THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Court of Common Pleas

Maite Murphy, Circuit Court Judge

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SC Court of Appeals

Case No. 2012-CP-18-02583
Appellate Case No. 2019-000644

Jennifer McFarland and Carlton Holcombe,

Appellants,

v.

Thomas Morris and David Hannemann,

Respondents.

RECORD ON APPEAL
(VOLUME 2 OF 2)

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MESSERVY

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

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 Claypoole, PA

EXHIBIT

1

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Client Docs0226

(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 SUMMERVILE, 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 SUMMERVILE, 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 SUMMERVILE, 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 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 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: (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 Five Hundred and No/lOO ($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

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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 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

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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

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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 SUMMERVILE, 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

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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

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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 10:30 A M and recorded
in book 3268 page 227
LINDA T MESSERVY
REGISTER OF MESNE CONVEYANCES

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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

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2002 NOV 26 PM 12:25
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;

EXHIBIT

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(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.

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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

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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.

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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

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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.

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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

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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

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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

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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

EXHIBIT

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titions of the Declaration and the By-laws of the Association, and the voting rights of the Owners shall be as set forth ..ie 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 duty 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.

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

ɔonsibility shall include the maintenance, repair and/or replacement of: *(i)* all buildings and improvements located ...nin 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 ɔense of such Owner, and cleaning, repairs or replacement deemed necessary. Except in the event of emergency .uations, 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

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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.

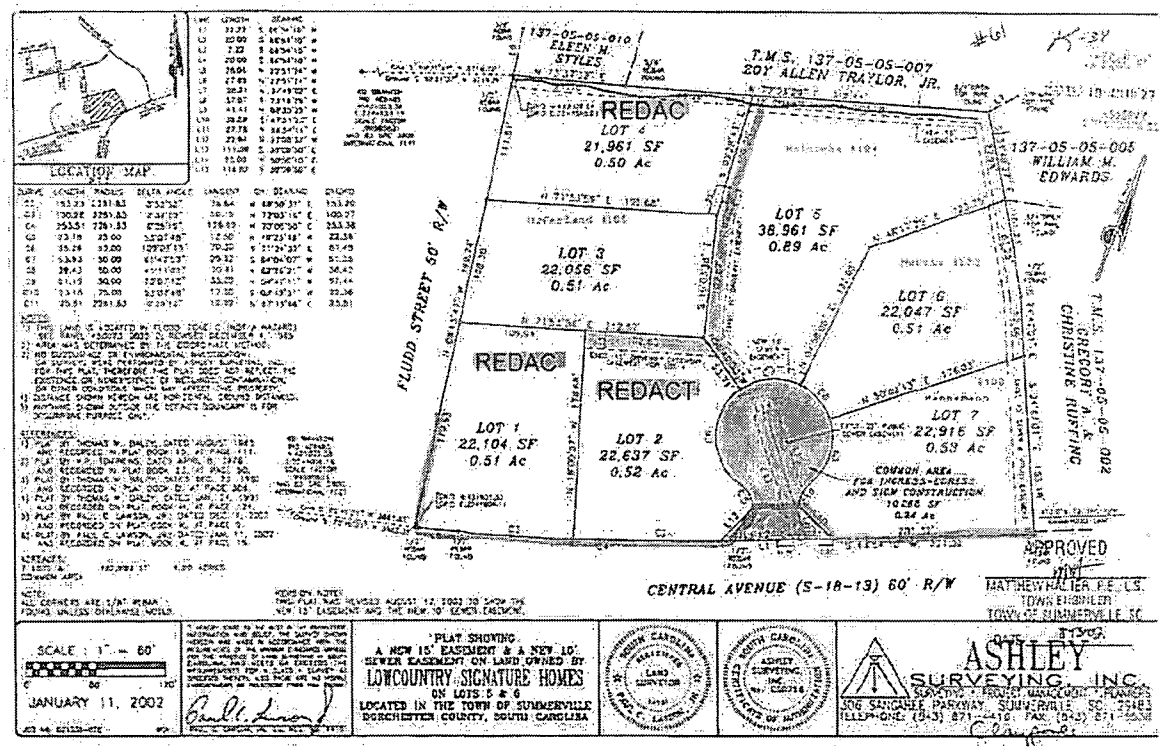
17. CONFLICTS.

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"

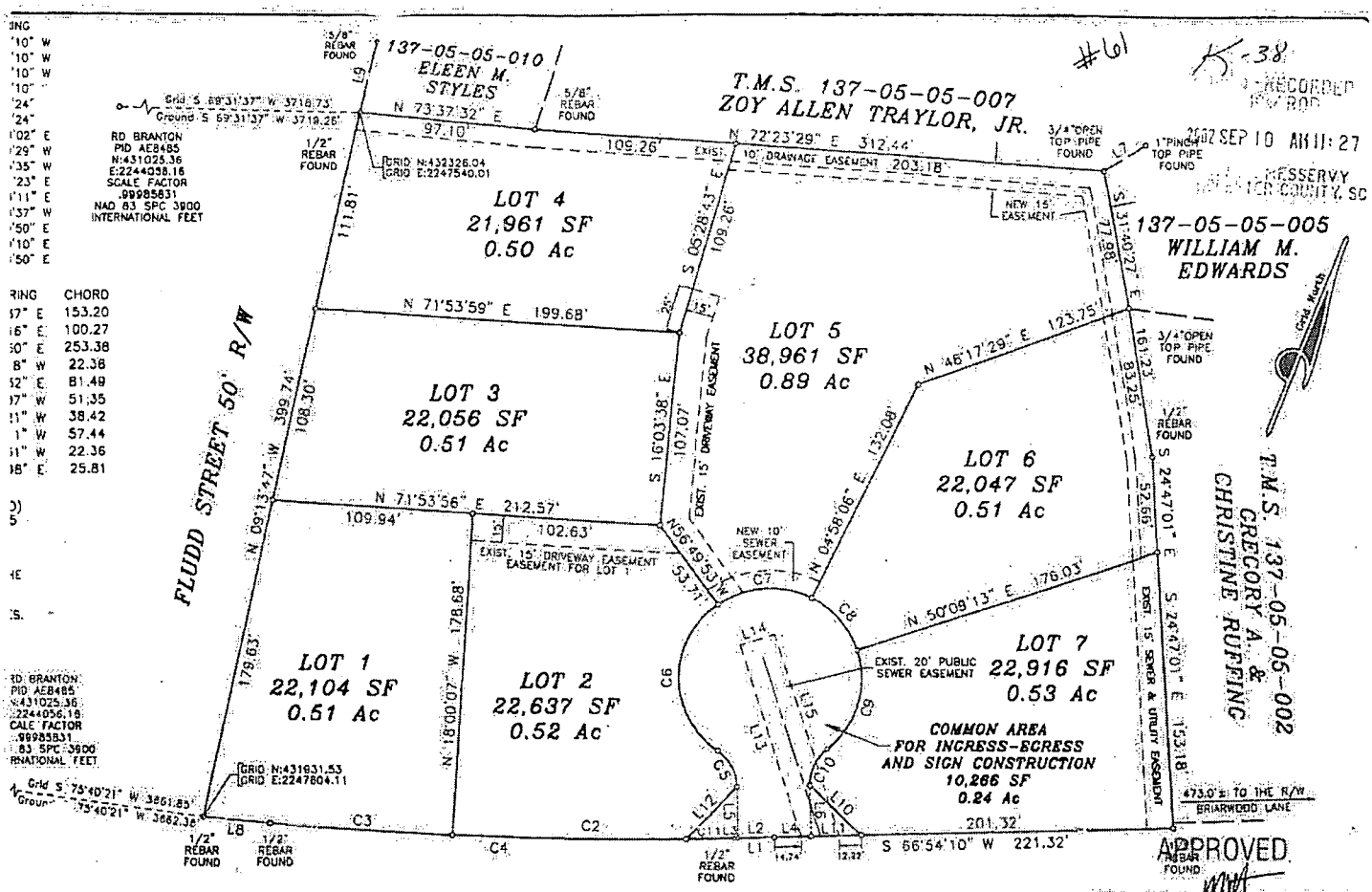
All those certain pieces, parcels or lots of land, situate, lying and being in the Town of Summerville, County of Dorchester, known as Lots 1, 2, 3, 4, 5, 6, and 7 Live Oak Village, as shown on a plat dated January 11, 2002 and revised August 12, 2002 entitled PLAT SHOWING A NEW 15' EASEMENT AND A NEW 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.

104.147
Client Docs0275


LOCATION MAP
137-05-05-010
ELEEN M. STYLES
T.M.S. 137-05-05-007
201 ALLEN TRAYLOR, JR.
137-05-05-005
WILLIAM M. EDWARDS
T.M.S. 137-05-05-002
GREGORY A. & CHRISTINE RUFFIN
REDAC
LOT 4
21,961 SF
0.50 Ac
LOT 5
38,961 SF
0.89 Ac
LOT 3
22,056 SF
0.51 Ac
LOT 6
22,047 SF
0.51 Ac
FLUDD STREET 50' R/W
REDAC
REDACT
LOT 1
22,104 SF
0.51 Ac
LOT 2
22,637 SF
0.52 Ac
LOT 7
22,916 SF
0.53 Ac
COMMON AREA FOR INGRESS-EGRESS AND SIGN CONSTRUCTION
10,285 SF
0.24 Ac
CENTRAL AVENUE (S-18-13) 60' R/W
APPROVED
MATTHEW HALLER, P.E., L.S.
TOWN ENGINEER
TOWN OF SUMMERVILLE, SC
SCALE : 1" = 60'
JANUARY 11, 2002
PLAT SHOWING
A NEW 15' EASEMENT & 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
ASHLEY SURVEYING, INC.

EXHIBIT

4


137-05-05-010
ELEEN M. STYLES
T.M.S. 137-05-05-007
ZOY ALLEN TRAYLOR, JR.
137-05-05-005
WILLIAM M. EDWARDS
T.M.S. 137-05-05-002
GREGORY A. & CHRISTINE RUFFING
FLUDD STREET 50' R/W
CENTRAL AVENUE (S-18-13) 60' R/W
LOT 1
22,104 SF
0.51 Ac
LOT 2
22,637 SF
0.52 Ac
LOT 3
22,056 SF
0.51 Ac
LOT 4
21,961 SF
0.50 Ac
LOT 5
38,961 SF
0.89 Ac
LOT 6
22,047 SF
0.51 Ac
LOT 7
22,916 SF
0.53 Ac
COMMON AREA
FOR INGRESS-EGRESS
AND SIGN CONSTRUCTION
10,266 SF
0.24 Ac
EXIST. 20' PUBLIC SEWER EASEMENT
EXIST. 15' DRIVEWAY EASEMENT FOR LOT 1
EXIST. 15' DRIVEWAY EASEMENT
NEW 10' SEWER EASEMENT
NEW 15' EASEMENT
EXIST. 10' DRAINAGE EASEMENT
EXIST. 15' SEWER & UTILITY EASEMENT
473.0'± TO THE R/W BRIARWOOD LANE
S 66°54'10" W 221.32'
N 72°23'29" E 312.44'
N 71°53'59" E 199.68'
N 71°53'56" E 212.57'
N 50°09'13" E 176.03'
N 46°17'29" E 123.75'
APPROVED
MATTHEW HALTER, P.E., L.S.
TOWN ENGINEER
TOWN OF SUMMERVILLE, SC
DATE 8/30/02
PLAT SHOWING
A NEW 15' EASEMENT & 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
SOUTH CAROLINA REGISTERED LAND SURVEYOR 14191 PAUL C. LAWSON, JR.
SOUTH CAROLINA ASHLEY SURVEYING, INC. No. C00758 CERTIFICATE OF AUTHORIZATION
ASHLEY SURVEYING, INC.
SURVEYING • PROJECT MANAGEMENT • PLANNERS
306 SANGAREE PARKWAY SUMMERVILLE SC 29483
TELEPHONE: (843) 871-4416 FAX: (843) 871-9538
EXHIBIT
5

April 10, 2010

Live Oak Village Homeowners Association
106 Oak Village Lane
Summerville, SC 29483

President, HOA

I have recently purchased the home at 102 Oak Village Lane. We have extensive improvements going on inside and out. Unfortunately, demolition of our front steps is required to replace them with brick veneer and change out all wooden hand rails with wrought iron. To keep with the décor we are going to replace all wooden rails with iron. The wooden louvered shutters are being replaced with louvered PVC with a life time warranty on paint and materials. All of the construction will only be an upgrade to the existing structure.

Sincerely,

Tom Morris

EXHIBIT

6

104.147
Hannemann/Morris0018

102 Oak Village Lane
Summerville, SC 29483
24 June 2010

Live Oak Homeowners Association
106 Oak Village Lane
Summerville, SC 29483

On 24 June 2010 I received approval from the Summerville Code Enforcement to remove a tree from our property. The tree to be removed is a Magnolia in the front yard that is diseased.

The removal will be conducted either by Lance Johnson of Strictly Business our associations lawn maintenance contractor or with C. Dana Moberg, of Carolina Tree Care, 3259 Rowe Drive, Summerton, SC 29148. Mr. Moberg (ISA Certified Arborist #WE-6876A) can be reached at 803-928-6326.

Sincerely,

Thomas O. Morris, Jr.

104.147
Hannemann/Morris0023

EXHIBIT

7

Jennifer McFarland
105 Oak Village Lane
Summerville, SC 29483
Home Phone (843) 851-3076

September 7, 2011

Live Oak Village HOA
Board of Directors
Via Hand Delivery

Dear LOVHOA Board of Directors;

In a perfect world, everyone would abide by the agreed upon rules of conduct and courtesy toward one another. Unfortunately, there are always going to be individuals in a community who are ignorant of those rules or who simply believe that they're personally exempt from having to follow them. This is especially damaging to the overall morale in a gated enclave where homeowners have paid a premium with the expectation that everyone will follow certain protocols. As was evidenced at the last homeowners meeting it will be impractical – or potentially dangerous – to attempt to resolve this issue through conversation, therefore I now find it necessary to seek resolution through the homeowners' association Board of Directors.

For well over a year, homeowners at REDACTED Mike and Sophia Mazell have had a non family member Mr. Delburt "Butch" Fritz, living in the downstairs portion of their home. This violates the LOVHOA by-laws section 7.5 which states that "All lots shall be used for single-family residential purposes exclusively" and section 7.6 which states that "No business activity including but not limited to, a rooming house, boarding house ...or any trade of any kind whatsoever shall be carried on upon or in any lot" Single-family is defined as "one or more persons occupying a single dwelling unit, provided that all members are related by blood or marriage."

Secondly, there is an unlicensed vehicle parked on the Mazell's lot that is in violation of the LOVHOA by-laws section 7.24 which states "No stripped, partially wrecked, unlicensed or invalidly licensed, disabled or junk vehicle, or part of, shall be permitted to be parked or kept in the Subdivision."

Mr. Delburt "Butch" Fritz is an employee of Stokes-Craven Automotive in Manning, SC and a co-worker of Mike Mazell as is evidenced on the Stokes Craven website. For over a year and a half I have personally observed, almost daily, Mr. Fritz and Mr. Mazell depart together in the morning and return together in the evening from work. In the past I have observed Mr. Fritz operate this now unlicensed vehicle that is on the Mazell's lot. I have supporting documentation regarding these infractions.

It is the duty of the LOVHOA Board of Directors to remedy these infractions in compliance with the Declaration of Covenants and Restrictions for Live Oak Village. The objectives of the Covenants are to, but not limited to, "minimize or eliminate the possibility of any disruptions of the peace and tranquility of the residential environment of the Subdivision" and "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." I respectfully request that homeowners Mike and Sophia Mazell be formally notified of these infractions and to cease and desist. I have consulted with my personal Attorney regarding this issue with an understanding that I am well within my rights to demand these infractions be remedied. Referencing Section 8.6 "It is agreed that time is of the essence with regard to the restrictions, covenants, limitations and conditions". I look forward to hearing from you soon with the resolution.

Respectfully;

Jennifer McFarland
105 Oak Village Lane

EXHIBIT
8

104.147
Hannemann/Morris0040

September 21, 2011

VIA CERTIFIED MAIL

Michael K. and Sophia Mazell
REDACTED

Dear Mr. and Mrs. Mazell:

The Live Oak Village HOA Board of Directors has been made aware that there is presently a non family member, Mr. Delburt "Butch" Fritz, whom has been living in the downstairs portion of your home at REDACTED for an extended period. This violates the LOVHOA Covenants section 7.5 which states that "All lots shall be used for single-family residential purposes exclusively" and section 7.6 which states that "No business activity including but not limited to, a rooming house, boarding house ... or any trade of any kind whatsoever shall be carried on upon or in any lot" Single-family is defined as "one or more persons occupying a single dwelling unit, provided that all members are related by blood or marriage."

Secondly, there is an unlicensed white Ford SUV parked on your lot at REDACTE REDACTED that is in violation of the LOVHOA Covenants section 7.24 which states "No stripped, partially wrecked, unlicensed or invalidly licensed, disabled or junk vehicle, or part of, shall be permitted to be parked or kept in the Subdivision."

The two infractions stated above are in violation of the Covenants and Restrictions governing this subdivision. Accordingly, the Association hereby demands that you cease and desist from having Mr. Delburt "Butch" Fritz (or any other non family member) living within your property and to properly license or remove the unlicensed motor vehicle parked on your lot at REDACTED

If after ten days of the date of this letter, these infractions are not remedied in accordance with the LOVHOA Covenants, the Association shall impose fees, fines, penalties and sanctions, after notice and hearing, including but not limited to, the imposition of fines and or the suspension of your voting rights, or the suspension or infringement upon other rights you may have as an owner of real property within this subdivision. Such fines may be $100.00 per day until the infractions are remedied pursuant to LOVHOA Covenants and shall become a continuing lien on your property.

EXHIBIT

9

KJ PROPERTY MANAGEMENT DOCS PER SUBPOENA #026

In addition, all costs incurred in the enforcement of the LOVHOA Covenants and Restrictions, including but not limited to, reasonable attorneys' fees for the Association, shall be assessed to you.

The Association does not desire to take these steps but the infractions adversely affect all properties in the subdivision and are in violation of the LOVHOA Covenants and Restrictions.

Respectfully;

Live Oak Village HOA Board of Directors
Mr. William McFarland, President and BOD
Mr. David Hannemann, Secretary and BOD
Mr. Thomas Morris, BOD

KJ PROPERTY MANAGEMENT DOCS PER SUBPOENA #027

K. J. Property Management, LLC Agreement with Live Oak Village HOA

This agreement between K.J. Property Management, L.L.C. and Live Oak Village HOA for the purpose of defining contractual performance. Any job tasks voted on by the Board of Directors that need to be carried out by KJPM will come to KJPM from the direction of the President or at Board of Directors meetings with majority vote. KJPM shall be available to any owner during general business days and hours. In the event of an emergency KJPM may be contacted by any Board Member of the Association.

1. Master Deed, Bylaws and Covenants and Restrictions

Serve as liaison between homeowners and Board of Directors.
Write letters to owners who violate the governing documents and take action according to the governing documents.
Attend Board of Directors meetings and the annual meeting if placed on the agenda.
KJPM will agree to place Live Oak Village HOA governing documents on the KJPM website.
All correspondence/letters are previewed and approved by the President and final copies provided to the President at the time they are executed.

2. KJPM Performance

KJPM owner will at all times act in the best interests of the Live Oak Village HOA. The Live Oak Village HOA members will, and do hereby agree to, indemnify and hold harmless the Manager for any liability for damages, legal actions, costs and expenses (including attorney's fees and court costs). Live Oak Village HOA agrees to place the owner of KJPM on the Association insurance policy along with the Board of Directors.

3. Term of Agreement

KJPM is to provide the services as outlined commencing on the 23th day of September, 2011 and continue through the 31st day of March 2012. Agreement shall be automatically renewed on each anniversary date with the same conditions unless notified by the Board of Directors. At such time KJPM may ask for an increase in compensation and/or the Board may increase the fee upon renewal. KJPM will be notified one month in advance if the Board determines that it can not sustain fees for a management company and need to terminate this agreement.

4. Compensation

A total of $300.00 divided into 6 months payments of $50.00 per month. In the event the Association requires KJPM to perform obligations greater than those set out in this agreement KJPM will require additional compensation of $10.00 per hour to include owner notice mailings plus copy and stamp reimbursement. Any work over the $50.00 per month will require prior approval from the President prior to any work being performed and billed.

EXHIBIT
10

DEFENDANT'S EXHIBIT
1A
Greene

- Delinquent collections and violation fines - In addition to the monthly compensation the Board of Directors agrees to KJPM collection fee of $25.00 per occurrence paid by Live Oak Village HOA, the owner will reimburse the fee to the Association upon payment. The fee includes KJPM invoicing owners, filing small claims court appearances, filing liens and lien satisfactions.

5. Termination of Agreement

Any duties and obligations from of this contract have not been satisfactory to Live Oak Community, the Board of Directors will have an executive meeting with KJPM. KJPM is then given a thirty (30) day right to cure. If the specific act(s) have not been corrected after thirty (30) days Live Oak Community or KJPM shall have the right to terminate the agreement after such time. All Checks, electronic or paper will be returned to Live Oaks Village HOA at such time.

By: Bill McFarlan President Date: 9/23/11
Live Oak Village HOA President
LOVHOA

By: K Greene Date: 9/23/11
Kathleen J. Greene, Owner K.J. Property Management, LLC

Mailing Address:
PO Box 80806
Charleston, SC 29416
Office 843-654-0920
Cell 843-576-0920
kjpm@kjpm.net
www.kjpm.net

K.J. Property Management, LLC
PO Box 80806
Charleston, SC 29416

Mr. David and Patricia Hannemann
100 Oak Village Lane
Summerville, SC 29483

September 23, 2011

The Board of Directors is pleased to announce that an agreement has been entered with K.J. Property Management, LLC. One of the job duties will be enforcing our covenants and restrictions. This is a proactive property management company whose mission is to improve the quality of life and preserve the value of investment for each owner.

You will receive a letter from my office when an owner violates the rules. The President has previewed and approved all correspondences prior to them being sent out to the owners. I will serve as liaison between the homeowners and The Board of Directors. When asked by the Board of Directors I will be attending meetings. If you would like to attend a scheduled meeting please call the K.J. Property Management office to be placed on the agenda along with the nature of your concern. If you have not already, please review the covenants and restrictions for Live Oaks Village HOA.

Any questions or concerns feel free to contact my office. I am available during normal business hours, Monday – Friday. The best way to reach me on the weekend is via email. You can call my office at 843-763-0943 or email to kjpm@knology.net.

I look forward to meeting each of you!

Sincerely,

Kathleen Greene
K.J. Property Management, LLC
Its Manager

cc: Live Oaks Village Homeowners Association Board of Directors.

EXHIBIT

11

104.147
Hannemann/Morris0041

K.J. Property Management, LLC
PO Box 80806
Charleston, SC 29416

September 26, 2011

Michael K and Sophia Mazell
REDACTED

Dear Mr. and Mrs. Mazell:

I am writing you this letter today to remind you of the procedures found in Bk 3268 pg 247 of The Live Oak Village HOA Covenants and Restrictions. According to that procedure The Live Oak Village HOA has rights to ask you to cease and desist the following actions.

1. Violation: Bk 3332 pg 216 Article VII Use Restrictions, section 7.5 Residential use of lots which states that "All lots shall be used for single-family residential purposes exclusively" and section 7.6 which states that "No business activity including but not limited to, a rooming house, boarding house ...or any trade of any kind whatsoever shall be carried on upon or in any lot"

   Single-family is defined as "one or more persons occupying a single dwelling unit, provided that all members are related by blood or marriage." The purpose of a single family dwelling is to avoid non-family members from living at the house. I believe the person (Mr. Delburt "Butch" Fritz) in the bottom portion of your home is not a member of the immediate Mazell family.

2. Violation: Bk 3332 pg 220 An unlicensed white Ford SUV parked on your lot. Section 7.24 which state "No stripped, partially wrecked, unlicensed or invalidly licensed, disabled or junk vehicle, or part of, shall be permitted to be parked or kept in the Subdivision."

   A photo of the SUV has been provided to my office with the information of the length of term the SUV has been unlicensed. I would hope to hear that you have made plans to license the vehicle as soon as possible.

EXHIBIT
12

DEFENDANT'S EXHIBIT SUB 4
Greene 12-17-14

KJ PROPERTY MANAGEMENT DOCS PER SUBPOENA #052

The action which needs to take place on your part is;

1. Within 10 days from receipt of this letter Mr. Fritz needs to leave the home. Do you have a lease with Mr. Fritz?
2. Within 10 days from receipt of this letter your SUV needs to have a legal tag or removed from the property.

Book 3268 pg 253 - Remember if no action is taken and these infractions are not remedied in accordance with the LOVHOA Covenants, the Association shall impose fees, such fines may be $100.00 per day until the infractions are remedied pursuant to LOVHOA Covenants.

I do look forward to discussing these matters with you. If you wish to be heard at a board meeting to only discuss the 2 violations please contact my office. We appreciate and hope to eliminate any future problems by you taking care of these violations in a timely manner.

Respectfully;

Kathleen Greene
K.J. Property Management, LLC
843-763-0943
kjpm@knology.net

cc: Live Oak Village HOA Board of Directors

K.J. Property Management, LLC
PO Box 80806
Charleston, SC 29416

October 3, 2011

Michael K. and Sophia Mazell
REDACTED

Dear Mr. and Mrs. Mazell:

It is the Associations responsibility to its membership as seen on Bk 3268 pg 233 to take any and all actions necessary to enforce all Covenants and Restrictions affecting the subdivision. There are no provisions under the powers and duties of the Board as seen on Bk 3268 pg 262 for the Board of Directors to grant any owner special exception to the rules.

The Board of Directors has considered your request to have Mr. Fritz stay in your residence for another 90 days. Unfortunately Mr. Fritz cannot remain in your home for that time period. However, the Board has approved 30 days from the date of this letter. On Bk 3268 pg 275 under rule making and enforcement, each owner shall comply strictly with the declarations of Covenants and Restrictions for LOVHOA.

Time is of the essence; Mr. Fritz cannot reside at REDACTED past November 3, 2011.

As seen on Bk 3268 pg 253 if no action is taken and this infraction is not remedied in accordance with the LOVHOA Covenants and Restrictions, the Association shall impose fees; such fines may be $100.00 per day until the infractions are remedied pursuant to LOVHOA Covenants and Restrictions.

Respectfully;

EXHIBIT
13

Kathleen Greene
K.J. Property Management, LLC
843-763-0943
kjpm@knology.net
cc: Live Oak Village HOA Board of Directors

DEFENDANT'S EXHIBIT 5
Greene 12-17-14

KJ PROPERTY MANAGEMENT DOCS PER SUBPOENA #054

K.J. Property Management, LLC
PO Box 80806
Charleston, SC 29416
843-763-0943
kjpm@knology.net

October 7, 2011

Mr. Michael and Sophia Mazell
REDACTED

Dear Mr. and Mrs. Mazell,

I have consulted with the Board of Directors and the issues you shared with me have already been raised and answered by Board members. Therefore, after my review of supporting documents I will answer you on behalf of the Board.

1. Why wasn't the last meeting held by Robert's rules of order?
   It was and you did obtain the floor and had a right to speak. Motions were made and handled by Robert's rules. There were heated discussions without a proper motion made. The Board had to return to point of order more than once. An acceptable motion or modified motion was not made therefore voting did not take place.

2. Why the Holcome yard replenished and your yard were was not?
   Holcome granted the HOA right of way to put a drain pipe on his private property, which is why his property was replenished. The HOA did not remove the trees that were within the drainage easement behind your property and therefore not responsible for replacing them. The Town of Summerville removed those trees, which they had the right to do. That is a matter you would have to take up with the Town.

3. Why isn't the rock in the community replenished?
   The common roads belonging to the HOA have been replenished. This was done at the completion of the fence and gate installation.

EXHIBIT
14

DEFENDANT'S EXHIBIT
6
Greene 12-17-14

KJ PROPERTY MANAGEMENT DOCS PER SUBPOENA #061

4. Why are the sticks and survey tape still on the property?
   Use of property markers is not an issue governered in the Covenants and Restrictions. This is not an HOA or Board issue.

5. Were all the owners given the Covenants and the Amendment to those Covenants?
   This is a question you would have to pose to your builder. Both documents are available on the Dorchester County website.

I am sure I have answered the questions regarding each issue you have raised. Please know that many of the items were discussed with legal counsel. These matters are now closed.

Sincerely,

Kathleen Greene
K.J. Property Management

cc: Live Oak Village HOA Board of Directors.

K. J. Property Management, LLC Agreement with Live Oak Village HOA

This agreement between K.J. Property Management, L.L.C. and Live Oak Village HOA for the purpose of defining contractual performance. Any job tasks voted on by the Board of Directors that need to be carried out by KJPM will come to KJPM from the direction of the President or at Board of Directors meetings with majority vote. KJPM shall be available to any owner during general business days and hours. In the event of an emergency KJPM may be contacted by any Board Member of the Association.

1. Covenants and Restrictions

Serve as liaison between homeowners and Board of Directors.
Write letters to owners who violate the governing documents and take action according to the governing documents.
Attend Board of Directors meetings and the annual meeting if placed on the agenda.
KJPM will agree to place Live Oak Village HOA governing documents on the KJPM website.
All correspondence/letters are previewed and approved by the President and final copies provided to the President at the time they are executed.

2. KJPM Performance

KJPM owner will at all times act in the best interests of the Live Oak Village HOA. The Live Oak Village HOA members will, and do hereby agree to, indemnify and hold harmless the Manager for any liability for damages, legal actions, costs and expenses (including attorney's fees and court costs). Live Oak Village HOA agrees to place the owner of KJPM on the Association insurance policy along with the Board of Directors.

3. Term of Agreement

KJPM is to provide the services as outlined commencing on the 31st day of March 2012, 2011 and continue through the 31st day of March 2013. Agreement shall be automatically renewed on each anniversary date with the same conditions unless notified by the Board of Directors. At such time KJPM may ask for an increase in compensation and/or the Board may increase the fee upon renewal.

4. Compensation

A total of $600 divided into 12 monthly payments of $50.00 per month. In the event the Association requires KJPM to perform obligations greater than those set out in this agreement KJPM will require additional compensation of $10.00 per hour to include owner notice mailings plus copy and stamp reimbursement. Any work over the $50.00 per month will require prior approval from the President prior to any work being performed and billed.

EXHIBIT

15

DEFENDANT'S EXHIBIT Skb 3 Greene 12-17-14

104.147
Hannemann/Morris0042

- Delinquent collections and violation fines - In addition to the monthly compensation, the Board of Directors agrees to a KJPM collection fee of $25.00 per owner paid by Live Oak Village HOA, the owner will return the fee to the Association upon payment. The fee includes KJPM invoicing owners, filing small claims action, court appearances, filing liens and lien satisfactions.

5. Termination of Agreement

If any duties and obligation items of this contract have not been satisfactory to Live Oak Community the Board of Directors will have an executive meeting with KJPM. KJPM is then given a thirty (30) day right to cure. If the specific act(s) have not been corrected after thirty (30) days Live Oak Community or KJPM shall have the right to terminate this agreement after such time. All files, electronic or paper, will be returned to Live Oaks Village HOA at such time.

By: William M. Finland Date: 3/28/12
Live Oak Village HOA President

By: K Greene Date: 3/28/12
Kathleen J. Greene, Owner K.J. Property Management, LLC

Mailing Address
PO Box 80806
Charleston, SC 29416
Office 843-534-6926
Cell 843-534-6926
kjpm@knology.net
www.kjpm.net

104.147
Hannemann/Morris0043

Tom Morris

From: Kathleen J. Greene [kjpm@Knology.net]
Sent: Wednesday, March 28, 2012 4:20 PM
To: tmorrisjr@sc.rr.com
Subject: 102 Oak Village Lane

Attachments: _102 002.jpg; _102 001.jpg; _104 001.jpg

_102 002.jpg (354 KB) _102 001.jpg (206 KB) _104 001.jpg (116 KB)

Mrs. Morris, attached is the letter you requested. Article VII Section 7.2 clearly states in the event the ACC, in this case the Board, fails to approve or disapprove any request within thirty (30) days after the Board had receives a requestr the homeowner deems the request approved. In this case the homeowner had the right to plant the vegetable garden in the side yard. This matter was handled in the same manner when you submitted a letter regarding the extensive home improvements on the exterior front of your home on April 10, 2010 and again on June 24, 2010 for a tree to be removed See attached copy of your letters. If you have any other concerns answered please reply.

Sincerely,
Kathleen J. Greene
K.J. Property Management, LLC
843-763-0943 office
843-534-6926 cell
www.kjpm.net
Trust God.

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.1913 / Virus Database: 2114/4900 - Release Date: 03/28/12

EXHIBIT
16 A

104.147
Hannemann/Morris0431

March 10, 2009

Live Oak Village HOA

106 Oak Village Lane

Summerville, SC 29483

According to the LOVHOA by-laws Section 7.36 we are requesting approval to plant and maintain a vegetable garden in our side yard.

Thank you in advance.

Cariton and Ute Holcombe

104 Oak Village Lane

Summerville, SC 29483

14B

104.147
Hannemann/Morris0432

April 1, 2012

Live Oak Village HOA
Board of Directors
106 Oak Village Lane
Summerville, S.C. 29483

I would like to ask for approval from the HOA Board of Directors to remove and replace some of our existing landscaping and add lighting in accordance with HOA covenants.

Sincerely,

Thomas O. Morris, Jr.

EXHIBIT

17

104.147
Hannemann/Morris0049

Download Toolbar Help & Member Services 24/7 Live Chat Support Log Out

RoadRunner Search

LifeLock® Fraud Services
LifeLock® Credit Alerts For...

Read Message

Usage 27% of 100.0 MB

Compose Get Mail Search Mail Address Book Settings Log Out

Inbox (4)
Drafts
Sent Mail
Deleted Items (6)
Junk Mail (10)

Manage Folders
saved items
saved sent items

LifeLock® Fraud Services
LifeLock® Credit Alerts For...

LifeLock® Fraud Services
LifeLock® Credit Alerts For...

Reply Reply All Forward View Header Delete Report SPAM Printable View Move to:

<< Prev | Next >>

From: Brandt Shelbourne <brandt@shelbournelaw.com>

To: david-patricia@hoco150.com <david-patricia@hoco150.com>, dhannemann@sc.rr.com <dhannemann@sc.rr.com>, tmorrisjr@sc.rr.com <tmorrisjr@sc.rr.com>, b21536@bellsouth.net <b21536@bellsouth.net>, IWF@WISELAW.COM <IWF@WISELAW.COM>

Cc:

Subject: Live Oak Villas

Priority: Normal Date: Tuesday, April 17, 2012 2:41 PM Size: 12 KB

Dear LOVHOA BOD. I represent Jennifer McFarland. She is specifically concerned with what appear to be covenant violations by Mr. and Mrs. Morris. As I understand it, they have not received proper authority to conduct landscaping work of the scope and nature they appear to be doing. While she is not necessarily opposed to them improving their landscaping, she is concerned that proper procedure was not followed and that there is no plan on file as to the scope and time of the project. According to Mrs. McFarland, the last time the Morris's did work on their front circle, it sat untouched and was not restored for some many months. According to the LOVHOA President, he has no knowledge that there has been a Board meeting to review this request from the Morris's, nor has thirty (30) days run from the date of the request. If the Morris's contend there was a board meeting, please provide me with copies of the minutes of said meeting, the date and time of the meeting, its agenda, a list of all board members present and a list of any homeowners present, as well as the proper notification of the board meeting. If they contend Mr. Morris voted on his own proposal, please explain how this does not rise to be a conflict of interest. It is her concern that the BOD('s) involved in this action may have acted outside their vested powers.

We await your prompt reply.

P. Brandt Shelbourne
Shelbourne Law Firm
131 E. Richardson Ave.
Summerville, SC 29483
843-871-2210 (ph)
843-875-2224 (fax)
brandt@shelbournelaw.com

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Previous Message | Next Message

EXHIBIT
18

RoadRunner

Log Out Channels Benefits Road Runner Help
Home News Security Center Password Reset Web Mail Support
Mail Finance Download IE RR Self Care Security Abuse
Video Sports Download Toolbar 24x7 Live Chat Support Tutorials Search
TV Listings Shopping Premium Services Feedback

104.147
Hannemann/Morris0046

SHELBOURNE LAW FIRM
Attorneys and Counselors at Law
131 E. Richardson Avenue
Summerville, South Carolina 29483

Mailing Address: Post Office Box 988
Summerville, South Carolina 29484

P. Brandt Shelbourne
Melanie A. Maes*
*Also Licensed in Washington

Phone (843) 871-2210
Fax (843) 875-2224

April 17, 2012

Mr. Thomas Morris
102 Oak Village Lane
Summerville, SC 29483

Mr. David Hannemann
100 Oak Village Lane
Summerville, SC 29483

Re: Live Oak Village

Dear Live Oak Village HOA Board of Directors:

I represent Jennifer McFarland. She is specifically concerned with what appears to be covenant violations by Mr. and Mrs. Morris. As I understand it, they have not received proper authority to conduct landscaping work of the scope and nature they appear to be doing. While she is not necessarily opposed to them improving their landscaping, she is concerned that proper procedure was not followed and that there is no plan on file as to the scope and time of the project. According to Mrs. McFarland, the last time the Morris's did work on their front circle, it sat untouched and was not restored for some many months. According to the Live Oak Village HOA President, he has no knowledge that there has been a Board meeting to review this request from the Morris's, nor has thirty (30) days run from the date of the request. If the Morris's contend there was a board meeting, please provide me with copies of the minutes of said meeting, the date and time of the meeting, its agenda, a list of all board members present and a list of any homeowners present, as well as the proper notification of the board meeting. If they contend Mr. Morris voted on his own proposal, please explain how this does not rise to be a conflict of interest. It is her concern that the Board of Directors involved in this action may have acted outside their vested powers.

We await your prompt reply.

With best regards, I am

Sincerely yours,

P. Brandt Shelbourne

/ses
cc: Client

104.147
Hannemann/Morris0060

Tom Morris

From: dhannemann@sc.rr.com
Sent: Thursday, April 19, 2012 12:03 PM
To: McFarland
Cc: tmorrisjr@sc.rr.com
Subject: RE: HOA Board of Directors meeting

Bill:

I am sorry you postponed the LOVHOA Board of Directors meeting scheduled for April 18, 2012 at 4:30 PM. Please provide dates and times for rescheduling this meeting next week.

If Attorney P. Brandt Shelbourne raised questions in his e-mail they are not apparent. Seeming the only issue raised is an apparent approval for the Morris's landscape renovation at a Board of Director's meeting that was never held.

If you have changes to the proposed agenda, please make them. This revised agenda needs to be provided to the BOD prior to the rescheduled BOD meeting.

Since I was not able to provide you with a written copy of the Draft LOVHOA Annual Meeting Minutes for August 30, 2011, a copy was placed in a brown envelope at your front door at or about 5:30 PM on April 18, 2012 as witnessed by Tom Morris.

As for your request for BOD meeting minutes held sometime in September 2011, no minutes exist. An unscheduled impromptu discussion of the BOD was held, without an agenda, to review options of hiring a Property Manager to deal with a possible violation of the covenants and by-laws.

David

--- McFarland <b21536@bellsouth.net> wrote:
> David;
>
> Just received your email..
>
> There are several reasons why I am postponing the BOD meeting for this afternoon. First, you are incorrect that the issues raised by Atty. Brandt Shelbourne are not relevant to the items you requested to be discussed at the meeting - the issues raised by Atty. Shelbourne are completely relevant as a reason for postponing the meeting. One of the items to be discussed at the meeting included a KJPM Property Manager report/review - that report is incomplete pending the resolution of the issues raised regarding the approval for the work on the Morris's front yard. These issues raised directly involve both of you as BOD's and Tom as a homeowner.
>
> The items you and Tom submitted verbatim to be discussed did not constitute the complete agenda. There were items I intended to add but you did not supply me with the requested revised minutes of the last annual meeting which prevented me from setting the final agenda for this BOD meeting. I have sent you (3) emails of which you have not responded , I was unaware that you were out of town. Then only today you replied and you still have not produced the requested minutes. Thereby I must compel that you forward to me today via email the revised minutes of the last annual meeting and minutes of the BOD directors meeting held shortly after the last HOA members meeting.
>
> The email from Atty. Brandt Shelbourne and the questions raised are very clear. As you and Tom are serving on the LOVHOA Board of Directors you have a duty to answer the questions raised. The actions taken of an approval by you and Tom as was reported to KJPM, by Charlene Morris on Friday April 13th puts the validity of the LOVHOA BOD in serious question. Therefore any actions/motions discussed at a BOD meeting would be questionable and put the HOA at risk of a lawsuit until these questions are answered and viewed by the Attys.

> Bill
> LOVHOA, BOD/PRESIDENT

EXHIBIT

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04147
annemann/Morris0406

Bill:

After reading your e-mail there is still some confusion on my part. You postponed today's scheduled Board of Director's meeting without providing proper and timely notification. An e-mail sent at 4:12 pm on April 18, 2012 for a previously scheduled and accepted 4:30 pm meeting time on the same day is, in my opinion, insufficient.

The issues raised by Attorney P. Brandt Shelbourne should not have warranted postponing the Board of Director's meeting. His e-mail appears to have some misinformation which requires clarification. When members of the BOD e-mailed you a request for a Board of Director's Meeting, you responded indicating an agenda was required which was subsequently provided. Nothing in your e-mails accepting the meeting date indicated you desired anything else to be included in the agenda. As for an e-mail copy of the revised annual meeting minutes, aka draft annual meeting minutes, you previously received an original draft copy to which you provided comments. These comments were incorporated in accordance with your request. Therefore, it appears you had sufficient information needed from which you could have made additions to the Board of Director's Meeting Agenda if desired. Since I was unable to provide you with a written copy of the Draft LOVHOA Meeting Minutes for August 30 2011 at our scheduled BOD meeting today, I have placed a copy in a brown envelope on your front door as witnessed by Tom Morris at or about 5:30 pm this evening.

