THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Nov 17 2020
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No.: 2019-002038

John H. Attridge and Janet L. Attridge, Robert W. Bankov, Virginia J. Bankov, Tom Bolton, Guy I. Collier, Nancy L. Collier, Richard Jay Coleman, Marlene Coleman, Russell G. Dimke, Sandra A. Dimke, James G. Goodwin, Jr., Carol A. Goodwin, George J. Lovett, Wilna W. Lovett, Peter Marzluff, Deborah C. Marzluff, Gary Okey, Nancy Okey, Michael Pellecchia, Janice S. Pellecchia, Frank H. Roberts, Sr., Richard Swilpa, Michele Gallant, Phyllis A. Kaupp-Seas, Robert P. Brendza, and Robin E. Brendza individually and in their derivative capacity on behalf of Bull Point Plantation Property Owners Association

……Respondents,

vs

The Board of Directors of Bull Point Plantation Property Owners Association, Inc., Bull Point Plantation Property Owners Association, Inc., Bull Point SC, LLC, William E. Gavigan, Michael Carey, Christopher J. Quick, James Riordan; DB Aster, LLC; and GSI, LLC,

……Defendants/Counterclaimants,

Of which Bull Point SC, LLC, William E. Gavigan, Michael Carey, Christopher J. Quick; James Riordan; and GSI, LLC are

……Appellants

And

Bull Point, SC, LLC, and William E. Gavigan,

……..Third-Party Plaintiffs/Appellants,

Vs

Joseph P. D'Ambrosio, Mary D. Ambrosio, Michael Powers, Harriett Bosiack, Robert Wolfson, James Hayes, Steve Andrews, Ron Lambe, Dave Prezvys, Rivers Reach at Pocotaligo, LLC, Rivers Reach Realty, LLC, and Jon Does 1-10,……..……Third-Party Defendants

MOTION FOR LEAVE TO FILE MOTION PURSUANT TO RULE 60(b)

Appellants and Third-Party Plaintiffs/Appellants hereby file this Motion for Leave to file the attached Motion for Relief from this court pursuant to Rule 60 (b). This attached Motion for relief is being filed in this Court and the lower court.

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EXHIBIT LIST

1. Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation, dated September 22, 1995.

2. Bull Point Plantation Owners Association, Inc., Articles of Incorporation, dated February 5, 2020.

3. Bull Point Plantation Property Owners Association, Inc., Articles of Incorporation, dated September 26, 1995, Articles of Amendment, dated July 5, 2006, and Articles of Amendment, dated February 4, 2015.

4. Bull Point Plantation Property Owners Association, Articles of Incorporation, dated January 2, 2007, and Articles of Dissolution, dated March 21, 2013.

5. Minutes of Special Meeting of the Interim Board of Directors of Bull Point Plantation Property Owners Association, dated January 17, 2020.

6. Amended Deed, dated September 27, 2007.

7. Motion to Dismiss

8. Affidavit of Barry Johnson, Esq.

9. Order, Denning Motion to Quash

10. Retainer Agreement (Johnson & Davis, PA), dated January 25, 2017.

11. Retainer Agreement (Nexsen Pruet), dated May 25, 2017.

12. Proposed Seventeenth Amendment (and related emails), from dated January 2016 to mid-2017.

13. Johnson File (22 pages relating to the Declarant Rights).

14. Attested Verified Amended Complaint filed in that federal action entitled *UPC vs D'Ambrosio*, United State District Court Case No.: 9:19-CV-00547-BHH.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AFFIDAVIT OF WILLIAM E. GAVIGAN

1. I am over the age of 18 years. I am resident of Beaufort County, South Carolina. As set forth below, I am the President of BULL POINT PLANTATION OWNERS ASSOCIATION, INC. A South Carolina Nonprofit corporation, and a principal in defendants BULL POINT SC, LLC and GSI, LLC. In that capacity, I could and would competently testify thereto regarding the following:

Recording of the Declaration and Relevant Amendments by the Declarant

2. On or about September 22, 1995, Bull Point, LLC, with the consent of Metropolitan Properties, Inc., executed the *Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation* known as 53 lots in Phase I (the "Original Declaration"). Attached hereto as Exhibit 1 and incorporated by reference herein is a true and correct copy of the Articles of Incorporation.

3. On February 12, 1996, Bull Point, LLC, with the consent of Metropolitan Properties, Inc., recorded the *Third Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation*. (Recorded February 14, 1996, in Book 836, at Page 689.) The Third Amendment was a restatement of the Original Declaration, and correct certain scrivener's errors.

4. On January 17, 2000, Bull Point, LLC executed the *Ninth Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation*. (Recorded February 4, 2000, in Book 1259, at Page 1959.) This added Phase II to the Plan of Development and replaced amendments 1-7 of the Declaration.

5. On March 22, 2005, Bull Point, LLC executed the *Fourteenth Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation*. This added **Phase IV** (56.236 acres) to the Plan of development and stated the Declarant is the owner of the 96 acres Additional Property known as future Phase VII. (Recorded, in Book 02118 at Pages 0722-0725.)

6. On August 21, 2017, GSI, LLC executed the *Seventeenth Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation*. This deleted the Twelfth Amendment. (Recorded August 21, 2017, in Book 3600, at Page 2638).

7. On January 21, 2020, GSI, LLC executed the *Nineteenth Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation*. (Recorded January 24, 2020, in Book 3831, at Pages 1217-1221).

The "Association"

8. On or about September 26, 1995, with the recording of the Original Declaration, Bull Point Plantation Owners Association, Inc. was created as an unincorporated nonprofit association.

Subsequently, on January 23, 2020, Articles of Incorporation were filed with the South Carolina Secretary of State and Bull Point Plantation Owners Association, Inc. was incorporated as a South Carolina nonprofit corporation. Attached hereto as Exhibit 2 and incorporated by reference herein is a true and correct copy of the Articles of Incorporation.

The "POA-Inc"

9. On September 26, 1995, Bull Point Homeowners Association, Inc. was formed as a South Carolina nonprofit corporation ("BPHOA"). On August 14, 2006, BPHOA changed its name to "Bull Point Property Owners Association, Inc." ("BPPOA"). On February 4, 2016, BPPOA changed its name to "Bull Point Plantation Property Owners Association, Inc." ("POA-Inc"). Attached hereto as Exhibit 3 and incorporated by reference herein are true and correct copies of the Articles of Incorporation and the two Articles of Amendment.

