA Special Homeowners Meeting

Date and Time and Place
May 31, 2012, 7:02 P.M. Fire Station No. 4, 164 Sheep Island Road, Summerville, SC

Meeting Chair
Since the president of the LOVHOA was not present the Secretary chaired this meeting.

Attendees
100 Oak Village Lane – Mr. & Mrs. David Hannemann
REDACTED Oak Village Lane – Proxy Letter for Mr. Norbert Cummings, Jr.
102 Oak Village Lane – Mr. & Mrs. Thomas Morris, Jr.
REDACTED Oak Village Lane – Mr. Michael P. Knight
104 Oak Village Lane – Mr. & Mrs. Carlton Holcombe
107 Oak Village Lane – Proxy Letter for Mr. Michael Mazell
Kathleen Greene, K.J. Property Management, LLC

Proof of notice of meeting or waiver of notice
As per the LOVHOA covenants and bylaws, a special homeowners meeting can be called by one fourth (¼) of all voting membership. The special meeting request was signed by 5 of the 7 LOV homeowners and the other 2 members, Bill McFarland and Carlton Holcombe, were notified by certified mail. The notifications for Mr. McFarland and Mr. Holcombe were mailed on May 21, 2012 for a special meeting date of May 31, 2012.

Object of Special Meeting
The object of this meeting was to discuss future goals of the LOVHOA and resolve and reestablish harmony of the community of LOV.

Reading of Minutes
David Hannemann read the draft LOVHOA meeting minutes taken on August 30, 2011 followed by an objection to the reading of these draft minutes. A motion was made and seconded to approve the minutes as read. There were 5 votes to approve and one abstention. However, the voting is considered invalid because it was not mentioned in the object of the special meeting. Therefore, the draft LOVHOA annual meeting minutes for August 30, 2011 will need to be read and approved at the next HOA meeting.

Return to Object of Special Meeting
Returning to the special meeting object, a motion was made and seconded to improve the communication among all 7 LOV homes by sharing homeowner's requests with all members of the HOA. Discussion followed the motion relating to providing information to all homeowners concerning issues to any and all properties. There was an objection to the motion; however, since this motion was within the object of the meeting, a vote was taken – 5 votes to approve and one abstention.

There were other discussions not relating to the object of this meeting and are therefore not included in these meeting minutes.

Adjournment
A motion was made and seconded to adjourn the meeting.

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Client Docs0126

Respectfully Submitted,
David Hannemann, Secretary

# LOVHOA Special BOD Meeting Minutes

Announcements

1. Is there any authorized representative for the President at this meeting?
   a. No response

2. Since it is fifteen (15) minutes past the appointed hour and the President is not here, I as Secretary and only other Executive Officer am calling the meeting to order.

3. This meeting is being recorded; please state your name prior to any comments.

Date and Time and Place
Thursday, October 4, 2012 at 8:45 P.M. at the Fire Station No. 4, 164 Sheep Island Road, Summerville, SC

Attendees
100 Oak Village Lane – present
REDACTED Oak Village Lane – absent
102 Oak Village Lane – present
REDACTED Oak Village Lane – absent
104 Oak Village Lane – present
105 Oak Village Lane – absent
107 Oak Village Lane – present

Calling of Role Certifying Proxies – BOD Members Only
Bill McFarland – President - absent
David Hannemann – Secretary - present
Thomas Morris, Jr. – BOD - present

Having 2 of the 3 BOD members present creates a quorum for this special BOD meeting of the LOVHOA.

Proof of notice of meeting or waiver of notice
Letters with dated postage, October 1, 2012, were sent to all HOA members. By-laws require a 3 day notice for any special BOD meeting and this requirement was met.

Reading of Minutes (BOD Draft minutes for May 31, 2012)
David Hannemann read the LOVHOA BOD Draft meeting minutes taken on May 31, 2012. A BOD member moved that the draft meeting minutes be amended to remove two items under New Business that related to an annual meeting that has not taken place.
A motion was made and approved to accept the minutes as amended.