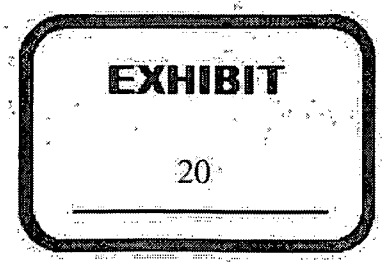
You also requested minutes for a Board of Director's meeting on or about September 7, 2011. This meeting was called by you without notice or provision of a meeting agenda and related to an issue from Jennifer McFarland, your wife, about a non-family member living at REDACTED REDACTE which is in violation of the LOVHOA Covenents and By-Laws. Since this gathering of the Board of Directors was informal, I did not take any meeting minutes.

If there was a problem with Ms. Kathleeen Green of KPJM LLC being able to provide all the information requested for the BOD meeting of today, this item should have been raised previously when you accepted. Certainly the agenda could have been adjusted to cover items on or up to April 1, 2012. As for an approval reportedly given Ms. Kathleen Green of KPJM LLC by Ms. Morris, Ms. Green apparently misunderstood. Mr. Morris and I did not hold, repeating "DID NOT HOLD" a Board of Director's meeting to approve their front landscaping as this would have been a violation of the LOVHOA covenants and bylaws.

Any questions posed by Attorney P. Brandt Shelbourne would be promptly answered by members of the BOD, unfortunately, there do not appear to be any questions in his e-mail. There are statements, some of which are incorrect, relating to an issue about the Morris's landscape renovation to the front of their house and a phantom Board of Director's meeting that never took place.

Hopefully, the above information will allow a BOD meeting to be rescheduled within the next week. Time is of the essence.

David



104.147
Hannemann/Morris0414

From: Carlton Mechanical [mailto:summervillemech@bellsouth.net]
ent: Thursday, April 19, 2012 10:04 AM
o: kjpm liveoak
Cc: McFarland
Subject: Oak Village Lane

Kathleen, thank you for speaking with me yesterday. I'm writing to confirm our telephone conversation. As I told you our next door neighbor is doing some work in their front yard and appears that they have cleaned out all of the landscaping.

The backhoe has been setting in the front yard for over week and no one knows when it will be removed. No one knows when the landscaping will be replaced.

This individual in on the board and he isn't following the covenants. I don't think a person that is representing the HOA, that can't follow the covenants that he is to enforce, should be setting on the board of the HOA.

Please let me know what I can do to help. Thanks,

Carlton Holcombe
Summerville Mechanical Inc

Tel. 843-873-8032

ax 843-873-8361

Cell 843-442-2624

EXHIBIT

21

104.147
Client Docs0158

Date: Wednesday, April 25, 2012 2:48 PM

From: Kathleen J. Greene <kjpm@Knology.net>

To: Tom Morris <tmorrisjr@sc.rr.com>

Cc: dhannemann@sc.rr.com, b21536@bellsouth.net

Subject: Re: RE: Mr. Thomas and Charlene Morris

Mr. Morris, with all due respect the past is the past. Contrary to your statements below, No one can void a rule. Again, I was hired to make sure the community followed the rules. The rules have been consistently enforced and Mr. Mazell and Mr. Holcombe had no problem complying after given such notice. Mr. McFarland, Mr. Hannemann and you were appointed by the community to uphold those rules as well. As a BOD, by your actions, you are operating outside the boundary of the covenant and restrictions and bylaws. You state that "you are confused" however on March 28th you received a complete explanation from me via email of the covenants and restrictions and bylaws when you complained about the Holcombe's garden. You are in violation of the covenant and restrictions and bylaws as you began on work April 9th without approval and have not submitted a plan. Again, your letter stated that "some" of the landscaping was going to be removed. Apparently that was not your intent. I am not sure why it has been difficult for you to turn in some type of plan and time frame, that is now past due since Monday. Please comply with the rules. Again, review the procedure about imposing fines. The ten day period will fall on April 30th. Such fines shall begin after that date.

Kathleen J. Greene
K.J. Property Management, LLC
843-763-0943 office
843-534-6926 cell
www.kjpm.net
Trust God

On Tue 04/24/12 8:53 PM , "Tom Morris" tmorrisjr@sc.rr.com sent:
> April 24, 2012
>
> RE: 102 Oak Village Lane Landscaping Project
>
> Dear Ms. Green;
>
> Upon reviewing your letter, apparently you misunderstood. Your
> verificationand supporting information of your contract or that of covenants
and
> restrictions violations was not requested or questioned. However, when
> theLOVHOA fails to consistently enforce covenants and by-laws, enforcement
> ofthe same is null and void. Continued attempts at imposing requirements
> andpenalties shall be considered arbitrary and capricious.
>
> Covenant Article VII Section 7.2 has not been strictly enforced. This
> covenant requires written submission of plans which are either approved
> ordisapproved by the Board of Directors or become automatically approved
> after30 days if no action is taken. My letter dated April 10, 2010 for step
> demolition and my letter dated June 24, 2010 for tree removal were
> acceptedwithout providing any written plans or specifications and work was
> begunprior to any formal approval or 30 day waiting period. Apparently
> verbalcommunication with the Board of Directors regarding any projects is
> sufficient for approval as noted in your recent reply. If this is the
> case,then the 30 day approval process happened months ago when I spoke to
> thePresident of LOVHOA about our landscape project.
>
> With this in mind, there is no violation for which enforcement can be
> taken.The prior actions make any enforcement of Article VII Section 7.2 mu
> because of the previous inconsistent application thus setting
> precedent.When the governing body inconsistently enforces these rules they are

104.147
Hannemann/Morris0052

EXHIBIT
22

> therefore rendered null and void. The person being governed becomes
> confused as to the appropriate proceedings and consequences. My April
> 1,2012 letter indicating our landscaping and lighting project is
> currentlyunderway and the project will be remedied as soon as possible by the
> homeowner. As homeowners, we find it difficult to understand why
> improvements to our home are causing such consternation and debate.
>
> Sincerely,
> Tom and Charlene Morris
> 102 Oak Village Lane
>
> -----Original Message-----
> From: Kathleen J. Greene [kjpm@Knology
> .net] Sent: Monday, April 23, 2012 2:53 PM
> To: tmorrisjr
> @sc.rr.com; dhannema
> nn@sc.rr.com; b21536@b
> ellsouth.netSubject: RE: Mr. Thomas and Charlene Morris
>
> Mr. and Mrs. Morris;
>
> I would like to begin with my intro letter dated 9/23/2011. First of
> allplease remember it is one of the job duties of KJPM to enforce the
> covenantsand restrictions. That letter explains that you will receive a letter
> frommy office when any owner violates the rules. This policy has not been
> inconsistently enforced with you or anyone else. Regarding the Mazell
> violation of having a non-family member living with him and an
> unlicensedvehicle on their lot, was remedied by the homeowner. The Holcombe
yard
> maintenance and repairs were also remedied by the homeowner. You have
> notbeen treated unfairly, each case was based on the rules.

>
> Finally, the violation at hand.
> You did not get approval from all BOD members, you did not wait (30)
> days.The letter you submitted for "remove and replace some of our existing
> landscape and install lighting" does not remotely cover the scope of
> thework that you actually have begun. You have not communicated to the
> President or to myself the reason the actual work being done, as
> comparedthe letter, is now different.
>

104 147
Hannemann/Morris0053

> You are still in violation and need to submit the plan today and
> completethe work within the time frame stated in my email.
> Thank you in advance for your coporation.
> Kathleen J. Greene
> K.J. Property Management, LLC
> 843-763-0943 office
> 843-534-6926 cell
> www.kjpm.netTrust God
>
> On Sun 04/22/12 3:18 PM , "Tom Morris" tmorrisjr
> @sc.rr.com sent:> April 22, 2012
> >
> > RE: 102 Oak Village Lane Landscaping
> Project>
> > Dear Ms. Green;
> >
> > First, we want to apologize for the barren
> landscape in front of our> home.Unfortunately the commencement of our
> landscaping project was delayeddue
> > toa death in our family. Thus, our project had to
> be postponed. We will> workdiligently to complete the landscaping as soon
> as possible. >
> > With respect to Article VII regarding the failure
> of the architectural> control committee (which does not exist) to approve
> or disapprove any> request within 30 days after complete written plans
> and specifications> havebeen submitted, the same shall be deemed
> approved; this policy hasbeen
> > inconsistently enforced for my property. For
> example:>
> > . Demolition of front porch steps
> > O The President of the LOVHOA informed me that I
> needed to> submit a letter outlining my proposal for the
> demolition and> replacement of the front porch steps and other
> improvements> which had already begun. The President of the
> LOVHOA indicated> it was OK that work had commenced and all he needed
> was> "something to put in the files". At the time we
> spoke I> apologized for my not understanding the rules and
> submitted the> letter dated April 10, 2010. This letter was
> submitted without> any blueprints, drawings, or other plans for the
> proposed> changes and work was completed without further
> comment. Payment> for work already commenced was made on or before
> the 14th of> April and documentation exists to support this
> point. >
> > . Diseased Tree Removal
> > O On June 24, 2010 I submitted to the President of
> the> LOVHOA a request to remove a diseased tree.
> Having received> permission from the Town of Summerville Code
> Enforcement this> tree was removed on the 15th of July. No comment
> was made> relating to the timeframe from date of submission
> to removal. >
> > It should be noted, both of the above activities
> were begun prior to> approval or disapproval and without a 30 day
> waiting period thus creating> aprecedent relating to the covenant. Therefore,
> the precedent set makes> thiscovenant null and void.
> >
> > Sincerely,
> > Thomas and Charlene Morris
> > 102 Oak Village Lane
> >
> >
> > -----Original Message-----
> > From: Kathleen J. Greene [kjpm@Knology
> > .net] Sent: Friday, April 20, 2012 5:05
> PM> To: dhannema
> > nn@sc.rr.com
> ; tmorrisjr> @sc.rr.com; b21536@b

104.147
Hannemann/Morris0054

> > ellsouth.netSubject: Mr. Thomas and Charlene
> Morris>
> > April 20, 2012
> >
> > Mr. Thomas and Charlene Morris
> > 102 Oak Village Lane
> > Summerville, SC 29483
> >
> > It is the Associations responsibility to its
> membership as seen on Bk> 3268pg 233 to take any and all actions necessary to
> enforce all Covenants> andRestrictions affecting the subdivision. There
> are no provisions under> thepowers and duties of the Board as seen on Bk
> 3226 pg 262 for the Board> ofDirectors to grant an owner special exception to
> the rules or for two> Boardmembers to take a vote without a duly called
> meeting. It is the> objectivesof the Covenants are to, but not limited
> to, minimize oreliminate the
> > possibility of ay disruptions of the peace and
> tranquility of the> residential environment of the
> subdivision.>
> > Article VII Use Restriction. In the event the
> Architectural Review> Board,which Live Oak Village does not have, the
> matter falls on the Boardto
> > approve or disapprove any request within thirty
> days after complete> writtenplans and specifications have been submitted
> to it, the same shallbe
> > deemedapproved. You have not had a board vote in
> this matter oflandscaping
> > andinstalling lighting and have not waited the
> appropriate amount of time.>
> > As seen in exhibit C (E) Action taken without a
> meeting. The directors> shallhave the right to take any action in the
> absence of am meeting of the> directors which they could take at a meeting by
> obtaining the written> approval of all directors. Mr. McFarland did not
> and has not received> anysuch written notice.
> >
> > The barren landscaping and trackho have been the
> same on the property> forover 10 days. When I visited the property on
> 4/12/2012 at that time I> sawthat no work had been done. A few complaints
> have been sent to myoffice.
> > Bk3268 pg 249 Section 7.23 prohibits a commercial
> vehicle; while I do> understand the trackho was moved from the property
> today you have been> inviolation of this rule since the trackho was set
> on your property. >
> > Unfortunately we have no record of a time frame in
> which to finish your> project. It is the Associations responsibility to
> insure plans for> landscaping provide visually pleasing settings.
> Please supply those plans> toMr. McFarland. According to Article IV, Section
> 5.2. Unless> specificallyidentified herein as being the
> responsibility of theAssociation, all
> > maintenance and repair of lots, together with all
> other improvements> thereonor therein and all lawns, landscaping and
> grounds on and within alot
> > shallbe the responsibility of the owner of such
> lot. Article VII, Section7.42
> > inthe Amendended Declaration of Covenants and
> Restrictions each owner> shallkeep his lot and all improvements therein in
> good order and repair in> keeping with the harmony of Live Oak Village
> Community. >
> > As seen in Article VIII Section 8.1 Enforcement.
> These infractions are> notremedied accordance with the Live Oak Village
> Covenants the Association> shall impose fees, fines, penalties and sanctions.
> Notice including but> notlimited to, the imposition of fines and or the
> suspension of your> votingrights, or the suspension or infringement
> upon other rights you mayhave
> > asan owner of real property within this
> subdivision. In addition, all> costsincurred in the enforcement of the Live

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Oak
> Village Covenants and> Restrictions, including but not limited to,
> reasonable attorneys fees> forthe Association, shall be assessed to
> you.>
> > Bk 3268 pg 274 (b) The action required to abate the
> violation; and (c)> Procedure such fines may be imposed until the
> infractions are remedied for> atime period of not less than ten days. Please
> submit your detailed and> illustrated plans and time frame to Mr. McFarland
> and Mr. Hannemann> thisweekend. The landscaping and lighting has to be
> approved and the yard> workcompleted within 10 days. Bk 3332 pg 224
> Section 8.1 Enforcement.Such
> > fines shall not exceed $100.00 per violation per
> day.> I do hope this matter will be remedied and the
> rules followed, as I am> sureyou are.
> > Sincerely,
> >
> > Kathleen Greene of K.J. Property
> Management> its Manager
> > Live Oak Village
> > 106 Oak Village Lane
> > Summerville, SC 29483
> > Cc: Mr. McFarland and Mr. Hannemann
> >
> >
> >
> > -----
> > No virus found in this message.
> > Checked by AVG - www.avg.comVersion:
> 2012.0.1913 / Virus Database:2411/4948 - Release Date:
> > 04/20/12
> >
> >
> >
>
> -----
> No virus found in this message.
> Checked by AVG - www.avg.comVersion: 2012.0.1913 / Virus Database: 2411/4954 -
Release Date:
> 04/23/12
>
>
>

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May 1, 2012

Live Oak Village HOA
Board of Directors
106 Oak Village Lane
Summerville, S.C. 29483

Live Oak Village Home Owners,

To avoid any misinterpretation surrounding the inhabitants of my home, I would like to make it known that my brother Kirk will be staying with us for a period of time. He has a new job in the area and is in the process of buying a home. Therefore, you may see a white GMC Terrain with the SC license plate number HJT 571 coming in and out of the gate.

Sincerely,

Tom Morris
102 Oak Village Lane

EXHIBIT

23

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Hannemann/Morris0377

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 further 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.

EXHIBIT

24

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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

102 Oak Village Lane
Summerville, SC 29483
April 27, 2012

Mr. Bill McFarland
Board of Director Live Oak Village Homeowners Association
105 Oak Village Lane
Summerville, SC 29483

Re. Formal Request for Special Meeting of Board of Directors,
Live Oak Village Homeowners Association

Dear Mr. McFarland;

With this letter I am formally requesting a special meeting of the Board of Directors for the Live Oak Village Homeowners Association (LOVHOA). The LOVHOA covenants and bylaws state the majority of the Board of Directors can call a special meeting, but the meeting cannot be held prior to 3 days after written notice. This meeting will be held at my home, 102 Live Oak Village, Summerville, SC 29493 on Wednesday May 2, 2012 at 7:00 pm.

The purpose of this meeting is to approve or disapprove my landscaping and lighting request. I will provide plans and a schedule for completion at this meeting. The covenants allow for approval or disapproval of my by a majority of the Board of Directors.

Respectfully,

Thomas O. Morris, Jr., Board of Director

David K. Hannemann, Board of Director

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Hannemann/Morris0057

To Whom it May Concern

I hereby certify on April 27, 2012, a letter was mailed to Mr. Bill McFarland, Board of DirectorsLive Oak Village Homeowners Association, 102 Oak Village Lane, Summerville, SC 29483. This letter requested a special meeting of the Live Oak Village Homeowners Association Board Of Directors.

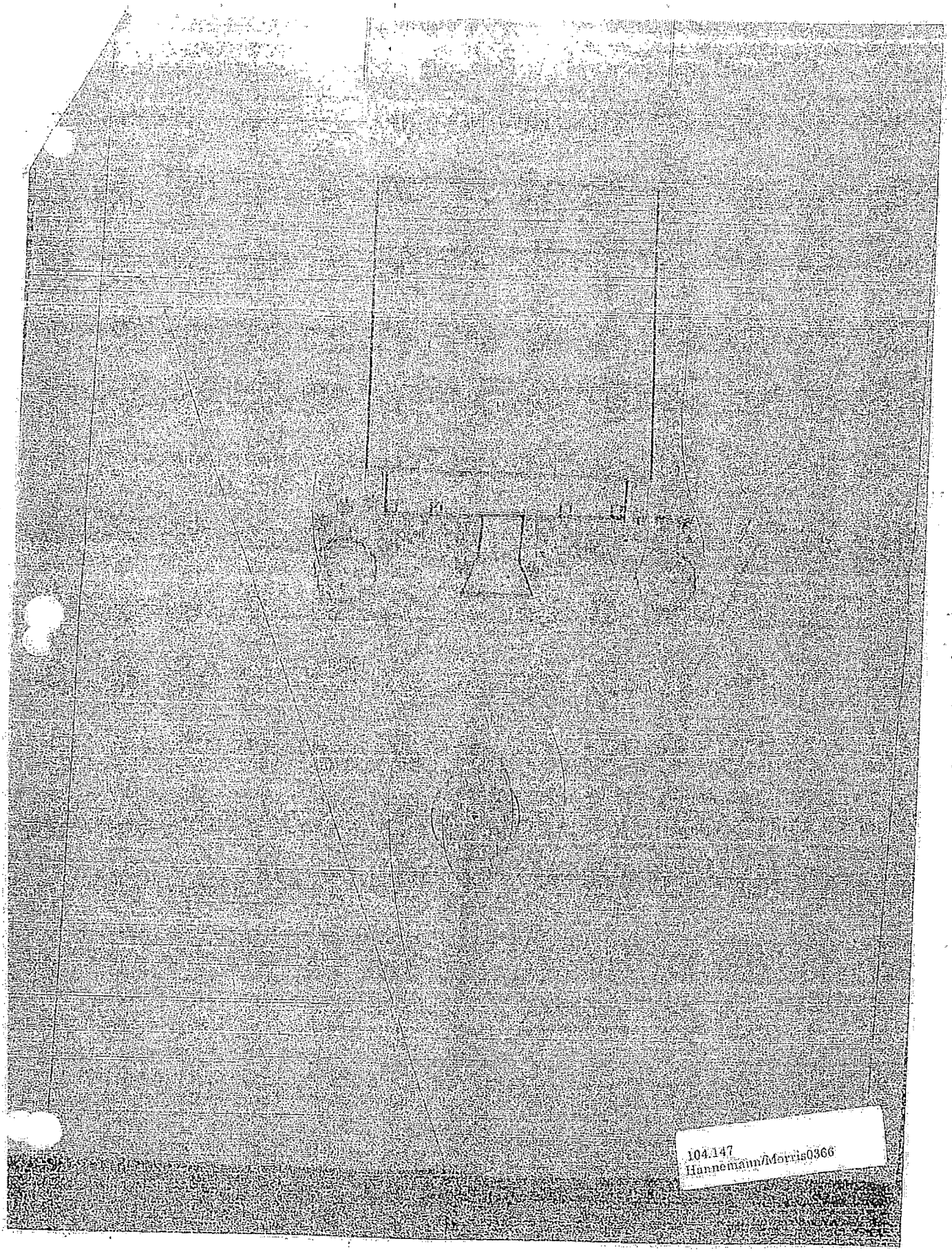
Thomas O. Morris, Jr.

Subscribed and Sworn to before me this
27th day of April, 2012.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 1-27-2021

ANTON W. STEINER
NOTARY
My Comm. Exp.
01-27-2021
PUBLIC
SOUTH CAROLINA

104.147
Hannemann/Morris0058



104.147
Hannemann/Morris0366

SHELBOURNE LAW FIRM
Attorneys and Counselors at Law
131 E. Richardson Avenue
Summerville, South Carolina 29483

Mailing Address: Post Office Box 988
Summerville, South Carolina 29484

P. Brandt Shelbourne
Melanie A. Maes*
*Also Licensed in Washington

Phone (843) 871-2210
Fax (843) 875-2224

May 17, 2012

Mr. Thomas Morris
102 Oak Village Lane
Summerville, SC 29483

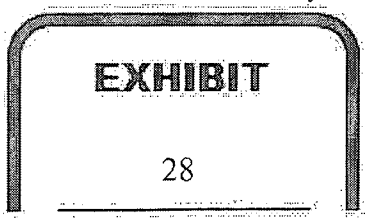
Mr. David Hannemann
100 Oak Village Lane
Summerville, SC 29483

Re: Live Oak Village

Dear Live Oak Village HOA Board of Directors:

Mrs. McFarland wants to be clear that she is not objecting to the scope and type of landscaping done by Mr. Tom Morris on his property. Rather, she is concerned with and is objecting to the procedure by which it was accomplished and to the apparent failure of the Board to follow the Covenants and Restrictions in responding to the homeowners. Pursuant to Section 3(c) of the Covenants and Restrictions, notice of meetings has to be given properly as set forth in the Covenants. The meeting that was supposed to be held on May 2, 2012 was not held pursuant to proper notice. President of the Live Oak Village Homeowners' Association Bill McFarland did not receive notice in a timely fashion. The alleged notice of April 27, 2012, according to the affidavit you have provided, was sent to an address other than Mr. McFarland's address. According to the affidavit, the notice was sent to Mr. Morris's address. Furthermore, the meeting was supposedly held at a homeowner's home which is not an acceptable venue for the meeting unless all members agree. Further, according to South Carolina Code Section 33-31-831, a company director should not vote when he has personal interest in the vote. Mr. Morris's vote to retroactively approve actions he had taken amount to a conflict of interest. Please understand that Mrs. McFarland is not objecting to the actual work that was done, but only to the manner in which they attempted to obtain approval because it is necessary to set and maintain the proper precedent and follow the proper procedures. Further, Mr. Morris was fined approximately $1,000.00 by the Homeowners' Association by and through the manager and that amount needs to be paid to the Homeowners' Association.

Additionally, the Homeowners' Association has a property manager hired with the consent of the Board to manage the property. However, Mrs. McFarland is informed that several Board members refuse to communicate with the property manager which only escalates the costs and difficulties of managing this property.



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Hannemann/Morris0065

MAY 17, 2012

Mrs. McFarland strongly believes that the Covenants and Restrictions are there to protect the property values and it is critical that the intent of the Covenants and Restrictions be followed accurately so as to avoid any unnecessary litigation and/or legal issues in the future. Thank you for your attention.

With best regards, I am

Sincerely yours,

P. Brandt Snelbourne

/ses
cc: Client

104.147
Hannemann/Morris0066

102 Oak Village Lane
Summerville, SC 29483
May 19, 2012

Mr. Bill McFarland
Board of Director Live Oak Village Homeowners Association
105 Oak Village Lane
Summerville, SC 29483

Mr. Carlton Holcomb
104 Oak Village Lane
Summerville, SC 29483

Re. Written Request for Special Meeting of the
Live Oak Village Homeowners Association

Dear Mr. McFarland;

The Live Oak Village Homeowners Association (LOVHOA) covenants and bylaws state a special meeting can be requested by ¼ of the homeowners as indicated in Exhibit C.3(B&C). The undersigned homeowners have decided to hold a special LOVHOA meeting on Thursday May 31, 2012 beginning at 7:00 P.M. and will take place at Fire Station No. 4, 164 Sheep Island Road, Summerville, SC. The object of the meeting is to discuss future goals of the LOVHOA and resolve and reestablish harmony of the community of LOV.

Respectfully,

Thomas O. Morris, Jr., Board of Director

David K. Hannemann, Board of Director

Norbert Cummings, Homeowner

Michael Knight, Homeowner

Michael Mazell, Homeowner

EXHIBIT

30

104.147
Hannemann/Morris0087

102 Oak Village Lane
Summerville, SC 29483
May 21, 2012

Mr. P. Brandt Shelbourne
P.O. Box 988
Summerville, SC 29484

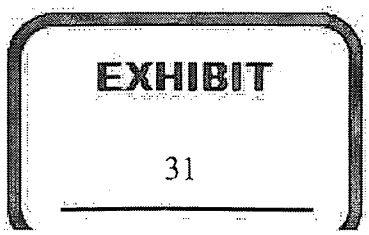
Dear Mr. Shelbourne:

We are in receipt of your letter dated May 17, 2012 to the Live Oak Village Homeowners Association, Board of Directors. To the issues raised in your letter of May 17, 2012 we respond as follows:

- The Special Board of Directors meeting held on May 2, 2012, proper notification of said meeting and its notification to Mr. Bill McFarland, BOD.
  - According to the Covenants and By-Laws, a Special Board of Director's meeting can be called with a 3 day notification, (Exhibit C.5 (B)) which was given as provided by the document attached to the BOD meeting minutes.
  - The notice was sent to the proper address, Mr. McFarland, Board of Director, at 105 Oak Village Lane. Upon review, we acknowledge the notarized attachment for the Special BOD meeting contained a typo error of 102 rather than 105 as an address. However, the letter was addressed and delivered properly to 105 Oak Village Lane in accordance with Exhibit C.3(C).

- The proper venue for the Special BOD meeting on May 2, 2012.
  - This Special BOD meeting was held at Mr. Morris's home as permitted by Exhibit C.5 (A). Previously, a precedent was set by both Mr. and Mrs. McFarland when they requested an immediate discussion with Mr. Morris and Mr. Hannemann, in the living room of 100 Oak Village Lane, to review the issue of a non relative residing at 107 Oak Village Lane.
  - Again, a precedent was set when a discussion occurred between Mr. and Mrs. McFarland and Mr. Hannemann on the front porch at 105 Oak Village Lane. This discussion related to the hiring of a property manager to deal with the issue of a non resident living at 107 Live Oak Village Lane. Mr. Morris was not present at this discussion. This agreement was verbal, not written, and related to the hiring of a property manager, at the rate of $50.00 per month. To date all of the Board of Directors have not seen any information relating to the enforcement activities undertaken on their behalf by the property manager nor has the scope of the agreement been disclosed to all BODs.

- South Carolina Code Section 33-31-831
  - In your letter you cite SC Code Section 33-31-831 where you state "a company director should not vote when he has a personal interest in the vote". The



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Hannemann/Morris0067

operative word is "should" which does not prohibit any action by an individual in which there is a personal interest.

- The fines to Mr. Morris as received from the property manager.
  - The fines assessed by the Property Manager K.J. Property Management, LLC are invalid. A quorum of the Board of Directors, in a special meeting lawfully held on May 2, 2012, approved Mr. Morris's landscape and lighting plans.
  - The Live Oak Village Homeowners Association governing body is the Board of Directors as per (Article I, Section 1.3). Exhibit C.6(A) of the Bylaws of Live Oak Village Homeowners Association state the Board shall manage and direct the affairs of the Association. Since the Board of Directors has not met to address the fines imposed by the property manager on 102 Oak Village Lane, no fines may be assessed.
  - Any fines or enforcement actions levied need to be discussed at a BOD or HOA meeting, as outlined in the Covenants (Article VIII Section 8.1). Therefore, due process has not been afforded to the residents of 102 Oak Village Lane.

Based on the above comments, the Special BOD meeting held on May 2, 2012 was lawful and the actions taken stand as indicated in the Special Board of Directors meeting minutes. Another BOD meeting needs to be scheduled as soon as possible to afford the residents of 102 Oak Village Lane due process.

Respectfully,

Thomas O. Morris, Jr.
Board of Director

David K. Hannemann
Board of Director

104.147
Hannemann/Morris0068

This letter is being hand delivered due to the fact that the post office box is no longer valid. The letter was send certified mail, number 7012 0470 0000 3792 5634, to the post office box as directed in your stationary. It was returned to us with a notification of "forward time exp, rtn to send" "return to sender".

I am in receipt of the certified letter, number 7012 0470 0000 3792 5634, as delivered to:

Shelbourne Law Firm
131 E. Richardson Avenue
Summerville, SC 29483

Rachel Gizzell

I hereby certify this letter was hand delivered to Shelbourne Law Firm 131 E. Richardson Ave, Summerville at approximately 11:30 am on May 30, 2012

104.147
Hannemann/Morris0069

102 Oak Village Lane
Summerville, SC 29483
May 24, 2012

Mr. Bill McFarland
Board of Director Live Oak Village Homeowners Association
105 Oak Village Lane
Summerville, SC 29483

RE. Formal Request for Special Meeting of Board of Directors,
Live Oak Village Homeowners Association

Dear Mr. McFarland:

With this letter I am formally requesting a special meeting of the Board of Directors for the Live Oak Village Homeowners Association (LOVHOA). The LOVHOA covenants and bylaws state the majority of the Board of Directors can call a special meeting, but the meeting cannot be held prior to 3 days after written notice. This meeting will be held at Fire Station 4, 164 Sheep Island Road, Summerville, SC on Thursday May 31, 2012 at 6:00 P. M. just prior to the Special LOVHOA Homeowners meeting scheduled for 7:00 P.M.

The purpose of this meeting is:

- to discuss the annual LOVHOA annual meeting date;
- to establish a schedule for monthly Board of Directors meetings as required by the covenants and bylaws (Exhibit C.5 (A));
- to approve or disapprove a request from 100 Oak Village Lane to remove and replace diseased Indian Hawthorn bushes in the front yard and to add Ligustrum bushes along the back side yard;
- to discuss the activities of K.J. Property Management, LLC;
- any other issues that may arise.

Respectfully,

Thomas O. Morris, Jr., Board of Director

David K. Hannemann, Board of Director

EXHIBIT
32

104.147
Hannemann/Morris0330

C3.

DRAFT 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

EXHIBIT
34

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.

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.

DEFENDANT'S EXHIBIT 16

104.147
Hannemann/Morris0316

- Discussion regarding activities of K.J. Property Management LLC.
  - This discussion was tabled due to a lack of information.

- Other issues
  - LOVHOA Budget (2012-2013) - The BOD recommended a draft budget for 2012-2013 be provided to all homeowners prior to the next scheduled annual LOVHOA meeting.
- Open Communication
  - A motion was made and seconded to discuss the following procedure at the next LOVHOA annual meeting.
    - Requests for property changes (By-law exceptions) will be discussed by the BOD at their next scheduled monthly BOD meeting. The BOD will make a recommendation and the Secretary will distribute the request and the Board's recommendation to all homeowners. The homeowners will then vote either to accept the Board's recommendation or reject it. An abstention will be considered as a vote in favor of the Board's recommendation.

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.

Respectfully Submitted

David Hannemann, Secretary / BOD

meeting minutes Approved & Accepted

104147
Hannemann/Morris0317

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 Proxy Letter for Mr. Norbert Cummings, Jr.
102 Oak Village Lane – Mr. & Mrs. Thomas Morris, Jr.
REDACTED Mr. Michael P. Knight
104 Oak Village Lane – Mr. & Mrs. Carlton Holcombe
REDACTED Proxy Letter for Mr. Michael Mazell
Kathleen Greene, K.J. Property Management, LLC

EXHIBIT
36

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. Holcolmbe 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 those 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.

Respectfully Submitted,
David Hannemann, Secretary

104.147
Hannemann/Morris0088

102 Oak Village Lane
Summerville, SC 29483
June 1, 2012

Ms. Kathleen Greene
K.J. Property Management, LLC
P.O. Box 80806
Charleston, SC 29416

RE. LOVHOA Fines

Dear Ms. Green:

We truly believe you are caught in the middle on our landscape and lighting issue. While the LOVHOA covenants and by-laws are the ruling documents, their enforcement seems to be somewhat arbitrary. Previously, other homeowners in Live Oak Village have made major changes/improvements to their property without any request for a waiver or approval from the LOVHOA. However, we understand that past practice does not change the requirements laid out in the covenants and bylaws.

We believe imposition of fines for our failure to provide landscape and lighting plans in the timeframe you requested are excessive. Unfortunately, while there is a difference of opinion on this issue it will have to remain unresolved. Therefore, in the interest of maintaining peace and harmony within the LOVHOA and to preclude a long, expensive and potentially nasty legal action that would inconvenience our friends, we have decided to pay the $1000 fine. With this payment we are neither admitting to violations in fact nor is this payment intended to set a precedent for any member of the LOVHOA. This should resolve the landscape and lighting issue between 102 Oak Village Lane and the LOVHOA. We are anxious to return to the peace and tranquility of our home and not bring any more undue stress to our friends in the neighborhood.

Respectfully,

Mr. & Mrs. Thomas O. Morris, Jr.

EXHIBIT

37

104.147
Hannemann/Morris0064

Date: Thursday, June 7, 2012 10:49 AM

From: Carlton Mechanical <summervillemech@bellsouth.net>

To: dhannemann@sc.rr.com

Subject: Meeting Minutes & Proxies

I don't understand. Was there a meeting, even if I objected, and there was a meeting, as a home owner I am due a copy of the proxies and minutes?

Carlton Holcombe
Summerville Mechanical Inc
Tel. 843-873-8032
Fax 843-873-8361
Cell 843-442-2624

From: "dhannemann@sc.rr.com" <dhannemann@sc.rr.com>
To: Carlton Mechanical <summervillemech@bellsouth.net>
Sent: Thu, June 7, 2012 10:02:30 AM
Subject: Re: Fw: meeting

Carlton:

On May 31, 2012 you stated that the gathering of Live Oak Village Homeowners did not comply with the covenants and by-laws and was therefore illegal. You indicated the 10 day notification period, which you stated could not include the day of mailing, was not followed and you continually objected during the meeting. Therefore, since you claim the meeting was improper, neither minutes nor proxies will be provided.

David

---- Carlton Mechanical <summervillemech@bellsouth.net> wrote:
>

Carlton Holcombe
Summerville Mechanical Inc
Tel. 843-873-8032
Fax 843-873-8361
Cell 843-442-2624

---- Forwarded Message ----
From: Carlton Mechanical <summervillemech@bellsouth.net>
To: dhannenmann@sc.rr.com
Sent: Tue, June 5, 2012 1:29:30 PM
Subject: meeting

David, you said that you were going to send me a copy of the proxies, and can you also send me the minutes to the meeting last week?

Carlton Holcombe
Summerville Mechanical Inc
Tel. 843-873-8032
Fax 843-873-8361
Cell 843-442-2624

EXHIBIT
38

104.147
Hannemann/Morris0089

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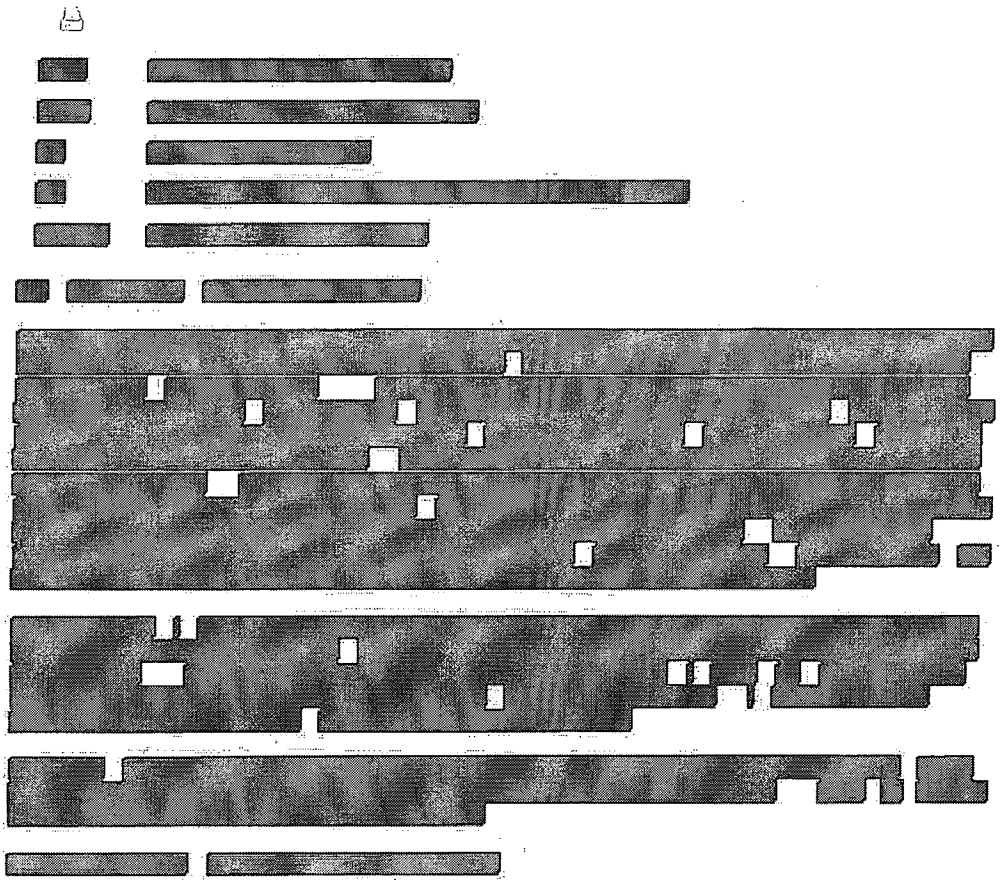

-----Original Message-----
From: dhannemann@sc.rr.com [dhannemann@sc.rr.com]
Sent: Wednesday, June 27, 2012 10:57 AM
To: McFarland
Cc: 'Tom & Charlene'; kjpm@knology.net
Subject: RE: Mail Sent to HOA Mail Box

EXHIBIT

39

Mr. McFarland, President and Board of Director:

Just for clarification:

Your e-mail states you did receive notification from the Post Office regarding a Certified letter addressed to Live Oak Village Homeowners Association, 106 Oak Village Lane, Summerville. You did not pick it up because there is no physical address for 106 Oak Village Land and the notice was incomplete in that it did not reference the sender. Even after my email indicating the Certified letter was from Mr. Mazell you still did not pick up the Certified letter.

You further state that Certified mail can be sent to your home address; however, the attached certified letter mailed to your home address was not picked up and was returned to the sender.

As for hand delivery, I attempted to deliver the Draft Annual HOA Meeting Minutes to your home, I rang the doorbell and knocked on the door, but no one answered. (Your vehicles were in your driveway)

Finally, I sent my dues payment to 106 Oak Village Lane and indicated in an e-mail to you that the envelope was inadvertently sent without sealing it properly. I asked you to respond as soon as it was received. After several

104.147
Hannemann/Morris0101

e-mails regarding the status of the dues payment, you finally acknowledged receipt of the check some 10 days later.

Frankly, I am confused as to how any homeowner is to send something to the HOA and obtain proof of delivery. In order to resolve this issue I, as Secretary of the HOA, will gladly go to the Post Office and sign for the Certified letter from the Mazells if you will provide me with the U.S. Postal Service notification. It is my understanding the Post Office will usually release the letter to anyone signing the notification. Just call me and tell me when it is convenient to come to your home and get the notification today.

David Hannemann
Secretary and Board of Director

---- McFarland <b21536@bellsouth.net> wrote:
> There is no physical address for 106 Oak Village Lane for the postal service to make a delivery of certified letter, only a mailbox. A certified letter requires a human signature of which the mailbox cannot supply. The Mazell's have been notified in the past, in writing, that certified mail cannot be sent to 106 Oak Village Lane: In the past the Mazell's have sent their payment via certified mail to our home address or via hand delivery. Additionally, whoever filled out the certified mail form left it incomplete without any reference of who it was from.
>
> In the future prior to sending an email of this kind, please do your "research" and question how the process was handled in the past.
>
> -----Original Message-----
> From: dhannemann@sc.rr.com [dhannemann@sc.rr.com]
> Sent: Tuesday, June 26, 2012 10:38 AM
> To: McFarland
> Cc: kjpm@knology.net; Tom & Charlene
> Subject: Mail Sent to HOA Mail Box
>
> Mr. McFarland, President and Board of Director;
>
> I, as a Board of Director, have been advised on June 15, 2012 the United States Postal Service left a notice of Certified Mail of attempted delivery for the Live Oak Village Homeowners Association, 106 Oak Village Lane, Summerville, SC 29483. This Certified Mail letter, number 7010 2780 0002 4319 4404, contains the check for the Live Oak Village Homeowners Association dues payment from Mike and Sophia Mazell. To date this Certified Letter has not been picked up from the Post Office. Please explain, as president and board of Director, why the Live Oak Village Homeowners Association at 106 Oak Village Lane, Summerville, SC 29483 does not accept Certified Mail.
>
> David Hannemann
> Secretary and Board of Director
>

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Hannemann/Morris0102

100 Oak Village Lane
Summerville, SC 29483
July 20, 2012

Mr. Bill McFarland, President and Board of Director
Live Oak Village Homeowners Association
105 Oak Village Lane
Summerville, SC 29483

Dear Mr. McFarland;

Enclosed is the unopened certified letter containing the Live Oak Village Homeowners Association (LOVHOA) dues check for 2012-2013 from Mr. and Mrs. Michael Mazell. Please provide Mr. and Mrs. Mazell with a written receipt for the timely payment of dues.

In clarification, your assertion that certified mail cannot be sent to 106 Oak Village Lane because there is no physical building indicates a LOVHOA policy regarding certified mail. In a review of the LOVHOA covenants and bylaws there is no such policy. Any such policy must, according to Roberts Rules, be presented, discussed, and approved by a majority of the homeowners. No individual officer of any organization can arbitrarily make rules without proper notice and comment to all members of the organization as well as obtaining their approval by a majority vote.