The "POA"

10. On January 2, 2007, Bull Point Plantation Property Owners Association was formed as a South Carolina nonprofit corporation (the "POA"). On March 21, 2013, the POA was *dissolved*. Attached hereto as Exhibit 4 and incorporated by reference herein are true and correct copies of the Articles of Incorporation and the Articles of Dissolution.

11. Pursuant to its Articles of Incorporation, the POA did *not* have members. (*See* ¶ 4.)

Plaintiffs Actions Following the Order Have Been Through POA-Inc, Not the POA

12. The Order defines Bull Point Plantation Property Owners Association as the "POA." (Order, p. 2.) Subsequently, the Order gives certain rights of governance to the POA. (Order, ¶¶ 1-8.). Notwithstanding the Order, since the Order Plaintiffs have acted (improperly) on behalf of POA-Inc.

13. In January 2020 and in February 2020, POA-Inc purported to hold an Annual Meeting for the budget and to elect directors. Although Section 13.03 of the Declaration provides that notice is to be by United States mail, POA-Inc did *not* send notices by United States mail. (Apparently, they sent notices by email. I am informed and believe that at least one owner did not receive notice of the Annual Meeting.) Plaintiffs also held the meeting when there was no *quorum*, as required by the Declaration.

14. The Fifteenth Amendment provides that owners that are not in good standing (i.e., have not paid their Annual Assessment) may not vote to elect members to the Contingency Fund Committee. The Fifteenth Amendment does *not* provide that owners not in good standing may not vote on other matters, to include adopting the annual budget and/or for the election of Directors. Similarly, neither the Original Declaration nor any other amendments prevent owners from voting, for any reason.

15. Notwithstanding the foregoing, Plaintiffs prevented several owners from voting (upwards of 70), claiming (wrongly) that owners were barred from voting for everything. Attached hereto as Exhibit 5 and incorporated by reference herein is a true and correct copy of Minutes, dated January 17, 2020.

Facts Relating to the Clubhouse

16. Section 3.03 of the Declaration governs Recreational Amendments. The Original Declaration did not identify a Clubhouse, however, as amended by the Ninth Amendment, the Declaration provides that "Declarant shall construct a Clubhouse . . . in *Phase III* of the Development." (Ninth Amendment, § 3.03(d).) (Emphasis added.) This has not occurred yet.

17. On September 27, 2007, Bull Point, LLC executed an "Amended Deed," pursuant to which Bull Point, LLC granted to POA-Inc. (*not* the POA and *not* the Association) approximately 8.0 acres in Phase **VIII** (*not* Phase III). (Recorded 10/11/2007, kin Book 02637, at Pages 0819-0823.) Attached hereto as Exhibit 6 and incorporated by reference herein is a true and correct copy of the Amended Deed.

Plaintiffs Intentionally Used Confusing Names in the Pleadings

18. I am a defendant in that action entitled D'Ambrosio v. Gavigan *et al.* (Case No. 2018-CP-07-01895).

19. In connection with a motion to dismiss, Joseph D'Ambrosio, Esq., Plaintiff's co-counsel herein, filed a reply wherein he stated that "Plaintiffs intentionally plead their Amended Complaint with the *generic* name "Bull Point Property Owners Association (without the "Inc."). Attached hereto as Exhibit 7 and incorporated by reference herein is a true and correct copy of the reply.

Newly Discovered Evidence

20. In February 2016, GSI, LLC entered into a written agreement with DB Aster, LLC to acquire Bull Point Plantation. The purchase did not occur as anticipated and GSI, LLC commenced that action entitled GSI, LLC v. DB Aster, LLC, *et al.* (Case No. 9:16-cv-02552-RMG) (the "GSI Action").

21. During the pendency of the GSI Action, Barry Johnson, Esq., of Johnson & Davis, PA, filed an affidavit in which he stated that he had been retained by the "Bull Point Plantation Property Owners Association, Inc. Operations Committee." Attached hereto as Exhibit 8 and incorporated by reference herein is a true and correct copy of Mr. Johnson's Affidavit.

22. A subpoena was served in that action entitled *Bull Point Plantation Property Owners Association, Inc. v. Robin Brendza, et al.* (Case No. 2018-CP-07-02345). Subsequently, on April 2019, certain defendants (including Plaintiff Okey, Brendza, Dimke, and Third-Party Defendant Lambe herein) moved to quash said subpoena. In said motion, Messrs. Lambe and Okey stated that they hired Mr. Johnson individually (and paid for said legal services with Contingency Funds). Thereafter, on or about December 31, 2019, the court therein denied the motion to quash. Subsequently, Mr. Johnson produced approximately 1,800 pages of documents (the "Johnson File"). Attached hereto as Exhibit 9 and incorporated by reference herein is a true and correct copy of the order denying the motion.

24. Only after the Order that is the subject of this Motion, I discovered from the Johnson File the following facts:

a. That during the pendency of the GSI Action, Mr. Johnson had not been engaged by the POA-Inc. or its Operations Committee; *rather*, Mr. Johnson had been retained by the Plaintiffs and contracted with Association Bull Point Plantation Owners Association, Inc. Attached hereto as Exhibit 10 and incorporated by reference herein is a true and correct copy of the retainer agreement, dated January 25, 2017.

b. That during the pendency of the GSI Action, on May 25, 2017, the Association, retained Nexsen Pruet in connection with a subpoena for the production of records served on the owner's association. The retainer was executed by Joseph Steinhauser as President of the Association. Attached hereto as Exhibit 11 and incorporated by reference herein is a true and correct copy of this retainer agreement.

c. That from January 2016 to mid-2017, Plaintiffs sought to have the Declaration amended by the (then) Declarant, DB Aster, LLC, so that the entity which has been the Association for twenty-four years as defined by the Original Declaration. would include the word "Property" so that the entire name would be "Bull Point Plantation Property Owners Association, Inc."

d. *After* the subject Order, Defendants admitted this change was sought so that the name would comport with the name of another South Carolina nonprofit corporation (*i.e.*, POA-Inc.) through which they nonetheless fraudulently carried on business by changing, without authority, the name of Bull Point Property Owners Association, Inc. to Bull Point Plantation Property Owners Association, Inc. (i.e. POA-Inc.) in February 2016. Attached hereto as Exhibit 12 and incorporated by reference herein are true and correct copies of the emails and related documents relating to Plaintiffs' (unsuccessful) effort to change the Declaration (with the proposed amendment attached hereto referred to as the "Proposed Seventeenth Amendment").