Reports of Officers
None


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Client Doc00055

LOVHOA Special BOD Meeting Minutes

Reports of Committees
None

Unfinished Business
None

New Business

- The Secretary indicated there appeared to be a problem with the dues payment for 107 Oak Village Lane. The circumstances surrounding this issue were not a topic for discussion at this meeting. However, the Secretary stated he had a certified check in hand for payment of the dues that would be exchanged for the original check if needed.
- A motion was made and seconded to nominate David Hannemann for President. There were no additional nominations from the floor. As indicated in the by-laws the BOD voted and the majority elected David Hannemann as President.
- A motion was made and seconded to nominate Thomas Morris, Jr. as Secretary. There were no additional nominations from the floor. The BOD voted and the majority elected Thomas Morris, Jr. as Secretary.
- A motion was made and seconded to nominate David Hannemann as Treasurer. There were no additional nominations from the floor. The BOD voted and the majority elected David Hannemann as Treasurer.
- Since there are new officers for President/Treasurer and Secretary, we are requesting the previous office holders to relinquish all HOA files to the new Secretary and the checkbook and physical accounting files to the new Treasurer.

Adjournment

A motion was made and seconded to adjourn. The motion was approved and the Special BOD Meeting for the LOVHOA was adjourned at 7:00 P.M.

Thomas Morris, Jr. - Secretary

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Client Docs0086

# LOVHOA Special Board of Directors Meeting

Date and Time and Place
May 31, 2012 – 6:05 P.M. – Fire Station No. 4, 164 Sheep Island Road, Summerville, SC

Calling of Role and Certifying Proxies
Bill McFarland – BOD / President – Not in Attendance
David Hannemann – BOD / Secretary
Thomas Morris, Jr. - BOD

Proof of notice of meeting or waiver of notice
- Certified Mail Receipt for Bill McFarland.
  - USPS Tracking indicated the Certified Letter was sent on May 24, 2012. The notice was therefore mailed in accordance with the By-laws.

Reading of Minutes
David Hannemann, BOD / Secretary read the Draft LOVHOA Special Board of Directors meeting minutes taken on May 2, 2012. A motion was made and seconded for approval of the minutes as read. Since a quorum, or majority, of Directors was present the minutes stand approved as read.

Reports of Officers
There were none.

Reports of Committees
There were none.

Unfinished Business
- Rational for imposition and duration of fines on a homeowner for any covenant and by-law violations.
  - Currently the president and property manager are levying fines and penalties for covenant and by-law violations. All other BOD members need to be aware of the criteria being used for levying fines and penalties. However, since neither the president nor property manager was in attendance this could not be discussed.

LOVHOA Special Board of Directors Meeting

New Business

- Discussion of the LOVHOA annual meeting date.
  - This item was tabled due to the lack of information.
- Establish schedule for monthly BOD meetings.
  - A motion was made and seconded that the BOD shall meet the first week of each month. This motion was passed unanimously.
- 100 Oak Village Lane request.
  - A motion was made and seconded to approve a request from 100 Oak Village Lane, dated May 24, 2012 to remove and replace diseased shrubbery from the front of the home as well as to plant additional shrubbery on the back side of the property. This motion was passed unanimously.
- Discussion regarding activities of K.I. Property Management LLC.
  - This discussion was tabled due to a lack of information.

Adjournment

A motion was made and seconded to adjourn. The motion was approved and the Special Meeting of the Board of Directors for Live Oak Village Homeowners Association was adjourned at 6:30 P.M.

David Hammemann, Secretary / BOD

## Certificate of Counsel

The undersigned counsel for Appellants certifies that, in accordance with Rule 210(c), SCACR, this **Record on Appeal** contains all material proposed to be included by any party that was presented to the lower court and not any other material. The undersigned also certifies that this **Record on Appeal** complies with the Supreme Court of South Carolina's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: _____

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Dated: 12/18/15