Since the President of the LOVHOA seems to have taken the responsibility for retrieving mail from the LOVHOA mail box at 106 Live Oak Village, that task may, at times, interfere with daily routines. It appears you were prevented from retrieving the certified letter from Mr. and Mrs. Mazell which is why the HOA Secretary and Board of Director indicated in an email he would gladly take the certified mail notification to the Post Office, retrieve the certified mail, and deliver it to you. If this offer had been accepted there would have been no need to send Mr. and Mrs, Mazell a past due notice for payment of their 2012-2013 dues payment which had been sent in a timely manner.

Hopefully, this issue is now closed.

Sincerely,

David Hannemann, Secretary and Board of Director

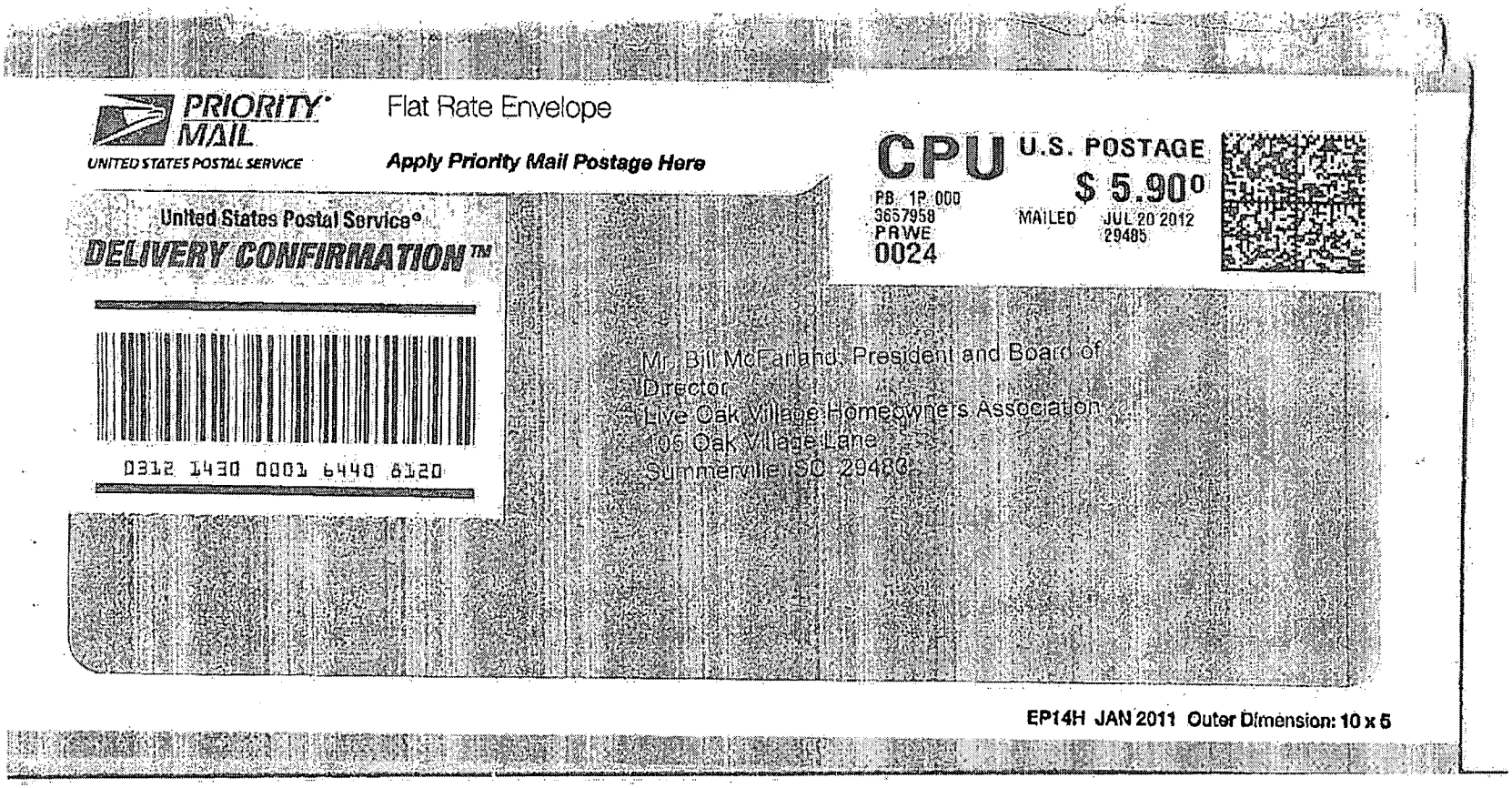
Thomas Morris, Jr., Board of Director

Enclosure

cc. Norbert Cummins
Michael Knight
Carlton Holcombe
Michael Mazell
Kathleen Green

EXHIBIT
40

104.147
Client Docs0074



PRIORITY MAIL
UNITED STATES POSTAL SERVICE

Flat Rate Envelope

Apply Priority Mail Postage Here

CPU U.S. POSTAGE
$ 5.90
PB 1P 000
3657958
PRWE
0024
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29485

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0312 1430 0001 6440 6120

Mr. Bill McFarland, President and Board of
Director
Live Oak Village Homeowners Association
106 Oak Village Lane
Summerville, SC 29483

EP14H JAN 2011 Outer Dimension: 10 x 5

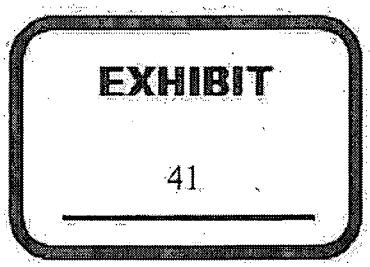
104.147
Client Docs0075

105 Oak Village Lane
Summerville, SC 29483

July 27, 2012

Mr. David Hannemann, Secretary and Board of Director, LOVHOA
100 Oak Village Lane
Summerville, SC 29483

Mr. Thomas Morris, Board of Director, LOVHOA
102 Oak Village Lane
Summerville, SC 29483



Dear Mr. Hannemann and Mr. Morris;

You have misrepresented the facts in your July 20, 2012 letter.

In clarification, **there is no LOVHOA policy regarding certified mail, only common sense in play.** There is no physical building for #106. When a postal employee enters into LOV they find (7) homes but there are (8) mailboxes. There is no physical building of which the postal person can exit their vehicle, present the certified letter and obtain the required human signature necessary for the delivery of a certified letter. It is for this reason, in the past years the homeowners of LOVHOA (including the Mazell's) have been requested in writing not to send certified mail to 106 Oak Village Lane as again there is no physical location. There are several ways in which payments can be made to LOVHOA, regular mail (which all other homeowners successfully use), hand delivery and US Postal Service delivery confirmation. These options have always been available to the Mazell's, equally, the same as all other homeowners

Four payments were received on time: REDACTED Cummings, REDACTED Knight, #104 Holcombe and #105 McFarland, these payments were sent via US mail and received without a problem, prior to the due date. The LOVHOA statements were mailed on April 27th which provided for more than the required (30) days prior to the due date of on or before May 31st. Assessments not paid when due shall be delinquent. It is the same for LOVHOA as it is for payments due to mortgage companies, equity lines or credit cards, when payments are not received when due, they are past due. Past due statements are sent when payments are past due.

The US Postal Service tracking log for the Mazell's certified letter state it was expected to be delivered, past due, on June 15th, I enclose a copy of the US Postal Service tracking log for your review. Your offer to pick up this letter was only made via email on June 27th, the US Postal Service tracking number you supplied showed the item was to be returned to sender on June 30th. Furthermore, the US Postal Service track and confirm log states that the sender of the certified mail was notified that the item was available for pick up on July 2nd, but it remained unclaimed by the Mazell's until July 12th, another (10) days. Even then it was over a week before it was forwarded by you to the LOVHOA. Why was the payment not forwarded for almost (3) weeks after the Mazell's were notified that their certified letter was returned? (51 days past the due date of May 31st). Again as the bylaws state "Any assessments of an owner or any portions thereof which are not paid when due, shall be delinquent". As outlined in Article VI of the LOVHOA covenants and bylaws, penalties and fines have been incurred on the Mazell's account and will be billed accordingly with the next statement.

104.147
Client Docs0071

The Mazell's are responsible for their account. As you were the only one who inquired on the Mazell's payment, (not the Mazell's themselves) I followed up with you via email on July 10th informing you that the LOVHOA had not received the Mazell's payment and that it was past due. You did not reply to me at all.

Regarding your duties as Secretary of the HOA, Mr. Carlton Holcombe has requested in writing to you several times that you provide him with a copy of the minutes/proxies of the special members meeting held on May 31st. You refused his request because he objected to your meeting. Your written reply to Mr. Holcombe via email dated June 7, 2012 states "since you claim the meeting was improper, neither the minutes nor proxies will be provided". After receiving your refusal Mr. Holcombe again made the same request for you to provide him with the minutes/proxies, to date he has not been given the requested copies from you. Roberts Rules state that you must make the minutes available to the members.

The minutes you provided me on June 15th for the Special members HOA meeting held on May 31st meeting are incomplete as they exclude motions made and accounting of votes taken during this meeting. Roberts Rules state that all motions and the accounting of votes must be included in the minutes recorded by the Secretary. You are again requested to forward to Mr. Holcombe a corrected complete set of minutes and proxies for the special members HOA meeting held on May 31st.

Your letter appears to accuse me of making a policy that does not exist and not following the bylaws in your effort to make the LOVHOA responsible for the Mazell's not making their payment on time. Your accusations are misplaced and inappropriate. Further they appear slanderous and only cause further discord amongst the LOV homeowners. Coupled with the comments made about me at the recent special members HOA meeting, they cause me great concern and I demand that you stop your malicious and defamatory comments.

Sincerely;

Bill McFarland
LOVHOA, President and BOD

Enclosure:

Cc: Norbert Cummings
Michael Knight
Carlton Holcombe
Michael Mazell
Kathleen Green

104.147
Client Docs0072

Track & Confirm

GET EMAIL UPDATES PRINT DETAILS

YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION	FEATURES
70102780000243194404	First-Class Mail®	Delivered	July 12, 2012, 12:53 pm	SUMMERVILLE, SC 29483	Expected Delivery By June 15, 2012 Certified Mail™
		Notice Left	July 02, 2012, 12:28 pm	SUMMERVILLE, SC 29483	
		Depart USPS Sort Facility	July 02, 2012	CHARLESTON, SC 29423	
		Processed at USPS Origin Sort Facility	July 01, 2012, 11:07 pm	CHARLESTON, SC 29423	
		Unclaimed	June 30, 2012, 3:03 pm	SUMMERVILLE, SC	
		Notice Left	June 15, 2012, 10:23 am	SUMMERVILLE, SC 29483	
		Arrival at Unit	June 15, 2012, 8:51 am	SUMMERVILLE, SC 29483	
		Acceptance	June 14, 2012, 3:11 pm	SUMMERVILLE, SC 29485	
		Acceptance	June 14, 2012, 1:45 pm	SUMMERVILLE, SC 29485	

106 Oak Village Lane
Summerville, SC 29483
July 31, 2012

Mr. Bill McFarland, President and Board of Director
Live Oak Village Homeowners Association
105 Oak Village Lane
Summerville, SC 29483

Dear Mr. President and Board of Director:

Thank you for your response.

Since we disagree as to whether or not the Live Oak Village Homeowner Association (LOVHOA) has a policy regarding Certified Mail to 106 Oak Village Lane, we suggest this be placed on the 2012 annual meeting agenda for resolution.

As for the timely payment of the LOVHOA annual assessment, a.k.a. dues, the covenants allow a 30 day grace period. The failure of a board member to retrieve certified mail sent to 106 Oak Village Lane does not constitute a late payment. Therefore, all payments were made in a timely manner.

Regarding the request for the May 31, 2012 Special LOVHOA Draft Meeting Minutes from 104 Oak Village Lane, the secretary is sorry they were not sent to him directly. Since it appears the president interceded on the homeowner's behalf, the draft minutes were sent to the president, presuming they would be shared with the homeowner. It appears by the president's comments regarding excluded motions and votes tallies they have been shared. However, in the interest of clarifying this issue the secretary will forward a copy of the e-mail sent to you to the homeowner.

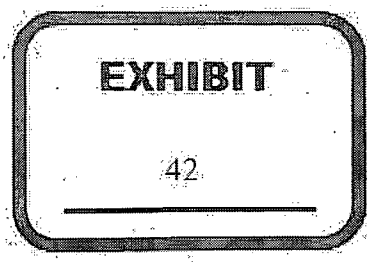
At this time we would like to again request the following items:

- Several e-mails were sent to the president regarding dates for the LOVHOA annual meeting. To date no response has been received nor has an annual meeting date been set.

- An e-mail was also sent to the president regarding expenses incurred by LOVHOA from June 1, 2011 to the present date. This information is required in advance of the annual meeting for budget preparation. To date no response or information has been received.

Please note our intent as Board members is to assure equal treatment for all homeowners and to request information relating to established policies.

Respectfully:



David Hannemann, Secretary and Board of Director

Thomas Morris, Jr., Board of Director

cc: Norbert Cummings, Michael Knight, Carlton Holcombe, Michael Mazell, Kathleen Green

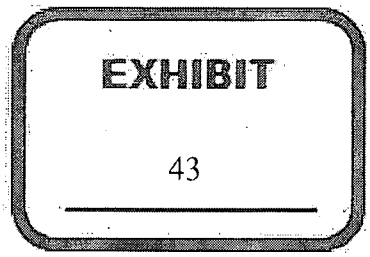
104.147
Hannemann/Morris0271

McFarland
105 Oak Village Lane
Summerville, SC 29483

August 4, 2012

Mr. David Hannemann, Secretary and Board of Director, LOVHOA
100 Oak Village Lane
Summerville, SC 29483

Mr. Thomas Morris, Board of Director, LOVHOA
102 Oak Village Lane
Summerville, SC 29483



Dear Mr. Hannemann and Mr. Morris;

In reply to your letter dated July 31, 2012:

There is no disagreement regarding "certified mail to #106 Oak Village Lane, there is no policy in place, period, only common sense, as clearly explained in the response to your previous letter dated July 20, 2012. Mail sent to the LOVHOA mailbox (by all other homeowners including yourself) has been successfully received via delivery confirmation and regular US mail. There is nothing to resolve regarding this matter.

Upon receipt of your letter, I requested via email that you provide the supporting covenant/bylaw for the statement that "the covenants allow for a 30 day grace period" of which you made in your July 31st letter to the LOVHOA members. I can only ascertain from your perplexing reply (see attached) that you are unwilling and/or unable to provide the covenant or bylaw you reference as fact. The covenants and bylaws govern the LOVHOA and constitute a contract between the LOVHOA and the LOV homeowners. The covenants/bylaws are not debatable and do not warrant an open forum. The covenants and bylaws are clear with regards to when payments are delinquent and the remedies for delinquent payments. I include the covenant/bylaws below for your understanding:

Section 14 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...

Section 6.3: Effect of Nonpayment of Assessments: Remedies of the Association

Any assessment not paid within (30) days after the due date shall bear interest from the due date...

The covenants/bylaws state as above "Any assessment of an Owner or any portions thereof which are not paid when due shall be delinquent" and "Any assessment not paid within (30) days after the due date shall bear interest FROM the due date" this is not a 30 day grace period. You have been requested on numerous occasions to measure your actions against the covenants and bylaws however your actions appear to again show willful disregard to the covenants/bylaws.

104.147
Client Docs0068

There is no failure of a Board Member to retrieve certified mail; there is a failure of the Mazell's to pay their assessment on time. Again, their payment was sent past due on June 14th. Their payment was available for them to pick up on July 2nd, yet remained unclaimed by them until July 12th. It was not ultimately received by the HOA until July 21st(51 days past due). The payment was due May 31st.

Your statement "Therefore, all payments were made in a timely manner" does not reflect the covenants and bylaws Section 14 H sited above. An arbitrary statement made by you in the capacity of a LOVHOA Board Member does not override the Bylaws/Covenants. Only (4) homeowners paid their assessment when due.

As Secretary, you refused in writing to send the Special members meeting minutes to Carlton Holcombe, you then provided a copy to me that is not complete. I have no idea what you mean the "excluded motions and votes tallies they have been shared". The minutes you provided excluded the motion to reduce the Morris fine which was seconded and voted on. As Secretary, you must include ALL motions, votes and outcome, period. We will wait the corrected copy.

The annual meeting is held annually. As Secretary you recorded the minutes, so you most certainly know that the annual meeting last year was held on August 30, 2011, with only (3) homeowners in attendance. The annual meeting will be scheduled for that same time period this August. Meeting notices will be sent according to the bylaws/covenants.

With reference to your statement that your intent is to assure equal treatment for all homeowners, that is the only way the bylaws/covenants can be interpreted and applied. That is the duty and purpose of the BOD. Your misstatements regarding a nonexistent policy regarding certified mail and a nonexistent (30) day grace period in an attempt to benefit one homeowner and your written refusal to supply requested meeting minutes to another, to me, appears contradictory to your statement that your intent is to "assure equal treatment for all homeowners"

I sincerely hope that this letter writing campaign of yours and Mr. Morris is concluded as I am obligated to reply and to restate the facts. These facts do not change with your repeated assertions.

Bill McFarland
LOVHOA President and BOD

Cc: Cummings, Knight, Holcombe, Mazell, KJPM

104.147
Client Docs0069

Cc:

-----Original Message-----
From: Tom Morris [tmorrisjr@sc.rr.com]
Sent: Wednesday, August 22, 2012 10:46 PM
To: 'McFarland'
Cc: dhannemann@sc.rr.com; kjpm@Keology.net
Subject: RE: Morris electrical wire

EXHIBIT

45

Mr. McFarland:

In response to your letter concerning our conversation on the morning of Friday, August 17, we obviously didn't have a casual conversation between neighbors as your letter implied. After a visit to Michael and Donna Knight's house, you called out to me after I had passed your driveway and

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Hannemann/Morris0112

asked me, "Is Donna going to help you with the meeting?" My response to you was "oh, we are going to have a meeting?" Your reply was yes and it was going to be ugly and was going to get out of hand. You also implied that there were going to be lawsuits. I did not solicit any conversation with you nor did I spend a lot of time listening to you. My statement to you was simply "do what you need to do." These constant issues are becoming cumbersome as well as tiresome. This certainly doesn't help with the peace and harmony of our community. As for KJPM, a closer observation was all that was needed to define a hose versus an electrical wire. She is, after all, the property manager. As for the detailed plans, they were submitted at the BOD meeting you chose not to attend. To address your statement that I was attempting to intimidate KJPM is so far from the truth. I simply stated facts pertaining to my feelings and my property.

In closing, I am reiterating my final statement to you on that unsolicited conversation on Friday, August 17. Yes, I write my own letters and find it odd that you ask that question. However, I look forward to the day when we will no longer have to respond to your endless emails and letters.

Tom Morris
LOVHOA, BOD

-----Original Message-----
From: McFarland [b21536@bellsouth.net]
Sent: Tuesday, August 21, 2012 11:47 AM
To: 'Tom Morris'
Cc: dhannemann@sc.rr.com; Kathleen Greene
Subject: RE: Morris electrical wire

Mr. Morris;

Following up on our conversation the other day in the driveway regarding your email below, I looked into this and the letter you forwarded that implies that the property manager is in some way attempting harass you, I can't disagree more with your contention. During her normal course of duty, KJPM had a question on what the black line crossing your property was. The green hose was obviously a garden hose but it wasn't obvious that the black line was a second garden hose. Had you submitted a detailed plan for your landscaping and lighting as required by the bylaws, she would have known that the landscape lighting would be properly installed and lines buried. KJPM was hired under a unanimous vote of the BOD when you and Mr. Hannemann would not enforce a violation against a homeowner, you yourself, at that time, said that hiring a property manager was "a wonderful idea". KJPM should be allowed to perform her duties without the continued attempts of you and Mr. Hannemann to intimidate her. This kind of drama in the neighborhood is neither required nor desired. It would be in the best interest of our community and also regarding the issue of peace and harmony to not make issues when this is clearly a non-issue, again it was only a question, period. Hopefully this issue is now closed.

Bill McFarland
LOVHOA President and BOD

-----Original Message-----
From: Tom Morris [tmorrisjr@sc.rr.com]
Sent: Thursday, August 16, 2012 12:18 PM
To: kjpm@Knology.net
Cc: dhannemann@sc.rr.com; Bill Mcfarland
Subject: RE: Morris electrical wire

Dear Mrs. Greene,
Please see attached letter regarding my garden hose you mistakenly identified as an electrical wire.
Tom

104.147
Hannemann/Morris0113

-----Original Message- ---
From: Kathleen J. Greene [kjpm@Knology.net]
Sent: Monday, August 06, 2012 12:53 PM
To: Tom Morris
Subject: RE: Morris electrical wire

Mr. Morris,

During two separate recent visits to Live Oak I saw a green garden hose and a black line crossing your drive. It appeared to me the black line was an electrical cord running to your center island, if not, then please let me know what the black line is for? Are the black line and the garden hose temporary? I have not taken pictures.

Kathleen J. Greene
K.J. Property Management, LLC
843-763-0943 office
843-534-6926 cell
www.kjpm.net

On Thu 08/02/12 2:16 PM , "Tom Morris" tmorrisjr@sc.rr.com sent:
> Hello, please send me a picture. Obviously you all see something that
> I donot.
> Thanks,
> Tom
>
> -----Original Message-----
> From: Kathleen J. Greene [kjpm@Knology .net] Sent: Thursday, August
> 02, 2012 11:42 AM
> To: dhannema
> nn@sc.rr.com; McFarland LOV; tmorrisjr
> @sc.rr.comSubject: Morris electrical wire
>
> Hello ~ On a recent visit I noted an electrical line on the Morris
> property.Section 7.21 Exclusion of Above Ground Utilities. Please bury
> the
line
> asap.Let me know when you've accomplished this so I can note it in the
file.
> Thanks much ~
> Kathleen J. Greene
> K.J. Property Management, LLC
> 843-763-0943 office
> 843-534-6926 cell
> www.kjpm.net
>
>
>
> -----
> No virus found in this message.
> Checked by AVG - www.avg.comVersion: 2012.0.2197 / Virus Database:
2437/5172 - Release Date:
> 08/02/12
>
>
>

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.2197 / Virus Database: 2437/5184 - Release Date: 08/07/12

No virus found in this message.
Checked by AVG - www.avg.com

104147
Hannemann/Morris0114

Version: 2012.0.2197 / Virus Database: 2437/5215 - Release Date: 08/21/12

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104.147
Hannemann/Morris0115

102 Oak Village Lane
Summerville, SC 29483

August 16, 2012

Ms. Kathleen Greene
K.J. Property Management, LLC
PO Box 80806
Charleston, SC 29416

RE: Mistaken Electrical Wire

Dear Ms. Greene:

In the future, when visiting a property you manage, I would suggest a closer inspection of the problem you are addressing is needed. The electrical wire you requested be buried as soon as possible is in fact an ordinary gray garden hose with a black line. Perhaps prior to writing the email you should have examined the issue more closely. This gray hose, along with a green hose, are being used for watering a replacement live oak tree. Our landscaper recently replaced this live oak tree and advised that it would die if not watered repeatedly. On this issue it would have been helpful to know the date and approximate time of your incorrect discovery, please send.

From the amount of letters and emails received, it appears my property has become of great interest to you. Why is this? In closing, I feel my property is under constant scrutiny which almost borders on harassment. In the future, please provide documentation, dates, times, and pictures to support any claims.

Respectively,

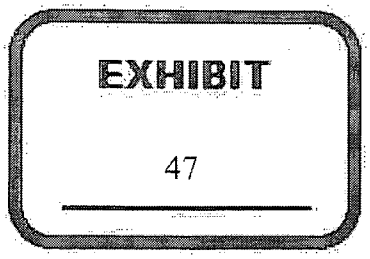
Thomas O. Morris, Jr.

EXHIBIT

46

104147
Hannemann/Morris0116

Mr. Carlton Holcombe
104 Oak Village Lane
Summerville, SC 29483



August 10, 2012

Dear Mr. Hannemann;

I am receipt of the various letters and emails you have been sending to the community and after much consideration regarding your handling of HOA affairs I feel it necessary to voice my concerns. I have served on many Boards, including Walnut Farms and LOVHOA and have found your actions seemingly contrary to following the Covenants and Restrictions and Bylaws of Live Oak Village that you were elected to follow, incumbent by law.

During the Special Members meeting held May 31st, you attempted to improperly conduct that meeting as the Annual meeting, chaired motions and votes outside the nonspecific object stated. Even after I objected, you continued on with the meeting.

Following the meeting, I requested, within my rights under Roberts Rule of Order, to receive a copy of the minutes you recorded. Your written reply was "since you claim the meeting was improper, neither the minutes nor proxies will be provided". This is completely inappropriate and unacceptable. It is your duty to make the minutes available, not subjectively deny them because you were offended by my valid objections.

At the President's request, you finally forwarded to me a copy of the minutes but they are incomplete. I was in attendance at the meeting and a motion was made and voted approved to make the Morris fine only $100.00. Regardless of what occurred with that fine after the meeting, the motion was made, seconded and voted on. Roberts Rules state all motions, adopted or not, must be in the minutes.

This is very troublesome to me as it shows a continued pattern of yours in attempting to use your position on the LOVBOD for the support of your fellow BOD, Mr. Morris.

The problems seem to have begun when I began spring preparation for my tomato garden. Mrs. Morris was adamantly against our re-planting the garden and repeatedly attempted to get the Property Manager to stop me. In 2009, sometime before the Morris's were even homeowners in LOV, I presented a letter to obtain approval for a vegetable garden which was approved under the LOVHOA covenants/bylaws after (30) days. The Property Manager reviewed this and deemed I had properly followed the covenants and bylaws. Mrs. Morris made it known to the Property Manager she strongly disagreed that I should be allowed to continue to cultivate my garden.

Several weeks later, Mr. and Mrs. Morris removed every single plant, tree and shrub from their front yard. After it sat that way, untouched, for some weeks, I contacted the President and then the Property Manager to find out what the plan was. I was quite surprised to find there was no plan submitted and that requests from the Property Manager had not been complied with. The Morris's were notified that fines would be levied if they did not comply in the time allotted for by the covenants/bylaws. This was not done and fines were enforced.

104:147
Hannemann/Morris0117

Previously, when my yard had become overgrown and a small piece of siding fell off, I received a letter from the Property Manager outlining my infraction and the penalties should I not comply. As the covenants and bylaws the Property Manager sited were correct, I fixed my siding and cleaned up my yard and the matter was closed.

I understand that another homeowner was notified by the Property Manager that they had some violations and that they also complied.

Why Mr. and Mrs. Morris chose not to comply with the Property Manager is of their own concern. What I am concerned about is how Mr. Hannemann and Mr. Morris as LOVHOA BOD's handled the situation. Since I was already denied a previous request for minutes from the Secretary Mr. Hannemann, I requested and received a copy of the Special BOD meeting minutes from the President to attempt to understand why a motion was made and voted on in the Special Members meeting May 31st to reduce the Morris fine to $100.00. According to the minutes of the Special BOD meeting attended by Mr. Hannemann and Mr. Morris, Mr. Morris voted in favor of his own landscaping plans. Again as I have set on many Boards before, I know that the SC Articles of Incorporation prohibit any board member with a vested interest from being the deciding vote in favor. This vote at the Special BOD meeting to approve the Morris's landscaping was used in the Special Members meeting to support the motion and vote to reduce their fine from $1000.00 to $100.00.

The actions of you at both meetings in attempt to circumvent the covenants and bylaws show that you and Mr. Morris as BOD have intent to use your authority for your own benefit and the detriment of others.

Now, it appears you and Mr. Morris as BOD's are attempting to avoid interest charges/fees on another homeowner by sending letters out that have vague statements, not supported by the covenants and bylaws and attempt to lay false blame. When I was past due on my assessment, I paid all interest charges and fees associated, as it should be.

In reviewing the bylaws I do not find support for the claims you make or actions you have taken When I sat on the LOVHOA BOD, we carefully followed the covenants and bylaws and when in question we sought legal counsel for affirmation. I do not see you and Mr. Morris doing the same. Your actions appear to arise to the level of gross negligence and willful neglect. I strongly recommend that you and Mr. Morris have the HOA attorney review your actions as BOD and abide by his findings.

In closing I request that both you and Mr. Morris resign from the BOD and that the homeowners seat a new BOD so that we can move forward without conflict of board members acting outside their vested duties.

Respectfully,

Mr. Carlton Holcombe

Cc: LOVHOMEOWNERS

104.147
Hannemann/Morris0118

100 Oak Village Lane
Summerville, SC 29483
August 16, 2012

EXHIBIT

48

Mr. Carlton Holcombe
104 Oak Village Lane
Summerville, SC 29483

Dear Mr. Holcombe:

I am in receipt of your letter. It is unfortunate you feel the need to be involved again when your only wish, as stated at the special Live Oak Village Homeowners Association (LOVHOA) meeting, was to be left alone. However, to briefly respond to your letter, you indicated that the special LOVHOA meeting on May 31, 2012 was improperly conducted. I disagree. Your objections were noted but they were not reasons to halt the meeting. Anything accomplished at that meeting was related to the peace and harmony for LOVHOA. As for the draft meeting minutes, you are correct; I was reluctant to provide them. Draft minutes according to Roberts Rules are simply that, DRAFT. They are the recollections of the minute taker and are not to be misinterpreted as the final minutes, which you have apparently done. Per Roberts Rules draft minutes are read at the next meeting with additions and changes made and then finalized for approval. Obviously, this procedure has not been completed.

My intent at the special LOVHOA meeting regarding landscaping at 102 Oak Village Lane was to review the BOD actions taken at the May 2, 2012. A special BOD meeting was held on that date and approved the landscape plans for the property. The LOVHOA by-laws do not prohibit an interested party from voting on a personal issue. The fine imposed on 102 Oak Village Lane was, I believe, improper. Since the BOD approved the landscape plans on May 2, the violation should have been for only one day or $100. However, the LOVHOA President and the Property Manager disagreed and the fine remained as assessed at $1000 or $100/day for 10 days. In the spirit of being a good neighbor and to prevent any additional legal expense to LOVHOA, the 10 day fine was paid.

Finally, your assertion regarding claims that Mr. Morris and I have acted improperly regarding the LOVHOA covenants and by-laws, is confusing. Mr. Morris and I have been elected and are, we believe, performing our duties in accordance with the LOVHOA covenants and by-laws. We have no intention of resigning. As for seeking legal counsel to resolve issues, we have sought to avoid that action for the sake of all members of LOVHOA. Any such action would create additional costs for all members. There are only seven homes in this association. If we cannot agree to live in peace and harmony without conflict, something is drastically wrong.

Respectfully,

David Hannemann

cc: Norbert Cummings, Tom Morris, Jr., Michael Knight, Bill McFarland, Mike Mazell

104.147
Hannemann/Morris0119

Mr. Carlton Holcombe
104 Oak Village Lane
Summerville, SC 29483

EXHIBIT

49

August 23, 2012

Dear Mr. Hannemann;

On August 21st I received your letter dated August 16th and in reply I cannot believe that you would speak to me again in such a manner and attempt to deny me my rights as a homeowner in good standing to "be involved". This is my home and it is my right to be involved and just because you currently hold a BOD position this does not give you the right to control what information I am allowed to receive or to question actions taken. Your response to me further supports my opinion that you are not following the LOVHOA Covenants and Bylaws.

You continue to attempt to skirt issues by deflecting. In fact, you were not hesitant to provide me the minutes because they were only in draft form; you denied them to me because I objected to the handling and the content of the May 31st meeting. I quote you from your email dated June 7th regarding my request for the minutes "since you claim the meeting was improper, neither the minutes nor proxies will be provided". As I stated in my last letter, you attempted to improperly conduct that meeting as the Annual meeting, chaired motions and votes outside the nonspecific object stated. While you are correct as per Roberts Rules of Order, meeting minutes are only a draft until read in the next meeting. You are incorrect by not including all motions moved as required by Roberts Rules of Order that dictates all motions whether or not they were adopted or not must be included in the minutes. You cannot deflect from this by stating the minutes are only in draft form or that is falls to your recollection. There was a motion moved and adopted to reduce the Morris's fine to $100.00 which must be included in the minutes.

You keep referring to an approval for the Morris's landscaping that was approved at a Special BOD meeting, again Mr. Morris as BOD cannot be the deciding vote to approve his personal landscaping plans and then use that approval to ultimately reduce the fine from $1000.00 to $100.00.

I am confused and concerned by your statement that you want "to prevent any additional legal expense to LOVHOA". I am in receipt of the financial data that was sent via US Mail to all LOVHOA members earlier this month. There were no LOVHOA funds spent for legal expenses, either in the past year from June 1, 2011 to May 31, 2012 nor is there any allocated in the projected budget of June 1, 2012 to May 31, 2013. Again, is appears to me you are practicing the art of deflection rather than addressing the question of Mr. Morris and your actions.

As you have refused to heed the advice of Attorney Brandt Shelbourne and refused to seek your own legal advice, It is seems to me that this matter will only be settled by a court of law.

Respectfully,

Mr. Carlton Holcombe

Cc: LOVHOMEOWNERS

104.147
Hannemann/Morris0120

Live Oak Village Homeowners Association
106 Oak Village Lane
Summerville, SC 29483

NOTICE OF LIVE OAK VILLAGE HOA MEETING

DATE: Wednesday September 12, 2012

TIME: 4:30pm to 6:00pm

PLACE: Summerville Public Library
76 Old Trolley Rd
Summerville, SC

Order of Business

- **Calling of the roll and certifying proxies**
- **Proof of notice of meeting or waiver of notice**
- **Reading of minutes**
  August 30, 2011 yearly meeting and May 31, 2012 Special Members Meeting
- **Reports of Officers**
- **Election of board member**
- **Unfinished business/New Business**
- **Adjournment**

EXHIBIT

50 A

104.147
Hannemann/Morris0249

McFarland

m:	Patricia Hannemann <pah@hoco150.com>
...nt:	Tuesday, September 11, 2012 8:28 AM
To:	b21536@bellsouth.net
Subject:	Annual HOA Meeting

Mr. McFarland:

Due to a family emergency neither Trish or I will not be attending the upcoming Annual HOA meeting.

David

EXHIBIT

52 A

104.147
Client Docs0055

McFarland

From: Tom Morris <tmorrisjr@sc.rr.com>
Sent: Tuesday, September 11, 2012 11:38 AM
To: Bill Mcfarland
Subject: Annual HOA Meeting

Mr. McFarland,

I will be working on Wednesday and unable to attend the scheduled meeting.

Tom Morris

52C

104.147
Client Docs0057

McFarland

m:	McFarland <b21536@bellsouth.net>
t:	Tuesday, October 02, 2012 1:34 PM
To:	Kathleen Greene (kjpm@Knology.net)
Subject:	FW: Mr. Fritz

Kathleen;

Following up on the Mazell-Fritz situation, Fritz is still living in his home I would like to know how you will be proceeding with your enforcement actions.

Thank you,

Bill McFarland
LOVHOA President

-----Original Message-----
From: Kathleen J. Greene [mailto:kjpm@Knology.net]
Sent: Tuesday, September 25, 2012 11:52 AM
To: mkmazell@yahoo.com
Subject: Mr. Fritz

Live Oak Village HOA
Oak Village Lane
merville, SC 29483

September 25, 2012

Mr. Michael and Sophia Mazell
REDACTED

EXHIBIT
54

Michael,
I called you last week to ask you about Mr. Fritz living in your home again. I listened to the detailed reasons for Mr. Fritz being in your home and how helpful he is to you. However, it seems we are back to where we were in exactly a year ago. Mr. Fritz is a non family member. This does violate section 7.5 which states that all lots shall be used for single-family residential purposes exclusively. Family members living under one roof must be related by blood or marriage. But then you know all this and yet Mr. Fritz is back in your home.

It is part of my job to remedy this infraction in compliance with the Declaration of Covenants and Restrictions for Live Oak Village. Again, I am notifying you that this infraction immediately cease and desist.

I appreciate and hope to eliminate any future problems by you taking care of this violation in a timely manner. Action which needs to take place on your part is; Within 10 days from receipt of this letter Mr. Fritz needs to leave the home or fines may be imposed.

Rc tfully,

Kathleen Greene

104.147
Client Docs0282

K.J. Property Management, LLC
843-763-0943

104.147
Client Docs0283

100 Oak Village Lane
Summerville, SC 29483
September 30, 2012

Mr. William McFarland, President
& Board of Director
Mrs. Jennifer McFarland, Treasurer
105 Oak Village Lane
Summerville, SC 29483

EXHIBIT

55

Dear Mr. President:

It has come to our attention that certain actions taken by you without approval from the Board of Directors may have placed the Live Oak Village Homeowners Association in legal jeopardy.

In early June a Board of Director was given a check for their homeowner's association dues by Ms. Sophia Mazell, residing at REDACTED I placed this check in an envelope and sent it via Certified Mail on June 14, 2012 to the Live Oak Village Homeowners Association mail box at 106 Oak Village Lane, Summerville, SC. (See attached receipt). This certified letter was never delivered due to a policy related by you that certified mail cannot be delivered to 106 Oak Village Lane, Summerville, SC because there is no physical location. Shortly thereafter, in an e-mail to you, I indicated I would go to the Post Office and sign for the Certified Letter. You never responded to my offer. The certified letter was retrieved from the Post Office by the HOA member at REDACTED on July 12, 2012 and returned to me. I then placed the unopened certified mail envelope in a Priority Mail envelope and sent it to you at 105 Oak Village Lane, Summerville, SC, your home address, with Delivery Confirmation on July 20, 2012. (See attached) The United States Post Office indicates this Priority Mail envelope was delivered to you on July 21, 2012 at 10:14 am. Therefore, the annual dues payment for REDA REDACTED was in your or your wife's, the HOA Treasurer, possession as of July 21, 2012 and was not deposited into the Live Oak Village Homeowners bank account.

Along with the Annual Live Oak Village Homeowners Association meeting notice, sent to REDA REDACTED on or about September 1, 2012, you or your wife included a late fee assessment. This late fee assessment was neither discussed with nor approved by the Board of Directors. The unopened certified mail envelope sent June 14, 2012 should have been considered timely payment and not subject to any late fees. At this point it is unclear as to why the annual dues assessment for REDACTED was not deposited in a timely manner.

This matter is further compounded by a complaint issued by the Solicitor's office against Ms. Sophia Mazell, REDACTED for issuing a "worthless check" on or about September 20, 2012. Failure to deal with the annual dues payment check for REDACTE REDACTED in a reasonable and timely manner has placed the Live Oak Village Homeowners Association in legal jeopardy based on your and or your wife's individual actions not in conformance with HOA rules and policies. Additionally, the failure of any officer in the Live Oak Village Homeowners Association to fulfill their duties potentially also places all members of the association in legal jeopardy. The actions or inactions by you or your wife to deposit an

104/147
Hannemann/Morris0109

annual dues payment in a timely manner are not actions consistent with the duties of the President, Board of Director and Treasurer of the HOA. Therefore, we, as Board of Director members do hereby renounce these actions and affirm these actions were not taken on behalf of the Live Oak Village Homeowners Association. The Live Oak Village Homeowners Association is not responsible for any consequences, legal or otherwise, that may arise from these actions. We, as Board of Director members, do hereby request the resignation of you as President and Board of Director and your wife, Jennifer McFarland, Treasurer effective immediately.

Respectfully,

David Hannemann. Secretary and Board of Director

Thomas Morris, Jr., Board of Director

cc: Mr. Norbert Cummings
Mr. & Mrs. Michael Knight
Mr. & Mrs. Carlton Holcombe
Mr. & Mrs. Michael Mazell
Ms. Kathleen Greene

104.147
Hannemann/Morris0110

EXHIBIT
59

PAINTED WITH A BLUE BACKGROUND ON WHITE PAPER · SECURITY FEATURES LISTED ON BACK

First Citizens
Member FDIC

275 SMB06
BRANCH NO.

4829688

07-148
532

MIKE MAZELL DUES

October 04, 2012
DATE

1,000 00

$ $1,000.00

LIVE OAK VILLAGE HOA

TO THE ORDER OF

CASHIER CHECK
FIRST CITIZENS BANK AND TRUST COMPANY, INC.

AUTHORIZED SIGNATURE

RE DA CT ED

EXHIBIT LE
9
S. Mazell 1/24/14

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 – absent
102 Oak Village Lane – present
REDACTED – absent
104 Oak Village Lane – present
105 Oak Village Lane – absent
REDACTED – present

EXHIBIT
60

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

104.147
Hannemann/Morris0186

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 REDAC REDACTED 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

104.147
Hannemann/Morris0186

From: <dhannemann@sc.rr.com> **Sent:** Wed 10/17/12 10:43 AM
To: kjpm@Knology.net **Priority:** Normal
Cc: Tom & Charlene <tmornsjr@sc.rr.com>, Mike & Sophia <mkmazell@yahoo.com>
Subject: Re: Fwd: Re: Re: REDACTED

Dear Ms. Greene:

On October 4, 2012 you sent an e-mail to the homeowner at REDACTED in which you stated "Such fines shall begin 10/5/2012." Also on October 4, 2012 the Board of Directors for the Live Oak Village Homeowners Association (LOVHOA) met in a Special Board of Directors Meeting where all homeowners were invited to attend. Based on the LOVHOA By-Laws and Robert's Rules proper notice was provided and new officers were elected by the BOD present. At that meeting, a new President, Secretary, and Treasurer were elected. Any actions taken on or after October 5, 2012 on behalf of the LOVHOA would have to be approved by the new President or full BOD. No such actions were authorized as relates to REDACTED Any directions you may have received prior to October 5, 2012 from the former President regarding REDACTED or any other directions pertaining to LOVHOA issues are considered null and void.