e. That Plaintiffs knew that notice to owners/members was required to be delivered by United States mail because the Proposed Seventeenth Amendment also sought to change the notice provision. (*See* ¶ 7 of the Proposed Seventeenth Amendment.)

f. That Plaintiffs knew that the Declaration did not include a definition of members in "Good Standing" because the Proposed Seventeenth Amendment sought to add a definition of "Member in Good Standing." (*See* ¶ 2 of the Proposed Seventeenth Amendment.)

g. That Plaintiffs knew that the Declarant (and affiliates) did not have to pay annual assessments or other fees to the Association and that the Declarant could and would pass from DB Aster, LLC to another entity. (*See* Email, dated January 4, 2016, attached hereto.)

h. That Plaintiffs always believed that the Declarant Rights could be purchased and/or assigned. In certain Johnson File records, it shows that Plaintiffs intended to buy the Declarant Rights (and the developer's real property interests) from DB Aster, LLC or its assignee. Further, the records show that Plaintiffs intended to have the Declarant Rights assigned to their own limited liability company, Huspah Properties, LLC, which was formed for this purpose. And the records show that Plaintiffs intended to use Contingency Funds to accomplish this acquisition. Attached hereto as Exhibit 13 and incorporated by reference herein is a true and correct copy of 22 pages of Mr. Johnson's document production pertaining to the Declarant Rights.

25. Joseph D'Ambrosio, Esq., of the Law Offices of Joseph P. D'Ambrosio is one of the attorneys representing Plaintiffs.

26. Mr. D'Ambrosio is/was a defendant in that federal action entitled *UPC vs D'Ambrosio* (Case No.: 9:19-CV-00547-BHH (the "UPC Federal Action").

27. On October 22, 2109, D'Ambrosio filed a motion to dismiss in the UPC Action. The exhibits to the motion included a copy of the actual verified amended complaint that the affidavits in the subject lawsuit attested to (the "Attested VAC"). Attached hereto as Exhibit 14 and incorporated by reference herein is a true and correct copy of the Attested VAC.

28. The Verified Amended Complaint herein and the Attested VAC are not the same.

William E. Gavigan

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

On this 17 day of November 2020, before me personally appeared William E. Gavigan, who provided satisfactory evidence of his identification to be the person whose name is subscribed to this instrument and he acknowledged that he executed the foregoing instrument by his signature here.

William E. Gavigan

Sworn to (or affirmed) and subscribed before me this 17 day of November 2020.

(Notary Signature)

Notary Printed Name
Beaufort County, South Carolina
My commission expires: 10/22/2028

EXHIBIT

1

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BULL POINT PLANTATION, dated September 22,1995

Jon Attridge, et al. v. The Board of Directors of Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

31845

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BULL POINT PLANTATION

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR **BULL POINT PLANTATION** is made this 22nd day of September, 1995, by **BULL POINT LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY** by and with the consent and agreement of **METROPOLITAN PROPERTIES, INC., A SOUTH CAROLINA CORPORATION.**

W I T N E S E T H:

WHEREAS, Bull Point LLC and Metropolitan Properties, Inc., "Declarant", is the owner of certain real property located in Beaufort County, South Carolina, known as Bull Point Plantation described in Exhibit "A"; and

WHEREAS, Bull Point LLC and Metropolitan Properties, Inc. have entered into a Contract of Sale dated the 23rd day of Feb., 1995, wherein Metropolitan Properties, Inc. as Seller agreed to transfer to Bull Point LLC the property described in Exhibit A on a phased basis as provided for in said contract; and

WHEREAS, Bull Point LLC has purchased a portion of the Bull Point Property from Metropolitan Properties, Inc. as described in Exhibit B, attached hereto and incorporated herein and desires to submit said property to the provisions of this declaration as provided for herein; and

WHEREAS, as hereinafter provided in this declaration, declarant has retained and reserved the right, privilege and option at its sole discretion to submit to the provisions of this declaration at a later time, and from time to time, as a part of the Bull Point Plantation all or a portion of the real property described in Exhibit "A", attached hereto and incorporated herein by reference;

NOW, THEREFORE, Declarant, hereby declares that all of the property described in Exhibit "B" shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, restrictions, covenants, charges, liens, and conditions which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with the title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the above described properties or any portion thereof, and their respective heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof. Declarant hereby

retains and reserves the right, privilege, and option to subject to the provisions of this Declaration at a later time, and from time to time, all or any portion of the real property described in Exhibit "A" attached hereto.

ARTICLE I
DEFINITIONS

1.01 Definitions: When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all of the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "Additional Property" shall mean and refer to the real property described in Exhibit "A", SAVE AND EXCEPT THE REAL PROPERTY DESCRIBED IN EXHIBIT "B" (Phase I).

(b) "Architectural Review Board of Bull Point Plantation" shall mean and refer to the committee who shall be appointed by the Associations' Board of Directors to approve exterior and structural construction, improvements, additions, and changes in all areas of the Development.

(c) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Bull Point Plantation Owners Association, Inc. as amended from time to time.

(d) "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.

(e) "Association" shall mean and refer to Bull Point Plantation Owners Association Inc., a South Carolina non-profit corporation.

(f) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

(g) "By-Laws of the Association" or the "By-Laws" shall mean and refer to those By-Laws of Bull Point Plantation Owners Association, Inc. which govern the administration and operation of the Association, as the same may be amended from time to time.

(h) "Common Areas" shall mean and refer to all real and personal property now or hereinafter owned by the Association for the common use and enjoyment of the owners. The common areas are to be owned by the Association at a time in the sole discretion of the Declarant, in the future set by Declarant. The designation of any land and/or improvements as common

areas shall not mean or imply that the public at large acquires any easement of use or enjoyment therein.

(i) "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 reserves, pursuant to the provisions of this Declaration.

(j) "Declarant" shall mean and refer to Bull Point LLC and Metropolitan Properties, Inc. which have executed this Declaration, or any successor-in-title to the entire interest of Declarant with respect to the property and the additional property at the time of such transfer to said successor-in-title, or any party which acquires said Declarant's entire interest with respect to the property and the additional property at the time of such acquisition pursuant to foreclosure of a mortgage encumbering said Declarant's interest in the property and the Additional Property.

(k) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for a portion of Bull Point Plantation and all amendments thereof filed for record in the records of the RMC office of Beaufort County, South Carolina.

(l) "Development" with an initial capital letter, shall mean and refer to the property and all improvements located or constructed thereon.

(m) "Dwelling" with an initial capital letter, shall mean and refer to any improved property intended for use as a single family detached dwelling located within the Development.

(n) "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 a judicial foreclosure.

(o) "Institutional Mortgage" shall be deemed to 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 the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(p) "Lease" shall mean and refer to any lease, sublease, or rental contract, whether oral or written.

(q) "Limited Common Element" shall mean and refer to all real and personal property now or hereinafter owned by the

Association for the use and enjoyment of designated owners of lots or dwellings.

(r) "Limited Common Expense Assessment" shall mean and refer to each designated share of expenses and other charges from time to time assessed against a designated owner for the maintenance and upkeep of a Limited Common Element.

(s) "Living Space" shall mean and refer to enclosed and covered areas that are heated and/or cooled within a dwelling.

(t) "Lot" shall mean and refer to any unimproved portion of the property upon which it is intended that a single family residence shall be constructed. A lot of land shall be deemed unimproved and thus considered to be a lot, rather than a dwelling, until the improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such lot and the improvements thereon shall collectively be considered to be a dwelling for purposes of this declaration.

(u) "Mortgage", with an initial capital letter, shall mean and refer to a mortgage, security deed, deed of trust, installment land sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a lot or dwelling.

(v) "Mortgagee" with an initial capital letter shall mean and refer to the holder of a mortgage.

(w) "Multi-Family Declaration" shall mean and refer to any instrument or document, and any amendments thereto, which may be recorded in the Records of the Clerk of Court for Beaufort County, South Carolina, with respect to any Multi-Family Area and which creates a condominium or horizontal property regime for such Multi-Family Area or imposes covenants, conditions, easements, and restrictions with respect to such Multi-Family Area.

(x) "Occupant" shall mean and refer to any person, including, without limitation, any owner or any guest, invitee, lessee, tenant, or family member of an owner, occupying or otherwise using a dwelling, boat dock space or boat ramp within the Development.

(y) "Owner" with an initial capital letter shall mean and refer to one or more persons, including declarant, who or which owns fee simple title to any lot, dwelling, or other property in the Development, excluding, however, those persons having such an interest under a mortgage. In the event that there is recorded in the Records of the Clerk of Court for

Beaufort County, South Carolina, any installment land sales contract covering any lot or dwelling, the owner of such lot or dwelling shall be the purchaser under said contract and not the fee simple title holder. An installment land sales contract shall be an instrument whereby the purchaser is required to make payments for a lot or dwelling for a period extending beyond nine (9) months from the date of the contract, and where the purchaser does not receive title to such lot or dwelling until all such payments are made, although the purchaser is given use of such lot or dwelling.

(z) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

(aa) "Property" with an initial capital letter, shall mean and refer to those tracts or parcels of land described on Exhibit "B", together with all improvements thereon, and upon submission to the provisions of this Declaration, the tracts or parcels of land described in Exhibit "A", or any portion thereof, together with all improvements thereon.

(bb) "Recreational Amenities" shall include such recreational facilities and improvements as are from time to time located within the common areas and the easement areas established pursuant to Section 3.03 hereof, including, without limitation, recreational area to be constructed in Phase I, a boat ramp and community dock, a seventeen (17) acre lake, a five (5) acre recreational island located on the eastern side of Phase I and jogging trails and/or bike paths as further described herein.

(cc) "Site Plan" shall mean and refer to that certain plat showing Bull Point Subdivision Phase I, a Section of Tomotley Plantation, Sheldon Township, prepared by Gasque & Associates, Inc., dated September 21, 1995. Additional plats shall be included for future phases under this definition.

ARTICLE II
PLAN OF DEVELOPMENT

2.01 Plan of Development of Property. The property shall initially contain 53 lots in Phase I and one dwelling may be constructed on each lot. The dimensions of the lots are shown on the site plan. All lots within Phase I of the Development shall be and are hereby restricted exclusively to single-family residential use. Declarant shall have the right, but not the obligation for so long as Declarant owns any lot or dwelling primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development, to make improvements and changes to all common areas to all lots or dwellings owned by Declarant, including, without limitation, (i)

installation and/or maintenance of any improvements in and to the common areas, including recreational amenities, (ii) changes in the location of the boundaries of any lots or dwellings owned by the Declarant or of the common areas, (iii) installation and maintenance of any water, sewer, and other utility systems and facilities, and (iv) installation of security, refuse and/or other Development support facilities. The Declarant retains the right to designate limited common elements which shall be for the use and benefit of owners as designated by the Declarant in its sole discretion.

2.02 Plan of Development of Additional Property. Declarant hereby reserves the option, to be exercised in its sole discretion, to submit from time to time the additional property or a portion or portions thereof to the provisions of this declaration and thereby to cause the additional property or a portion or portions thereof to become part of the property. Declarant intends that the additional property will be developed with a maximum of not to exceed 300 lots in the development, together with roads, drainage systems, and other improvements serving such dwellings. However, Declarant reserves the right, but is not obligated to develop property with more or fewer lots, with multi-family sections on the additional property or a golf course and clubhouse, provided that Declarant is in compliance with the applicable provisions of the Beaufort County Development Standards Ordinance and/or any other applicable government regulations, ordinances, etc. This option may be exercised by the Declarant in accordance with the following rights, conditions, and limitations, which are the only conditions and limitations of such option to add all or any portion of the additional property to the Development:

(a) The option may be exercised from time to time during a period of thirty (30) years from the date of this declaration; provided, however, that the Declarant reserves the right to terminate such option at any time prior to the expiration of such thirty (30) year period by executing and filing an agreement evidencing such termination on the records of the Register of Mesne Conveyances for Beaufort County, South Carolina, and, except for such termination by Declarant, no other circumstances will terminate such option prior to the expiration of the thirty (30) year period.