Therefore, I as President am directing you to cease and desist from assessing any fines on the homeowner at REDACTED As I have indicated previously, the homeowner at REDACTE REDACTED has provided a reasonable explanation to the majority of the BOD as to why Mr. Fritz is visiting or staying at his home. Based on the homeowners explanation there is no current violation. Please notify the homeowner at REDACTED that there are no fines imposed by the LOVHOA and that this matter is closed.

As to your resignation, I have spoken with Mr. Morris, and we, as the majority of the Board of Directors for LOVHOA are willing to accept your resignation, without condition, immediately if you so desire.

David Hannemann
President

EXHIBIT
62

--- "Kathleen J. Greene" <kjpm@Knology.net> wrote:
> Board members ~ . My agreement states - Any job tasks voted on by the Board of Directors that need to be carried out by KJPM will come to KJPM from the direction of the President or at Board of Directors meetings with majority vote. Prior to the meeting you had on October 4th Bil Mc Farlandl, the President, directed me to fine Mazell. We have not had a Board meeting about Mazells infraction Mazell can not prove Mr. Fritz has his own place of residents. I was originally hired to take care of the Mazell infraction over a year ago and here we are again with the same infraction. Therefore, I will take direction from Bill McFarland, President and fine Mazell $1,000 (the maximum amount attached).
>
> At this time I want to give my 30 day notice based on the Board not being a collective united group. I do not want to continue to be the person in the middle. From my side I see 2 (Mr. Hannemann & Mr. Morris) against 1 (Mr. McFarland). My contract also states that - If the specific act(s) have not been corrected after thirty (30) days Live Oak Community or KJPM shall have the right to terminate this agreement after such time. I hope you will accept my resignation as of November 1, 2012 I give my 30 days notice for the agreement to expire December 1, 2012.
> Sincerely,
> Kathleen J. Greene
> K.J. Property Management, LLC

KJ PROPERTY MANAGEMENT DOCS PER SUBPOENA #013

> 843-763-0943 office
> 843-534-6926 cell
> www.kjpm.net
>
>
>
> ----- Original Message -----
> From: dhannemann@sc.rr.com
> To: kjpm@Knology.net
> Sent: Mon 10/15/12 5:24 PM
> Subject: Fwd: Re: Re: REDACTED
>
>
> Dear Ms. Greene:
>
> Mr. Fritz did live at REDACTED previously and moved out in compliance with your request. However, I have recently asked the homeowner at REDACTED if Mr. Fritz is currently living there and the answer is no. The homeowner at REDACTED has stated Mr. Fritz is and will continue to be a frequent guest at REDACTED Also, upon occasion, he will spend the night babysitting their dog. None of these activities is in violation of the HOA bylaws; therefore, there is nothing to enforce. However, if you have any evidence to the contrary, I would like to see it and to know from whom it was obtained.
>
> David Hannemann
> President
>
>
> ---- "Kathleen J. Greene" kjpm@Knology.net> wrote:
> > Mazell can't prove Fritz doesn't live there. This same violation was the reason I was hired over a year ago. Mazell was willing and did comply with the rule at that time. If Fritz can't produce an electric bill in September to prove he has his own place to live then maybe he does live with Mazell. Fine's should be imposed until proof is in hand. I understand you don't want me to enforce this rule.
>
> > Kathleen J. Greene
> > K.J. Property Management, LLC
> > 843-763-0943 office
> > 843-534-6926 cell
> > www.kjpm.net
> >
> >
> > On Sat 10/13/12 2:18 PM , dhannemann@sc.rr.com sent:
> > > Ms. Greene
> > >
> > > As the newly elected President of the Live Oak Village Homeowners
> > > Association I thought my last e-mail regarding this issue would have been
> > > sufficient. I indicated "no action should be taken or fines imposed". To
> > > further clarify, this issue is considered closed, Mr. Mazell does not have
> > > to provide anything further regarding Mr. Fritz.
> > > If there is still a concern, I would like to know from whom and what
> > > evidence exists. Please address all questions to me and do not contact Mr.
> > > Mazell again regarding Mr. Fritz.
> > > Thank you
> > >
> > > David Hannemann
> > > President

> > >
> > >
> > >
> > > ---- "Kathleen J. Greene" kjpm@Knology
> > > .net> wrote: > Mike ~ I am awating proof (electric bill) that Mr.
> > > Fritz has his own home. Please scan and email a current bill. Thanks for
> > > your cooperation.> Kathleen J. Greene
> > > > K.J. Property Management, LLC
> > > > > 843-763-0943 office
> > > > > 843-534-6926 cell
> > > > > www.kjpm.net>
> > > > >
> > > > > On Mon 10/08/12 3:13 PM , Kathleen J. Greene kjpm@Knology
> > > .net sent: > > Please send proof that Mr. Frtiz has his own
> > > address. An electric bill> > would be fine. Thanks ~ Kathleen J.
> > > Greene> > K.J. Property Management, LLC
> > > > > > > 843-763-0943 office
> > > > > > > 843-534-6926 cell
> > > > > > > www.kjpm.net> >
> > > > > > On Mon 10/08/12 1:52 PM , michael mazell
> > > mkmazell@y> > ahoo.com sent: > You do what the board of
> > > directors direct you to do> > .MM> FROM: Kathleen J. Greene
> > > > > > TO: mkmazell@y
> > > > > > ahoo.com > SENT: Monday, October 8, 2012 1:34
> > > PM> > > SUBJECT: Re: REDACTED
> > > > > > >
> > > > > > You told me he did
> > > > > > Kathleen J. Greene
> > > > > > > K.J. Property Management, LLC
> > > > > > > 843-763-0943 office
> > > > > > > 843-534-6926 cell
> > > > > > > http://www.kjpm.net/ [1]> On Mon 10/08/12 1:33 PM ,
> > > michael mazell > > sent: > > MR FRITZ DOES NOT LIVE WITH ME WHAT ARE
> > > YOU> > BASING THIS ON .MM> > FROM: Kathleen J. Greene
> > > > > > > TO:
> > > > > > > SENT: Monday, October 8, 2012 1:19
> > > PM> > > > SUBJECT: Re: REDACTED
> > > > > > > >
> > > > > > > The Secretary of the Board holds the minutes.
> > > You> > would have to> check
> > > > > > > with Summerville Town Hall to verify my
> > > license.> > > > $100 fine per day began 10/5/2012. I will
> > > invoice> > you every day> unit
> > > > > > > the infraction has stopped.
> > > > > > > > Kathleen J. Greene
> > > > > > > > K.J. Property Management, LLC
> > > > > > > > 843-763-0943 office
> > > > > > > > 843-534-6926 cell
> > > > > > > > http://www.kjpm.net/ [1]> > On Fri 10/05/12 6:44 PM
> > > , michael mazell > > sent: > > > Mrs Greene when can i expect the
> > > documents i> > have requested your> > > timely response would be
> > > greatly appreciated.MM> > > > > FROM: Kathleen J. Greene
> > > > > > > > TO:
> > > > > > > > SENT: Thursday, October 4, 2012
> > > 12:21> > PM> > > SUBJECT: REDACTED
> > > > > > > > >

> > > > > > > > Mike - You have not replied to my email
> > > or> > letteron September 25,> > > 2012 about Mr. Fritz
> > > living with you again. In> > an earlier> > > conversation you had admitted Mr.
> > > Fritz is> > staying at your home.> > This
> > > > > > > > violates the LOVHOA Covenants section 7.5
> > > which> > states that> "All
> > > > > > > > lots shall be used for
> > > single-family> > residential purposes> > > exclusively" and
> > > section 7.6 which states> > that "No business> > > activity including but
> > > not limited to, a> > rooming house, boarding> > > house "
> > > > > > > > >
> > > > > > > > In accordance with the LOVHOA Covenants,
> > > the> > Association shall> > impose
> > > > > > > > fees, fines, penalties and sanctions,
> > > after> > notice and hearing,> > > including but not
> > > limited to, the imposition of> > fines and or the> > > suspension of your voting
> > > rights, or the> > suspension or> infringement
> > > > > > > > upon other rights you may have as an owner
> > > of> > real property> within
> > > > > > > > this subdivision. Such fines may be $100.00
> > > per> > day, not to> exceed
> > > > > > > > $1,000, until the infractions are
> > > remedied> > pursuant to LOVHOA> > > Covenants.
> > > > > > > Such fines shall begin 10/5/2012. Your
> > > were> > willing to comply a> > year
> > > > > > > ago for this same violation. I can only
> > > hope> > you will now do the> > > same. We don't want to
> > > go to court to solve> > this matter.> > >
> > > > > > > Sincerely,
> > > > > > > Kathleen J. Greene
> > > > > > > K.J. Property Management, LLC
> > > > > > > 843-763-0943 office
> > > > > > > 843-534-6926 cell
> > > > > > > http://www.kjpm.net/ [4] [1]> > > > > > >

From: <dhannemann@sc.rr.com> - Re: Fwd: Re: Re: REDACTED

Tom Morris

From: Tom Morris [tmorrisjr@sc.rr.com]

Sent: Monday, October 08, 2012 4:29 PM

To: Carlton Holcombe; David Hannemann ; Norb Cummings; Mike Mazell ; Donna Knight ; kjpm@knology.net

Subject: LOVHOA Special Board Of Directors - Draft Minutes

Attachments: LOVHOA BOD Meeting DRAFT minutes 10- 2012.doc

Attached is the LOVHOA Special BOD Meeting – Draft Minutes for October 4, 2012. There has been a change in officers – David Hannemann has been elected President and Treasurer and I have been elected Secretary. We are waiting for the official files to be transferred. However, in the meantime if we can be of any assistance, do not hesitate to contact us.

Tom Morris, Jr. Secretary

EXHIBIT

65

104.147
Hannemann/Morris0205

2/20/2014

Date: Monday, October 8, 2012 2:16 PM

From: Kathleen J. Greene <kjpm@Knology.net>

To: McFarland LOV <b21536@bellsouth.net>, dhannemann@sc.rr.com, tmorrisjr@sc.rr.com, mkmazell@yahoo.com

Subject: Mr. Mazell

I received a call from Mr. Mazell this morning - he says "On occassion he stays overnight to take care of the dog when he goes out of town. Mr. Fritz does not live there! Mr. Fritz will always be around the house." I look forward from a response from the Board on what direction to take in this matter.

Kathleen J. Greene
K.J. Property Management, LLC
843-763-0943 office
843-534-6926 cell
www.kjpm.net

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EXHIBIT

66

104.147
Hannemann/Morris0131

Date: Tuesday, October 9, 2012 10:45 AM

From: Kathleen J. Greene <kjpm@Knology.net>

To: dhannemann@sc.rr.com

Subject: Re: LOVHOA Special Board Of Directors - Draft Minutes

I have forwarded the mintues to Mr and Mrs McFarland.
Kathleen J. Greene
K.J. Property Management, LLC
843-763-0943 office
843-534-6926 cell
www.kjpm.net

On Mon 10/08/12 5:39 PM , dhannemann@sc.rr.com sent:
>
> Ms. Greene:
>
> Thank you for responding.
>
> Regarding the matter of Mr. Fritz at REDACTED I have spoken
> with Mr. Morris and we believe there is nothing to contradict what you have
> been told by the resident of REDACTED Therefore, no action
> should be taken or fines imposed.
> As regards Mr. and Mrs. McFarland, their attorney has requested neither I
> nor Thomas Morris, Jr. contact them directly. Therefore, we would
> apprecate your forwarding the LOVHOA Special Board of Director's 10/4/12
> Draft Minutes to the former President and Treasurer.
> Thank you again and we look forward to working with you.
>
> David Hannemann - President/Treasurer
>
> ---- "Kathleen J. Greene" kjpm@Knology
> .net> wrote: > Thank you for sending the mintues. So in my
> agreement it says I take orders from the President or a majority vote of
> the board. Please advise me on the Mazell matter. I will be sending my fee
> invoice to Mr. Hannemann before the end of the month as I assume the
> checkbook will be turned over to you. I look forward to working with you ~
> > Kathleen J. Greene
> > K.J. Property Management, LLC
> > 843-763-0943 office
> > 843-534-6926 cell
> > www.kjpm.net>
> >
> > On Mon 10/08/12 4:28 PM , "Tom Morris" tmorrisjr
> @sc.rr.com sent:> > Attached is the LOVHOA Special BOD Meeting -
> Draft Minutes for> > October 4, 2012. There has been a change in
> officers - David> > Hannemann has been elected President and
> Treasurer and I have been> > elected Secretary. We are waiting for the
> official files to be> > transferred. However, in the meantime if we can
> be of any> > assistance, do not hesitate to contact us.
> > > Tom Morris, Jr. Secretary
> > >
> >
>
>
>
>

EXHIBIT

67

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104.147
Hannemann/Morris0127

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From: Kathleen J. Greene <kjpm@Knology.net>

To: mkmazel@yahoo.com

Cc:

Subject: Mazell fine

Priority: Normal Date: Tuesday, October 16, 2012 11:12 AM Size: 264 KB

Attachments: Mazell fine 10-15-2012 001.jpg (261.5 KB)

Mike please find attached the fine for a non-family member living with you. I have been directed by the President, Mr. McFarland to fine you on the basis that you can not prove Mr. Fritz has his own residents.
Kathleen J. Greene
K.J. Property Management, LLC
843-763-0943 office
843-534-6926 cell
www.kjpm.net

EXHIBIT

68

104.147
Hannemann/Morris0128

Live Oak Village

Live Oak Village
106 Oak Village Lane
Somerville, SC 29483

Invoice

Date	Invoice #
10/5/2012	6

Bill To
Mr. Michael and Sophia Morell REDACTED

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
10	Violation - Non family member living in the home - 10 days fine 10-5 to 10-15-2012	100.00	1,000.00
	Live Oak Village 106 Oak Village Lane Somerville, SC 29483	Total	$1,000.00

Previous Message | Next Message

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104.147
Honneimann/Morris0129

(s12)

104.147
Hannemann/Morris0130

Tom Morris

From: Kathleen J. Greene [kjpm@Knology.net]
Sent: Tuesday, October 16, 2012 4:07 PM
To: mkmazell@yahoo.com
Subject: Fine

Mr. Mazell - I want to clarify my statement about Mr. McFarland directing me to fine Mazell. Ms. McFarland, who filed the original complant in Sept 2011 contacted me about Mr. Fritz living at your home again on Sept 20,2012. Upon sending you a letter on September 25, 2012 about the situation you said Mr. Fritz does stay in your home occasionally. I told you I would be sending you a fine if you couldn't prove Mr. Fritz residents. I asked for proof (Sept. electric bill) that Mr. Fritz has his own residents. As of this date you have not send proof. Therefore, I am assuming Mr. Fritz does not have his own residents. The letter I sent via email and snail mail were approved by Mr. McFarland, Presient. I am doing my duties according to my agreement and enforcing the covents a year ago as I was hired for the same infraction.

Kathleen J. Greene
K.J. Property Management, LLC
843-763-0943 office
843-534-6926 cell
www.kjpm.net

EXHIBIT
69

104.147
Hannemann/Morris0232

Date: Wednesday, October 17, 2012 11:28 AM

From: Kathleen <kjpm@knology.net>

To: dhannemann@sc.rr.com

Cc: Tom & Charlene <tmorrisjr@sc.rr.com>, Mike & Sophia <mkmazell@yahoo.com>

Subject: Re: Fwd: Re: Re: REDACTED

I have decided not to resign

EXHIBIT

70

T-Mobile, America's First Nationwide 4G Network

dhannemann@sc.rr.com wrote:

Dear Ms. Greene:

On October 4, 2012 you sent an e-mail to the homeowner at REDACTED in which you stated "Such fines shall begin 10/5/2012." Also on October 4, 2012 the Board of Directors for the Live Oak Village Homeowners Association (LOVHOA) met in a Special Board of Directors Meeting where all homeowners were invited to attend. Based on the LOVHOA By-Laws and Robert's Rules proper notice was provided and new officers were elected by the BOD present. At that meeting, a new President, Secretary, and Treasurer were elected. Any actions taken on or after October 5, 2012 on behalf of the LOVHOA would have to be approved by the now President or full BOD. No such actions were authorized as relates to REDACTED Any directions you may have received prior to October 5, 2012 from the former President regarding REDACTED or any other directions pertaining to LOVHOA issues are considered null and void.

Therefore, I as President am directing you to cease and desist from assessing any fines on the homeowner at REDACTED REDACTED As I have indicated previously, the homeowner at REDACTED has provided a reasonable explanation to the majority of the BOD as to why Mr. Fritz is visiting or staying at his home. Based on the homeowners explanation there is no current violation. Please notify the homeowner at REDACTED that there are no fines imposed by the LOVHOA and that this matter is closed.

As to your resignation, I have spoken with Mr. Morris, and we, as the majority of the Board of Directors for LOVHOA are willing to accept your resignation, without condition, immediately if you so desire.

David Hannemann
President

— "Kathleen J. Greene" <kjpm@Knology.net> wrote:
> Board members - My agreement states - Any job tasks voted on by the Board of Directors that need to be carried out by KJPM will come to KJPM from the direction of the President or at Board of Directors meetings with majority vote. Prior to the meeting you had on October 4th Bil Mc Farlandl, the President, directed me to fine Mazell. We have not had a Board meeting about Mazells infraction Mazell can not prove Mr. Fritz has his own place of residents. I was originally hired to take care of the Mazell infraction over a year ago and here we are again with the same infraction. Therefore, I will take direction from Bill McFarland, President and fine Mazell $1,000 (the maximum amount attached).
>
> At this time I want to give my 30 day notice based on the Board not being a collective united group. I do not want to continue to be the person in the middle. From my side I see 2 (Mr. Hannemann & Mr. Morris) against 1 (Mr. McFarland). My contract also states that - If the specific act(s) have not been corrected after thirty (30) days Live Oak Community or KJPM shall have the right to terminate this agreement after such time. I hope you will accept my resignation as of November 1, 2012 I give my 30 days notice for the agreement to expire December 1, 2012.
> Sincerely,
> Kathleen J. Greene
> K.J. Property Management, LLC
> 843-763-0943 office
> 843-534-6926 cell
> www.kjpm.net
>

104.147
Hannemann/Morris0137

>
>
> ----- Original Message -----
> From: dhannemann@sc.rr.com
> To: kjpm@Knology.net
> Sent: Mon 10/15/12 5:24 PM
> Subject: Fwd: Re: Re: REDACTED
>
>
> Dear Ms. Greene:
>
> Mr. Fritz did live at REDACTED previously and moved out in compliance with your request. However, I have recently asked the homeowner at REDACTED if Mr. Fritz is currently living there and the answer is no. The homeowner at REDACTED has stated Mr. Fritz is and will continue to be a frequent guest at REDACTED RED Also, upon occasion, he will spend the night babysitting their dog. None of these activities is in violation of the HOA bylaws; therefore, there is nothing to enforce. However, if you have any evidence to the contrary, I would like to see it and to know from whom it was obtained.
>
> David Hannemann
> President
>
>
> ---- "Kathleen J. Greene" kjpm@Knology.net> wrote:
> > Mazell can't prove Fritz doesn't live there. This same violation was the reason I was hired over a year ago. Mazell was willing and did comply with the rule at that time. If Fritz can't produce an electric bill in September to prove he has his own place to live then maybe he does live with Mazell. Fine's should be imposed until proof is in hand. I understand you don't want me to enforce this rule.
>
> > Kathleen J. Greene
> > K.J. Property Management, LLC
> > 843-763-0943 office
> > 843-534-6926 cell
> > www.kjpm.net
> >
> >
> > On Sat 10/13/12 2:18 PM , dhannemann@sc.rr.com sent:
> > > Ms. Greene
> > >
> > > As the newly elected President of the Live Oak Village Homeowners
> > > Association I thought my last e-mail regarding this issue would have been
> > > sufficient. I indicated "no action should be taken or fines imposed". To
> > > further clarify, this issue is considered closed, Mr. Mazell does not have
> > > to provide anything further regarding Mr. Fritz.
> > > If there is still a concern, I would like to know from whom and what
> > > evidence exists. Please address all questions to me and do not contact Mr.
> > > Mazell again regarding Mr. Fritz.
> > > Thank you
> > >
> > > David Hannemann
> > > President
> > >
> > >
> > >
> > > ---- "Kathleen J. Greene" kjpm@Knology
> > > .net> wrote: > Mike – I am awating proof (electric bill) that Mr.
> > > Fritz has his own home. Please scan and email a current bill. Thanks for
> > > your cooperation.> Kathleen J. Greene
> > > > K.J. Property Management, LLC
> > > > 843-763-0943 office
> > > > 843-534-6926 cell
> > > > www.kjpm.net>
> > > >
> > > > On Mon 10/08/12 3:13 PM , Kathleen J. Greene kjpm@Knology
> > > .net sent:> > Please send proof that Mr. Frtiz has his own
> > > address. An electric bill> > would be fine. Thanks ~ Kathleen J.
> > > Greene> > K.J. Property Management, LLC
> > > > 843-763-0943 office

104.147
Hannemann/Morris0138

> > > > > 843-534-6926 cell
> > > > > www.kjpm.net> >
> > > > > On Mon 10/08/12 1:52 PM , michael mazell
> > > mkmazell@y> > ahoo.com sent:> You do what the board of
> > > directors direct you to do> > .MM> FROM: Kathleen J. Greene
> > > > > > TO: mkmazell@y
> > > > > ahoo.com > SENT: Monday, October 8, 2012 1:34
> > > PM> > > SUBJECT: Re: REDACT
> > > > > > >
> > > > > > You told me he did
> > > > > > Kathleen J. Greene
> > > > > > K.J. Property Management, LLC
> > > > > > 843-763-0943 office
> > > > > > 843-534-6926 cell
> > > > > > http://www.kjpm.net/ [1]> On Mon 10/08/12 1:33 PM ,
> > > michael mazell > > sent:> > MR FRITZ DOES NOT LIVE WITH ME WHAT ARE
> > > YOU> > BASING THIS ON .MM> > FROM: Kathleen J. Greene
> > > > > > > TO:
> > > > > > > SENT: Monday, October 8, 2012 1:19
> > > PM> > > SUBJECT: Re: REDACT
> > > > > > >
> > > > > > The Secretary of the Board holds the minutes.
> > > You> > would have to> check
> > > > > > with Summerville Town Hall to verify my
> > > license> > > > $100 fine per day began 10/5/2012. I will
> > > invoice> > you every day> until
> > > > > > the infraction has stopped.
> > > > > > Kathleen J. Greene
> > > > > > K.J. Property Management, LLC
> > > > > > 843-763-0943 office
> > > > > > 843-534-6926 cell
> > > > > > http://www.kjpm.net/ [1]> > On Fri 10/05/12 6:44 PM
> > > , michael mazell > > sent:> > > Mrs Greene when can i expect the
> > > documents i> > have requested your> > > timely response would be
> > > greatly appreciated.MM> > > > FROM: Kathleen J. Greene
> > > > > > > TO:
> > > > > > > SENT: Thursday, October 4, 2012
> > > 12:21> > PM> > > SUBJECT: REDACTED
> > > > > > >
> > > > > > Mike . You have not replied to my email
> > > or> > letteron September 25,> > > 2012 about Mr. Fritz
> > > living with you again. In> > an earlier> > > conversation you had admitted Mr.
> > > Fritz is> > staying at your home.> > This
> > > > > > violates the LOVHOA Covenants section 7.5
> > > which> > states that> "All
> > > > > > lots shall be used for
> > > single-family> > residential purposes> > > exclusively" and
> > > section 7.6 which states> > that "No business> > > activity including but
> > > not limited to, a> > rooming house, boarding> > > house "
> > > > > > >
> > > > > > in accordance with the LOVHOA Covenants,
> > > the> > Association shall> > impose
> > > > > > fees, fines, penalties and sanctions,
> > > after> > notice and hearing,> > > including but not
> > > limited to, the imposition of> > fines and or the> > > suspension of your voting
> > > rights, or the> > suspension or> infringement
> > > > > > upon other rights you may have as an owner
> > > of> > real property> within
> > > > > > this subdivision. Such fines may be $100.00
> > > per> > day, not to> exceed
> > > > > > $1,000, until the infractions are
> > > remedied> > pursuant to LOVHOA> > > Covenants.
> > > > > > Such fines shall begin 10/5/2012. Your
> > > were> > willing to comply a> > year
> > > > > > ago for this same violation. I can only
> > > hope> > you will now do the> > > same. We don't want to
> > > go to court to solve> > this matter.> > >

104.147
Hannemann/Morris0139

> > > > > > > > Sincerely,
> > > > > > > > Kathleen J. Greene
> > > > > > > > K.J. Property Management, LLC
> > > > > > > > 843-763-0943 office
> > > > > > > > 843-534-6926 cell
> > > > > > > > http://www.kjpm.net/ [4] [1]> > > > > > > >
> > > > > > > > Links:
> > > > > > > > ------
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104147
Hannemann/Morris0140

Tom Morris

From: dhannemann@sc.rr.com
ent: Tuesday, October 23, 2012 6:54 PM
To: Ms. Greene
Cc: Tom & Charlene
Subject: Meeting

Dear Ms. Greene:

Tom and I, as Board Members of the Live Oak Village Homeowners Association, would like to meet with you to better understand your roles under the original contract and current contract as they pertain to the Live Oak Village Homeowners Association. This meeting, which we would like to hold this week, can take place at a time and location of your choosing. Unfortunately, we will not be available on Thursday October 25, 2012.

Thank you

David Hannemann

EXHIBIT

71

104.147
Hannemann/Morris0221

Tom Morris

From: Kathleen J. Greene [kjpm@Knology.net]
ent: Wednesday, October 24, 2012 11:47 AM
To: dhannemann@sc.rr.com
Cc: tmorrisjr@sc.rr.com
Subject: Re: Meeting

I have a very busy personal and business schedule for the next several weeks. I have already provided you a copy of my contract that you can refer to. That should answer any questions you may have.
Kathleen J. Greene
K.J. Property Management, LLC
843-763-0943 office
843-534-6926 cell
www.kjpm.net

On Tue 10/23/12 6:53 PM , dhannemann@sc.rr.com sent:
> Dear Ms. Greene:
>
> Tom and I, as Board Members of the Live Oak Village Homeowners
> Association, would like to meet with you to better understand your
> roles under the original contract and current contract as they pertain
> to the Live Oak Village Homeowners Association. This meeting, which
> we would like to hold this week, can take place at a time and location of your choosing.
> Unfortunately, we will not be available on Thursday October 25, 2012.
> Thank you
>
> David Hannemann
>

->

EXHIBIT

72

104.147
Hannemann/Morris0219

Tom Morris

From: Kathleen J. Greene [kjpm@Knology.net]
Sent: Wednesday, October 24, 2012 1:47 PM
To: dhannemann@sc.rr.com; McFarland LOV; tmorrisjr@sc.rr.com
Subject: Re: Meeting

Mr. McFarland, Mr. Hannemann and Mr. Morris; since I have a valid license to practice HOA management in the Town of Summerville. I retract my resignation and will work for Live Oak Village until my agreement is renewed.
Kathleen J. Greene
K.J. Property Management, LLC
843-763-0943 office
843-534-6926 cell
www.kjpm.net

On Tue 10/23/12 6:53 PM , dhannemann@sc.rr.com sent:
> Dear Ms. Greene:
>
> Tom and I, as Board Members of the Live Oak Village Homeowners
> Association, would like to meet with you to better understand your
> roles under the original contract and current contract as they pertain
> to the Live Oak Village Homeowners Association. This meeting, which
> we would like to hold this week, can take place at a time and location of your choosing.
> Unfortunately, we will not be available on Thursday October 25, 2012.
> Thank you
>
> David Hannemann
>
>

EXHIBIT
73

104147
Hannemann/Morris0220

100 Oak Village Lane
Summerville, SC 29483
November 1, 2012

K. J. Property Management, LLC
P. O. Box 80806
Charleston, SC 29416

Re: Request for Correspondence

Dear Ms. Green:

On October 25, 2102 I sent you an e-mail requesting you provide "copies of all correspondence/letters you have written on behalf of the Live Oak Village Homeowners Association since inception of your contract. These items should include documents reviewed and approved by the former President." This request stated the documents were to be provided by October 31, 2012.

These documents have not been provided. Therefore, as stipulated in your contract, you are directed to attend a meeting of the Board of Directors on Monday November 5, 2012 at time and place of your choice. Failure to respond will cause the clause 5 of your agreement with Live Oak Village Homeowners Association to be activated. You have 30 days from November 5, 2012 to resolve this situation. Failure to comply will terminate your contract.

Respectfully,

David Hannemann
President/BOD

cc. Thomas Morris, Jr. BOD

EXHIBIT

75

104.147
Hannemann/Morris0201

McFarland

From:	dhannemann@sc.rr.com
Sent:	Monday, May 07, 2012 10:08 AM
To:	McFarland; tmorrisjr@sc.rr.com
Cc:	kjpm@Knology.net; brandt@shelbournelaw.com
Subject:	Draft Live Oak Village Special Board of Directors Meeting Minutes
Attachments:	LOVHOA Special Board of Directors Special Meeting Minutes.doc; Morris Landscape0001.pdf; Morris Landscape0002.pdf; Morris Landscape Design.jpg; Morris Landscape0003.pdf

Attached are the Draft minutes for the Live Oak Village Homeowners Association Special Board of Directors Meeting held on May 2, 2012. There have been no previous BOD meetings regarding the Morris landscape project.

David Hannemann
Secretary and Board of Director

76

104.147
Client Docs0151

DRAFT

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 further 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.

104.147
Client Docs0152

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.

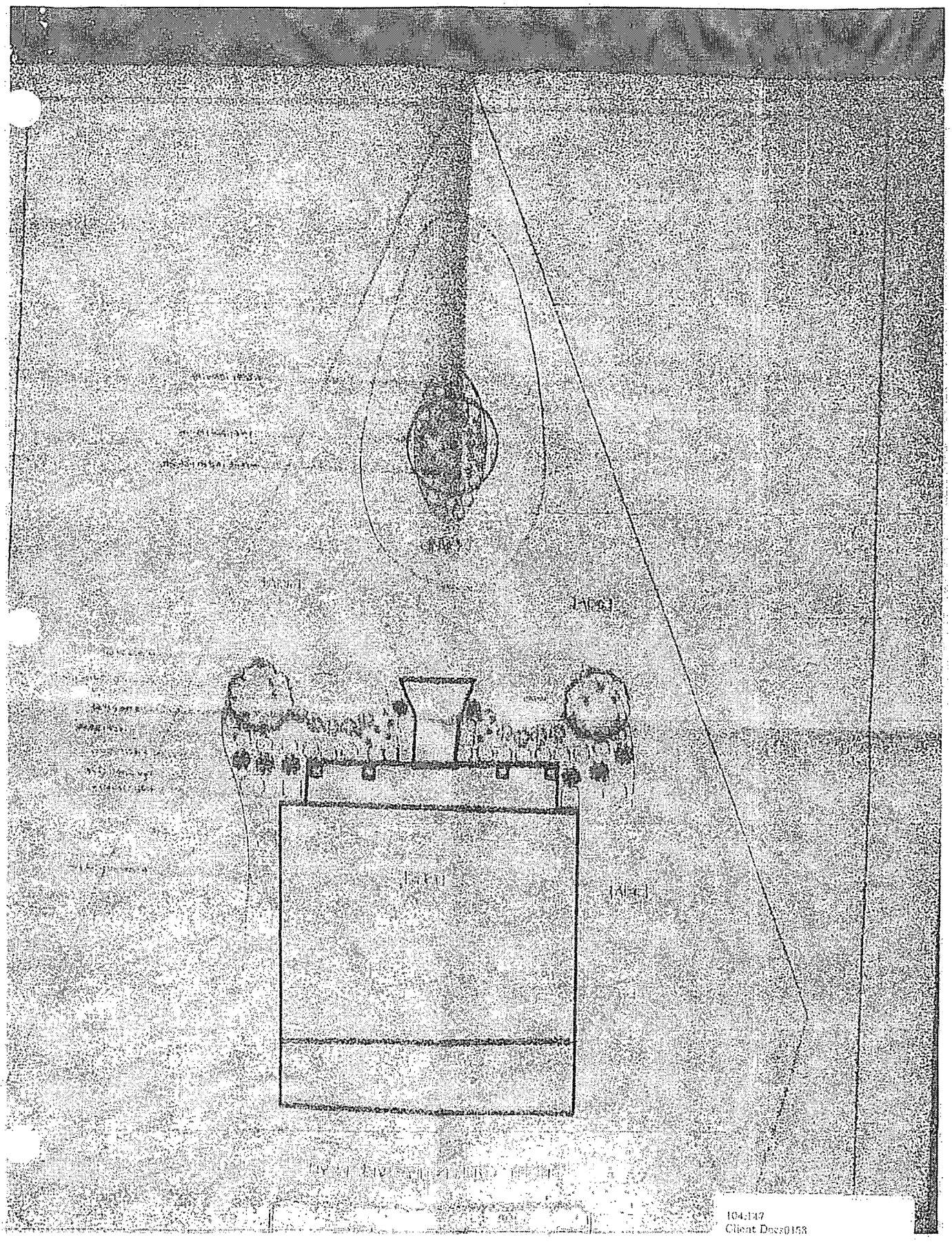
There was no other new business presented.

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

104.147
Client Docs0156


104:147
Client Docs0153

May 1, 2012

Live Oak Village HOA
Board of Directors
106 Oak Village Lane
Summerville, S.C. 29483

Board of Directors:

I am seeking approval if needed to repair, replace or add to my existing gutter system.

Sincerely,

Tom Morris

Tom Morris
102 Oak Village Lane

104.147
Client Docs0154

McFarland

From:	dhannemann@sc.rr.com
Sent:	Wednesday, September 26, 2012 2:22 PM
To:	McFarland
Cc:	Donna & Mike Knight; Norb; Mike & Sophia; Holcombe; Tom & Charlene
Subject:	September 12, 2012 Scheduled Annual HOA Meeting

Mr. President:

Trish and I are currently in Summverville but we can not predict for how long due to the family emergency out of state.

We were informed you scheduled an Annual Homeowners meeting for September 12, 2012 to which we replied in an e-mail indicating we would be unable to attend. Did that meeting occur? If yes, who was present, and as a homeowner in good standing please forward the draft minutes for that meeting. If the meeting did not occur, when will the Annual Homeowners meeting be rescheduled.

David Hannemann, BOD & Secretary

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104.147
Client Docs0052

Written Notice of Special Board of Directors Meeting of the Live Oak Village Homeowners Association

100 Oak Village Lane
Summerville, SC 29483

June 12, 2013

Mr. Bill McFarland
Member of the Board of Directors
Live Oak Village Homeowners Association
105 Oak Village Lane
Summerville, SC 29483

Dear Mr. McFarland:

In accordance with Section (C)5 of the Bylaws for the Live Oak Village Homeowners Association ("LOVHOA"), the undersigned members of the Board by this notice advise you of a Special Meeting of the Board to be held on Monday, June 17, 2013 beginning at 5:00 PM and will take place at Fire Station No. 4 located at 164 Sheep Island Road, Summerville, SC.

By copy of this to Kathleen Green, Property Manager, K.J. Property Management, LLC, PO Box 80806, Charleston, South Carolina 29416, we request her presence at the meeting and she is to bring copies of the following HOA documents and information:

1. All meeting minutes for LOVHOA;
2. All correspondence from LOVHOA or generated on its behalf to homeowners;
3. Copies of any and all documents sent to the LOVHOA;
4. Copies of Contracts with the LOVHOA;
5. Copies of all bank statements for the LOVHOA; and
6. Copies of any and all miscellaneous documents pertaining to the LOVHOA.

The matter to be discussed is the Mazall liens.

Respectfully,

David K. Hannemann, President

Thomas O. Morris, Jr., Secretary

78

104.147
Hannemann/Morris0194

STATE OF SOUTH CAROLINA	)	IN THE COURT OF THE 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	)	
	)	STIPULATION OF PARTIAL DISMISSAL WITH PREJUDICE
V.	)	
	)	
THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL AND MICHAEL MAZELL	)	
	)	
DEFENDANTS	)	
SOFIA MAZELL AND MICHAEL MAZELL	)	
	)	
THIRD PARTY PLAINTIFFS	)	
	)	
V.	)	
	)	
WILLIAM MCFARLAND	)	
	)	
THIRD PARTY DEFENDANT	)	

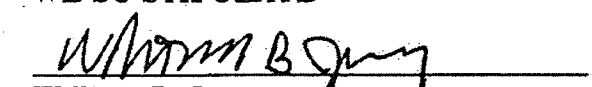
CERTIFIED COPY
2014 NOV -6 AM 11:19
CLERK OF COURT
DORCHESTER COUNTY

Pursuant to Rule 41(c) of the South Carolina Rules of Civil Procedure, Defendants/Third-Party Plaintiffs, Sofia Mazell and Michael Mazell, hereby dismiss with prejudice their counterclaims against Plaintiffs, Live Oak Village Homeowners Association, Inc., Jennifer McFarland, Carlton Holcombe, and Ute Holcombe. Further, Defendants/Third-Party Plaintiffs, Sofia Mazell and Michael Mazell, hereby dismiss with prejudice their Third-Party Complaint against Third-Party Defendant William McFarland. This Stipulation of Partial Dismissal does not affect the claims made by Plaintiffs or any other Defendant or Third-Party Plaintiff not so named herein.

Defendants/Third-Party Plaintiffs, Sofia Mazell and Michael Mazell, and Plaintiffs Live Oak Village Homeowners Association, Inc., Jennifer McFarland, Carlton Holcombe, and Ute

Holcombe, and Third-Party Defendant William McFarland, by and through their undersigned attorneys, stipulate to this partial dismissal with prejudice as stated above.

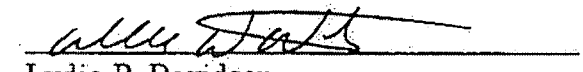
WE SO STIPULATE:



William B. Jung
1156 Bowman Road, Ste. 200
Mt. Pleasant, SC 29464
Attorney for Sofia Mazell and Michael Mazell

P. Brandt Shelbourne
Shelbourne Law Firm
131 E. Richardson Avenue
Summerville, SC 29483
Attorney for the Ute Holcombe

Jason A. Daigle
Young Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402
Attorney for Live Oak Village Homeowners Association, Inc., Jennifer McFarland, Carlton Holcombe, and William McFarland



Lydia P. Davidson
Krawcheck & Davidson
9 State Street
Charleston, SC 29401
-and-
William W. Watkins, Jr.
Wall Templeton
P.O. Box 1200
Charleston, SC 29402
Attorney for Thomas Morris and David Hannemann

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

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2015 JAN 16 PM 3:20
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.

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,

WALL TEMPLETON & HALDRUP, P.A.

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Attorneys for Defendants Thomas Morris and David Hannemann

CERTIFIED COPY

CERTIFICATE OF SERVICE

2015 JAN 16 PM 3:24

The undersigned employee of WALL TEMPLETON & HALDRUP, P.A. hereby certifies that on this 16th day of January, 2015, she served a copy of **AMENDED MOTION FOR SUMMARY JUDGMENT** by placing a copy in a postpaid envelope for collection and processing for mailing, following this business's ordinary practice, with which she is readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited with the United States Postal Service in the ordinary course of business and addressed to the persons hereinafter named, at the places and addresses stated below, which are the last known address, in Charleston, South Carolina:

CLERK OF COURT
DORCHESTER COUNTY

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Sarah Jane Schrodetzki

EXHIBIT "D"

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2016 DEC -8 AM 11:48
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
102 Oak Village Lane – Mrs. Thomas Morris
REDACTED
104 Oak Village Lane – Mr. Carlton Holcombe
105 Oak Village Lane – Mr. & Mrs. Bill McFarland
REDACTED

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; RE voted yea; 102 abstained; RE was absent and according to the rules voted with the majority; 104 voted yea; 105 voted yea; RE 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.

104.147
Hannemann/Morris0080

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 Flint Street for REDACTED 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

104.147
Hannemann/Morris0037

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 Proxy Letter for Mr. Norbert Cummings
102 Oak Village Lane – Proxy Letter for Mr. & Mrs. Thomas Morris, Jr.
REDACTED Absent
104 Oak Village Lane – Proxy Letter for Mr. Carlton Holcombe.
105 Oak Village Lane – Mr. & Mrs. Bill McFarland
REDACTED 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 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.

104.147
Hannemann/Morris0038

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

104.147
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 further 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.

104.147
Hennemann/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

104.147
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 – Proxy Letter for Mr. Norbert Cummings, Jr.
102 Oak Village Lane – Mr. & Mrs. Thomas Morris, Jr.
REDACTED – Mr. Michael P. Knight
104 Oak Village Lane – Mr. & Mrs. Carlton Holcombe
REDACTED – 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. Holcolmbe 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 those 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.

104.147
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 absent
102 Oak Village Lane – present
REDACTED absent
104 Oak Village Lane – present
105 Oak Village Lane – absent
REDACTED present

Calling of Roll: 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

104147
Client Doc00035

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 REDACTED REDACTED 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

104.147
Client Doc00036

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.J. 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 Hannemann, Secretary / BOD

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	absent
102 Oak Village Lane –	present
REDACTED	absent
104 Oak Village Lane –	present
105 Oak Village Lane –	absent
REDACTED	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

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 REDAC REDACTED 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

EXHIBIT "E"

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,	)	PLAINTIFFS' RESPONSES TO DEFENDANTS THOMAS MORRIS AND DAVID HANNEMANN'S REQUESTS FOR ADMISSIONS
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.	)	

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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 15144)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
ATTORNEYS FOR PLAINTIFFS

Summerville, South Carolina
November 20 2014

Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing has been served upon opposing counsel by mailing a copy properly addressed with the sufficient postage affixed thereto this 20th day of November, 2014.