(b) The legal description of the additional property is set forth in as Exhibit "A" less and excepting Phase I described in Exhibit "B"; portions of the additional property may be added to the Development at different times, and there are no limitations fixing the boundaries of those portions of regulating the order, sequence, or order in which such portions may be added to the Development.

(c) If the additional property or any portion thereof is added to the Development, the lots and multi-family areas, if any, developed therein and the dwellings constructed thereon

will be restricted exclusively to the residential use and will be subject to standards and restrictions set forth in Article X hereof. In addition, all dwellings and other improvements constructed thereon will be substantially consistent in terms of quality of designed construction to those dwellings and improvements located elsewhere within the Development. This provision shall not prohibit the use of a portion o the property for commercial purposes at the discretion of the Declarant.

(d) If the additional property or any portion thereof is added to the Development, Declarant reserves the right to designate the boundaries of the lots and multi-family areas, as well as the common areas, if any, to be added to the Development in connection therewith.

(e) Should the option to add the additional property, or any portion thereof, not be exercised within the term specified herein or be terminated by Declarant, such option shall in all respects expire and be of no further force and effect. In the event that such option expires or is terminated, as aforesaid, Declarant shall not be obligated to impose on the additional property or any portion thereof any covenants, conditions, or restrictions the same as or similar to those contained herein, provided that the additional property shall be restricted to residential and multi-family use subject to Declarant's right to designate and utilize property fronting on US Highway 17 for commercial purposes.

(f) The option reserved by Declarant to cause all or any portion of the additional property to become part of the Development shall in no way be construed to impose upon Declarant any obligation to add all or any portion of the additional property to the Development or to construct thereon any improvements of any nature whatsoever.

The option reserved under this Section 2.02 may be exercised by Declarant only by the execution of an amendment to this Declaration which shall be filed in the Register of Mesne Conveyance office for Beaufort County, South Carolina, together with a revision of or an addition to the site plan showing the additional property or such portion or portions thereof as are being added to the Development by such amendment, as well as the lots and/or multi-family areas therein. At the discretion of Declarant, Declarant shall convey to the Association the common areas, if any, contained within the additional property, or such portion thereof so submitted, such conveyance to be subject to the lien of taxes not yet due and payable, all easements and restrictions of record, utility easements serving or otherwise encumbering the property and/or the additional property, and any exceptions which would be disclosed by a survey or a physical inspection of such parcels. Any such amendment shall expressly

submit the additional property or such portion thereof to all the provisions of this Declaration, and upon the exercise, if any, of such option or options, the provisions of this Declaration shall then be construed as embracing the real property or such portion or portions thereof so submitted to the terms hereof, together with all improvements located thereon. If the additional property or any portion or portions thereof is added to the Development, then from and after the addition to the Development of the additional property or such portion or portions by such amendment to this Declaration, the number of votes in the Association shall be increased by the number of lots or dwellings to be located on the additional property or such portion or portions thereof as are added so that there shall continue to be one vote in the Association per lot or dwelling in the Development.

2.03 Multi-Family Associations. In the event that Declarant submits the Additional Property or any portion or portions thereof to the terms of this Declaration, there may be established by Declarant, its successors or assigns, Multi-Family Associations limited to the Owners of Dwellings, boat slips, or dock spaces within the Multi-Family areas located within such portion or portions of the Additional Property so submitted in order to promote their health, safety, and social welfare, as well as to provide for the maintenance of dwellings, other improvements, and/or common elements owned by such Owners and/or such Multi-Family Associations, provided that such Owners shall also be members of the Association and such dwellings and other improvements shall continue to be subject to the terms of the Declaration. Such Multi-Family Areas may be subject to Multi-Family Declarations which impose covenants and restrictions which are in addition to, but not in abrogation or substitution of, those imposed hereby, and such Multi-Family Associations may levy additional assessments and make and enforce supplementary covenants, restrictions, rules and regulations with respect to such Multi-Family Areas.

2.04 Water and Sewer Facilities. The submitted property shall not have private or public utility water or sewer utility services and these services shall be provided at the present time by a well and septic tank which will be installed and maintained by each lot owner.

2.05 Interest Subject to Plan of Development. Every purchaser of a lot or dwelling shall purchase such lot or dwelling and every mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of Declarant's plan of Development as herein set forth, and Declarant shall have and does hereby specifically reserve the right to amend the plan of development and to add the additional property or any portion or portions thereof to the Development as hereinabove provided, and, with respect to each lot or dwelling located within the additional property, to convey to

the purchaser thereof the title to the lot or dwelling and its appurtenant membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of Development set forth in this Article II may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

ARTICLE III
PROPERTY RIGHTS

3.01 General. Each lot and dwelling shall for all purposes constitute real property which shall be owned in fee simple absolute, and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each owner shall be entitled to the exclusive ownership and possession of his lot or dwelling, subject to the provisions of this Declaration, including without limitation, the provisions of this Article III. The ownership of each lot and dwelling shall include, and there shall pass with each lot and dwelling as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the common areas as established hereunder, which shall include, but not be limited to, membership in the Association. Each owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to his lot or dwelling, and upon such transfer, such former owner shall simultaneously transfer and endorse to his successor-in-title any certificates or other evidences of his membership in the Association. Lots shall not be subdivided, and, except as provided in Sections 2.01 and 3.06 hereof, the boundaries between lots shall remain as established in accordance with the site plan, unless the relocation thereof is made with the consent of at least a majority of the owners in the respective roads, drives, courts, and/or circles of Declarant, so long as Declarant owns a lot or dwelling primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development.

3.02 Owner's Easement of Enjoyment. Subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board of Directors in accordance with the By-Laws and the terms hereof, every owner, his family, tenants, and guests shall have a non-exclusive right, privilege, and easement of use and enjoyment in and to the common areas transferred to the Association, such easement to be appurtenant to and to pass and run with title to each lot and dwelling, subject to the following provisions:

(a) The right of the Association to borrow money (i) for the purpose of improving the Development or any portion thereof, (ii) for acquiring additional common areas, (iii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Development, or (iv) for providing the services authorized herein, and subject to the provisions of Section 8.02 hereof, to give as security for the payment of any such loan a mortgage or other security instrument conveying all or a portion of the common areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interests, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any owner, or the holder of any mortgage, irrespective of when such mortgage is executed or given.

(b) The rights and easements reserved to Declarant in Sections 3.03(a), 3.04, 3.05, 3.06, 3.07, 3.10, 3.11, and 3.12 hereof.

(c) The right of the Association to grant and accept easements as provided in Section 3.07 hereof, and to dedicate or transfer fee simple title to all or any portion of the Common Areas to any public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the simple title must be approved by a majority of those present in person or by proxy at a duly held meeting of the Association and by Declarant, for so long as Declarant owns any lot or dwelling primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development.

(d) The rights and easements reserved in Section 3.04 hereof for the benefit of the Association, its directors, officers, agents, and employees.

(e) The rights and easements reserved in Section 3.10 hereof for the benefit of the additional property.

3.03 Recreational Amenities.

(a) Subject to the terms and provisions of this Declaration and the rules, regulations, fees and charges from time to time established by the Declarant or the Board of Directors, every owner and his family, tenants, and guests shall have the non-exclusive right, privilege and easement of access to and the use and enjoyment of the recreational amenities.

(b) In the event of any multiple ownership of a lot or dwelling which is permitted hereunder by Section 10.26 hereof,

no more than four (4) Owners of such lot or dwelling, as well as his/her spouse and children under the age of twenty-one (21), shall be entitled to the use of the Recreational Amenities, and such Owner shall be designated in writing to the Board of Directors by all such co-owners.

(c) Declaration shall have the right, but not the obligation to construct a golf course and related facilities on future phases other than Phase I and Phase II which shall not be for the exclusive use and/or benefit of owners.

3.04 Access. All owners, by accepting title to lots or dwellings conveyed subject to this Declaration, waive all rights, except for limited common recreational amenities as designated by the Declarant, of uncontrolled and unlimited access, ingress, and egress to and from such lot or dwelling and acknowledge and agree that such access, ingress and egress shall be limited to roads, sidewalks, walkways, trails, and waterways located within the Development from time to time, provided that pedestrian and vehicular access to and from all lots and dwellings shall be provided at all times. There is reserved unto Declarant, the Association, and their respective successors and assigns the right and privilege, but not the obligation, (i) to control access to and from Huspah Creek or other waterways from time to time located within or contiguous to the Development, and (ii) to maintain guarded or electronically-monitored gates or some other device, in the sole discretion of Declarant, controlling vehicular access to and from the Development.

3.05 Easements for Declarant. During the period that Declarant owns any lot or dwelling primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development, Declarant shall have an alienable and transferable right and easement on, over, through, under, and across the common areas for the purpose of constructing dwellings and other improvements in and to the lots and the additional property and for installing, maintaining, repairing, and replacing such other improvements to the property (including the recreational amenities and other portions of the common areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of doing all things reasonable necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing.

3.06 Changes in Boundaries; Additions to Common Areas. Declarant expressly reserves for itself and its successors and assigns, the right to change and realign the boundaries of the common areas and any lots owned by Declarant, including the realignment of boundaries between adjacent lots, dwellings owned by Declarant, provided that any such change or realignment of

boundaries shall not materially decrease the acreage of the common areas and shall be evidenced by a revision of or an addition to the site plan which shall be recorded in the plat records of the RMC office of Beaufort County, South Carolina. In addition, Declarant reserves the right, but shall not have the obligation, to convey to the Association at any time and from time to time any portion of the additional property, such real property to be conveyed to the Association as an addition to the common areas and subject to the title exceptions set forth in section 2.02 hereof.

3.07 Easements for Utilities. There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement as well as the power to grant and accept easements to and from any public authority or agency, public service district, public or private utility, or other person, upon, over, under, and across (i) all of the common areas, (ii) all areas set forth by the Declarant for the purpose of installing, replacing, repairing, maintaining, and using master television antennas 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 Declarant, its successors or assigns, or by the Board of Directors, provided, however, that for so long as Declarant owns any lot or dwelling primarily for the purpose of the sale or has the unexpired option to add the additional property or any portion thereof to the Development, the Board of Directors must obtain the written consent of Declarant prior to granting and accepting any such easements. To the extent possible, all utility lines and facilities serving the Development 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 Development 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 other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, and use of such utilities and systems.

3.08 Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents, employees, including, but not limited to, any manager employed by the Association and any other employees of such manager, to enter upon any lot, dwelling, or any portion thereof 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 or occupant of the area directly affected thereby.

3.09 Sales Construction Offices and Temporary Residential and Maintenance Buildings. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant and its successors and assigns the alienable and transferable right and easement in and to the property for the maintenance of signs, sales offices, construction offices, business offices, and model dwellings, together with such other facilities as in the sole opinion of the Declarant may be reasonably required, covenant, or incidental to the completion, improvement and/or sale of lots, dwellings, common areas, or the additional property, for so long as Declarant owns any lot or dwelling primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development.

3.10 Easements for Additional Property. There is hereby reserved for Declarant, and its successors, assigns, and successors-in-title to the additional property, for the benefit of and as an appurtenance to the additional property and as a burden upon the property, perpetual, non-exclusive rights and easements for (i) pedestrian, vehicular, and boating access, ingress, egress, parking, and docking over, across, within on all roads, sidewalks, trails, parking facilities, lagoons, lakes, and docks from time to time located within the common areas or within easements serving the common areas, (ii) the installation, maintenance, repair, replacement and use within the common areas and those portions of lots and dwellings encumbered pursuant to Section 3.05 hereof of security systems and utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers, and electrical, gas, telephone, water, sewer, and master television antennas and/or cable system lines, and (iii) drainage and discharge of surface water onto and across the property provided that such drainage and discharge shall not materially damage or affect the Development or any improvements from time to time located thereon. Furthermore, in the event that the additional property or any portion or portions thereof are not added to the Development, then owners of residential units located herein shall have, and there is hereby reserved for their benefit and as an appurtenance to their respective residential units, the perpetual, non-exclusive right and easement of access to the use and enjoyment of all recreational amenities, except for limited common recreational amenities, on a basis which is equal and equivalent to that enjoyed by owners; provided, however, that as a condition precedent to the use of the recreational amenities by any such other of a residential unit within any portion of the additional property not so added to the Development, such owner shall pay the Association annual assessments for the use of the recreational amenities.