Jennifer E. Bell

EXHIBIT "F"

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,	)	PLAINTIFFS' RESPONES TO DEFENDANTS MICHAEL MAZELL'S AND SOFIA MAZELL'S SECOND REQUEST FOR ADMISSIONS
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.	)	

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 REDACTED REDACTED 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 REDACTED REDACTED 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 REDACTED REDACTED 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
Nildci 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

Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing discovery response has been served upon opposing counsel by mailing a copy properly addressed with the sufficient postage affixed thereto this 20th day of November, 2014.

DEPOSITION EXCERPTS

In The Matter Of:

Live Oak Village Homeowners Association, Inc. et al v. Thomas Morris, David Hanneman, Sofia Mazell et al

---

David Kurt Hannemann
November 4, 2014

---

*Lana R. Edmonds * LRM Court Reporting, LLC*
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1 August of 2010, Jennifer was serving as the
2 treasurer?
3 A Yes.
4 Q Okay. Okay. Let's move to the August
5 2011 meeting. Is it your understanding that's the
6 last time the meeting was held?
7 A Yes.
8 Q Okay. Who was elected then?
9 A Mr. Morris was elected in absentia.
10 Q What's that mean?
11 A He wasn't there present at the meeting.
12 Q Did he get tricked into doing that, then?
13 A No. He sent a note indicating that if
14 nominated, he would serve.
15 Q So in August of 2011, Mr. Morris was
16 elected to the board?
17 A Yes, replacing Mr. Holcombe.
18 Q So in August of 2011, the board of
19 directors was comprised of you, Mr. McFarland, and
20 Mr. Morris?
21 A Yes.
22 Q Okay. Who were the officers?
23 A I was the secretary. Mr. McFarland was
24 the president.
25 Q Did Mr. Morris have -- was Mr. Morris an

In The Matter Of:

Live Oak Village HOA, Inc., et al vs

Thomas Morris, et al

William McFarland, 30(b)(6)

December 2, 2014

A. William Roberts, Jr. and Associates

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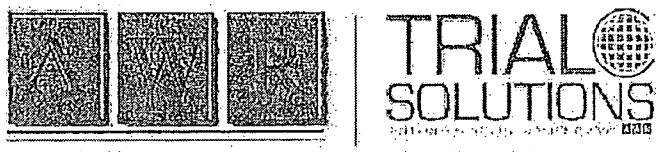

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1 Q. Yeah, please do.
2 (DFT. EXH. 2, Declaration of Covenants
3 and Restrictions, was marked for identification.)
4 (DFT. EXH. 3, Amendments to the
5 Declaration of Covenants and Restrictions, was
6 marked for identification.)
7 BY MR. WATKINS:
8 Q. Let me -- let me hand you what's been
9 marked Exhibit No. 2, and if you'll just take a
10 reference and tell us for the record what that is,
11 and then I'm also going to hand you Exhibit No. 3.
12 So my first question -- that was a
13 compound question, but the first question was,
14 just so that we have it for the record, Exhibit
15 No. 2, can you tell us what that is?
16 A. Yes. That's the declaration of
17 covenants and restrictions for Live Oak Village.
18 Q. And does it also contain the bylaws?
19 A. I believe so, in the back, yes.
20 Q. Okay. And Exhibit No. 3, can you tell
21 us what those are?
22 A. Amendments to the declaration and
23 restrictions for Live Oak Village.
24 Q. Okay. Are those the governing
25 documents for Live Oak Village, Exhibits No. 2

1 and 3?
2 A. Yes, I believe so, yes.
3 Q. Okay. And so my pending question was:
4 Are you aware of anyone else, other than Oak
5 Village Development, LLC, that is defined as the
6 declarant under any of those documents?
7 A. Okay. This document here supersedes
8 this document, so if I were to look at this
9 document as who the declarants are --
10 MR. SHELBOURNE: Which one is that?
11 THE WITNESS: It's the amendment.
12 BY MR. WATKINS:
13 Q. Exhibit No. 3 is the amendment to the
14 covenants, correct?
15 A. Correct.
16 Q. You're referring now to Exhibit No. 3?
17 A. Yes, I am. I'm looking at the
18 signature page, and it would be Mr. John Payne,
19 Scott S. Drummond, and John Payne is a managing
20 member of Oak Village Development, LowCountry
21 Signature Homes president, which would be John
22 Payne again, managing member, John Payne Homes,
23 Village Development Corporation, which I believe
24 was David Willis, my name, and then my wife's
25 name.

1 my personal expense, from my attorney to Hannemann
2 and Morris notifying them of various infractions
3 and other areas of how they were conducting
4 meetings.
5 Q. And you said these were done at your
6 expense. Is this you were doing this in your
7 individual capacity, or is this being done in the
8 capacity of the HOA?
9 A. It is being done in the capacity of
10 the HOA, but it would require me to get approval
11 to spend the money on it, so I felt I would donate
12 to the cause, so to speak, to try to have some
13 type of civil order in our governing of the HOA.
14 Q. All right. Let me just get this
15 straight, then. Has the HOA incurred any
16 attorneys fees in this litigation?
17 A. I would say yes.
18 Q. How much attorneys fees has the HOA
19 paid out in this litigation?
20 A. I would say we're up to, if I'm not
21 mistaken -- it's just a guess, but I would say
22 maybe $35,000.
23 Q. So the HOA, through all of its
24 members, through dues assessments and everything
25 that's been paid, has paid to Mr. Shelbourne

1 $35,000?
2 A. Right. The homeowner Holcombe and
3 myself, McFarlands, have lent the money to the HOA
4 to fund the lawsuit.
5 Q. Is there any note or agreement that
6 has been entered into by the HOA for this loan?
7 A. No. It was a verbal agreement.
8 Q. Okay. Was there any board action to
9 take this loan?
10 A. No. It was impossible to have a board
11 action.
12 Q. Is there any note that substantiates
13 this loan?
14 A. No.
15 Q. So you just took it upon yourself to
16 take an indebtedness for the HOA of $35,000? Is
17 that how that worked?
18 A. Well, it was brought to my attention
19 that several homeowners were very disturbed about
20 what was happening with several of the members not
21 following the bylaws, and being that those members
22 were board of directors, it was impossible for me
23 to do anything else to preserve the HOA.
24 Q. We'll get into the specifics, but what
25 my question is -- I just want to make sure I'm

1 Q. Okay. Well, we'll go through each of
2 those when we get there.
3 Am I correct also the HOA, nor the
4 board of directors, has ever held a meeting to
5 authorize the HOA to bring suit against any of the
6 defendants in this case, correct?
7 A. No. That'd have been impossible. The
8 defendants in the case are board of directors.
9 Q. Right. So the board has never
10 authorized any litigation, correct?
11 A. Exactly. My answer stands. It would
12 have been impossible, as the defendants in this
13 case are board of directors.
14 Q. And so you have acted unilaterally as
15 one board member to do --
16 A. As the president of the HOA, I did act
17 in order to preserve the HOA, to preserve the
18 corporation.
19 Q. I jumped into this, but I know you've
20 been to -- been present for a number of
21 depositions in this case, correct?
22 A. Of this case? No. This would be my
23 first deposition, I believe.
24 Q. Okay. Have you ever attended any
25 other depositions?

1 that.
2 Q. Were you aware of it?
3 A. I was aware that -- the attorney
4 informed me that they may have done that, yes.
5 Q. The attorney informed you they may
6 have done that?
7 A. That's correct.
8 Q. What attorney?
9 A. I believe it was Jason and Brandt.
10 Q. Well, don't tell me about
11 conversations with them, but I want to know
12 whether or not the HOA had knowledge that
13 Hannemann and Morris' dues were paid into escrow
14 for their annual assessments?
15 A. I believe that that was told, yes.
16 Q. All right. And the reason they were
17 placed into escrow is that they, as board of
18 director members, had asked for certain items. Is
19 that right?
20 A. I don't know the circumstances that
21 they were asking for.
22 Q. You don't know?
23 A. Yeah.
24 Q. As president, you had no idea?
25 A. Right.

1 attorneys and expend legal fees and --
2 Q. You've said that that was associated
3 with the restraining order hearing that the HOA
4 had --
5 A. As to my duties as an HOA president.
6 Q. Anything else?
7 A. Relating to the check, no. I would
8 say that's definitely for the conspiracy issue.
9 Q. What damages are you claiming as a
10 result of the conspiracy, which my understanding
11 is ultimately related to the same check issue?
12 A. Well, the conspiracy, again, that
13 we're alleging is that favors were being given
14 back and forth between Mazells and Hannemann and
15 Morris. For example, right after the October 4th
16 meeting, Hannemann immediately issued email to the
17 property manager claiming that he is now the
18 president, and he wants the property manager to
19 cease and desist all investigation into the
20 Mazells renting out their home, where the property
21 manager was confused. And so I would say how was
22 the HOA damaged? Well, there was an outstanding
23 fine that the property manager assigned to that
24 code, that violation, so I would say that we
25 missed out on that.

1 Q. Should the HOA even decide to use a
2 property manager. They're not required to use a
3 property manager, are they?
4 A. They're not required, no, but we are
5 all required to follow the bylaws.
6 Q. I agree. All right.
7 So in terms of any damages for this
8 conspiracy claim --
9 Well, we didn't ask -- I didn't ask
10 about is there any dollar figure or any other
11 damages that the HOA has obtained for favor -- for
12 these alleged favors between Hannemann and Morris?
13 A. I would say the cost of the
14 litigation, the HOA would want its legal fees
15 back, asking Hannemann and Morris to follow the
16 bylaws.
17 Q. And the HOA legal fees that you're
18 referring to relate to this temporary restraining
19 hearing. Is that right?
20 A. No. That's just where it started, but
21 I would say into this suit itself that the HOA's a
22 party to.
23 Q. So you believe that under the
24 conspiracy claim, the HOA -- what dollar figure do
25 you believe the HOA is entitled to as it relates

1 to attorneys fees?
2 A. Whatever the outstanding attorneys
3 fees are. I think I gave you a number earlier,
4 somewhere around 35.
5 Q. All right. And those are the damages
6 of the HOA?
7 A. More or less, yes.
8 Q. Well, more or less. I mean, there's
9 multiple plaintiffs involved in this case, right?
10 A. Right.
11 Q. There are multiple defendants?
12 A. But we haven't got into other issues,
13 but yes. I'm trying to -- without going into new
14 issues, for example, yes, that's it.
15 Q. Has the HOA issued a special
16 assessment to the owners for these attorneys fees?
17 A. No.
18 Q. When is it planned -- how is it
19 planned to pay these attorneys fees?
20 A. By going to court and getting a
21 judgment.
22 Q. In the event that it doesn't get a
23 judgment, then it would be the responsibility of
24 the members of the association to pay those fees?
25 A. That's one option.

1 decision?
2 A. Just me. I had no board at that time.
3 Q. And from late 2012 until today, you
4 have not informed any of the homeowners that the
5 association has incurred a debt so far that you
6 claim to be $35,000 for attorneys fees for this
7 litigation, correct?
8 A. Correct.
9 Q. All right. Are there any other
10 damages that you're claiming as a part of the
11 conspiracy claim that we haven't already
12 discussed?
13 A. No.
14 Q. All right. So if I understand your
15 conspiracy claim, and from a damages standpoint,
16 it's the fines related to the Mazells, which you
17 believe to be $5,000 or less, and attorneys fees.
18 Is that right?
19 A. And any other potential fines that may
20 have been collected as a result of bylaws not
21 being filed.
22 Q. So you're claiming potential
23 speculative-type fines that may occur in the
24 future?
25 A. Well, no. I'm talking about actual

1 conspiracy claim, if any?
2 A. I couldn't quantify it. Maybe the
3 property manager could; I could not.
4 Q. Can you tell me what the -- these
5 violations or potential fines are? What is the
6 list of violations that the HOA is claiming leads
7 it to damages under the conspiracy claim?
8 A. You mean what violations have occurred
9 right now, up to this point, is what you mean? Is
10 that what you're asking me?
11 Q. Well, I'm trying to understand your
12 claim. Your claim is a conspiracy claim, right?
13 A. Right.
14 Q. And I want to know what damages, if
15 any, have arisen from that conspiracy to the HOA.
16 A. Okay. I think I've already explained
17 the other ones, but at this point, that would be
18 it.
19 Q. Okay. And that would be it is $35,000
20 in attorneys fees, fine by the property manager
21 for the Mazells at $5,000 or less, and then these
22 potential fines?
23 A. Right.
24 Q. And you can't give me a number on
25 these potential fines?

1 A. No.
2 Q. Can you tell me -- can you give me a
3 list of what the violations are that give rise to
4 the potential fines that have -- that arose
5 because of the alleged conspiracy?
6 A. Yes.
7 Q. Okay. Great. What are they?
8 A. So we have -- we have violations of
9 bringing prohibited vehicles in the HOA, the
10 bylaws.
11 Q. All right. Let's stop there. If you
12 don't mind, can I interrupt you?
13 A. Sure.
14 Q. Violation of prohibited vehicles, how
15 is that part of the conspiracy?
16 A. Oh, no. Well, I understood your
17 question to be what were the potential violations,
18 or maybe we should say there are none and get to
19 H. I don't know, you know.
20 Q. Well, H is under your declaratory
21 judgment action.
22 A. Right.
23 Q. And you're seeking different relief
24 under that.
25 A. Right.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF COMMON PLEAS

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.

(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

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Columbia, SC (803)731-5224	Greenville, SC (864)234-7030	Charlotte, NC (704)573-3919

1 begun coming up with this plan sometime probably
2 mid-May, if I had to put a date on it, two
3 thousand -- I'm sorry, 2012.
4 Q. And what evidence do you have of them
5 getting together in May of 2012 to come up with a
6 common scheme or plan to injure the plaintiffs?
7 A. That's when I believe that the whole
8 issue with the check started arising, sometime in
9 that time frame.
10 Q. What do you believe their common
11 scheme or plan was?
12 A. I believe that there was a plan to use
13 an issue with a check to make some type of claim
14 against me, as the president of the HOA, that I
15 mishandled the check, and then use that issue to
16 present it to all the homeowners and also to file
17 a restraining order and use that issue to try to
18 remove me and to basically humiliate and embarrass
19 me in the community and remove me off the board of
20 the HOA.
21 Q. So in mid-May, it's your belief that
22 all four of these defendants got together and came
23 up with a plan to create issues with a check for
24 the Mazells so that they could then claim that the
25 president has mishandled the check. They could

1 then use that information to make you go to a
2 restraining order hearing and then have you
3 removed from the board?
4 A. Yeah, more or less. It was more of a
5 favor for a favor-type issue; whereas, they could
6 get the property manager off the Mazells' back for
7 his infractions, and in turn, they could use
8 Mazells' issue with the check to bite me with, and
9 then, of course, we saw the issue in the
10 magistrate court where -- all this occurred at the
11 October 4th meeting and certainly before the
12 October 4th meeting, October 3rd, where they would
13 use these issues where he could testify against me
14 in a magistrate court to say I mishandled funds,
15 send letters to homeowners, et cetera, making
16 these accusations. And obviously, the intent was
17 to remove me from the board and president, as that
18 was their intent in the October 4th meeting, of
19 which Michael Mazell participated.
20 Q. Anything else as it relates to the
21 common scheme or plan that you believe these
22 defendants --
23 A. As it regards to the HOA, that would
24 be -- as I represent the HOA, that would be my --
25 Q. Okay. You believe they had this

1 Q. All right. And also in that meeting,
2 you nominated Mr. Morris for a board position,
3 correct?
4 A. Yes.
5 Q. Okay. That nomination was seconded
6 and unanimously approved, right?
7 A. Yes, it was.
8 Q. So that's when -- so then in 2011,
9 Mr. Morris is now on the board. Is that right?
10 A. That's correct.
11 Q. So at this point, it's you,
12 Mr. Hannemann, and Mr. Morris?
13 A. Correct.
14 (DFT. EXH. 29, 4/27/12 Letter to
15 Mr. McFarland from Mr. Morris and Mr. Hannemann,
16 Bates Hannemann/Morris 57, 59, and 50, was marked
17 for identification.)
18 BY MR. WATKINS:
19 Q. I'm handing you Exhibit No. 29. This
20 is related to a request for a special meeting of
21 board of directors for Live Oak Village for a
22 May 2nd homeowner -- May 2nd special board of
23 directors meeting.
24 MR. SHELBOURNE: What's the date on
25 that?

1 property manager, from other homeowners,
2 et cetera, and I guess it culminated from that
3 point on.
4 Q. You've taken a position throughout
5 this lawsuit -- I keep seeing things from --
6 signed by you, William McFarland, comma,
7 president. Are you still the president, though,
8 even though the board's not in existence anymore?
9 A. I would regard myself as the only
10 member in good standing on the board.
11 Q. Oh, okay, right, right. And let's go
12 to that whole good standing point. Let's go back
13 to Paragraph -- what is it? -- 15C of the bylaws
14 on Page 17. You agree with me -- I know this has
15 been covered, but I just want to make sure I
16 understand your answers very clearly.
17 Do you agree with me that nobody's
18 ever had a hearing, whether it's the Mazells, the
19 McFarlands -- excuse me -- the Holcombes,
20 Hannemann, Morris, Knight, anybody, has anybody
21 ever been given a hearing to defend some fine or
22 some revocation of rights that has been threatened
23 against them? Has any meeting -- hearing ever
24 been held?
25 A. Not to my knowledge, no.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF COMMON PLEAS

LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC., JENNIFER MCFARLAND, CARLTON HOLCOMBE, and UTE HOLCOMBE,

Plaintiffs,

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THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL, and MICHAEL MAZELL,

Defendants.

(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

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 let us know.

2 Are you under the influence of any

3 alcohol, drugs, or medications that would impair

4 your memory or ability to truthfully answer the

5 questions here today?

6 A. No.

7 Q. Okay. Can I get your full name,

8 please?

9 A. Yes. Jennifer McFarland.

10 Q. And what is -- do you have a middle

11 name?

12 A. No, I do not.

13 Q. Do you have a maiden name?

14 A. Yes, Moffa, M-O-F-F-A, M-O-F-F-A.

15 Q. Have you ever been married prior to

16 being married to Mr. McFarland?

17 A. No.

18 Q. Ever been known by any other names,

19 any aliases or anything else, other than Jennifer

20 Moffa or Jennifer McFarland?

21 A. No.

22 Q. What's your date of birth?

23 A. REDACTED 1964.

24 Q. What's your current address?

25 A. 105 Oak Village Lane, in Summerville.

1 authority on the board, it would be the -- your
2 testimony would be the same testimony as he has
3 already testified to on behalf of the HOA. Is
4 that right?
5 A. Yes.
6 Q. And as part of that cause of action,
7 it says: The plaintiffs will suffer irreparable
8 damage to their ability to reside at their
9 property. Is that the -- is that the only injury
10 that you are claiming in this case?
11 A. With reference to Hannemann and
12 Morris?
13 Q. For the declaratory judgment action,
14 yes, ma'am.
15 A. Yes, I believe so.
16 Q. Okay, all right. On the conspiracy
17 cause of action, is there any additional testimony
18 that you can add that your husband hasn't already
19 testified to as it relates to the conspiracy cause
20 of action as to what my clients, Mr. Morris,
21 Mr. Hannemann, and, for that matter, any of the
22 other defendants in this case, did?
23 A. Well, there's some on a more personal
24 level where there's -- I just -- I feel like -- I
25 just don't feel comfortable living in my home

1 individually?

2 A. Yes. For me individually, I feel that

3 the defendants conspired together to make our

4 lives so uncomfortable that we did not want to

5 live in Live Oak Village anymore. I've had people

6 taking pictures of me on my front porch.

7 Mr. Hannemann, he goes in our mailbox, which I had

8 to get a no trespass. The Mazells, we could spend

9 a day on that.

10 Just recently, with Mr. Hannemann's

11 invitee crashing through the HOA fence on the

12 perimeter of the Knights' home -- they live

13 directly next door to me -- one morning I'm in my

14 own backyard, fenced-in backyard, at 7:00 in the

15 morning, and Donna Knight drives out, and she

16 screeches back and comes down the driveway and

17 starts yelling at me, whom I'm not responsible for

18 this gate -- I'm not even on the board -- about

19 who the heck is lying, and who's screwing who,

20 and, I mean, I just feel like I'm not even

21 comfortable going outside anymore, because I don't

22 understand why I'm being yelled at for things that

23 absolutely have nothing to do with me.

24 And it's just -- it's a culmination of

25 things like that. I just -- I'm just not even

1 comfortable anymore. I go to the mailbox, I feel
2 people are watching what I'm doing. I just don't
3 know -- I just -- I feel uncomfortable.
4 Q. Okay. And do you believe that that
5 has any -- those actions there, do they have
6 anything to do with your conspiracy cause of
7 action?
8 A. I think that they conspired together
9 to make our lives miserable, to try to get us to
10 leave the neighborhood. That's my personal part
11 of this.
12 Q. Have you attempted to sell your home
13 since the filing of this lawsuit?
14 A. No, we have not attempted to sell it.
15 Q. Have you looked at any other real
16 estate or any other property in attempt to make a
17 purchase?
18 A. Not in attempt to make a purchase, but
19 I look all the time.
20 Q. So does my wife.
21 Are there -- other than -- we've
22 talked about kind of the check issue, and y'all
23 believe that there was a conspiracy in order to
24 prevent the HOA from getting the Mazells' check,
25 right?

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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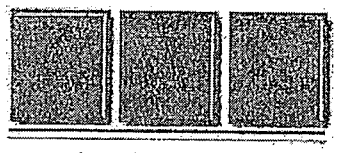

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Original File Holcombe_Carlton_Roy_-_141204.TXT
Min-U-Script® with Word Index

1 STIPULATION

2 It is stipulated by and among Counsel
3 that this deposition is being taken in accordance
4 with the South Carolina Rules of Civil Procedure,
5 Rule 30; that all objections as to Notice of this
6 deposition are hereby waived; that all objections
7 except as to form are reserved until the time of
8 trial; and that the deponent reserves reading and
9 signing of this deposition.

10 * * * * * * * * * * * * *

11 CARLTON ROY HOLCOMBE

12 being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. WATKINS:

15 Q. Good morning, Mr. Holcombe. We've
16 just met formally here this morning. Again, my
17 name's Trey Watkins, and I'm representing
18 Mr. Morris and Mr. Hannemann related to
19 allegations by you and others in this lawsuit, and
20 I'm here today to take your deposition on those
21 issues.

22 For the record, can you please give us
23 your full name?

24 A. Carlton Roy Holcombe.

25 Q. And where do you reside?

1 A. 104 Oak Village Lane, Summerville,
2 29483.
3 Q. And how long have you resided at that
4 residence?
5 A. We bought that home in 2008.
6 Q. Have you ever given a deposition
7 before?
8 A. Yes.
9 Q. How many other times have you given a
10 deposition?
11 A. Once.
12 Q. And in what matter was that?
13 A. That was with the McFarlands' case
14 against their neighbor behind them. I forgot his
15 name.
16 Q. Is that Mansour?
17 A. Yes.
18 Q. Have you ever been deposed or given
19 any other sworn testimony under oath, other than
20 in that case?
21 A. Not to my recollection.
22 Q. Do you understand that your testimony
23 here today is the same as if it were live in
24 court?
25 A. Yes.

1 y'all are seeking the court to declare that they
2 have done that and then issue an injunction so
3 that they do not -- seeking that they do not serve
4 on the board of directors any further. Is that
5 right?
6 A. Yes.
7 Q. And you have alleged that the injury
8 as a result of these actions is that you will
9 suffer irreparable damage to your ability to
10 reside at your property. Is that right?
11 A. Yes.
12 Q. Is there any other injury that you're
13 alleging in this case?
14 A. Are you referring to damages?
15 Q. I'm referring to how you have been
16 injured as a result of the actions of Mr. Morris
17 and Mr. Hannemann such that you're seeking the
18 court to declare that they no longer serve in
19 their official capacity as board of directors
20 members.
21 A. Well, presently, they're breaking the
22 bylaws, with no regard of any other homeowner in
23 there.
24 Q. And y'all have listed in No. 6, A
25 through H, a number of items where you feel they

1 have broken those bylaws or those covenants and
2 restrictions. And I've spoken to Mr. McFarland
3 about those, and I think I understand them.
4 Mrs. McFarland has confirmed his testimony as it
5 relates to those, and we'll have an opportunity to
6 go through those.
7 But my question to you is: Is there
8 any other -- the only injury that's been alleged
9 is that the plaintiffs have suffered irreparable
10 damage to their ability to reside at their
11 property. Is there any other injury that you are
12 claiming as a result of these actions?
13 A. Not at this time.
14 Q. The actions, I do want to go through
15 those and give you an opportunity to give me your
16 testimony as it relates to these actions. The
17 first action under 6A, it says: Voting to waive
18 fines that apply to themselves.
19 A. Yes.
20 Q. Are you aware of any votes that were
21 taken --
22 Well, let me back up, first off, and
23 make sure I've got the world that we're dealing
24 with. As it relates to the declaratory judgment
25 action, we're talking about the actions of

1 reduce fines if the Mazells would vote for them?
2 A. That's correct.
3 Q. And they would vote for them how?
4 A. In any manner they wanted.
5 Q. And none of the Mazells were on the
6 board of directors?
7 A. That's correct.
8 Q. So they were homeowners within the
9 association?
10 A. That's correct.
11 Q. Anything else as it relates to
12 allegations on the conspiracy claim?
13 A. No.
14 Q. It's part of your complaint that the
15 plaintiffs have incurred special damages,
16 including, but not limited to, attorneys fees and
17 costs in defending against defendants' actions and
18 loss of homeowners association fees. Are
19 attorneys fees and costs and loss of homeowners
20 association fees the damages -- the world of
21 damages that you're claiming related to this
22 conspiracy claim?
23 A. There are several damages. One of
24 them is the ability to inflict fines for not
25 following the covenants or bylaws, the loss of the

1 money from the Mazells' fine. If we had a
2 functional board right now, we would be fining the
3 Morrises for their breach already and also
4 Hannemann for his breach already.
5 And then we're functioning without
6 their dues, which the covenants doesn't allow them
7 to, per se, put them in escrows, so we're
8 functioning with trying to take care of the
9 neighborhood without their dues for the last two
10 years.
11 Q. Anything else?
12 A. That's it.
13 Q. Are you claiming attorneys fees and
14 costs --
15 A. Yes.
16 Q. -- to you personally?
17 A. Yes.
18 Q. Have you provided a loan to the
19 homeowners association for attorneys fees and
20 costs?
21 A. No.
22 Q. Have you personally incurred any
23 attorneys fees and costs in this matter?
24 A. Yes.
25 Q. How much have you incurred in

1 attorneys fees and costs?
2 A. Approximately 15- to $20,000 to date.
3 Q. And have those been paid by you
4 personally?
5 A. That's correct.
6 Q. And you are claiming those attorneys
7 fees and costs as a part of your conspiracy claim?
8 A. Yes.
9 Q. Are you claiming attorneys fees and
10 costs as a part of any other damages in this
11 lawsuit?
12 A. No.
13 Q. Are you claiming attorneys fees and
14 costs as it relates to the defamation cause of
15 action that you've claimed or the breach of
16 covenants and restrictions against the Mazells
17 that you've claimed?
18 A. Say that again, please.
19 Q. Sure. In this lawsuit, just so that
20 we're clear, you've asserted -- you're claiming --
21 you've got causes of action, at least my
22 understanding is causes of action, declaratory
23 judgment action, conspiracy action, slander and
24 defamation action, and a breach of covenants and
25 restrictions action. Are those your claims in

1 this case?
2 A. Right.
3 Q. For which ones of those claims are you
4 claiming attorneys fees?
5 A. All but the defamation.
6 Q. All but the defamation?
7 A. That's correct.
8 Q. And so that I'm clear, you have never
9 agreed to provide the homeowners association a
10 loan for attorneys fees and costs in this matter,
11 correct?
12 A. What we think we did was front the
13 homeowners association money, and if the
14 homeowners association received their attorneys
15 fees back, we would get ours back.
16 Q. You think you've done that?
17 A. Well, we think if we're successful in
18 our suit, that's what we would get.
19 Q. What happens if you're not successful?
20 A. Well, I'm out some money.
21 Q. You're going to what?
22 A. I'll be out some money.
23 Q. So in reality, you've never actually
24 given a loan to the homeowners association, have
25 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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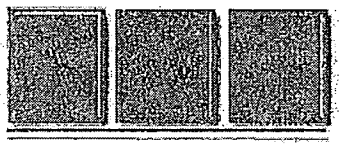

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For best viewing/searching, use Adobe Reader/Acrobat ver. 9 or higher
(www.adobe.com).

1 same thing, and that way we can have a
2 question-and-answer session for the record. Is
3 that fair?
4 A. Yes.
5 Q. Great. Thank you.
6 Are you under the influence of any
7 medication, alcohol, drugs, or anything that would
8 impair your ability to testify here today?
9 A. No.
10 Q. I am going to be asking you some
11 questions. If I ask you a question, I'm going to
12 assume that you understood that if you provide me
13 an answer. Is that fair?
14 A. Yes.
15 Q. To start out, I'd like to just get
16 some -- you're a plaintiff in this action, right?
17 A. Yes.
18 Q. And you've brought a cause of action
19 against Mr. Morris and Mr. Hannemann. You
20 understand that, right?
21 A. Yes.
22 Q. Can you give us your full name for the
23 record, please?
24 A. Ute Johanna Holcombe.
25 Q. And Mrs. Holcombe, where do you

1 reside?
2 A. 104 Oak Village Lane.
3 Q. And I took testimony from your husband
4 as to where he has resided. Have you resided in
5 the same residences with your husband?
6 A. Yes, I have.
7 Q. Since --
8 A. All of the above.
9 Q. Right. Thank you. I've tried to
10 avoid some additional extra testimony here. Just
11 to make sure we're clear, throughout y'all's
12 transitions between Live Oak Village, other
13 residences in Summerville, and other places,
14 you've resided with your husband? That's correct?
15 A. Yes.
16 Q. Have you resided in any other
17 residences that he did not list while you've been
18 married to your husband?
19 A. No.
20 Q. And what's your date of birth?
21 A. REDACTED 1955.
22 Q. And what's your phone -- do you have a
23 cell phone?
24 A. (843)442-2625.
25 Q. Your husband had a few documents. Did

1 A. Yes.
2 Q. One of those actions is a declaratory
3 judgment action?
4 A. I don't understand what that means.
5 Q. Essentially, my understanding of it is
6 that because of the actions of Mr. Morris and
7 Mr. Hannemann, y'all are seeking, through a
8 declaratory judgment action, an injunction against
9 Mr. Morris and Mr. Hannemann for serving on the
10 board of directors.
11 A. Yes.
12 Q. Is that a fair recollection of your
13 understanding?
14 A. Yes.
15 Q. And as part of that cause of action,
16 the allegations and injury is that the plaintiffs
17 will suffer irreparable damage to their ability to
18 reside at their property. Is that the injury that
19 you're claiming in this case?
20 A. I think it's something you just need
21 to discuss with my husband. I really don't even
22 want to -- I don't know anything about that.
23 Q. And we just did. We discussed that,
24 and I did ask him that question, and my
25 recollection of his testimony was that that was

1 the only injury that he is claiming as related to
2 the declaratory judgment action. Do you know of
3 any other injury that you're claiming?
4 A. No.
5 Q. Do you have any information that you
6 can provide to me regarding your allegation of
7 voting to waive fines that apply to themselves as
8 part of the declaratory judgment action?
9 A. Huh-uh. I can't tell you anything.
10 You'd have to ask my husband.
11 Q. Would that be true for all of the
12 allegations outlined in Item 6 of the declaratory
13 judgment action?
14 A. Yes. Again, you'd have to talk to my
15 husband about that. I don't know anything about
16 that.
17 Q. So you don't have any evidence or
18 testimony about anything associated with the
19 declaratory judgment action. Is that true?
20 A. Yes.
21 Q. Do you have any information or
22 testimony that you can offer as it relates to your
23 conspiracy claim? Do you have any knowledge
24 related to that?
25 A. No, I do not.

1 Q. My understanding of the conspiracy
2 claim is related to the handling and collection of
3 the Mazells' check. Is that your understanding of
4 what that claim is?
5 A. That's what the understanding is, yes,
6 but like I said, I don't -- I am just a bystander.
7 Q. So you don't have any independent
8 knowledge related to that?
9 A. No, I do not.
10 Q. Are you seeking any damage as it
11 relates to that?
12 A. No.
13 Q. I think those are the questions I have
14 for you at this time. I'll let some other
15 lawyers, if they have questions, ask you, and then
16 I may follow up or have additional questions.
17 EXAMINATION
18 BY MR. JUNG:
19 Q. Good morning, Mrs. Holcombe. My name
20 is Brad Jung, and I represent Mike and Sofia
21 Mazell.
22 Similar to what Mr. Watkins instructed
23 you, I'm going to ask you a couple of questions,
24 and if you don't understand my question, can I
25 rely upon you to tell me you don't understand?

In The Matter Of:

Live Oak Village HOA, Inc., et al vs

Thomas Morris, et al

Kathleen M. Greene

December 17, 2014

A. William Roberts, Jr. and Associates

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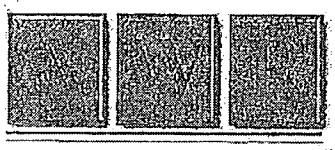

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1 restrictions?
2 A. Yes.
3 Q. And then he would instruct you to send
4 them a letter and fine them?
5 A. Yes.
6 Q. Okay. Are you aware of there ever
7 being a -- were you ever involved in any notices
8 for hearings sent out?
9 A. No.
10 Q. Okay. Are you aware of any cease and
11 desist letters that were sent out through the
12 property manager?
13 A. I believe there was one.
14 Q. One?
15 A. Yes.
16 Q. Okay. And what was that related to?
17 A. Landscaping issue.
18 Q. Okay. And you seem to be familiar with
19 my term, cease and desist letter. You're aware
20 that that's a very specific letter under the
21 bylaws; right?
22 A. Yes.
23 MR. SHELBOURNE: Objection.
24 BY MR. WATKINS:
25 Q. Are you aware that there's an

1 enforcement provision in the bylaws that calls for
2 a cease and desist letter?
3 A. Yes.
4 Q. And then now in addition to a cease and
5 desist letter there's also a provision that calls
6 for a notice of a hearing and a hearing. Are you
7 aware of that?
8 A. Yes, sir.
9 Q. Was that procedure ever followed for
10 any of the violations that you dealt with as it
11 relates to Live Oak Village?
12 A. No.
13 Q. How did you first become involved with
14 Live Oak Village?
15 A. Put an ad in the newspaper.
16 Q. Okay. And did someone call you on that
17 ad?
18 A. Mr. McFarland.
19 Q. Ms. McFarland.
20 A. Mr. McFarland.
21 Q. Mr. Bill McFarland.
22 A. Bill.
23 Q. And tell me how that -- what did y'all
24 talk about? How did that conversation go?
25 A. Well, it was agreed upon -- there's

CERTIFICATE OF SERVICE

The undersigned employee of WALL TEMPLETON & HALDRUP, P.A. hereby certifies that on this 16th day of January, 2015, she served a copy of **AMENDED MOTION FOR SUMMARY JUDGMENT** by placing a copy in a postpaid envelope for collection and processing for mailing, following this business's ordinary practice, with which she is readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited with the United States Postal Service in the ordinary course of business and addressed to the persons hereinafter named, at the places and addresses stated below, which are the last known address, in Charleston, South Carolina:

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Sarah Jane Schrodetzki

STATE OF SOUTH CAROLINA	)	IN THE COURT OF THE 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	)	
	)	NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT
V.	)	
	)	
THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL AND MICHAEL MAZELL	)	
	)	
DEFENDANTS	)	
THOMAS MORRIS AND DAVID HANNEMANN	)	
	)	
THIRD PARTY PLAINTIFFS	)	
	)	
V.	)	
	)	
WILLIAM MCFARLAND	)	
	)	
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: _____

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(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.

Amanda Delta

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Case No. 2012-CP-18-02583
JENNIFER McFARLAND and CARLTON HOLCOMBE,	)	
Plaintiffs,	)	**PLAINTIFFS' MOTION TO ALTER, AMEND, AND/OR RECONSIDER OR, ALERNATIVELY, FOR A NEW TRIAL**
v.	)	
	)	***Hearing Requested***
THOMAS MORRIS and DAVID HANNEMANN,	)	
Defendants.	)	

TO: THE HONORABLE MAITE MURPHY, presiding Circuit Judge, and Defendants, THOMAS MORRIS and DAVID HANNEMANN, by and through their attorneys of record, MORGAN S. TEMPLETON, ESQUIRE, WILLIAM W. WATKINS, JR., ESQUIRE, and JOHN J. DODDS, IV, ESQUIRE, all of WALL TEMPLETON & HALDRUP, P.A.

NOW COME Plaintiffs, Jennifer McFarland ("Mrs. McFarland") and Carlton Holcombe ("Mr. Holcombe"), by and through their undersigned counsel, pursuant to Rules 52 and/or 59, SCRCP, within ten days after receipt of the Court's order disposing of this action (the "Subject Order"),[1] and, on the grounds set forth below, hereby move this Honorable Court (1) to amend its findings, and/or make additional findings, and amend the Subject Order to favor Plaintiffs;[2] (2) to reconsider and/or otherwise alter and/or amend the Subject Order to favor Plaintiffs;[3] or,

[1] The Subject Order was filed January 14, 2019.

[2] *See* Rule 52(b) ("Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, and the motion may be made with a timely motion for a new trial. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment.").

[3] *See* Rule 59(e) ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order."); *see also Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004) ("[I]t is proper to view a Rule 59(e)

alternatively, (3) to grant Plaintiffs a new trial or, if not a new trial absolute, to open the record, take additional testimony and/or receive additional evidence, amend its findings of fact and conclusions of law or make new findings and conclusions, and enter a new order directing judgment in favor of Plaintiffs[4]:

I.
GROUNDS FOR RELIEF

A. Plaintiffs ask the Court to reconsider both the Subject Order and Plaintiffs' Proposed Order in their entirety, to vacate the Subject Order, and to adopt and enter Plaintiffs' Proposed Order as the order disposing of this action.

Plaintiffs' "Proposed Order" refers to the revised proposed Decision and Order that Plaintiffs' counsel submitted to the Court via email on December 3, 2018, copying in Defendants' counsel. A copy of Plaintiffs' Proposed Order is attached to this motion as Exhibit A, which is incorporated herein by reference.

---

motion not only as a vehicle to request the trial court 'alter or amend the judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments.").

[4] *See* Rule 59(a) ("A new trial may be granted to all or any of the parties and on all or part of the issues . . . in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment."); Rule 59(b) ("In non-jury actions the motion [for a new trial] shall be made not later than 10 days after the receipt of written notice of the entry of judgment or of the filing of an order disposing of the action, if no judgment has been entered.").

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B. In numerous respects, the Court's Findings of Fact and Conclusions of Law are materially incomplete, not supported by the evidentiary record, and/or erroneous as a matter of law.

Re: Finding of Fact No. 4

1. To the extent this finding means the Court has found that William McFarland ("Mr. McFarland") ceased to be an officer (president, specifically[5]) and a member of the board of directors (the "Board," or in reference to the Board's membership, "Board Member(s)") of Live Oak Village Homeowners Association, Inc. (the "HOA"), after October 4, 2012, such a finding is not supported by the evidentiary record. Even Defendants, Thomas Morris ("Mr. Morris") and David Hannemann ("Mr. Hannemann"), themselves identified Mr. McFarland as a Board Member *after* October 4, 2012. (*See, e.g.,* Trial Ex. 78 (notice dated *June 12, 2013*, by Messrs. Hannemann and Morris to "Mr. Bill McFarland [/] Member of the Board of Directors [/] Live Oak Village Homeowners Association," purporting to give Mr. McFarland notice of a special Board meeting they had called for *June 17, 2013*).) Additionally, the October 4, 2012, special Board meeting at which Messrs. Hannemann and Morris purported to vote Mr. McFarland out as HOA president and Mr. Hannemann in in his place could not possibly have been valid. Notice of the meeting was only placed in the mail to Mr. McFarland on October 1, 2012. (*See* Trial Ex. 60.) Mr. McFarland could not have actually gotten it until after that date, and the meeting notice could not possibly have been given in compliance with the By-laws. (*See* Ex. 3 p. 4 (providing that special Board meetings require "not less than three (3) days notice to each director mailed or presented personally to such director with such time.") Indeed, three *full days after* October 1st could not have possibly *passed* until October 5th. *See Town of*

[5] With respect to the office of HOA treasurer, it would be more accurate to say that Mr. McFarland began performing duties of treasurer after Mrs. McFarland resigned that position in 2009. (*See* Trial Tr. pp. 44:2–45:13.)

Summerville v. City of North Charleston, 378 S.C. 107, 112, 662 S.E.2d 40, 42–43 (2008) ("[W]here the time prescription mentions only the passage of a number of days, a 'day' means a calendar day, beginning and ending at midnight."). Moreover, with only Messrs. Hannemann and Morris involved in the process of moving, seconding the motion, and voting to remove Mr. McFarland as HOA president and of nominating, seconding the nomination, and voting to elect Mr. Hannemann to take Mr. McFarland's place as HOA president, the proceedings were out of proper order and tainted by conflict of interest and self-dealing. Indeed, Defendants' own witness Kathleen Greene still recognized Mr. McFarland to be HOA president after October 4, 2012, and she also attested to Defendants having aligned themselves against Mr. McFarland, rending the Board dysfunctional. (*See* Trial Ex. 70; Trial Tr. p. 351:3–21.)

Re: Finding of Fact No. 5

2. In a footnote, the Court states: "[Mrs.] McFarland was a member of the HOA's Board of Directors during the period of 'well over a year' that the tenant was purportedly living in the Mazell's residence. The record is devoid of any evidence that [Mrs.] McFarland took any action regarding this issue while she was a member of the Board of Directors." This criticism of Mrs. McFarland is not supported by the evidentiary record. Although Mrs. McFarland had frequently seen the tenant (more precisely, the person she would later learn to be the tenant) for quite a while before her September 7, 2011, letter to the Board, it was not until August of 2011, when her teenage daughter, upon returning home after a morning run, told her there was "a man standing over on [the] Mazzels's property looking at me and it's kind of creepy," that Mrs. McFarland had reason to focus her attention on the nature of the tenant's presence in the neighborhood. (*See* Trial Tr. pp. 15:24–16:13.)