3.10 Maintenance Easement. Subject to the terms of Section 5.02(b) hereof, there is hereby reserved for the benefit of

Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any lot and upon unimproved portions of any dwelling 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 Development, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform such actions. Furthermore, there is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors and assigns, an alienable, transferable, and perpetual right and easement, but not the obligation, to enter upon any lots or dwellings which are located within seventy-five (75) feet from the water's edge of any lagoon, marina, pond, or other body of water within the Development, for the purpose of mowing such area and keeping the same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such bodies of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards.

3.11 Environmental Easement. There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all lots and all unimproved portions of dwellings for the purpose 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.

3.12 Wells and Effluent. There is hereby reserved for the benefit of Declarant, the Association, and their respective affiliates, agents, employees, successors and assigns, an alienable, transferable, and perpetual right and easement (i) to pump water from lagoons, ponds, lakes, and other bodies of water located within the Development for the purpose of irrigating any portions of the Development, (ii) to drill, install, locate, maintain, and use wells, pumping stations, water towers, siltation basins and tanks, and related water and sewer treatment facilities and systems within the common areas, including any within any portion of the recreational amenities.

3.13 Encroachments. There shall exist valid and perpetual easements, appurtenant to any lot or dwelling located adjacent to any lagoons, ponds, lakes and other bodies of water from time to time located within the common areas, for the encroachment of docks, bulkheads, boat slips, and for the maintenance, repair and replacement thereof for so long as such

encroachment exists, provided that the location of such docks, bulkheads, boat slips, and boathouses shall be subject to the prior approval of the Architectural Review Board pursuant to Article X hereof.

3.14 No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development has been removed from the provisions of this Declaration.

3.15 Easements for Walks, Trails and Signs. There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement upon, over and across lots and common areas within 35 feet of the street or road right of way for the installation, maintenance, and use of sidewalks, jogging trails, traffic directional signs, and related improvements.

ARTICLE IV
MEMBERSHIP

4.01 Membership. Every owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot or dwelling, and ownership of a lot or dwelling shall be the sole qualification for such membership. In the event that fee title to a lot or dwelling is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto shall automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. 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 per lot or dwelling. In the event of multiple owners of a lot or dwelling, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges and 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 vote be cast or more than one office held for each lot or dwelling, and further provided that a member casting a vote or holding an office with respect to his dwelling shall not be entitled to cast an additional vote or to hold an additional office for the lot upon which his residential unit is located. When more than one person holds an interest in any lot or dwelling, the vote for such lot or dwelling shall be exercised as those owners of such lot or dwelling themselves determine and advise the Secretary or an Assistant

Secretary of the Association prior to any meeting. In the absence of such advice, the vote appurtenant to such lot or dwelling shall be suspended in the event more than one person seeks to exercise it. The voting weight appurtenant to each lot or dwelling is equal and each lot and each dwelling shall have one (1) vote. Such voting weight shall continue to be equal upon the addition of all or a portion of the additional property to the Development, and each lot or dwelling therein shall have one vote. Each owner, by acceptance of a deed or other conveyance for a lot or dwelling, consents and agrees to the dilution of his voting interest in the Association by virtue of the submission from time to time of the additional property or any portion thereof to the terms of this Declaration as provided herein.

ARTICLE V
MAINTENANCE

5.01 Responsibility of Owners and Associations. Unless specifically identified herein or in another Declaration as being the responsibility of the Association or any other designated Association, all maintenance and repair of dwellings and the areas within a dwelling area not considered a common element or common area, together with all other improvements thereon or therein and all lawns, landscaping, and grounds on and within a lot or dwelling shall be the responsibility of the owner of such dwelling. Unless otherwise provided in the appropriate Multi-Family Declaration the maintenance and repair of all common areas or common elements located within Multi-Family Areas (including all landscaping and grounds and all recreational facilities and other improvements located within such Multi-Family Area) shall be the responsibility of the Multi-Family Association for such Multi-Family Area. As provided for in Section 5.02(b) hereof, each owner or the Association then the subject property shall also be obligated to pay for the cost incurred by the Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such owner or other Association, but which responsibility of such owner or other Association fails or refuses to discharge. No owner shall (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a dwelling unless such decoration, change or alteration is first approved, in writing by the Architectural Review Board as provided in Article X hereof, or (ii) do any work which, in the reasonable opinion of the Architectural Review Board, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the Architectural Review Board and the owners and mortgagees of lots or dwellings directly affected thereby or benefitting from such easement or hereditament.

5.02 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 operation, maintenance, repair, and replacement of the following, including but not limited to: (i) all roads, walks, trails, lagoons, ponds, parking lots, landscaped areas, and other improvements situated within the common areas or within easements encumbering lots or dwellings pursuant to Section 3.15 hereof, (ii) such security program 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 (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon the common areas. 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, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, breaking down or as a result of the repair of the same. 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 in or upon any portion of the areas or any other portion of the property. No diminution or abatement of assessments or recreational 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 and recreational charges being a separate and independent covenant on the part of each owner.

(b) In the event that Declaration or the Board of Directors determines that: (i) any owner has failed or refused to discharge properly his or its obligation 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, Declarant or the Association, except in the event of an emergency situation, may give such owner written notice of Declarant'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, or in the event that such maintenance, cleaning, repair, or 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 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, Declarant 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 as the case may be, and said cost shall be added to and become a part of the assessment to which such owner and his dwelling or areas within a dwelling area not considered a common element or common area, are subject, and shall become a lien against such lot or dwelling, or another Association become a part of the assessments for all owners within such other Associations and shall become a lien against such owner's dwellings, or areas within a dwelling area not considered a common element or common area. In the event that Declarant undertakes such maintenance, cleaning, repair, or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses.

ARTICLE VI
INSURANCE AND CASUALTY LOSSES

6.01 Insurance.

(a) 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 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.

(b) The Board or its duly authorized agents shall have the authority to and shall 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.

(c) 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 laws, (ii) errors and omission insurance, and (iii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

(d) 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 Development shall be vested in the Board of Directors; provided, however, that no mortgagee or other security holder of the common areas having an interest in such losses may be prohibited from participating in the settlement negotiation, if any, related thereto. Insofar as permitted by law, the Association shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth:

(i) All policies shall be written with a company licensed to do business in the State of South Carolina and holding a rating of A+ 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.

(ii) All property insurance policies shall be for the benefit of the owners and their mortgagees as their interests may appear.

(iii) 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.

(iv) 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 policies shall contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual owners or their mortgagees.