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Re: Finding of Fact No. 6

3. While the Subject Order correctly notes that "[i]n response to [Mrs.] McFarland's letter, an impromptu discussion was held among the members of the Board of Directors regarding the possibility of hiring a property manager to remedy the Mazell tenant issue," the Court does not address the contradiction between this finding and Mr. Hannemann's testimony that he thought the property manager was only going to "[h]andle the bills" and would not be involved in addressing violations of the Governing Documents. (Trial Tr. pp. 118:23–119:1.) From the moment he gave it, Mr. Hannemann's testimony was irreconcilable with, among other things, the plain language of his own April 19, 2012, email to Mr. McFarland acknowledging that, "sometime in September 2011," there had been "[a]n unscheduled impromptu discussion of the B[oard] . . . *to review options of hiring a Property Manager to deal with a possible violation of the [Governing Documents]*." (Trial Ex. 19 (emphasis added); *see also* Trial Tr. pp. 129:20–130:7.) It is now likewise irreconcilable with this Court's express finding as to the subject matter of the referenced discussion among the Board Members.

4. While it is technically correct that "[a]t no time was a Board of Directors meeting noticed or held pursuant to the Bylaws wherein a majority of the Board of Directors members constituting a quorum voted to approve the hiring of a property manager, nor was there unanimous written consent of all Board of Directors members approving the hiring of a property manager," the Court does not address the overwhelming evidence that—notwithstanding the position they have taken in this litigation—neither Mr. Morris nor Mr. Hannemann questioned legitimacy of K.J. Property Management, LLC (hereinafter referred to collectively with its owner Kathleen Greene as "Ms. Greene"), as HOA property manager at the time,[6] but rather both of

[6] (*See, e.g.*, Trial Tr. p. 117:4–12.)

them acted as if Ms. Greene was indeed HOA property manager, not only in their direct communications with Ms. Greene but also in their inclusion of Ms. Greene on HOA-related communications and documents. (*See* Trial Exs. 22, 36–37, 39–40, 42, 45–46, 55, 62, 65, 67, 70, 72–73, 75–76.) Of particular note in this regard are Mr. Hannemann's email to Ms. Greene on October 17, 2012, and his letter to her of November 1, 2012. In his October 17th email, Mr. Hannemann writes, "As to your resignation, I have spoken with Mr. Morris, and we, as the majority of the Board . . . are willing to accept your resignation, without condition, immediately if you so desire." (Trial Ex. 70.) His November 1st letter states, "[A]s stipulated in your contract, you are directed to attend a meeting of the Board on Monday[,] November 5, 2012 . . . . Failure to respond will cause the clause 5 of your agreement with Live Oak Village Homeowners Association to be activated. You have 30 days from November 5, 2012 to resolve this situation. Failure to comply will terminate your contract." (Trial Ex. 75.) Of course, the very willingness (on the part of Messrs. Hannemann and Morris) to accept Ms. Greene's resignation and, likewise, the threat to invoke clause 5 ("Termination of Agreement") necessarily betray Defendants' actual, real-time belief that Ms. Greene did, in fact, have a contract with the HOA and a position thereunder from which she could resign or be terminated. Moreover, the record is clear that Mr. Morris's wife herself acted as if Ms. Greene was the HOA property manager, as evidenced by her inquiry to Ms. Greene about whether Mr. Holcombe had obtained proper approval for the garden in his side yard. (*See* Trial Ex. 16A.) Even the Subject Order itself underscores the fact that Defendants acted in conformity with Ms. Greene's legitimacy as HOA property manager. The Subject Order finds as fact that, at a special HOA meeting held May 31, 2012, "a motion was made to reduce the $1,000.00 fine levied against Morris by [Ms.] Greene to $100.00 since the landscaping and lighting plans were approved at the . . . May 2, 2012 special

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Board of Directors meeting." (Subject Order p. 12.) The Subject Order goes on to find that "[t]his motion was approved by a tally of five homeowners in favor of one abstention by [Mr.] Holcombe, with Morris also voting to approve the motion in his capacity as a homeowner." (*Id.*)[7] This finding confirms that, even in the absence of formal Board approval, Defendants ratified Ms. Greene's service as HOA property manager by their conduct. Indeed, the very fact that Defendants participated in an effort to reduce a fine assessed by Ms. Greene as HOA property manager only further shows that, notwithstanding their later trial testimony, they did not question her legitimacy as HOA property manager at the time.

Re: Finding of Fact No. 7

5. The Court states, "[Mrs.] McFarland, who as set forth above was not a duly elected member of the Board of Directors nor an officer of the HOA, unilaterally and without Board approval contacted [Ms.] Greene . . . and 'asked if [she] would like to be the property manager to oversee violations for the community . . . .'" and, further, that "Greene . . . reported to and took directives solely from [Mrs.] McFarland." This finding is not supported by the evidentiary record. Neither of the two written contracts Ms. Greene entered into with the HOA was signed by Mrs. McFarland; both were signed by *Mr.* McFarland, for and on behalf of the HOA, as its president. (Trial Exs. 10, 15; *see also* Trial Tr. p. 319:2–5.)[8] Mrs. McFarland did not wrongly represent herself to Ms. Greene as a Board Member or HOA officer—to be clear, this has never even been suggested. Ms. Greene always knew Mrs. McFarland was not a Board

[7] The Subject Order reads as if there was broad neighborhood support for reducing Mr. Morris's fines. In truth, Mr. Holcombe objected to the meeting, and besides Defendants themselves and the proxies, the only other home participating in the meeting was that of the Knights. (*See* Trial Ex. 36.)

[8] Like her contracts with the HOA, Ms. Greene's paychecks were also signed by *Mr.* McFarland. (Trial Tr. 320:1–7.)

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Member or HOA officer but rather the spouse of Board Member/President Mr. McFarland,[9] and Ms. Greene considered Mrs. McFarland's involvement to be within the bounds of the normal spousal teamwork. (*See* Trial Tr. pp. 344:20–345:12.) Ms. Greene simply did not testify that Mrs. McFarland acted "unilaterally" or that she (Ms. Greene) "reported to and took directives solely from [Mrs. McFarland]." Rather, according to Ms. Greene, Mr. McFarland was involved and Mrs. McFarland did not act alone. (Trial Tr. pp. 321:23–322:3.) Indeed, Ms. Greene explained, "as far as dealing with Ms. McFarland and Mr. McFarland, it was always via e-mail[,]"[10] and as is well documented in the record, Mr. and Mrs. McFarland share the same email address. Lastly, while the Subject Order states, "it is evident from the testimony and evidence that the Board of Directors never voted upon Greene's levying of fines against homeowners,"[11] the Court has overlooked the fact of the Board was rendered dysfunctional by Defendants, who, again, as Ms. Greene documented, had aligned themselves together against Mr. McFarland, rendering the Board dysfunctional. (*See* Trial Ex. 70; Trial Tr. p. 351:3–21.) In other words, the Court overlooked the fact that it would not have been possible to have a vote of the Board wherein Mr. Hannemann and Mr. Morris himself voted to fine Mr. Morris.

Re: Finding of Fact No. 8

6. The Court's finding about Mr. Morris's reasonable belief as to the process to be followed for his landscaping project is not supported by the evidentiary record. To begin, this finding does not take into account, and is irreconcilable with, the Governing Documents. The Covenants expressly provide: "The failure to enforce any rights, reservation, restriction or condition contains in this Declaration, however long continued, shall not be deemed a waiver of

[9] (*See* Trial Tr. p. 318:1–14.)

[10] (Trial Tr. p. 321:24–25.)

[11] (Subject Order p. 9.)

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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 affects its enforcement." (Trial Ex. 1 at p. 29; Trial Ex. 2 at p. 29 (same).) Mr. Morris himself expressly admitted that the above-quoted language from the Covenants directly contradicted the idea that any leniency previously shown him for his own prior unapproved construction and landscaping absolved him of the need to follow the rules for future projects. (Trial Tr. pp. 304:3–304:5; *see also* Trial Ex. 3 [By-laws] at p. 18 ("Each Owner shall comply strictly with the By-laws . . . . [T]he enforcement of the provisions of the Declaration, the By-laws and the rules and regulation of the [HOA] are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners . . . . No delay, failure or omission on the part of the Declarant, the [HOA] 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.") The Court's finding here also overlooks the vast difference in the nature and scope of Mr. Morris's prior projects (replacing a stair case and removing a tree) and the April 2012 landscaping project that required heavy equipment and reduced his yard to what he self-described as a "barren landscape" for the better part of two months—and all of this after the April 1, 2012,[12] letter he sent asking for Board approval he did not wait to receive had grossly mischaracterized the nature of his plan as being the removal of "some" landscaping. In addition to disregarding the plain language of the Governing Documents, the Court's finding here rewards

[12] The Subject Order states Morris's letter was dated April 10, 2012. In fact, it was April 1, 2012, and, in full, it reads as follows: "I would like to *ask for approval* from the HOA Board of Directors to remove and replace some of our existing landscaping and lighting in accordance with the HOA covenants." (*See* Trial Ex. 17 (emphasis added).) The very fact that he wrote a letter expressly asking for Board approval of his project "in accordance with the HOA covenants," contradicts the idea that he did not really need to obtain approval. But, of course, despite having expressly requested approval, as Mr. Morris himself admits, he never waited for an answer. (Trial Tr. p. 242:6–13.)

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Mr. Morris's repeated misconduct while punishing the neighborly way in which he was afforded some leniency for his prior violations. For Mr. Morris, the Court's ruling is to the effect that three wrongs make a right and that, having been given an inch, it was only right for him to take a mile. But for Plaintiffs it seems the sad lesson is this: all good deeds will be punished.

Re: Finding of Fact No. 9

7. The referenced letter by attorney Brandt Shelbourne ("Mr. Shelbourne") is dated April 17, 2012, not April 19, 2012. (*See* Trial Ex. 18.) Also, the Court's characterization of Mr. Holcombe's complaint as "echo[ing]" Mrs. McFarland's is imprecise. Their complaints were separately delivered and they speak for themselves. (*See* Trial Exs. 18, 21; *see also* Trial Ex. 28.)

Re: Finding of Fact No. 10

8. The Court's citation to Section 15(c) of the By-laws overlooks the fact that the Board was rendered dysfunctional by Defendants, who, again, as Ms. Greene documented, had aligned themselves together against Mr. McFarland. (*See* Trial Ex. 70; Trial Tr. p. 351:3–21.) It would not have been possible to follow the referenced procedure, which would have required Mr. Hannemann and Mr. Morris himself to take action against Mr. Morris. Moreover, the Court overlooks that the referenced procedures, which begin with "[a] written demand to cease and desist from an alleged violation," could not possibly be followed where Mr. Morris's violation was already full and complete—cease and desist makes no sense when, because of the violation, Mr. Morris's yard was already a "barren landscape."

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Re: Finding of Fact No. 11

9. The Court states, "In response to these complaints from Plaintiffs, the work at Morris' residence ceased, leaving the yard to look like a 'barren landscape.'" This finding is not supported by the evidentiary record. It was on April 17, 2012, that Mr. Shelbourne first wrote the Board on behalf of Mrs. McFarland, voicing her concerns about the Morris landscaping project. (*See* Trial Ex. 18.) As the Court noted in Finding of Fact No. 9, on "April 19, 2012, [Mr.] Holcombe sent an email to [Ms.] Greene memorializing their conversation that occurred the day before, in which [Mr.] Holcombe echoed [Mrs.] McFarland's complaints." (Subject Order p. 10.) In Mr. Holcombe's April 19, 2012, email he stated "they have cleaned out all of the landscaping. . . . The backhoe has been sitting in the front yard for over a week and no one knows when it will be removed." (Trial Ex. 21.) In an email to Ms. Greene on April 22, 2012, Mr. Morris himself apologized for the "barren landscape in front of our home," explaining, "[u]fortunately the commencement of our landscaping project was delayed due to a death in our family. Thus, our project had to be postponed. We will work diligently to complete the landscaping as soon as possible." (Trial Ex. 22 at p. 3.) Indeed, when questioned by his own counsel about delay in the middle of the project, Mr. Morris expressly attributed the same to a death in the family." (Trial Tr. p. 278:9–16.) And when expressly asked about it at trial by Plaintiffs' counsel, Mr. Morris testified that he did not recall any delay in his landscaping project being caused by Mr. Shelbourne's letter. (Trial Tr. p. 300:4–20.) Moreover, the Court states that Defendants held a special Board meeting "[t]o specifically address Plaintiffs' concerns and in an attempt to follow the *requested* process." (Subject Order p. 11 (emphasis added).) The idea that the process was merely "requested," as opposed to *required* by the Governing Documents is wrong. And it is required in furtherance of the very objectives the Court itself expressly cites in

the Subject Order: for instance, "To minimize or eliminate the possibility of any disruptions of the peace and tranquility of the residential environment of the Subdivision;" "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;" "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 "To keep Property values in the Subdivision high, stable and in a state of reasonable appreciation." (Subject Order p. 2.) Further still, Mr. McFarland was not given proper notice of the referenced special Board meeting—the sworn certification of service for the notice itself attests that the notice was sent to 102 Oak Village Lane, which is not the McFarland's address. (*See* Trial Tr. pp. 159:3–160:6; Trial Ex. 24 at Bates No. 58.) Even further, with only Defendants involved in the process of moving, seconding the motion, and voting to approve Mr. Morris's own project, the proceedings were out of proper order and tainted by conflict of interest and self-dealing. The Court's finding that Defendants "believ[ed]" they were acting in the best interests of the HOA and following proper procedure is (1) not supported by the evidentiary record and (2) ultimately not relevant, especially as to the procedure. Regardless of their belief, the record leaves no doubt they Defendants did not follow proper procedure. Even Messrs. Morris and Hannemann's own retained expert, attorney Capers Barr, acknowledged that Mr. Morris had a conflict of interest under S.C. Code Ann. § 33-31-831 in voting to approve his own landscaping project. (*See* Trial Tr. p. 375: 8–19.)

10. Indeed, an exchange between Mrs. McFarland's prior counsel, Mr. Shelbourne, and Messrs. Morris and Hannemann on this point (about Mr. Morris voting to approve his own landscaping plan) is particularly illustrative of the problem that Plaintiffs implore this Court to address. In the wake of the May 2, 2012, special Board meeting, Mr. Shelbourne wrote Messrs.

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Morris and Hannemann, questioning, among other things, Mr. Morris's vote to approve his own project, stating, "according to [§] 33-31-831, a company director should not vote when he has personal interest in the vote." (*See* Trial Ex. 28.) In response to Mr. Shelbourne, Messrs. Morris and Hannemann chide, "In your letter you cite [§] 33-31-831 where you state 'a company director should not vote when he has a personal interest in the vote'. The operative word is 'should' which does not prohibit any action by an individual in which there is a personal interest." (*See* Trial Ex. 31.) Not only is this inaccurate as a proposition of law, it underscores the mindset that led to the HOA/Board dysfunction that is at the heart of the Plaintiffs' case.

Re: Findings of Fact Nos. 12 & 13

11. Despite the referenced May 31, 2012, special HOA meeting being noticed with the object of "harmony," the record shows it was not harmonious. (*See* Trial Tr. pp. 108:14–109:22; *See also* Exhibit B[13].) As Ms. Greene attested elsewhere in the record, Defendants had aligned themselves against Mr. McFarland, rendering the Board dysfunctional. (*See* Trial Ex. 70; Trial Tr. p. 351:3–21.) And as Exhibit B documents, Defendants, in their capacities as Board Members, were yelling, insulting, and bullying in an effort to reduce Mr. Morris's fine. Indeed, Ms. Greene documents anything but Defendants' engagement in an amicable, neighborly dialogue, with Mr. Morris even abruptly "interrupt[ing]" remarks his wife was making about the Holcombe's garden to interject his concern "about Mexican's working in [the neighborhood] and

[13] Attached to this motion as Exhibit B, which is incorporated herein by reference, is the document Bates Labeled "Client Docs0138" that was provided to the Court via email on November 14, 2018, copying in Defendants' counsel. This exhibit contains Ms. Greene's contemporaneous notes with respect to the special HOA meeting on May 31, 2012. As it was initially, this exhibit is submitted herewith in accordance with Plaintiffs' counsel's understanding that the Court expressed a willingness to leave the record open for a period of time after trial before rendering its decision, which period included the time at which this exhibit was previously submitted to the Court on November 14th. Moreover, Plaintiffs' counsel submits that the Court consideration of this exhibit is in furtherance of the interests of justice and well within the discretion afforded it under Rules 52 and 59.

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did they have green cards . . . ." (*See* Exhibit B.) The Subject Order also overlooks that the stated object of the meeting did not include addressing Mr. Morris's fine to begin with—a fact made all the more important because a quorum for the meeting was achieved via proxies from homeowners who could not have known the matter was to be discussed and, as the Subject Order itself notes, Mr. Morris voted to reduce his own fine. (*See* Trial Ex. 36.)[14] The Subject Order likewise overlooks that Defendants improperly attempted to conduct the *special* HOA meeting as *annual* HOA meeting. And, of course, the only conceivable reason why they would do this would be, in furtherance of their alliance against Mr. McFarland, to try and get him off the Board. The Subject Order further overlooks the only conceivable inference that can be drawn from Mr. Hannemann's improper refusal to provide Mr. Holcombe with copies of the meeting minutes and proxies: Defendants' had aligned themselves against Mr. Holcombe, too. (*See* Trial Exs. 38, 47–49.) Defendants' ill will and intentions in this regard are only underscored by the by the patently incredible testimony that Mr. Hannemann gave at trial claiming that the reason he refused to provide Mr. Holcombe with copies of the minutes and proxies was because the minutes were in draft form. To begin with, that is not the reason that Mr. Hannemann himself provided at the time. (*See* Trial Ex. 38.) Moreover, the record includes evidence of Mr. Hannemann, and for that matter Mr. Morris, actually circulating draft minutes on other occasions. (*See* Trial Exs. 65, 76.)

[14] The Subject Order states Mr. Morris voted to reduce his own fine "in his capacity as a homeowner." (Subject Order p. 12.) The Subject Order overlooks that Mr. Morris, like Mr. Hannemann, noticed the meeting expressly in his capacity as a "Board of Director." (*See* Trial Ex. 30.) Additionally, the very fact that the Subject Order would observe a distinction between Defendants' actions as homeowners versus as Board Members implicitly recognizes that, if Defendants' actions were taken as Board Members, which they were, they were taken outside their authority.

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Re: Finding of Fact No. 14

12. The Subject Order states, "Subsequent to the May 31, 2012 meeting in which the homeowners voted to reduce Morris' fine from $1,000.00 to $100.00, [Mr.] Morris continued to receive complaints from Plaintiffs" and was thus prompted to pay the $1,000 fine. This is false. Mr. Morris's letter to Ms. Greene with the $1,000 payment was sent on June 1, 2012 (*see* Trial Ex. 37), the very next day after the referenced May 31st meeting. The finding that his payment was prompted by "continued . . . complaints from Plaintiffs" is not supported by the evidentiary record.

Re: Findings of Fact Nos. 15 & 16

13. The Court overlooks the fact that the Mazell's payment was already overdue after May 31, 2012 (*see* Trial Ex. 41); thus, when ("[i]n June 2012," as the Subject Order states) Mrs. Mazell gave Mr. Hannemann a check for a bill that was already passed due, Mr. Hannemann's actions thereafter are all the more conspicuous. The Subject Order incorrectly states that the certified mailing Mr. Hannemann sent Mr. McFarland with the Mazell check was "refused." (*See* Trial Tr. p. 214:11–15.) Rather, it was never received—nor could it have been—because Mr. Hannemann sent the check via certified mail to a mailbox where certified mail could not be received. (*See* Trial Exs. 41, 43.) Mr. Hannemann effectively prevented Mr. McFarland's receipt of the check for some fifty (50) days, and then, despite Mr. Hannemann's direct responsibility for the delay and confusion in the transmittal of the Mazells' check, he, along with Mr. Morris, wrote a joint letter to the entire HOA accusing both Mr. and Mrs. McFarland of some vague but sinister impropriety with the Mazells' check that could expose the HOA to "legal jeopardy" and demanding Mr. McFarland's immediate resignation from the Board and as

HOA president. (*See* Trial Exs. 41, 43, 55.)[15] The only reasonable inference that can be drawn from these events (especially when considered along with the other evidence of Defendants' alignment against Mr. McFarland) is that Defendants were attempting to arouse negative sentiment against Mr. McFarland in the neighborhood to get him out of office/off the Board. This is only further supported by Mr. Morris obtaining a cashier's check (drawn on his own account) on October 4, 2012, and bringing it with him (to have "if needed") to the special Board meeting he and Mr. Hannemann had set for that date—which meeting Mr. Mazell attended even though he, a non-Board member, could not actually participate in it—at which they purported to vote Mr. McFarland out as HOA president and voted Mr. Hannemann in. (*See* Trial Exs. 59–60.) By October 4, 2012, the Mazell dues payment was already over four months late. The Subject Order's statement that Mr. Morris obtained the cashier's check "[i]n the event the Mazell dues check was not received by [Mr.] McFarland" does not make sense in this context. And, indeed, the Subject Order is inconsistent with Mr. Morris's own testimony in this regard. (Trial Tr. pp. 256:11–25 ([Q.] And the date of that certified check is the same date, is it not? [A.] I don't know, whatever it says on there. [Q.] October 4, 2012? [A.] Says October 4th. That's when it was. That's when I got it. They don't post date certified checks. [Q.] Is there any particular reason that's the same day as the meeting? [A.] I don't have a clue. That's when I got it. [Q.] You said you were going -- you got it just in case it was necessary? [A.] Exactly. [Q.] Why would it have been necessary on October 4th? [A.] I don't have a clue why it would have been necessary October 4th.").)

[15] The letter also demanded Mrs. McFarland's resignation as HOA treasurer, but she was not HOA treasurer to begin with. (*See* Trial Tr. p. 37:1–18.)

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Re: Findings of Fact No. 17 & 18

14. The Subject Order references "[Ms.] Greene acting at the direction of [Mrs.] McFarland and/or [Mr.] McFarland . . . ." As explained above, Ms. Greene considered Mrs. McFarland's involvement to be within the bounds of the normal spousal teamwork. (*See* Trial Tr. pp. 344:20–345:12.) Ms. Greene simply did not testify that Mrs. McFarland acted "unilaterally" or that she (Ms. Greene) "reported to and took directives solely from [Mrs. McFarland]." Rather, according to Ms. Greene, Mr. McFarland was involved and Mrs. McFarland did not act alone. (Trial Tr. pp. 321:23–322:3.) Indeed, Ms. Greene explained, "as far as dealing with Ms. McFarland and Mr. McFarland, it was always via e-mail[,]" As also explained above, the Court's citation to Section 15(c) of the By-laws here overlooks the fact that the Board was rendered dysfunctional by Defendants, who, again, as Ms. Greene documented, had aligned themselves together against Mr. McFarland. (*See* Trial Ex. 70; Trial Tr. p. 351:3–21; *see also* Exhibit B.) Messrs. Morris and Hannemann disregarded credible evidence of the violation presented to them by Ms. Greene and refused to take even so modest an investigatory step as to ask the tenant—the very same person who had improperly resided at the Mazells' before—to provide a copy of a utility bill that could prove he did indeed reside elsewhere. (*See* Trial Exs. 62, 66–67, 70.) Mr. Hannemann's claim, expressed in his trial testimony, that asking the tenant to provide a utility bill or other such proof of residence would have been unduly invasive is absurd.

Re: Findings of Fact Nos. 19 & 20

15. The October 4, 2012, special Board meeting at which Messrs. Hannemann and Morris purported to vote Mr. McFarland out as HOA president and Mr. Hannemann in in his place could not possibly have been valid. Notice of the meeting was only placed in the mail to

Mr. McFarland on October 1, 2012. (*See* Trial Ex. 60.) Mr. McFarland could not have actually gotten it until after that date, and the meeting notice could not possibly have been given in compliance with the By-laws. (*See* Ex. 3 p. 4 (providing that special Board meetings require "not less than three (3) days notice to each director mailed or presented personally to such director with such time.") Indeed, three full days after October 1st could not have possibly passed until October 5th. *See Town of Summerville*, 378 S.C. at 112, 662 S.E.2d at 42–43 ("[W]here the time prescription mentions only the passage of a number of days, a 'day' means a calendar day, beginning and ending at midnight."). Moreover, with only Messrs. Hannemann and Morris involved in the process of moving, seconding the motion, and voting to remove Mr. McFarland as HOA president and of nominating, seconding the nomination, and voting to elect Mr. Hannemann to take Mr. McFarland's place as HOA president, the proceedings were out of proper order and tainted by conflict of interest and self-dealing. Again, Defendants' own witness Ms. Greene still recognized Mr. McFarland to be HOA president after October 4, 2012, and she also attested to Defendants having aligned themselves against Mr. McFarland, rendering the Board dysfunctional. (*See* Trial Ex. 70; Trial Tr. p. 351:3–21.) And even Defendants themselves identified Mr. McFarland as a Board Member *after* October 4, 2012. (*See, e.g.*, Trial Ex. 78 (notice dated *June 12, 2013*, by Messrs. Hannemann and Morris to "Mr. Bill McFarland [/] Member of the Board of Directors [/] Live Oak Village Homeowners Association," purporting to give Mr. McFarland notice of a special Board meeting they had called for *June 17, 2013*).)

Re: All Conclusions of Law

16. None of the Court's Conclusions of Law is supported by the record or the applicable law. Addressing general standards for directors of nonprofit corporations, S.C. Code Ann. § 33-31-830 provides the following:

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(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner the director reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the corporation who the director reasonably believes is reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence;

(3) a committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(4) in the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and who the director believes is reliable and competent in the matters presented.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable to the corporation, a member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

. . . .

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Directors of a nonprofit corporation thus owe the corporation both a duty of care and a duty of loyalty. Also, directors are not to engage in self-dealing or act on corporate matters where they have a conflict of interest. *See* § 33-31-831.

While it is true that "[i]n a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the 'business judgment rule[,]'" this simply means that the judgment of the directors will not be set aside "*absent* a showing of bad faith, dishonesty, or incompetence . . . ." *Goddard v. Fairways Dev. Gen. P'ship*, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct.App.1993) (emphasis added); *see also Dockside Ass'n v. Detyens*, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987) ("[T]he business judgment rule precludes judicial review of actions taken by a corporate governing board absent a showing of a lack of good faith, fraud, self-dealing [,] or unconscionable conduct."). Moreover, "a corporation may exercise only those powers which are granted to it by law, by its charter or articles of incorporation, and by any bylaws made pursuant thereto; acts beyond the scope of the powers so granted are *ultra vires*." *Seabrook Island Prop. Owners Ass'n v. Pelzer*, 292 S.C. 343, 347, 356 S.E.2d 411, 414 (Ct. App. 1987). "The business judgment rule only applies to *intra vires* acts, not *ultra vires* ones[,]" and "[a] homeowners association is bound to follow its covenants and bylaws and cannot defend something that violates those documents on the basis that is a reasonable alternative." *Fisher v. Shipyard Village Council of Co-Owners, Inc.*, 409 S.C. 164, 180, 760 S.E.2d 121, 130 (Ct. App. 2014).

As addressed above and in Plaintiffs' Proposed Order (*see* Exhibit A), the record contradicts every one of Conclusions of Law Nos. 1–6. The record is replete with evidence of Defendants' dereliction of their duties of care and loyalty in favor of bad faith, self-dealing, incompetence, and dishonesty—that latter further displayed by their dubious trial testimony

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regarding such matters as their view of Ms. Greene's "legitimacy" as HOA property manager (which is strikingly different than that revealed by the contemporaneous records), including the incredible notion expressed at trial that the idea had been for Ms. Greene to "[h]andle the [HOA's] bills," and the explanation for why Mr. Holcombe's request for copies of the minutes and proxies from the May 31, 2012, special HOA meeting was refused. (*See also* Proposed Order; Exhibit B.) The statute expressly states, "A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted." This is directly on point with regard to the way Defendants disregarded the credible evidence that the very same tenant who had been improperly residing the Mazells before had returned to the Mazell's house. Moreover, with respect to following the Governing Documents, the applicable legal standard mandates that they in fact be followed—there is no such thing as a "reasonable alternative." Without question, Mr. Morris violated the Governing Documents with his April 2012 landscaping project. The very fact that the Court excused his violation on account of its supposed reasonableness is itself proof positive of Mr. Morris's breach of the legal standard that actually applies. And the breach of this standard—accompanied by bad faith, self-dealing, incompetence, and dishonesty—is evidenced repeatedly throughout the course of Defendants' efforts thereafter to use their positions on the Board, not to promote the HOA's interest in ridding the community of violations of the Governing Documents,[16] but to rid themselves of the nuisance of following the Governing Documents whenever it did not suit them.

[16] Indeed, far from protecting the community via protecting the sanctity of the Governing Documents, Mr. Morris took the position that the "covenant" he violated was "null and void." (*See* Trial Ex. 22 at Bates Label 54.)

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As for Conclusion of Law No. 7, i.e., the Court's ruling that Plaintiffs are not entitled to an injunction in any event because they have unclean hands, it too is not supported in law or fact. Regarding Mrs. McFarland, the Subject Order states she "has unclean hands by acting as an officer and/or director in directing the property manager without approval from the Board of Directors." (Subject Order p. 17.) As explained above in regard to Finding of Fact No. 7, neither of the two written contracts Ms. Greene entered into with the HOA was signed by Mrs. McFarland; both were signed by Mr. McFarland, for and on behalf of the HOA, as its president, just as were her checks. (*See* Trial Exs. 10, 15; *see also* Trial Tr. p. 319:2–5.) Mrs. McFarland did not wrongly represent herself to Ms. Greene as a Board Member or HOA officer—again, this has never even been suggested. Ms. Greene always knew Mrs. McFarland was not a Board Member or HOA officer but rather the spouse of Board Member/President Mr. McFarland,[17] and Ms. Greene considered Mrs. McFarland's involvement to be within the bounds of the normal spousal teamwork. (*See* Trial Tr. pp. 344:20–345:12.) Ms. Greene simply did not testify that Mrs. McFarland acted "unilaterally" or that she (Ms. Greene) "reported to and took directives solely from [Mrs. McFarland]." Rather, according to Ms. Greene, Mr. McFarland was involved and Mrs. McFarland did not act alone. (Trial Tr. pp. 321:23–322:3.) Indeed, Ms. Greene explained, "as far as dealing with Ms. McFarland and Mr. McFarland, it was always via e-mail[,]"[18] and as is well documented in the record, Mr. and Mrs. McFarland share the same email address. Regarding Mr. Holcombe, the Subject Order states he has "unclean hands in loaning the HOA money for attorney's fees and, in the event Holcombe is not awarded attorney's fees, in planning to issue a special assessment to all homeowners for reimbursement—all without a vote of the Board of Directors and/or homeowners." (Subject Order p. 17.) First off, this was not

[17] (*See* Trial Tr. p. 318:1–14.)

[18] (Trial Tr. p. 321:24–25.)

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actually Mr. Holcombe's testimony. The most that can be said of his testimony is that he agreed with Defendants' counsel "that if you are unsuccessful in collecting attorney's fees and costs, then you would anticipate a special assessment to all of the owners for the attorney's fees and costs." (Trial Tr. p. 9:3–7.) Mr. Holcombe's anticipation in this regard is simply not the same thing as him "planning to issue to issue a special assessment to all homeowners for reimbursement . . . without a vote of the Board of Directors and/or homeowners." At most, what Mr. Holcombe actually testified to was his anticipation of a special assessment, not that he himself would somehow be "issuing" such an assessment "without a vote of the Board of Directors and/or homeowners." There is absolutely no suggestion anywhere in this testimony (or elsewhere in the record) that any special assessment he might have anticipated would—or even could—ever come to pass unless and until it was properly approved and issued in accordance with the Governing Documents. And his mere act of fronting money to pursue litigation in good faith[19] in furtherance of the interests of the HOA—for no potential personal gain other than that in which he would share with fellow homeowners by remedying the dysfunction in the community's governance—cannot possibly amount to inequitable conduct or otherwise render his hand unclean. Moreover, in the evaluating the instant situation the Court's view of the equities is out of balance. The Subject Order states that even if the Court did find Defendants were acting outside the scope of their authority as Board Members, it nonetheless would not enjoin them from doing so. Besides the fact that the Court's finding about Plaintiffs' supposedly unclean hands is not supported by the evidentiary record, and besides the fact that, in any event, the conduct attributed to Plaintiffs on which this finding is based does not, as a matter of law,

[19] Nowhere has it been suggested (nor could it reasonably be) that Mr. Holcombe's pursuit of this litigation has been in bad faith. The Subject Order itself, even in finding Mr. Holcombe to have unclean hands, does not find any such bad faith on his part—nor, for that matter, on the part of Mrs. McFarland.

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amount to a proper basis to invoke the doctrine of unclean hands,[20] it is patently inequitable to allow Defendants to continue to act/fail to act in a way that is detrimental to the entire community on the basis of what, even as erroneously attributed to them in the Subject Order, is less significant conduct on the part of just *two* members of the community. Moreover, Plaintiffs' request for the Court to stop Defendants' violation of the Governing Documents is in accordance with S.C. Code Ann. § 33-31-810, which expressly authorizes the Court to "(a) . . . remove any director of the corporation from office . . . if [it] finds that: (1) the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, . . . ; and (2) removal is in the *best interest of the corporation*." (emphasis added). Moreover, in subsection (b), § 33-31-810 provides that "[t]he court that removes a director may bar the director from serving on the board for a period prescribed by the court."

II.
CONCLUSION

WHEREFORE, Plaintiffs move this Honorable Court (1) to amend its findings, and/or make additional findings, and amend the Subject Order to favor Plaintiffs; (2) to reconsider and otherwise alter and/or amend the Subject Order to favor Plaintiffs; or, alternatively; (3) to grant Plaintiffs a new trial or, if not a new trial absolute, to open the record, take additional testimony

[20] The Subject Order itself states, "'The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly [1] *in a matter that is the subject of the litigation* [2] *to the prejudice of the defendant*.'" (Subject Order p. 7 (quoting *First Union Nat'l Bank of S.C. v. Soden*, 511 S.E.2d 372, 379 (S.C. Ct. App. 1998) (emphasis added).) The supposed conduct on which the Court based its finding of unclean hands against Plaintiffs was not, in fact, "the subject of the litigation" and, besides that, the Court never identified any prejudice to Defendants thereby, nor does the evidentiary record allow for such a finding. The Subject Order merely states, in conclusory fashion, "Plaintiffs' actions violate the same Covenants and Bylaws of which they complain the Defendants are violating and, therefore, Plaintiffs' unclean hands bar the equitable remedy of injunction[,]" without ever actually identifying any provision of the Governing Documents supposedly violated by Mrs. McFarland or Mr. Holcombe. (*See* Subject Order p. 17.)

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and/or receive additional evidence, amend findings of fact and conclusions of law or make new findings and conclusions, and a new order/judgment in favor of Plaintiffs.

PLEASE NOTE that Plaintiffs reserve all rights to provide further support for this motion via additional briefing/evidentiary submissions and/or such other means, including oral argument, as the Court may require or allow.

Respectfully submitted,

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Case No. 2012-CP-18-02583
JENNIFER McFARLAND and CARLTON HOLCOMBE,	)	
	)	**DECISION AND ORDER**
Plaintiffs,	)	
v.	)	
THOMAS MORRIS and DAVID HANNEMANN,	)	
Defendants.	)	

THIS MATTER COMES BEFORE THE COURT for a decision on the merits following a nonjury trial. The Court's decision (i.e., its findings of fact and conclusions of law[1]) and corresponding order are set forth herein below.

I.
BACKGROUND

A. Introduction

Made up of just seven single-family homes and a common area, Live Oak Village (the "Subdivision") is a small residential development in Summerville. (*See generally* Trial Exs. 1–5.)

The Subdivision has certain recorded covenants and restrictions (collectively, the "Covenants"),[2] and they are designed to accomplish the following objectives for the mutual benefit of all owners of property in the Subdivision:

[1] Rule 52(a), SCRCP, instructs, "In all actions tried upon the facts without a jury . . . , the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58[, SCRCP][.]"

[2] (*See generally* Trial Exs. 1–2.)

EXHIBIT
A

> (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[3] 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[4] values in the Subdivision high, stable and in a state of reasonable appreciation.

(Trial Ex. 1 pp. 1–2; *see also* Trial Ex. 2 pp. 1–2 (same).)

Live Oak Village Homeowners Association, Inc. (the "HOA"), is a South Carolina nonprofit corporation. (Trial Ex. 3 p. 1.) Organized for the purpose of managing the business of the homeowners association for the Subdivision,[5] the HOA is empowered to, among other things, administer and enforce the Covenants. (Trial Ex. 1 p. 6 at Section 3.1; *see also* Trial Ex. 2 p. 6 at Section 3.1 (same).) "Every person or entity who is an Owner of any Lot . . . [is] . . . a member of the [HOA]." (Trial Ex. 1 p. 7 at Section 3.2; *see also* Trial Ex. 2 p. 7 at Section 3.2 (same).)

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[3] In short, "Owner" means the owner(s) of fee simple title to the "Lots" in the Subdivision. (*See* Trial Ex. 1 p. 4 at Section 1.18; *see also* Trial Ex. 2 p. 4 at Section 1.18 (same).) A "Lot" is, essentially, any parcel of property in the Subdivision intended for single-family use. (*See* Trial Ex. 1 p. 3 at Section 1.14; *see also* Trial Ex. 2 p. 4 at Section 1.14.)

[4] "Property or Properties . . . mean[s] . . . all property . . . subject to th[e] [Covenants]." (Trial Ex. 1 p. 4 at Section 1.20; Trial Ex. 2 p. 4 at Section 1.20 (same).)

[5] (Trial Ex. 3 p. 1.)

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Per its by-laws (the "By-laws"),[6] the HOA is to be governed by a three-member board of directors (the "Board," with each individual member of the Board a "Director"). (Trial Ex. 3 p. 3.) The Board is charged with the "manage[ment] and direct[ion] [of] the affairs of the [HOA]" and is authorized to "exercise all of the powers of the [HOA] subject only to approval by the Owners [(i.e., the HOA members)] . . . when such is specifically required by the[] By-laws." (Trial Ex. 3 p. 5.) The By-laws also provide for the Board's annual election of the HOA's executive officers, most notably the HOA president, who is the HOA's chief executive officer, and who, like the HOA secretary, must him/herself be a Director, too. (Trial Ex. 3 p. 7.)

B. Procedural History

This action was commenced on November 16, 2012. (*See generally* Summons & Compl.) The original plaintiffs were the HOA[7] and three HOA members, Jennifer McFarland ("Mrs. McFarland"),[8] Carlton Holcombe ("Mr. Holcombe"), and Ute Holcombe ("Mrs. Holcombe"). (*See generally* Compl.) The original defendants were Thomas Morris ("Mr. Morris") and David Hannemann ("Mr. Hannemann"), who were the two other Directors besides Mr. McFarland, and two other HOA members, Sofia Mazell ("Mrs. Mazell") and Michael Mazell ("Mr. Mazell," collectively with Mrs. Mazell, the "Mazells"). (*See generally* Compl.)[9]

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[6] Collectively, the Covenants and the By-laws are the "Governing Documents."

[7] As further explained below, the HOA claims, i.e., the claims asserted in the name of the HOA itself, were initiated by Director and HOA member/president William McFarland ("Mr. McFarland"). (*See Live Oak Village Homeowners Association, Inc. v. Morris*, Unpublished Op. No. 2016-UP-519 (S.C. Ct. App. filed December 21, 2016) (filed in this Court, along with the Remittitur from the Court of Appeals, on January 25, 2018).)

[8] Mr. and Mrs. McFarland are husband and wife. (*See* Trial Tr. p. 9:19–24, p. 17:17–20.)

[9] As reflected in the above caption, and as further explained below, the only remaining parties to this action are Mrs. McFarland and Mr. Holcombe on the plaintiffs' side and Messrs. Morris and Hannemann on the defendants'. (*See generally* Consent Order filed March 23, 2018.)

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Of the three causes of action in the original complaint, only one of them—a claim by Mrs. McFarland and Mr. Holcombe for declaratory and injunctive relief against Messrs. Morris and Hannemann (the "Declaratory Judgment Claim")—is now before the Court for decision.[10] The gravamen of the Declaratory Judgment Claim is that Messrs. Morris and Hannemann have caused the HOA/Board to become dysfunctional[11] by operating, and continuing to operate, outside the scope of their authority as Directors,[12] their acts/omissions in violation of the Governing Documents including, but not limited to, the following:

A. voting to waive fines that applied to themselves;

B. failing to hold timely or properly noticed [HOA] or Board . . . meetings;

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

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

E. voting in violation of South Carolina Code § 33-31-83[0];

F. failing to properly handle HOA funds;

G. failing to enforce the [Covenants] in a uniform and unbiased manner;

H. violating the [Covenants].

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[10] Though not before the Court, causes of action for civil conspiracy (against all defendants) and defamation (against the Mazells) are also included in the original complaint. (*See generally* Compl.)

[11] Though ultimately his position did not prevail, it was on account of this alleged dysfunction that Mr. McFarland initiated claims in the name of the HOA, taking the position that he was, in addition to being HOA president, the only Director who remained authorized to act on the HOA's behalf. (*See Live Oak Village Homeowners Association, Inc. v. Morris*, Unpublished Op. No. 2016-UP-519 (S.C. Ct. App. filed December 21, 2016) (filed in this, Court along with the Remittitur from the Court of Appeals, on January 25, 2018).)

[12] (*See* Compl. ¶ 5.)

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(Compl. ¶ 6.) The relief sought under the Declaratory Judgment Claim is twofold: (1) a judicial declaration as to Messrs. Morris and Hannemann's wrongful acts/omissions in violation of the Governing Documents (and legal consequences thereof) and (2) an injunction prohibiting (i.e., protecting against) the continuation/recurrence of those violations. (*See* Compl. p. 4 at Prayer for Relief.)

The operative complaint before the Court is, in fact, the amended complaint filed October 31, 2014. (*See generally* Am. Compl.) Besides correcting a typographical error in Paragraph 6.(E),[13] however, the amendment left the Declaratory Judgment Claim unchanged.[14] Accordingly, the above description of the Declaratory Judge Claim goes for the amended (i.e., operative) complaint, too.

Messrs. Morris and Hannemann and the Mazells asserted counterclaims against all original plaintiffs and third-party claims against Mr. McFarland. (*See* Mazell Answer to Compl., Counterclaims, and Third-Party Compl. filed December 27, 2012; Morris & Hannemann Answer to Compl., Counterclaims, and Third-Party Compl. filed January 16, 2013; Morris & Hannemann Answer to Am. Compl., Counterclaims, and Third-Party Compl. filed November 13, 2014.) The Mazells' counterclaims and third-party claims were resolved and dismissed by stipulation,[15] and all original plaintiffs and Mr. McFarland were granted summary judgment on Messrs. Morris and Hannemann's counterclaims and third-party claims. (*See* Order Granting Summ. J. in favor of Pls. & Third-Party Pl. filed March 13, 2015.)

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[13] This correction is shown in brackets in the above quotation from original Paragraph 6.

[14] The only substantive difference between the two complaints is the amended complaint's addition of a breach of contract claim against the Mazells (more specifically, a claim for breach of the Covenants) that is not before the Court. (*See generally* Pls.' Mot. to Amend Compl. filed July 10, 2014; *compare* Compl. *with* Am. Compl.)

[15] (*See* Stipulation of Partial Dismissal With Prejudice filed November 6, 2014.)

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Contemporaneous with the summary judgment granted in favor of the original plaintiffs and Mr. McFarland on Messrs. Morris and Hannemann's claims, however, Messrs. Morris and Hannemann and the Mazells were themselves granted partial summary judgment on the original plaintiffs' claims. (*See* Order Granting, In Part, Morris & Hannemann Mot. for Summ. J. filed March 13, 2015; Order granting Mazell Motion for Partial Summ. J. filed March 3, 2015.) Between them, and subject to their reversal on appeal, these partial summary judgments disposed of the claims of both the HOA and Mrs. Holcombe in their entirety and of the Declaratory Judgment Claim of both Mrs. McFarland and Mr. Holcombe. (*See generally* Order Granting, In Part, Morris & Hannemann Mot. for Summ. J. filed March 13, 2015; Order granting Mazell Motion for Partial Summ. J. filed March 3, 2015.)

The HOA, Mrs. McFarland, and Mr. Holcombe immediately appealed the summary judgments granted against them. (*See* Notice of Appeal filed March 20, 2015.)[16] Ultimately, the appeal resulted in affirmance of the summary judgment against the HOA[17] but reversal of the summary judgments against Mrs. McFarland and Mr. Holcombe,[18] and the case was remitted back to this Court on January 23, 2018. (*See* Remittitur filed January 25, 2018.)

By consent order filed March 23, 2018, the defamation claim against the Mazells was dismissed with prejudice and the civil conspiracy claim against all original defendants was dismissed without prejudice;[19] the case caption was amended to reflect Mrs. McFarland and Mr. Holcombe (collectively, "Plaintiffs," with a capital "P" to distinguish them from any other

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[16] Mrs. Holcombe chose not to appeal and, accordingly, ceased to be a party to this case.

[17] Accordingly, the HOA ceased to be a party to this case.

[18] (*See Live Oak Village Homeowners Association, Inc. v. Morris*, Unpublished Op. No. 2016-UP-519 (S.C. Ct. App. filed December 21, 2016) (filed in this Court, along with the Remittitur from the Court of Appeals, on January 25, 2018).)

[19] Accordingly, the Mazells ceased to be parties to this case.

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original plaintiffs) and Messrs. Morris and Hannemann (collectively, "Defendants," with a capital "D" to distinguish them from any other original defendants) as the only remaining parties to this case; and the case was transferred to the nonjury docket for trial of the sole remaining claim, i.e., the Declaratory Judgment Claim. (*See* Consent Order filed March 23, 2018.)

The case was tried to this Court without a jury on October 30–31, 2018. At the conclusion of trial, the Court held the record open for additional, post-trial submissions by the parties.[20] The record is now closed, and this matter is ripe for decision.

II.
DECISION

A. Findings of Fact[21]

1. To the extent necessary to support any conclusion of law, *infra*, the facts stated in the above background are incorporated herein by reference as factual findings.

2. At all relevant times, Plaintiffs were HOA members,[22] with Mrs. McFarland residing at 105 Oak Village Lange[23] and Mr. Holcombe at 104 Oak Village Lane. (*See* Trial Tr. p. 59:19–25; *see also* Trial Ex. 4.)

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[20] The Court established a schedule whereby Plaintiffs would have ten days (after trial ended on October 31, 2018) for post-trial submissions, then Defendants would have ten days to respond, and then Plaintiffs would have five days to reply. Defendants submitted a proposed order on November 26, 2018. That proposed order ("Defs.' Prop. Order") is cited from time to time below.

[21] All factual findings herein are made in accordance with the preponderance of the evidence standard.

[22] (*Compare* Am. Compl. ¶ 2 *with* Morris & Hannemann Answer to Am. Compl., Counterclaims, and Third-Party Compl. filed November 13, 2014 ¶ 1; *see also* Defs.' Prop. Order p. 7 at ¶ 2.)

[23] (*See* Trial Tr. p. 9:8–18; *see also* Trial Ex. 4.)

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3. At all relevant times, Defendants were Directors[24] and HOA members,[25] with Mr. Morris rising at 102 Oak Village Lane and Mr. Hannemann at 100 Oak Village Lane. (*See* Trial Ex. 4.)

4. At all relevant times, the other Director (besides Messrs. Morris and Hannemann) was HOA member/president Mr. McFarland,[26] with Mr. McFarland residing with his wife, Mrs. McFarland, at 105 Oak Village Lane. (*See* Trial Tr. p. 9:19–24; *see also* Trial Ex. 4.)

5. On September 7, 2011, Mrs. McFarland wrote the Board advising that, "[f]or well over a year," the Mazells had had a non-family member (hereinafter referred to simply as "Mr. F"[27]) "living in the downstairs portion of their home" in violation of the Governing Documents and asking the Board to remedy the violation. (*See* Trial Ex. 8.)[28]

6. Mrs. McFarland's September 7, 2011, letter prompted discussion between/among members of the Board about the HOA hiring a property manager to address violations of the Governing Documents. (*See* Trial Tr. pp. 15:17–24:13, pp. 128:8–132:19; Trial Ex. 19 (wherein Mr. Hannemann writes to Mr. McFarland, "An unscheduled impromptu discussion of the B[oard] was held, without an agenda, to review options of hiring a Property Manager to deal with a possible violation of the [Governing Documents]."); Trial Ex. 20 (wherein Mr.

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[24] (Trial Tr. p. 17:8–20; *see also* Defs.' Prop. Order p. 7 at ¶ 2.)

[25] (*Compare* Am. Compl. ¶ 3 *with* Morris & Hannemann Answer to Am. Compl., Counterclaims, and Third-Party Compl. filed November 13, 2014 ¶ 1.)

[26] (Trial Tr. p. 17:8–20; *see also* Defs.' Prop. Order p. 8 at ¶ 4.)

[27] Mr. F has never been a party to this litigation, and it is sufficient for the purposes of this Decision and Order to refer to him by last initial only.

[28] Although Mrs. McFarland had frequently seen Mr. F (more precisely, the person that she would later learn to be Mr. F) for quite a while before her letter to the Board, it was not until August of 2011, when her teenage daughter, upon returning to the house after a morning run, told her there was "a man standing over on [the] Mazzels's property looking at me and it's kind of creepy," that Mrs. McFarland had reason to focus her attention on the nature of Mr. F's presence in the neighborhood. (*See* Trial Tr. pp. 15:24–16:13.)

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Hannemann writes to Mr. McFarland, "You also requested minutes for a Board . . . meeting on or about September 7, 2011. This meeting was called by you without notice or provision of a meeting agenda and related to an issue from [Mrs.] McFarland . . . about a non-family member living at 107 Live Oak Village, which is in violation of the . . . [Governing Documents]. Since this gathering of the Board . . . was informal, I did not take any meeting minutes.").)

7. The aforementioned discussion led Mr. McFarland to reasonably believe that Messrs. Morris and Hannemann were agreeable with the HOA hiring a property manager and, acting on that belief, Mr. McFarland, for and on behalf of the HOA, as its president, contracted with K.J. Property Management, LLC (hereinafter referred to collectively with its owner, who at that time went by the name Kathleen Greene, as "Ms. Greene"[29]);[30] whereupon, with Ms. Greene's assistance as HOA property manager, the violation involving Mr. F living with the Mazells was remedied (for the time being, as further discussed, *infra*). (*See* Trial Tr. p. 25: 3–13.)

8. Both Messrs. Morris and Hannemann disputed whether Ms. Greene was properly hired as HOA property manager and contended that Ms. Greene's actions as property manager were illegitimate,[31] but the Court finds their testimony is not credible on this point.[32] The

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[29] Ms. Greene now goes by the last name John. (Trial Tr. p. 316:13–21.) She is, however, referred to herein as Ms. Greene because that is the name that appears in the various trial exhibits where reference to her is made.

[30] (*See* Trial Exs. 10–11, 15.)

[31] (*See, e.g.,* Tr. p. 114:23–116:20; Trial Tr. p. 231:18–24; *see also* Defs.' Prop. Order pp. 8–9 at ¶¶ 6–7.)

[32] In this regard, the Court notes that, while acknowledging he had discussed the idea of hiring a property manager with Mr. McFarland, Mr. Hannemann testified that he thought the property manager was only going to "[h]andle the bills" and would not be involved in addressing violations of the Governing Documents. (Trial Tr. pp. 118:23–119:1.) Mr. Hannemann's testimony is plainly belied by his April 19, 2012, email to Mr. McFarland acknowledging that, "sometime in September 2011," there had been "[a]n unscheduled impromptu discussion of the

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evidence shows that neither Mr. Morris nor Mr. Hannemann questioned Ms. Greene's legitimacy as HOA property manager at the time,[33] but rather both of them acted as if she was indeed HOA property manager, both in their direct communications with Ms. Greene and in their inclusion of Ms. Greene on HOA-related communications and documents. (*See* Trial Exs. 22, 36–37, 39–40, 42, 45–46, 55, 62, 65, 67, 70, 72–73, 75–76.) Of particular note in this regard are Mr. Hannemann's email to Ms. Greene on October 17, 2012, and his letter to her of November 1, 2012. In his October 17th email, Mr. Hannemann writes, "As to your resignation, I have spoken with Mr. Morris, and we, as the majority of the Board . . . are willing to accept your resignation, without condition, immediately if you so desire." (Trial Ex. 70.) His November 1st letter states, "[A]s stipulated in your contract, you are directed to attend a meeting of the Board on Monday[,] November 5, 2012 . . . . Failure to respond will cause the clause 5 of your agreement with Live Oak Village Homeowners Association to be activated. You have 30 days from November 5, 2012 to resolve this situation. Failure to comply will terminate your contract." (Trial Ex. 75.) Of course, the very willingness (on the part of Messrs. Hannemann and Morris) to accept Ms. Greene's resignation and, likewise, the threat to invoke clause 5 ("Termination of Agreement"[34]) necessarily betray Defendants' actual, real-time belief—notwithstanding the position they urge in this litigation—that Ms. Greene did, in fact, have a contract with the HOA and a position thereunder from which she could resign or be terminated.[35]

B[oard] . . . *to review options of hiring a Property Manager to deal with a possible violation of the [Governing Documents]*." (Trial Ex. 19 (emphasis added); *see also* Trial Tr. pp. 129:20–130:7.)

[33] (*See, e.g.*, Trial Tr. p. 117:4–12.)

[34] (*See* Trial Exs. 10, 15.)

[35] The Court also notes here that, contrary to Defendants' litigation position that Ms. Greene's acts were illegitimate, Mr. and Mrs. Morris did, in fact, pay (to Ms. Greene) the $1,000 fine assessed for their improper landscaping. (Trial Ex. 37.) Also, Defendants' Proposed Order

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9. Indeed, Mr. Morris's wife herself acted as if Ms. Greene was the HOA property manager, as evidenced by her inquiry to Ms. Greene about whether Mr. Holcombe had obtained proper approval for the garden in his side yard. (*See* Trial Ex. 16A.)

10. According to Defendants, Mrs. McFarland "unilaterally and without Board approval contacted . . . Greene" to procure her services as HOA property manager and that Greene "reported to and took directives solely from [Mrs.] McFarland,"[36] but these contentions are demonstrably false. Neither of the two written contracts Ms. Greene entered into with the HOA was signed by Mrs. McFarland; both were signed *Mr.* McFarland, for and on behalf of the HOA, as its president. (Trial Exs. 10, 15; *see also* Trial Tr. p. 319:2–5.)[37] Mrs. McFarland did not wrongly represent herself to Ms. Greene as a Director or HOA officer—to be clear, this has never even been suggested. Ms. Greene always knew Mrs. McFarland was not a Director or HOA officer but rather the spouse of Director/President Mr. McFarland,[38] and Ms. Greene considered Mrs. McFarland's involvement to be within the bounds of the normal spousal teamwork. (*See* Trial Tr. pp. 344:20–345:12.) Ms. Greene's testimony was to the exact opposite effect of that urged by Defendants, i.e., that Mrs. McFarland acted "unilaterally" and that Ms. Greene "reported to and took directives solely from [Mrs. McFarland]." According to Ms. Greene, Mr. McFarland was involved and Mrs. McFarland did not act alone. (Trial Tr. pp.

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suggests that the Morrises's payment of this fine was somehow related to "continued . . . complaints [received] from Plaintiffs" "*[s]ubsequent* to the May 31, 2012" special HOA meeting. (Defs.' Prop. Order p. 12 at ¶ 14 (emphasis added).) In support of this notion, Defendants cite the trial transcript at pp. 273–274, but review of these pages shows no such thing. (*See generally* Trial Tr. pp. 273–274.) Moreover, given that the Morrises paid the $1,000 fine to Ms. Greene on June 1, 2012 (*see* Trial Ex. 37), the very next day after the referenced May 31st meeting, Defendants' claim of "continued . . . complaints from Plaintiffs" is not credible.

[36] (Defs.' Prop. Order pp. 8–9 at ¶ 8.)

[37] Like her contracts with the HOA, Ms. Greene's paychecks were also signed by Mr. McFarland. (Trial Tr. 320:1–7.)

[38] (*See* Trial Tr. p. 318:1–14.)

321:23–322:3.) Indeed, Ms. Greene explained, "as far as dealing with Ms. McFarland and Mr. McFarland, it was always via e-mail[,]"[39] and as is well documented in the record, Mr. and Mrs. McFarland share the same email address.

11. At essentially the same time as Mrs. Morris was questioning whether Mr. Holcombe had obtained proper approval for his garden, the Morris's where themselves violating the Governing Documents by doing unauthorized landscaping in their front yard.

12. Though Mr. Morris wrote the Board on April 1, 2012, requesting approval "to remove and replace *some* of [his] existing landscaping,"[40] Mr. Morris admitted in his trial testimony that he went ahead with the project—which spanned the better part of April and May 2012 and required heavy equipment and reduced his front yard to a "barren landscape"[41]—before obtaining approval. (Trial Tr. p. 242:6–13.)

13. When the violation was brought to his attention, Mr. Morris, though himself a member of the Board, insisted there was no violation because—on account of leniency previously shown *him* for *his own* prior unapproved construction and landscaping projects that had gone unpunished—the requirement that he obtain approval for his April 2012 project was "null and void" because of the HOA's supposed inconsistent enforcement of the requirement. (*See* Trial Ex. 22.)

14. Notwithstanding Mr. Morris's contention that he did not in fact need to obtain approval for the project, he and Mr. Hannemann held a special meeting of the Board on May 2,

[39] (Trial Tr. p. 321:24–25.)

[40] (Trial Ex. 17 (emphasis added).)

[41] (*See* Trial Exs. 21–22, 24.)

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2012, and the two of them voted to approve—retroactively, i.e., after the project had already been started without approval—Mr. Morris's own request. (*See* Trial Ex. 24.)[42]

15. Even Messrs. Morris and Hannemann's own retained expert, attorney Capers Barr, acknowledged that Mr. Morris had a conflict of interest under S.C. Code § 33-31-831 in voting to approve his own landscaping project. (*See* Trial Tr. p. 375: 8–19.)

16. Indeed, an exchange between Mrs. McFarland's prior counsel, attorney Brandt Shelbourne, and Messrs. Morris and Hannemann on this point (about Mr. Morris voting to approve his own landscaping plan) is particularly illustrative of the problem that Plaintiffs are asking this Court to address. In the wake of the May 2, 2012, special Board meeting, Mr. Shelbourne wrote Messrs. Morris and Hannemann, questioning, among other things, Mr. Morris's vote to approve his own project, stating, "according to [§] 33-31-831, a company director should not vote when he has personal interest in the vote." (*See* Trial Ex. 28.) In response to Mr. Shelbourne, Messrs. Morris and Hannemann chide, "In your letter you cite [§] 33-31-831 where you state 'a company director should not vote when he has a personal interest in the vote'. The operative word is 'should' which does not prohibit any action by an individual in which there is a personal interest." (*See* Trial Ex. 31.) Not only is this inaccurate as a proposition of law, it underscores the mindset that led to the HOA/Board dysfunction that is at the heart of the Declaratory Judgment Claim.

17. Along with three other HOA members (specifically, Messrs. Mazell, Cummings, and Knight), Messrs. Morris and Hannemann noticed a special HOA meeting for May 31, 2012. (*See* Trial Ex. 30.)

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[42] The record includes a notarized certificate of service that purports show service of notice of the May 2, 2012, special meeting on Mr. McFarland by mail; however, this certificate indicates that the notice was mailed to Mr. McFarland at 102 Oak Village Lane, which is not Mr. McFarland's correct address. (*See* Trial Ex. 24.)

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18. While the stated object of the May 31, 2012, special HOA meeting was "to discuss future goals of the [HOA] and reestablish harmony of the community . . . ,"[43] the meeting's tone was decidedly acrimonious. (*See* Trial Tr. pp. 108:14–109:22; *see also* Plts.' Post-Trial Submission ["Client Docs0138"] (wherein the particularly hostile tone of the meeting is recounted in Ms. Greene's contemporaneous notes).)

19. Indeed, after the meeting, when Mr. Holcombe tried to obtain copies of the meeting minutes and proxies from Mr. Hannemann, Mr. Hannemann refused to provide them, for no reason other than his displeasure with Mr. Holcombe over his objections to the manner in which the meeting was noticed and conducted. (*See* Trial Exs. 38, 47–49.) The Court finds not credible Mr. Hannemann's testimony that the reason he refused to provide Mr. Holcombe with copies of the minutes and proxies was because the minutes were in draft form. To begin with, that is not the reason that Mr. Hannemann himself provided at the time. (*See* Trial Ex. 38.) Moreover, the record includes of evidence of Mr. Hannemann, and for that matter Mr. Morris, actually circulating draft minutes on other occasions. (*See* Trial Exs. 65, 76.)

20. The record also shows Messrs. Morris and Hannemann's odd involvement in respect of the Mazells' 2012 annual HOA assessment. This included the Mazells giving Mr. Hannemann a personal check for payment of their assessment, Mr. Hannemann holding that check (i.e., doing nothing with it at all) for an inordinate amount of time only then to deposit it into the mail in a manner (via certified mail to a mailbox where certified mail could not be received) that guaranteed that Mr. McFarland would not receive it, thereby delaying Mr. McFarland's actual receipt of the check for weeks, and thereafter, despite Mr. Hannemann's direct responsibility for the aforementioned delay and confusion in the transmittal of the

[43] (*See* Trial Ex. 31.)

Mazells' check, Messrs. Morris and Hannemann thereafter, writing a joint letter to the entire HOA accusing both Mr. and Mrs. McFarland of some vague but sinister impropriety with the Mazells' check that could expose the HOA to "legal jeopardy"[44] and demanding Mr. McFarland's immediate resignation from the Board and as HOA president. (*See* Trial Ex. 55.)[45] This also includes Mr. Morris obtaining a cashier's check (drawn on his own account) on October 4, 2012, and bringing it with him (to have "if needed") to the special Board meeting he and Mr. Hannemann had set for that date—which meeting Mr. Mazell attended even though he, a non-Board member, could not actually participate in it—at which they voted Mr. McFarland out as HOA president and voted Mr. Hannemann in. (*See* Trial Exs. 59–60.)[46]

21. When Mr. McFarland properly noticed an annual HOA meeting for September 12, 2012, both Messrs. Morris and Hannemann sent Mr. McFarland one-sentence emails on September 11, 2012, advising they could not attend. (*See* Trial Exs. 52A, 52C.) Mr. Holcombe testified that he saw both Messrs. Morris and Hannemann at their houses when he was on his way to the meeting. Indeed, Mr. Hannemann admitted at trial that, despite having told Mr. McFarland that he could not attend the meeting because of a "family emergency," the emergency

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[44] While presented to the whole of the HOA membership as a matter of fact, Mr. Hannemann admitted at trial that this supposed "legal jeopardy" into which the McFarlands had placed HOA was nothing more than speculation on his part. (*See* Trial Exs. 39–43, 55; Trial Tr. pp. 214:6–215:18.)

[45] The letter also demanded Mrs. McFarland's resignation as HOA treasurer, but she was not HOA treasurer to begin with. (*See* Trial Tr. p. 37:1–18.)

[46] Notice of the October 4, 2012, special Board meeting was only placed in the mail to Mr. McFarland on October 1, 2012. (*See* Trial Ex. 60.) He could not have actually gotten it until after that date, and the meeting notice could not possibly have been given in compliance with the By-laws. (*See* Ex. 3 p. 4 (providing that special Board meetings require "not less than three (3) days notice to each director mailed or presented personally to such director with such time.") Indeed, three full days *after* October 1st could not have possibly passed until October 5th. *See Town of Summerville v. City of North Charleston*, 378 S.C. 107, 112, 662 S.E.2d 40, 42–43 (2008) ("[W]here the time prescription mentions only the passage of a number of days, a 'day' means a calendar day, beginning and ending at midnight.").

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was out of state and he was in fact in town on September 12, 2012, as he was through at least September 26, 2012. (*See* Trial Ex. 77.) Moreover, both Mrs. McFarland and Mr. Holcombe testified that, while neither Mr. nor Mrs. Mazell attended the meeting, they saw Mrs. Mazell in the parking lot adjacent to the meeting location at the time of the meeting.

22. When Mr. F resumed living with the Mazells in the fall of 2012 as a non-family member/renter in violation of the Governing Documents,[47] Messrs. Morris and Hannemann disregarded credible evidence of the violation presented to them by Ms. Greene and refused to take even so modest an investigatory step as to ask Mr. F to provide a copy of a utility bill that could prove he did indeed reside elsewhere. (*See* Trial Exs. 62, 66–67, 70.) The Court finds not credible Mr. Hannemann's trial testimony that asking Mr. F to provide a utility bill or other such proof of residence would have been unduly invasive.

23. Even after Messrs. Morris and Hannemann claimed they had voted Mr. McFarland out as HOA president on October 4, 2012, Messrs. Morris and Hannemann's own witness, Ms. Greene, still recognized Mr. McFarland to be HOA president, observing also that Messrs. Morris and Hannemann had aligned themselves against Mr. McFarland. (*See* Trial Ex. 70.)

24. Mr. Greene testified at trial that, to her knowledge, the Board dysfunction (with Messrs. Morris and Hannemann aligned against Mr. McFarland) had never been resolved; and the continued existence of this dysfunction is further reflected in Mr. Barr's testimony, as well as by the fact of the pendency of the lawsuit captioned *Hannemann v. McFarland*, Case No. 2016-

[47] Whether or not Mr. F was, in fact, renting from the Mazells at this time, his living with the Mazells as a non-family member violated the Covenant's requirement that "[a]ll Lots . . . be used for single-family residential purposes exclusively." (Trial Ex. 1 p. 18 at Section 7.5; *see also* Trial Ex. 2 p. 19 at Section 7.5.)

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CP-18-01812, that Mr. Hannemann filed against Mr. McFarland in 2016, about which the parties stipulated on the trial record of this case, and which is of record in this Court in any event.

B. Conclusions of Law

1. The Declaratory Judgment Claim is not moot and is justiciable.

2. The special Board meeting Messrs. Morris and Hannemann held on October 4, 2012, was improperly noticed and therefore invalid; moreover, their vote to remove Mr. McFarland as HOA present and install Mr. Hannemann in his place was tainted by conflict of interest and therefore invalid.

3. Messrs. Morris and Hannemann did engage in acts/omissions outside the scope of their authority as Directors and their wrongful conduct in violation of the Governing Documents rendered the HOA/Board dysfunctional.

4. Messrs. Morris and Hannemann are generally enjoined from acting outside the scope of their authority as Directors and specifically enjoined from serving as Directors or HOA executive officers for a period of three years from the date of this Decision and Order.

III.
ORDER

NOW, THEREFORE, judgment shall be entered in favor of Plaintiffs against Defendants in accordance with the above findings of fact and conclusions of law.

IT IS SO ORDERED.

_____
Maite Murphy
Presiding Judge
First Judicial Circuit – Dorchester County

_____, South Carolina

Dated: _____

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McFarland

From: Kathleen J. Greene <kjpm@Knology.net>
Sent: Friday, June 01, 2012 1:50 PM
To: McFarland LOV
Subject: 5/31/2012 LOVHOA meeting KJPM notes

EXHIBIT

B

KJPM notes

I arrived early and gave my contract to Mr. Morris and Mr. Hannemann. They told me actions before my acquiring my Town license were not valid. They were under the impression I was hired month to month to handle the Mazell problem. Asked how I came up with the fine amount. I read them the enforcement rule "$100 per occurrence/per day". Mr. Holcombe came in prior to beginning the meeting and I told him caught him up to speed about what happened before he arrived. His comment to the room was the meeting had not started yet. Mr. Knight, Mr. and Mrs. Hanneman, Mr. and Mrs. Morris, and Mr. and Mrs. Holcomb were present. Mr. Hanneman said he had 5 proxies in hand. I am not certain who those proxies were from. Mr. Hannemann read the minutes from the last annual homeowners meeting. He was following the agenda for a homeowner's annual meeting. He made a motion that was seconded and all were in favor of approving the meeting minutes. Mr. Holcombe abstained. Mr. Holcombe said there was no agenda on the notice. Mr. Hannemann and Mr. Holcomb agreed to disagree. To keep in the topic on the notice Mrs. Morris wanted to send all the owners notices if anyone wanted approval for something and let the community decide. She talked about Mr. Holcombe's garden, then it seemed to me to be out of contents why Mr. Morris interrupted and talked about Mexican's working in Live Oaks and did they have green cards, Mr. Holcombe was quite upset and told her so. Motion was made and seconded. Mr. Holcombe abstained. Back to the Morris fines. Again Mr. Morris told me that the actions taken by KJPM were unlawful. Mrs. Hannemann asked for the reason I fined Mr. Morris more than $100. Again I read the enforcement rule as found on BK 326 pg 253 Article VII Section 8.1 Enforcement. I asked both Mr. and Mrs. Hannemann not to badger me and I was not going to answer her questions. Mr. Morris said he read the enforcement rule differently than I had, he read it as Mr. and Mrs. Hannemman had. And said "even lawyers don't agree that's why we go to court". Mr. Hoclombe said again that is not the point of this meeting and asked Mr. Hannemann what the point was. He said he wanted to elect a new board, this meeting taking the place of an annual meeting and wanted to discuss the budget. Mr. Holcombe told them certain people had not paid their fines and could not vote. Mr. Morris and Mr. Hannemann wanted to go to Mr. Knight's office to post mark the envelope so it would show the dues paid before midnight of 5/31/2012 since they had a 30 day grace period. Mr. Holcombe said their 30 day grace period was up on 5/30/2012. Again back to the fines. I was asked what it was based on. I let them know I had a letter stating the plans had to be submitted to the board by 4/30/2012 which they were not. In the letter I told there fines would occur. Of course I told them the May 2nd meeting was not a valid meeting so the fines continued. They argued it was a valid meeting and the plans were turn in at that meeting. They asked who authorized the fines. I told them the enforcement rule did. I also received an email from Mr. McFarland to let me know to continue the fines until the plans were submitted. Mr. Morris made a motion to pay a one day fine of $100. Motion was made and seconded all in favor. Mr. Holcombe abstained. Mr. Holcombe said Bill should have a vote on this. Discussion was held about Bill not attending meetings, Mr. Morris said Bill is not Hitler - Mrs. Holcombe interrupted by slammed her purse down on the table and said 'thank you very much'. I know that Mr. Holcombe is German. Then Mr. Morris and Mr. Hannemann talked about there have been precedents set in the community. One example was when Mr. and Mrs. Morris were working on their front steps, after the fact Mr. McFarland asked for a letter just for the records and let them continue the work. So they said Bill doesn't follow the rules. Mr. Hannemann asked me wouldn't Bill be in violation and charged a penalty if the month to month meetings and the annual meeting are not called as per the rules. I told him no that rests on the shoulder of the rest of the BOD and even every owner in the community. Hopefully every owner will follow the rules, as written, in the future. More discussion was held about Mr. McFarland not attending meetings that are duly called. He is not up for reelection. Mr. Morris has served one year and Mr. Hannemann has served for two years. Mr.Knight said toss the damn book in the trash and work together as neighbors should. At some point in the discussion Mr. Hannemann voted to adjourn at 9pm and it was seconded and motion carried.

Kathleen J. Greene

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
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SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No.: 2012-CP-18-2583

LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC., JENNIFER MCFARLAND, AND CARLTON HOLCOMBE.....Appellants,

vs.

THOMAS MORRIS, DAVID HANNEMANN, SOFIA MAZELL, AND MICHAEL MAZELL.....Respondents,

NOTICE OF APPEAL

Live Oak Village Homeowners Association, Inc., Jennifer McFarland, and Carlton Holcombe hereby appeal the Order Granting, In Part, Morris' and Hannemann's Amended Motion for Summary Judgment of the Honorable Diane S. Goodstein dated March 12, 2015 and received by Appellants on March 13, 2015 and Order Granting Summary Judgment of the Honorable Diane S. Goodstein dated March 12, 2015 and received by Appellants on March 13, 2015. Appellants also appeal the Order Granting Mazell Motion for Partial Summary Judgment of the Honorable Diane S. Goodstein dated March 2, 2015 and received by Appellants on March 3, 2015

March 17, 2015

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Case No. 2012-CP-18-02583
JENNIFER McFARLAND and CARLTON HOLCOMBE,	)	
	)	**DECISION AND ORDER**
Plaintiffs,	)	
v.	)	
THOMAS MORRIS and DAVID HANNEMANN,	)	
Defendants.	)	

THIS MATTER COMES BEFORE THE COURT for a decision on the merits following a nonjury trial. The Court's decision (findings of fact and conclusions of law[1]) and order are set forth herein below.

I.
BACKGROUND

A. Introduction

Consisting of just seven single-family homes and a common area for ingress/egress via the adjacent public street, Live Oak Village (the "Subdivision") is a small residential development in Summerville. (*See generally* Trial Exs. 1–5.) All the real property in the Subdivision is subject to certain recorded covenants and restrictions (collectively, the "Covenants"). (*See generally* Trial Exs. 1–2.)

The Covenants are designed (i.e., were imposed) to accomplish the following objectives for the mutual benefit of all owners of property in the Subdivision:

[1] *See* Rule 52(a), SCRCP ("In all actions tried upon the facts without a jury . . . , the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58[, SCRCP][.]").

> (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[2] 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[3] values in the Subdivision high, stable and in a state of reasonable appreciation.

(Trial Ex. 1 pp. 1–2; *see also* Trial Ex. 2 pp. 1–2 (same).)

Live Oak Village Homeowners Association, Inc. (the "HOA"), is a South Carolina nonprofit corporation. (Trial Ex. 3 p. 1.) Organized for the purpose of managing the business of the homeowners association for the Subdivision,[4] the HOA is empowered to, among other things, administer and enforce the Covenants. (Trial Ex. 1 p. 6 at Section 3.1, *see also* Trial Ex. 2 p. 6 at Section 3.1 (same).) "Every person or entity who is an Owner of any Lot . . . [is] . . . a member of the [HOA]." (Trial Ex. 1 p. 7 at Section 3.2; *see also* Trial Ex. 2 p. 7 at Section 3.2 (same).)

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[2] In short, "Owner" means the owner(s) of fee simple title to the "Lots" in the Subdivision. (*See* Trial Ex. 1 p. 4 at Section 1.18; *see also* Trial Ex. 2 p. 4 at Section 1.18 (same).) A "Lot" is, essentially, any parcel of property in the Subdivision intended for single-family use. (*See* Trial Ex. 1 p. 3 at Section 1.14; *see also* Trial Ex. 2 p. 4 at Section 1.14.)

[3] "Property or Properties . . . mean[s] . . . all property which is subject to th[e] [Covenants]." (Trial Ex. 1 p. 4 at Section 1.20; Trial Ex. 2 p. 4 at Section 1.20 (same).)

[4] (Trial Ex. 3 p. 1.)

Per its by-laws (the "By-laws"),[5] the HOA is to be governed by a three-member board of directors (the "Board," with each individual member of the Board a "Director"). (Trial Ex. 3 p. 3.) The Board is charged to "manage and direct the affairs of the [HOA]" and is authorized to "exercise all of the powers of the [HOA] subject only to approval by the Owners [(i.e., the HOA members)] . . . when such is specifically required by the[] By-laws. (Trial Ex. 3 p. 5.) The By-laws also provide for the Board's annual election of the HOA's executive officers, most notably the HOA president, who is the HOA's chief executive officer, and who, like the HOA secretary, must him/herself be a Director, too. (Trial Ex. 3 p. 7.)

B. Procedural History

This action was commenced on November 16, 2012. (*See generally* Summons & Compl.) The original plaintiffs were the HOA[6] and three HOA members, Jennifer McFarland ("Mrs. McFarland"),[7] Carlton Holcombe ("Mr. Holcombe"), and Ute Holcombe ("Mrs. Holcombe"). (*See generally* Compl.) The original defendants were Thomas Morris ("Mr. Morris") and David Hannemann ("Mr. Hannemann"), the other two Directors besides Mr. McFarland, and two other HOA members, Sofia Mazell ("Mrs. Mazell") and Michael Mazell ("Mr. Mazell," collectively with Mrs. Mazell, the "Mazells"). (*See generally* Compl.)[8]

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[5] Collectively, the Covenants and the By-laws are the "Governing Documents."

[6] As further explained below, the HOA claims, i.e., the claims asserted in the name of the HOA itself, were initiated by Director and HOA member/president William McFarland ("Mr. McFarland"). (*See Live Oak Village Homeowners Association, Inc. v. Morris*, Unpublished Op. No. 2016-UP-519 (S.C. Ct. App. filed December 21, 2016) (filed in this Court along with the Remittitur from the Court of Appeals on January 25, 2018).)

[7] Mr. and Mrs. McFarland are husband and wife. (*See* Trial Tr. p. 9:19–24, p. 17:17–20.)

[8] As reflected in the above caption, and as further explained below, the only remaining parties to this action are Plaintiffs Mrs. McFarland and Mr. Holcombe and Defendants Messrs. Morris and Hannemann. (*See generally* Consent Order filed March 23, 2018.)

Of the three causes of action in the original complaint, only one of them—a claim by Mrs. McFarland and Mr. Holcombe for declaratory and injunctive relief against Messrs. Morris and Hannemann (the "Declaratory Judgment Claim")—is now before the Court for decision.[9] The gravamen of the Declaratory Judgment Claim is that Messrs. Morris and Hannemann have caused the HOA/Board to become dysfunctional[10] by operating, and continuing to operate, outside the scope of their authority as Directors,[11] their acts/omissions in violation of the Governing Documents including, but not limited to, the following:

A. voting to waive fines that applied to themselves;

B. failing to hold timely or properly noticed [HOA] or Board . . . meetings;

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

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

E. voting in violation of South Carolina Code § 33-31-83[0];

F. failing to properly handle HOA funds;

G. failing to enforce the [Covenants] in a uniform and unbiased manner;

H. violating the [Covenants].

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[9] Though not before the Court, the original complaint also includes causes of action for civil conspiracy (against all defendants) and defamation (against the Mazells). (*See generally* Compl.)

[10] Though ultimately his position did not prevail, it was on account of this alleged dysfunction that Mr. McFarland initiated claims in the name of the HOA, taking the position that he was, in addition to being HOA president, the only Director who remained authorized to act on the HOA's behalf. (*See Live Oak Village Homeowners Association, Inc. v. Morris*, Unpublished Op. No. 2016-UP-519 (S.C. Ct. App. filed December 21, 2016) (filed in this Court along with the Remittitur from the Court of Appeals on January 25, 2018).)

[11] (*See* Compl. ¶ 5.)

(Compl. ¶ 6.) Wherefore, the object of the Declaratory Judgment Claim is relief in the form of a judicial declaration as to Messrs. Morris and Hannemann's wrongful acts/omissions in violation of the Governing Documents (and legal consequences thereof) and an injunction prohibiting (i.e., protecting against) their continuation/recurrence. (*See* Compl. p. 4 at Prayer for Relief.)

The Court, of course, recognizes that the operative complaint before it is, in fact, the amended complaint filed October 31, 2014;[12] however, besides correcting a typographical error in Paragraph 6.(E)—which correction is noted in brackets in the above quotation from original Paragraph 6—the amendment left the Declaratory Judgment Claim unchanged.[13] Accordingly, the above description of the Declaratory Judge Claim covers that claim as stated in the amended (i.e., operative) complaint, too.

Messrs. Morris and Hannemann and the Mazells asserted counterclaims against all original plaintiffs and third-party claims against Mr. McFarland. (*See* Mazell Answer to Compl., Counterclaims, and Third-Party Compl. filed December 27, 2012; Morris & Hannemann Answer to Compl., Counterclaims, and Third-Party Compl. filed January 16, 2013; Morris & Hannemann Answer to Am. Compl., Counterclaims, and Third-Party Compl. filed November 13, 2014.) The Mazells' counterclaims and third-party claims were resolved and dismissed by stipulation,[14] and all original plaintiffs and Mr. McFarland were granted summary judgment on Messrs. Morris and Hannemann's counterclaims and third-party claims. (*See* Order Granting Summ. J. in favor of Pls. & Third-Party Pl. filed March 13, 2015.)

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[12] (*See generally* Am. Compl.)

[13] The only substantive difference between the two complaints is the amended complaint's addition of a breach of contract claim (more specifically, a claim for breach of the Covenants) against the Mazells that is not before the Court. (*See generally* Pls.' Mot. to Amend Compl. filed July 10, 2014; *compare* Compl. *with* Am. Compl.)

[14] (*See* Stipulation of Partial Dismissal With Prejudice filed November 6, 2014.)

Contemporaneous with the summary judgment granted in favor of the original plaintiffs and Mr. McFarland on Messrs. Morris and Hannemann's claims, however, Messrs. Morris and Hannemann and the Mazells were themselves granted partial summary judgment in their favor on the original plaintiffs' claims. (*See* Order Granting, In Part, Morris & Hannemann Mot. for Summ. J. filed March 13, 2015; Order granting Mazell Motion for Partial Summ. J. filed March 3, 2015.) Between them, and subject to their reversal on appeal, these partial summary judgments disposed of the claims of both the HOA and Mrs. Holcombe in their entirety and of Declaratory Judgment Claim of both Mrs. McFarland and Mr. Holcombe. (*See generally* Order Granting, In Part, Morris & Hannemann Mot. for Summ. J. filed March 13, 2015; Order granting Mazell Motion for Partial Summ. J. filed March 3, 2015.)

The HOA, Mrs. McFarland, and Mr. Holcombe immediately appealed the summary judgments granted against them. (*See* Notice of Appeal filed March 20, 2015.)[15] Ultimately, the appeal resulted in affirmance of the summary judgment against the HOA[16] but reversal of the summary judgments against Mrs. McFarland and Mr. Holcombe,[17] and the case was remitted back to this Court on January 23, 2018. (*See* Remittitur filed January 25, 2018.)

By consent order filed March 23, 2018, the defamation claim against the Mazells was dismissed with prejudice and the civil conspiracy claim against all original defendants was dismissed without prejudice;[18] the case caption was amended to reflect Mrs. McFarland and Mr. Holcombe (collectively, "Plaintiffs," with a capital "P" to distinguish them from any other

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[15] Mrs. Holcombe chose not to appeal and, accordingly, ceased to be a party to this case.

[16] Accordingly, the HOA ceased to be a party to this case.

[17] (*See Live Oak Village Homeowners Association, Inc. v. Morris*, Unpublished Op. No. 2016-UP-519 (S.C. Ct. App. filed December 21, 2016) (filed in this Court along with the Remittitur from the Court of Appeals on January 25, 2018).)

[18] Accordingly, the Mazells ceased to be parties to this case.

original plaintiffs) and Messrs. Morris and Hannemann (collectively, "Defendants," with a capital "D" to distinguish them from any other original defendants) as the only remaining parties to this case; and the case was transferred to the nonjury docket for trial of the sole remaining claim, i.e., the Declaratory Judgment Claim. (*See* Consent Order filed March 23, 2018.)

The case was tried to this Court without a jury on October 30-31, 2018. At the conclusion of trial, the Court held the record open for additional, post-trial submissions by the parties.[19] The record is now closed, and this matter is ripe for decision.

II.
DECISION

A. Findings of Fact[20]

1. To the extent necessary to support any conclusion of law, *infra*, the facts stated in the above background are incorporated herein by reference as factual findings.

2. At all relevant times, Mrs. McFarland and Mr. Holcombe were HOA members,[21] Mrs. McFarland residing at 105 Oak Village Lange[22] and Mr. Holcombe at 104 Oak Village Lane. (*See* Trial Tr. p. 59:19–25; *see also* Trial Ex. 4.)

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[19] More specifically, the Court established a schedule whereby Plaintiffs would have ten days (after trial ended on October 31, 2018) for post-trial submissions, then Defendants would have ten days to respond, and then Plaintiffs would have five days to reply. Calculated in accordance with Rule 6, SCRCP, these deadlines were November 13th, November 26th, and December 3rd, 2018, respectively.

[20] All factual findings herein are made in accordance with the preponderance of the evidence standard.

[21] (*Compare* Am. Compl. ¶ 2 *with* Morris & Hannemann Answer to Am. Compl., Counterclaims, and Third-Party Compl. filed November 13, 2014 ¶ 1.)

[22] (*See* Trial Tr. p. 9:8–18; *see also* Trial Ex. 4.)

3. At all relevant times, Messrs. Morris and Hannemann were Directors[23] and HOA members,[24] Mr. Morris rising at 102 Oak Village Lane and Mr. Hannemann at 100 Oak Village Lane. (*See* Trial Ex. 4.)

4. At all relevant times, the other Director (besides Messrs. Morris and Hannemann) was HOA member/president Mr. McFarland,[25] Mr. McFarland residing with his wife, Mrs. McFarland, at 105 Oak Village Lane. (*See* Trial Tr. p. 9:19–24; *see also* Trial Ex. 4.)

5. On September 7, 2011, Mrs. McFarland wrote the Board advising that, "[f]or well over a year," the Mazells had had a non-family member (hereinafter referred to simply as "Mr. F"[26]) "living in the downstairs portion of their home" in violation of the Governing Documents and asked the Board to remedy the violation. (*See* Trial Ex. 8.)

6. Mrs. McFarland's September 7, 2011, letter prompted discussion between/among members of the Board about the HOA hiring a property manager to address violations of the Governing Documents. (*See* Trial Tr. pp. 15:17–24:13; Trial Ex. 19 (wherein Mr. Hannemann writes to Mr. McFarland, "An unscheduled impromptu discussion of the B[oard] was held, without an agenda, to review options of hiring a Property Manager to deal with a possible violation of the [Governing Documents]."); Trial Ex. 20 (wherein Mr. Hannemann writes to Mr. McFarland, "You also requested minutes for a Board . . . meeting on or about September 7, 2011. This meeting was called by you without notice or provision of a meeting agenda and related to an issue from [Mrs.] McFarland . . . about a non-family member living at 107 Live Oak

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[23] (Trial Tr. p. 17:8–20.)

[24] (*Compare* Am. Compl. ¶ 3 *with* Morris & Hannemann Answer to Am. Compl., Counterclaims, and Third-Party Compl. filed November 13, 2014 ¶ 1.)

[25] (Trial Tr. p. 17:8–20.)

[26] Mr. F has never been a party to this litigation, and since it is sufficient for the purposes of this Decision and Order to refer to him by initial only, the Court does so.

Village, which is in violation of the . . . [Governing Documents]. Since this gathering of the Board . . . was informal, I did not take any meeting minutes.").)

7. The aforementioned discussion led Mr. McFarland to reasonably believe that Messrs. Morris and Hannemann were agreeable with the HOA hiring a property manager and, acting on that belief, Mr. McFarland, for and on behalf of the HOA as its president, contracted with K.J. Property Management, LLC (hereinafter referred to collectively with its owner, who at that time went by the name Kathleen Greene, as "Ms. Greene"[27]),[28] whereupon, with Ms. Greene's assistance as HOA property manager the violation involving Mr. F living with the Mazells was remedied (for the time being at least, as further discussed, *infra*). (*See* Trial Tr. p. 25: 3–13.)

8. Although both Messrs. Morris and Hannemann disputed whether Ms. Greene was properly hired as HOA property manager, contending that Ms. Greene's actions as property manager were illegitimate,[29] the Court finds their testimony is not credible on this point.[30] The evidence shows that neither Mr. Morris nor Mr. Hannemann questioned Ms. Greene's legitimacy as HOA property manager at the time, but rather both of them acted as if she was indeed HOA

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[27] Ms. Greene now goes by the name Kathleen John. (Trial Tr. p. 316:13-21.) She is, however, referred to herein as Ms. Greene because that is the name that appears in the various trial exhibits where reference to her is made.

[28] (*See* Trial Exs. 10–11, 15.)

[29] (*See, e.g.,* Tr. p. 114:23–116:20 [Mr. Hannemann]; Trial Tr. p. 231:18–24 [Mr. Morris].)

[30] In this regard, the Court notes that, while acknowledging he had discussed the idea of hiring a property manager with Mr. McFarland, Mr. Hannemann testified that he thought the property manager was only going to "[h]andle the bills" and would not be involved in addressing violations of the Governing Documents. (Trial Tr. pp. 118:23–119:1.) Here, Mr. Hannemann's testimony is plainly belied his April 19, 2012, email to Mr. McFarland acknowledging that, "sometime in September 2011," there had been "[a]n unscheduled impromptu discussion of the B[oard] . . . *to review options of hiring a Property Manager to deal with a possible violation of the [Governing Documents].*" (Trial Ex. 19 (emphasis added); *see also* Trial Tr. pp. 129:20–130:7.)

property manager, both in their direct communications with Ms. Greene and their inclusion of Ms. Greene on HOA-related communications and documents. (*See* Trial Exs. 22, 36–37, 39–40, 42, 45–46, 55, 62, 65, 67, 70–73, 75–76.)

9. Indeed, Mr. Morris's wife acted as if Ms. Greene was indeed the HOA property manager as evidenced by inquiry to Ms. Greene about whether Mr. Holcombe had obtained proper approval for the garden in his side yard. (*See* Trial Ex. 16A.)

10. At essentially the same time as Mrs. Morris was questioning whether Mr. Holcombe had obtained proper approval for his garden, the Morris's where themselves violating the Governing Documents by doing unauthorized landscaping in their front yard.

11. Though Mr. Morris wrote the Board on April 1, 2012, requesting approval "to remove and replace *some* of [his] existing landscaping,"[31] Mr. Morris admitted in his trial testimony that he went ahead with the project—which spanned the better part of April and May 2012 and required heavy equipment and reduced his front yard to a "barren landscape"[32]—before obtaining approval. (Trial Tr. p. 242:6–13.)

12. When the violation was brought to his attention, Mr. Morris, though himself a member of the Board, insisted that there was no violation because—on account of the leniency previously *shown him* for *his own* prior unapproved construction and landscaping projects that had gone unpunished—the requirement that he obtain approval for his April 2012 project was "null and void" because of the HOA's supposed inconsistent enforcement of the same. (*See* Trial Ex. 22.)

13. Notwithstanding, Mr. Morris's contention the he did not in fact need to obtain approval for the project, he and Mr. Hannemann held a special meeting of the Board on May 2,

[31] (Trial Ex. 17 (emphasis added).)

[32] (*See* Trial Exs. 21–22, 24.)

2012, and the two of them voted to approve—retroactively, i.e., after the project had already been started without approval—Mr. Morris's own request. (*See* Trial Ex. 24.)[33]

14. Even Messrs. Morris and Hannemann's own retained expert, attorney Capers Barr, acknowledged that Mr. Morris had a conflict of interest under S.C. Code § 33-31-831 in voting to approve his own landscaping project. (*See* Trial Tr. p. 375: 8–19.)

15. Indeed, an exchange between Mrs. McFarland's prior counsel, attorney Brandt Shelbourne, and Messrs. Morris and Hannemann on this point (about Mr. Morris voting to approve his own landscaping plan) is particularly illustrative of the problem that Plaintiffs are asking this Court to address. In the wake of the May 2, 2012, special Board meeting, Mr. Shelbourne wrote Messrs. Morris and Hannemann, among other things, questioning the validity of Mr. Morris's vote to approve his own project, stating, "according to [§] 33-31-831, a company director should not vote when he has personal interest in the vote." (*See* Trial Ex. 28.) In response to Mr. Shelbourne, Messrs. Morris and Hannemann chide, "In your letter you cite [§] 33-31-831 where you state 'a company director should not vote when he has a personal interest in the vote'. The operative word is 'should' which does not prohibit any action by an individual in which there is a personal interest." (*See* Trial Ex. 31.) Not only is this inaccurate as a proposition of law, it underscores the mindset that led to the HOA/Board dysfunction that is at the heart of the Declaratory Judgment Claim.

16. Along with three other HOA members (specifically, Messrs. Mazell, Cummings, and Knight), Messrs. Morris and Hannemann noticed a special HOA meeting for May 31, 2012. (*See* Trial Ex. 30.)

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[33] The record includes a notarized certificate of service that purports show service of notice the May 2, 2012, special meeting on Mr. McFarland by mail; however, this certificate indicates that the notice was mailed to Mr. McFarland at 102 Oak Village Lane, which is not Mr. McFarland's correct address. (*See* Trial Ex. 24.)

17. While the stated object of the May 31, 2012, special HOA was "to discuss future goals of the [HOA] and reestablish harmony of the community . . . ,"[34] the meeting's tone was decidedly acrimonious. (*See* Trial Tr. pp. 108:14–109:22.)

18. Indeed, after the meeting, when Mr. Holcombe tried to obtain copies of the meeting minutes and proxies from Mr. Hannemann, for no other reason than his displeasure with Mr. Holcombe over Mr. Holcombe's objections to the manner in which the meeting was noticed and conducted. (*See* Trial Exs. 38, 47–49.) The Court finds not credible Mr. Hannemann's testimony that the reason he refused to provide Mr. Holcombe with copies of the minutes and proxies was because the minutes were in draft form. To begin with, that is not the reason that Mr. Hannemann himself provided at the time. (*See* Trial Ex. 38.) Moreover, the record includes of evidence of Mr. Hannemann, and for that matter Mr. Morris, actually circulating draft minutes on other occasions. (*See* Trial Exs. 65, 76.)

19. The record also shows Messrs. Morris and Hannemann's odd behavior in respect of their involvement in with the payment of the Mazells 2012 annual HOA assessment. This included the Mazells giving Mr. Hannemann a personal check for payment of their assessment, which check Mr. Hannemann held for an inordinate amount of time only to then send the check to Mr. McFarland via certified mail at an address (a mailbox) where certified mail could not be received and yet, joined by Mr. Morris, write a letter to the entire HOA accusing both Mr. and Mrs. McFarland of impropriety with the Mazells check that could expose the HOA to "legal jeopardy"—though, as he admitted at trial, such exposure, while presented to the whole of the HOA membership as a matter of fact, was nothing more than speculation on his part. (*See* Trial Exs. 39–43, 55; Trial Tr. pp. 214:6–215:18.) This also includes, Mr. Morris obtaining his own

[34] (*See* Trial Ex. 31.)

cashier's check on October 4, 2012, and bringing it with him (to have "if needed") to the special Board meeting he and Mr. Hannemann had set for that date—which meeting Mr. Mazell attended even though he, a non-Board member, could not actually participate—at which they contend they voted Mr. McFarland out as HOA president and voted Mr. Hannemann in. (*See* Trial Exs. 59–60.)

20. When Mr. McFarland properly noticed an annual HOA meeting for September 12, 2012, both Messrs. Morris and Hannemann sent Mr. McFarland one-sentence emails on September 11, 2012, advising they could not attend. (*See* Trial Exs. 52A, 52C.) Mr. Holcombe testified that he saw both Messrs. Morris and Hannemann at their houses when he was on his way to the meeting. Indeed, Mr. Hannemann admitted at trial that, despite having told Mr. McFarland that he could not attend the meeting because of a "family emergency," the emergency was out of state and that he was indeed in town on the date September 12, 2012, as he was through at least September 26, 2012. (*See* Trial Ex. 77.) Moreover, both Mrs. McFarland and Mr. Holcombe testified that, while neither Mr. nor Mrs. Mazell attended the meeting, they saw Mrs. Mazell in the parking lot adjacent to the meeting location at the time of the meeting.

21. When the Mr. F resumed living with the Mazells in the fall of 2012 as a non-family member/renter in violation of the Governing Documents, Messrs. Morris and Hannemann disregarded credible evidence of the violation presented to them by Ms. Greene and refused to take even so modest an investigatory step as to ask Mr. F to provide a copy of a utility bill that could prove he did indeed reside elsewhere. (*See* Trial Exs. 62, 66–67, 70.) The Court finds not credible Mr. Hannemann's trial testimony that asking Mr. F to provide a utility bill or other such proof of residence would have been unduly invasive.

22. Even after Messrs. Morris and Hannemann claimed they had voted Mr. McFarland out as HOA president on October 4, 2012, Messrs. Morris and Hannemann's own witness, Ms. Greene, still recognized Mr. McFarland to be rightful HOA president, observing also that Messrs. Morris and Hannemann had aligned themselves against Mr. McFarland. (*See* Trial Ex. 70.)

23. Mr. Greene testified at trial that, to her knowledge, the Board dysfunction (with Messrs. Morris and Hannemann aligned against Mr. McFarland) had never been resolved; and the continued existence of this dysfunction is further reflected in Mr. Barr's testimony as well as by the fact of the pendency of the lawsuit captioned *Hannemann v. McFarland*, Case No. 2016-CP-18-01812, that Mr. Hannemann filed against Mr. McFarland in 2016, about which the parties stipulated on the trial record of this case, and which is of record in this Court in any event.

B. Conclusions of Law

1. The Declaratory Judgment Claim is not moot and is justiciable.

2. Messrs. Morris and Hannemann's complained-of actions are outside the scope of their authority as Directors and their wrongful conduct in violation of the Governing Documents caused the HOA/Board to be dysfunctional.

3. Messrs. Morris and Hannemann are generally enjoined from acting outside the scope of their authority as Directors and specifically enjoined from serving as Directors of HOA executive officers for a period of three years.

III.
ORDER

NOW, THEREFORE, judgment shall be entered in favor of Plaintiffs against Defendants in accordance with the above findings of fact and conclusions of law.

IT IS SO ORDERED.

_____
Maite Murphy
Presiding Judge
First Judicial Circuit – Dorchester County

_____, South Carolina

Dated: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CIVIL ACTION: 2012-CP-18-02583
JENNIFER McFARLAND and CARLTON HOLCOMBE,	)	
Plaintiffs,	)	**ORDER**
vs.	)	
THOMAS MORRIS and DAVID HANNEMANN,	)	
Defendants.	)	

THIS MATTER COMES BEFORE THE COURT for a decision on the merits following a nonjury trial. After due deliberation and consideration of the evidence and arguments of counsel, judgment shall be entered in favor of the Defendants in accordance with the findings of fact and conclusions of law set forth below.[1]

BACKGROUND

A. Introduction:

This matter involves disputes between residents of the Live Oak Village subdivision located in Summerville, South Carolina. Live Oak Village is a small community that includes seven lots and common areas governed by the Declaration of Covenants and Restrictions for Live Oak Village, Summerville, South Carolina, as amended, and Bylaws of the Live Oak Village Homeowners Association ("HOA"). See generally Exs. 1–3.

The Covenants are designed to accomplish the following objectives for the mutual benefit of all owners of property within Live Oak Village:

[1]Rule 52(a), SCRCP, provides that "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58[, SCRCP]."

(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
(f) To keep Property values in the Subdivision high, stable and in a state of reasonable appreciation.

Ex. 1–2 at p.1–2. To effectuate these objectives, the Covenants create the HOA, a nonprofit corporation which is entitled to, among other things, administer and enforce the Covenants governing Live Oak Village. Id. at p.6.

The HOA is governed by the Board of Directors, which is comprised of three elected directors each serving three-year, staggered terms. See Ex. 3. The Board is charged to "manage and direct the affairs of the [HOA] and may exercise all of the powers of the [HOA] subject only to approval by the Owners . . . when such is specifically required by the[ ] bylaws." Id. at p.5. Pursuant to the Bylaws, a majority of the number of directors shall constitute a quorum for the transaction of business. Id. "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." Id.

The HOA's day-to-day business is carried out by the executive officers of the corporation. See id. According to the Bylaws, "[t]he executive officers of the [HOA] 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 . . . ." Id.

B. Procedural History:

On November 16, 2012, William McFarland, purportedly on behalf of the HOA, and three other individual homeowners, Plaintiff Jennifer McFarland, Plaintiff Carlton Holcombe, and Ute Holcombe, filed a Complaint in the Dorchester County Court of Common Pleas against Defendants Thomas Morris and David Hannemann, as well as two other individual homeowners, Sofia Mazell and Michael Mazell (collectively referred to as the "Mazells"). See generally Pls.' Compl. An Amended Complaint was filed on October 31, 2014 asserting the following causes of action: (1) declaratory judgment alleged by all plaintiffs against Morris and Hannemann; (2) conspiracy alleged by all plaintiffs against all defendants; (3) slander and libel alleged by Plaintiff Jennifer McFarland against Sofia Mazell and Michael Mazell; and (4) breach of the Covenants alleged by all plaintiffs against Sofia Mazell and Michael Mazell. See generally Pls.'Am. Compl.

Defendants Thomas Morris and David Hannemann filed an Answer to the Amended Complaint, Counterclaims, and a Third-Party Complaint against William McFarland. See Morris & Hannemann's Ans. to Pls.' Am. Compl., Counterclaims, & Third-Party Compl. The Counterclaims and Third-Party Complaint asserted causes of action for breach of fiduciary duty, negligence, conversion of HOA funds, accounting, and indemnity. See id. After six years of litigation and an appeal to the South Carolina Court of Appeals, the sole remaining cause of action before this Court is Plaintiff Jennifer McFarland's and Plaintiff Carlton Holcombe's claim for declaratory relief.

Plaintiffs Jennifer McFarland and Carlton Holcombe (collectively referred to as "Plaintiffs") contend they are entitled to a declaration that Defendants Thomas Morris and David Hannemann (collectively referred to as "Defendants") "are acting outside 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 Homeowners' Association." See Pls.' Compl. at ¶ 9. Specifically, Plaintiffs allege that Defendants willfully operated outside 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 Homeowners 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; and
> (h) Violating the covenants and restrictions.

See Pls.' Am. Compl. at ¶ 6.

This case was ultimately transferred to the nonjury docket and was tried before this Court on October 30 and 31, 2018. At the conclusion of trial, this Court held the record open for additional, post-trial submissions by the parties. The record is now closed, and this matter is ripe for decision.

APPLICABLE LAW

A. Declaratory Judgments:

Section 15–53–30 of the South Carolina Code of Laws provides the following:

> 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.

In an action for declaratory relief, the burden of proof rests with the party seeking the declaration, and that party must meet its burden by a greater weight or preponderance of the evidence. See Vt. Mut. Ins. Co. v. Singleton, 446 S.E.2d 47, 421 (S.C. 1994).

To state a cause of action under the Declaratory Judgment Act ("Act"), codified at S.C. Code Ann. § 15–53–10 *et seq.*, a party must demonstrate a justiciable case or controversy. Holden v. Cribb, 561 S.E.2d 634, 637 (S.C. Ct. App. 2001). The Act is a proper vehicle in which to bring a controversy before the Court when there is an existing controversy or at least the ripening seeds of a controversy. Sunset Cay, LLC v. City of Folly Beach, 593 S.E.2d 462, 466 (S.C. 2004) ("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 [Act]."). "The basic purpose of the Act is to provide for declaratory judgments without awaiting a breach of existing rights." Id. "The Act should be liberally construed to accomplish its intended purpose of affording speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship." Id. (citing Graham v. State Farm Mut. Auto. Ins. Co., 459 S.E.2d 844, 845 (S.C. 1995)).

B. South Carolina Nonprofit Corporation Act:

Section 33–31–830 of the South Carolina Nonprofit Corporation Act "sets forth the general standards of conduct for directors of nonprofit corporations" and "settles the dispute as to whether directors of nonprofit corporations should meet the general business standards or the trustee standards." Id., official comment 1. Akin to the traditional business judgment rule, S.C. Code Ann. § 33–31–830 provides, in pertinent part, the following:

> (a) A director shall discharge his duties as a director, including his duties as a member of a committee:
> (1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
(3) in a manner the director reasonably believes to be in the best interests of the corporation.

Id. at (a). Subsection (d) of § 33–31–830 further provides that "[a] director is not liable to the corporation, a member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section."

Furthermore, S.C. Code Ann. § 33-31-831 governs "conflict of interest" transactions which, according to the statute, are "transaction[s] in which a director of a corporation has a direct or indirect interest." Id. at (a). Subsection (a) of S.C. Code Ann. § 33–31–831 provides that "[a] conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair to the corporation at the time it was entered into . . . ."

C. Injunctive Relief & the Doctrine of Unclean Hands:

"An injunction is a drastic remedy issued by the Court in its discretion to prevent irreparable harm suffered by the plaintiff." E.g., Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 603 S.E.2d 905, 907 (S.C. 2004). "To obtain an injunction, the plaintiff must allege facts sufficient to constitute an action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation." Cnty. of Richland v. Simpkins, 560 S.E.2d 902, 904 (S.C. Ct. App. 2002). "To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. E.g., Denman v. City of Columbia, 691 S.E.2d 465, 470 (S.C. 2010).

Before awarding such equitable relief, the Court must fully and adequately consider or "balance" the parties' respective equities. "In evaluating a request for an injunction, the equities of both sides are to be considered, and each case must be decided on its own particular facts through a balancing of the equities." Siau v. Kassel, 632 S.E.2d 888, 893 (S.C. Ct. App. 2006); see

also Anderson v. Buonforte, 617 S.E.2d 750, 755 (S.C. Ct. App. 2005) ("When a court is sitting in equity . . . [it is] to consider the equities of both sides, balancing the two to determine what, if any, relief to give."); Foreman v. Foreman, 313 S.E.2d 312, 314 (S.C. Ct. App. 1984) (This Court has long recognized that in deciding whether to award equitable relief, "the equities on both sides must be taken into account."). "The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." First Union Nat'l Bank of S.C. v. Soden, 511 S.E.2d 372, 379 (S.C. Ct. App. 1998).

FINDINGS OF FACT

This Court makes the following findings of fact in accordance with the preponderance of the evidence standard:

1. To the extent necessary to support any conclusion of law, *infra*, the facts set forth in the "Background" section are incorporated herein by reference as factual findings.

2. At all times relevant hereto, Plaintiffs Jennifer McFarland ("McFarland") and Carlton Holcombe ("Holcombe") (collectively referred to as "Plaintiffs") and Defendants Thomas Morris ("Morris") and David Hannemann ("Hannemann") (collectively referred to as "Defendants") resided in Live Oak Village and were members of the HOA. See Tr. Trans. p. 3:13–14; 52:21–22; see also Ex. 4; Morris & Hannemann's Ans. to Pls.' Am. Compl., Counterclaims, & Third-Party Compl. at ¶ 1.

3. McFarland was elected to the HOA's Board of Directors at the 2008 HOA annual homeowners' meeting. See Tr. Trans. p. 37:2–4. McFarland also thereafter served as treasurer of the HOA, but resigned from her role as treasurer in 2009 on the advice of counsel. See id. at 37:24–25; 38:1–21. McFarland was replaced as a member of the Board of Directors by Morris at the 2011 HOA annual homeowners' meeting held in August. See id. at 39:15–17; 183:20–25; 184:1–2.

Therefore, as of August 2011, McFarland was neither a duly elected member of the Board of Directors nor an officer of the HOA.

4. As of August 2011, the members of the HOA's Board of Directors were Morris, Hannemann, and McFarland's husband, William McFarland. See Tr. Trans. p. 11:6–9. Between August 2011 and October 4, 2012, William McFarland served as President and Treasurer of the Board of Directors, and Hannemann served as the Board of Director's Secretary. See id. at 40:18–24; 179:3–16.

5. On September 7, 2011, McFarland wrote a letter to the Board of Directors complaining that "[f]or well over a year[2], homeowners at 107 Oak Village Lane, Mike and Sophia Mazell[,] have had a non-family member . . . living in the downstairs portion of their home" in violation of the Covenants. See Ex. 8; see also Ex. 2 at art. VII, § 7.6. McFarland requested the Board of Directors remedy the alleged violation. See Ex. 8.

6. In response to McFarland's letter, an impromptu discussion was held among the members of the Board of Directors regarding the possibility of hiring a property manager to remedy the Mazell tenant issue. See Ex. 19. At no time was a Board of Directors meeting noticed or held pursuant to the Bylaws wherein a majority of the Board of Directors members constituting a quorum voted to approve the hiring of a property manager, nor was there unanimous written consent of all Board of Directors members approving the hiring of a property manager. See Exs. 19 & 20; see also Tr. Trans. p. 185:12–15; Ex. 3 at §§ 4–6.

7. Nonetheless, McFarland, who as set forth above was not a duly elected member of the Board of Directors nor an officer of the HOA, unilaterally and without Board approval

[2] It should be noted that, as set forth above, McFarland was a member of the HOA's Board of Directors during the period of "well over a year" that the tenant was purportedly living in the Mazell's residence. The record is devoid of any evidence that McFarland took any action regarding this issue while she was a member of the Board of Directors.

contacted Kathleen Greene ("Greene") and "asked if [she] would like to be the property manager to oversee violations for the community . . . ." See Tr. Trans. p. 302:13–25. Greene's contracts with the HOA provide that "[a]ny job tasks voted on by the Board of Directors that need to be carried out by [Greene] will come to [Greene] from the direction of the President or at Board of Directors meetings with majority vote." See Exs. 10, 15. Greene, however, reported to and took directives solely from McFarland. See Tr. Tans. p. 307:8–11, 20–25; 308:1–4; 309:12–23. Greene assumed that any directive given to her had been voted upon by the Board of Directors. See id. at 305:18–25; 306:1–7. However, it is evident from the testimony and evidence that the Board of Directors never voted upon Greene's levying of fines against homeowners. See id. at 218:22–25; 219:1; 271:7–9; see also Ex. 33.

8. Morris moved into Live Oak Village in 2010. See Tr. Trans. p. 252:1–2. Upon moving into the neighborhood, Morris and his wife made certain improvements to their home, with the first such improvement being replacement of their residence's front staircase. See id. at 253:22–25; 254:1–8. Morris did not receive official approval from the Board of Directors prior to replacing the staircase. See id. at 254:9–11. Rather, William McFarland, who was President of the Board of Directors at the time, directed Morris to simply write a letter to the Board of Directors. See id. at 254:14–19. Morris followed this process and sent a letter to the Board of Directors dated April 10, 2010. See Ex. 6. He also followed this exact same procedure with regard to removing a diseased tree from his yard via letter dated June 24, 2010. See Ex. 7. Through these two previous experiences, and relying on the instructions of the HOA's President, William McFarland, Morris reasonably believed that this was the process to be followed. See Tr. Trans. p. 256:24–25; 257:1–3. On these two previous occasions, Morris never received any complaints from McFarland or Holcombe, who were members of the Board of Directors at that time. See Tr. Trans. p. 37:2–4;

38:22–25; 39:1–8; 257:16–21. Morris sent another letter to the Board of Directors on April 1, 2012 requesting permission to "remove and replace some of [his] existing landscape and add lighting in accordance with the HOA covenants." See Ex. 17; see also Tr. Trans. p. 261:3–12. Morris proceeded with his yardwork as he had done on the two previous aforementioned occasions. See Tr. Trans. p. 260:19–22.

9. On April 19, 2012, attorney Brandt Shelbourne, who was representing McFarland, sent a letter to the Board of Directors stating that McFarland "is specifically concerned with what appear to be covenant violations by Mr. and Mrs. Morris. . . . While she is not necessarily opposed to them improving their landscaping[3], she is concerned that proper procedure was not followed . . . ." See Ex. 18. On the same day, April 19, 2012, Holcombe sent an email to Greene memorializing their conversation that occurred the day before, in which Holcombe echoed McFarland's complaints. See Ex. 21.

10. The next day on April 20, 2012, Greene informed Morris that she would be imposing fines starting on May 1, 2012 at $100.00 per day, not to exceed $1,000.00. See Ex. 22. Prior to the issuance of any fines (except for failure to pay assessments), Section 15(c) of the Bylaws requires the following procedure:

> (1) A written demand to cease and desist from an alleged violation served upon the owner by the Board providing a time period of not less than ten days during which the violation may be abated without penalty;
> (2) If the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, written notice of a hearing served upon the homeowner by the Board; and
> (3) A hearing held in executive session by the Board pursuant to the notice in which the alleged violator is given a reasonable opportunity to be heard prior to the enforcement of any sanction.

[3] See also Ex. 28 ("Mrs. McFarland wants to be clear that she is not objecting to the scope and type of landscaping done by Mr. Tom Morris on his property. Rather, she is concerned with and is objecting to the procedure by which it was accomplished . . . .").

See Ex. 3. The Board of Directors never voted to impose any such fines and no hearing was held pursuant to Section 15(c) of the Bylaws prior to imposition of the same. See Tr. Trans. p. 271:7–11.

11. In response to these complaints from Plaintiffs, the work at Morris' residence ceased, leaving the yard to look like a "barren landscape." See Tr. Trans. p. 231:1–8. To specifically address Plaintiffs' concerns and in an attempt to follow the requested process, Defendants noticed a special Board of Directors meeting to be held on May 2, 2012. See Ex. 24; see also Tr. Trans. 149:24–25; 150:1–6. The sole item on the agenda for the meeting was to "approve or disapprove of [Morris'] landscaping and lighting request." See Ex. 24. The meeting was ultimately held on May 2, 2012, with a quorum of Board members—Morris and Hannemann—present at the meeting. See id. William McFarland did not appear at or participate in the meeting. See id. Ultimately Morris and Hannemann voted to approve Morris' landscaping plans, believing to be acting in the best interests of the HOA and to be following the correct procedure. See id.; see also Tr. Trans. p. 191:10–25: 192:1; 231:17–23.

12. On May 8, 2012, Morris, Hannemann, and three of the five other households—the Cummings, the Knights, and the Mazells—sent a letter to William McFarland and Holcombe requesting a special homeowners' meeting to be held on May 21, 2012. See Ex. 27. In response to this letter, attorney Brand Shelbourne, who was representing McFarland, sent another letter dated May 18, 2012, in which he stated the following:

> I understand that there is a special meeting currently scheduled for May 21, 2012. I have reviewed the notice of the meeting and while it complies with the majority of the Covenants and By-Laws, it fails to state the object for which the meeting is called. According to Section 3(c) of the Covenants and Restrictions, the notice must contain the object for which the meeting is called. Because it does not, we request that you provide the Homeowners' Association

> members with proper notice of the object of the meeting, duly signed by all members requesting said meeting for a date no soon than ten (10) days. Otherwise any meeting that takes place and any action taken therein will be invalid as the Covenants and Restrictions were not followed.

See Ex. 29. In response to Brandt Shelbourne's letter, Morris, Hannemann, and three of the five other households—the Cummings, the Knights, and the Mazells—sent another letter to William McFarland and Holcombe requesting a special homeowners' meeting to be held on May 31, 2012, with the object of the meeting specifically listed as "to discuss the future goals of the [HOA] and resolve and reestablish harmony and community of [the HOA]." See Ex. 30.

13. The special homeowners' meeting was ultimately held on May 31, 2012. See Ex. 36. All homeowners were present either physically or by proxy, with the exception of William and Jennifer McFarland. See id. At the meeting, a motion was made to reduce the $1,000.00 fine levied against Morris by Greene to $100.00 since the landscaping and lighting plans were approved at the aforementioned May 2, 2012 special Board of Directors meeting. See Tr. Trans. p. 62:22–25; 63:1–6. This motion was approved by a tally of five homeowners in favor and one abstention by Holcombe, with Morris also voting to approve the motion in his capacity as a homeowner. See id. at 273:7–24.

14. Subsequent to the May 31, 2012 meeting in which the homeowners voted to reduce Morris' fine from $1,000.00 to $100.00[4], Morris continued to receive complaints from Plaintiffs. See Tr. Trans. p. 273:25; 274:1–6. Because of these complaints, Morris sent a letter to Greene stating the following, in pertinent part: "[I]n the interest of maintaining peace and harmony within the Live Oak Village Homeowners' Association and to preclude a long, expensive and potentially

[4] As set forth above, Greene stated that she would begin fining Morris starting on May 1, 2012. Since the landscaping plans were approved at the special Board of Directors meeting on May 2, 2012, the fine at the time the plans were approved totaled $100.00.

nasty legal action that would inconvenience our friends, we have decided to pay the $1,000.00 fine." See Ex. 37.

15. In June 2012, Michael Mazell was in the hospital recovering from a serious staph infection. See Tr. Trans. p. 193:2–5. Hannemann and his wife went to visit Mr. Mazell in the hospital, and at that time asked Mrs. Mazell if there was anything they could do for them. See id. at 192:24–25; 193:1. At this time, Mrs. Mazell gave Hannemann their 2012 annual HOA assessment check. See id. at 193:6–8.

16. Hannemann sent the Mazell's check via certified mail to the HOA's mailbox with the Mazell's address listed as the return address. See Tr. Trans. p. 193:12–17; 194:4–18. Because the HOA's mailbox was not tied to a physical address, the certified mail envelope could not be delivered and was returned to the post office. See id at 194:4–18. Mr. Mazell then had to retrieve the refused certified mail envelope because his name was listed as the return addressee. See id. After Mr. Mazell retrieved the check from the post office, Mr. Mazell gave the check back to Hannemann, who then mailed it via priority mail directly to William McFarland at his home address on or about July 20, 2012. See Ex. 40. In the event the Mazell dues check was not received by William McFarland given these aforementioned issues, Morris—acting as a "good neighbor" and not in his capacity as a member of the Board of Directors—purchased a cashier's check to give to William McFarland to cover the Mazell's dues payments. See Ex. 60; see also Tr. Trans. p. 281:23–25.

17. Subsequent to McFarland's September 7, 2011 letter discussed above, see Ex. 8, the issue involving the Mazell's tenant was resolved and the tenant moved out of the Mazell's residence. See Tr. Trans. p. 18:18–20. However, McFarland complained again that the same person was purportedly living at the Mazell's residence approximately a year later. See id. at 317:13–17.

As a result, Greene, acting at the direction of McFarland and/or William McFarland, began levying fines against the Mazells. See id. at 318:19–25; 319:1–25; see also Ex. 68. The required procedure delineated in Section 15(c) of the Bylaws was never followed prior to the issuance of any fines against the Mazells. See Tr. Trans. p 107:21–25; 108:1–3; 278:23–25; 279:1–3; 313:7–9; 313:15–18.

18. Hannemann made a reasonable inquiry into the alleged tenant returning to the Mazell's residence and determined that the alleged tenant was not living with the Mazells. See Tr. Trans. p. 184: 21–24. Rather, Hannemann learned from Mr. Mazell that the alleged tenant was simply a houseguest and "upon occasion, he [would] spend the night babysitting [the Mazell's] dog." See Ex. 70; see also Exs. 66 & 67. Hannemann requested from Greene to present any evidence to the contrary[5] and, when Greene could not do so, directed Greene to stop imposing fines upon the Mazells. See id.

19. On September 30, 2012, Hannemann and Morris requested a special Board of Directors meeting to be held on October 4, 2012, with the sole purpose of the meeting being to elect new officers. See Ex. 56. Since the meeting was noticed by two directors and three days' notice was given to each director, this meeting was property noticed. See Ex. 3 at § 5(b).

20. The special Board of Directors meeting was ultimately held on October 4, 2012, with all of the members of the Board of Directors present with the exception of William McFarland. See Ex. 60. As a quorum was present, any actions voted on and approved by the quorum of directors present constituted a duly authorized action of the Board of Directors. See Ex. 3 at § 5(c). As a result of the meeting, Hannemann was elected to serve as President and Treasurer

[5] Greene insisted that "Mazell can't prove [the alleged tenant] doesn't live there" and that "fine's [sic] would be imposed until proof is in hand." Of course, as set forth above, none of the due process procedures outlined in Section 15(c) of the Bylaws were enforced prior to the levying of such fines.

of the Board of Directors, and Morris was elected to serve as Secretary of the Board of Directors. See Ex. 60.

CONCLUSIONS OF LAW

This Court makes the following conclusions of law:

1. Plaintiffs have failed to demonstrate that there is an existing controversy or at least the ripening seeds of a controversy upon which their declaratory judgment action is based and, therefore, this Court finds that Plaintiffs' declaratory judgment action is moot. See Holden, 561 S.E.2d at 637; see also Sunset Cay, LLC, 593 S.E.2d at 466.

2. To the extent Plaintiffs' claim is not moot and is based upon a justiciable case and controversy, this Court independently finds that Defendants did not exceed the scope of their authority as members of the HOA's Board of Directors and as officers of the HOA. This Court further finds that Defendants committed no act or omission that breached the standard of care of directors of nonprofit corporations pursuant to S.C. Code Ann. § 33–31–830.

3. Regarding the tenant allegedly residing at the Mazell's residence, Hannemann conducted a reasonably inquiry into the matter and acted reasonably and within the scope of his authority in contacting Greene and requesting that she abstain from imposing fines, as no hearing had occurred and the Board of Directors had not voted to approve the levying of fines against the Mazells. Hannemann acted in good faith and in the best interests of the HOA in attempting to enforce its Bylaws, and any fines issued thereunder, properly.

4. Morris did not exceed the scope of his authority or breach the standard of care as a director of a nonprofit corporation in casting his vote at the May 2, 2012 special Board of Directors meeting to approve his landscaping plan. S.C. Code Ann. § 33–31–831 does not prohibit and, indeed, contemplates an interested director potentially casting a vote; therefore, Morris did not

exceed the scope of his authority in actually casting the vote. Furthermore, Morris acted in good faith and in the best interests of the HOA, as voting to improve the landscaping plan would allow the work to proceed and, once finished, benefit the community as a whole. See S.C. Code Ann. § 33–31–831(a): "A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair to the corporation at the time it was entered into . . . ."

5. Hannemann did not exceed the scope of his authority or breach the standard of care for directors of nonprofit corporations in voting to approve Morris' landscaping plans, as Hannemann had no interest in the transaction. Furthermore, Hannemann's voting to approve the landscaping plans was done in good faith and in the best interests of the HOA consistent with the above.

6. Defendants did not exceed the scope of their authority or breach the standard of care for directors of nonprofit corporations in voting to reduce the fine levied against the Morrises from $1,000.00 to $100.00. This vote was cast at a special homeowners' meeting and not a Board of Directors meeting. The vote was not made in Defendants' respective capacities as members of the Board of Directors and, therefore, Defendants were not discharging their duties as directors.

7. Hannemann did not exceed the scope of his authority in the handling of the Mazells' dues check, nor did he breach the standard of care of directors of nonprofit corporations. Hannemann acted in good faith and in the best interests of the HOA in assisting another homeowner in turning in their annual dues to the HOA. Morris did not exceed the scope of his authority or breach the standard of care of directors of nonprofit corporations in purchasing a cashier's check in the event the Mazells' annual dues payment was not received on time. Morris was not acting within the scope of his capacity as a director or officer of the HOA and, rather, was acting in his capacity as a neighbor, friend, and fellow member of the HOA.

8. Assuming arguendo that Defendants did commit some act or omission that was outside the scope of their authority as members of the Board of Directors, this Court independently finds that, after balancing the equities, Plaintiffs are not entitled to an injunction. See Denman, 691 S.E.2d at 470; Siau, 632 S.E.2d at 893; see also First Union Nat'l Bank of S.C., 511 S.E.2d at 379. Specifically, McFarland has unclean hands by acting as an officer and/or director in directing the property manager without approval from the Board of Directors. See See Tr. Trans. p. 302:13–25; 307:8–11, 20–25; 308:1–4; 309:12–23. Holcombe has unclean hands in loaning the HOA money for attorney's fees and, in the event Holcombe is not awarded attorney's fees, in planning to issue a special assessment to all homeowners for reimbursement—all without a vote of the Board of Directors and/or homeowners. See id. at 81:22–25; 82:1–6. Plaintiffs' actions violate the same Covenants and Bylaws of which they complain the Defendants are violating and, therefore, Plaintiffs' unclean hands bar the equitable remedy of injunction.

ORDER

NOW, THEREFORE, it is hereby ORDERED that judgment be entered in favor of Defendants in accordance with the above findings of fact and conclusions of law.

IT IS SO ORDERED.

_____
The Honorable Maite Murphy
Presiding Judge, First Judicial Circuit

Dated this ___ day of _____, 2018.

_____, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Court of Common Pleas

Maite Murphy, Circuit Court Judge

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SC Court of Appeals

Case No. 2012-CP-18-02583

Jennifer McFarland and Carlton Holcombe,

Appellants,

v.

Thomas Morris and David Hannemann,

Respondents.

NOTICE OF APPEAL

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Attorneys for Respondents

Appellants, Jennifer McFarland and Carlton Holcombe, the plaintiffs in this case, hereby appeal the following orders of the Honorable Maite Murphy, Circuit Court Judge:

- Her Honor's **Order filed January 14, 2019** (setting forth the Court's findings of fact and conclusions of law and granting judgment in favor of Respondents, i.e., in favor of the defendants in this case, Thomas Morris and David Hannemann), and

- Her Honor's **Order Granting in Part and Denying in Part Plaintiffs' Motion to Alter, Amend, and/or Reconsider or, alternatively, for a New Trial, filed March 14, 2019**.

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellants received written notice of entry of the most recent order on March 14, 2019.

Respectfully submitted,

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By: _____

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Attorney for Appellants

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Dated: 4/12/19

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 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,
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