(v) All polices 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.

(vi) All policies shall contain a provision that no policy may be cancelled, invalidated, or suspended on account of the conduct of one or more of the individual owners or their respective families, servants, agents, employees, tenants, guess, and invitees, or other 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.

(e) 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 and dwelling. The Board of Directors may require all owners and/or other Associations to carry public liability and property damage insurance with respect to their respective lots and dwellings and to furnish copies or certificates thereof to the Association.

6.02 Damage or Destruction to 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 of the damaged or destroyed property. Repair or reconstruction, as used in this Article VI, means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to all or a part of the common areas, Declarant, for so long as Declarant owns dwelling areas within a dwelling area not considered a common element or common area, primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development, together with at least seventy-five (75%) percent of the total vote of the Association, shall otherwise agree, the Association shall restore or replace such damaged improvements. 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, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to

provide funds to pay such excess cost of repair or reconstruction. Such a special assessment shall be levied against the additional assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under by virtue of such assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board of Directors. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association. If it is determined that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the ruins of the common areas damaged or destroyed by fire or other casualty shall be cleared and the common areas left in a clean, orderly, safe, and sightly condition.

6.03 Damage or Destruction to Lots or Dwellings. In the event of damage or destruction by fire or other casualty to any dwelling and in the further event that either the owner of such dwelling responsible for the repair and replacement of such dwelling elects not to repair or rebuild the damaged or destroyed dwelling, such owner making such election shall promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such dwelling in a clean, orderly, safe and sightly condition. Should such owner elect to repair or rebuild such lot, dwelling or other improvements, such owner shall repair or rebuild such dwelling, or 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 X 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 diligently to conclusion.

ARTICLE VII
CONDEMNATION

7.01 Condemnation of Common Areas. Whenever all or any part of the common areas of the Development shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting on the agreement of at least seventy-five (75%) percent of the total vote of the Association and of Declarant, for so long as Declarant owns a dwelling primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development, the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association

and shall be disbursed or held as follows:

(a) 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 Declarant, for so long as Declarant owns a dwelling primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development, together with at least seventy-five (75%) percent of the total membership 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 Review Board, and by Declarant, for so long as Declarant owns a lot or dwelling primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development. 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, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a 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.

(b) If the taking or sale in lieu thereof does not involve any improvements to the common areas, or if there are net 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.

(c) If the taking or sale in lieu thereof includes all or any part of a dwelling and also 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 dwelling taken for their interest in such dwelling; provided, however, such apportionment may instead be resolved by the agreement of (i) the Board of Directors, (ii) the owners of all dwellings wholly or partially taken or sold, together with the mortgagees for each such dwelling, and (iii) Declarant,

for so long as Declarant owns a dwelling primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development.

7.02 Condemnation of Dwelling.

(a) In the event that all or any part of a dwelling is taken by any authority having the power of condemnation or eminent domain, or its conveyed in lieu thereof, and in the further event that the owner of such dwelling responsible for the maintenance and repair of such dwelling elects not to restore the remainder of the dwelling, then such owner making such election shall promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and shall leave such dwelling in a clean, orderly, safe, and sightly condition. In addition, if the size or configuration of such dwelling remaining after such taking or conveyance is insufficient to permit the restoration of the remaining improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building and other governmental regulations, then such owner shall have the option, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean, orderly, safe, and sightly condition referred to above, of deeding the remaining portion of the lot or dwelling as a part of the common areas, and thereafter any such owner shall not have any further voting rights or membership rights or privileges in the Association or with respect to the Development and shall not be subject to any further assessments imposed by the Association and payable after the date of such deeding.

(b) In the event that any part of a dwelling is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and if the owner of such dwelling responsible for the maintenance and repair of such dwelling elects to restore the remainder of the dwelling such owner making such election shall restore such remainder of such dwelling as nearly as practicable to the same condition it was in prior to such taking or conveyance and is accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work of restoration shall be commenced promptly following such taking or conveyance and shall be carried through diligently to conclusion.

ARTICLE VIII
ADMINISTRATION

8.01 Common Areas. The Association, subject to the rights of Declarant and the rights and duties of the owners set forth in this Declaration and the By-Laws of the Association, shall be responsible for the exclusive management and control of the common areas and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions thereof. Except to the extent otherwise required by the provisions of the South Carolina Code relating to non-profit corporations all matters pertaining to this Declaration, the By-Laws, or the Association may be exercised by the Board of Directors, acting through the officers of the Association, without any further consent or action on the part of the owners. As provided in Section 12.01 hereof and notwithstanding another provision to the contrary contained in any instruments evidencing or establishing the Development, Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (i) the expiration of twenty-five (25) years after the date of the recording of this Declaration; or (ii) the surrender by Declarant of the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and recorded by Declarant. Each owner, by acceptance of a deed to or other conveyance of a lot or dwelling vests in Declarant such authority to appoint and remove directors and officers of the Association as provided by this Section 8.01 and by Section 12.01 hereof.

8.02 Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the South Carolina Code relating to non-profit corporations, this Declaration, the By-Laws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies among the South Carolina Code, this Declaration, the By-Laws, or the Articles of Incorporation, the provisions of the South Carolina Code, this Declaration, the By-Laws and the Articles of Incorporation, in that order, shall prevail, and each owner of a lot or dwelling by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Association shall include, but shall not be limited to, the power to purchase one or more lots and/or dwellings and to hold, lease,

mortgage, sell, and convey the same. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others , as a common expense or by billing directly to lots or dwellings to furnish trash collections, water, sewer, and/or security service for the common areas and/or the lots and dwellings. Notwithstanding the foregoing provisions of this Section 8.02 or any other provision of this Declaration to the contrary, for so long as Declarant shall own any lot or dwelling primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage, or hypothecate all or any portion of the common areas.

8.03 Agreements. Subject to the prior approval of Declarant for so long as Declarant owns a lot or dwelling primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development, all agreements and determinations lawfully authorized by the Board of Directors shall be binding upon all owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Development or the privilege of possession and enjoyment of any part of the Development; and in performing its responsibilities hereunder, the Association, through its Board of Directors, shall have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board of Directors. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be a common expense. During the term of such management agreement, such manager may, if authorized by the Board of Directors, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers or members of the Association by this Declaration or the By-Laws. Such manager may be an individual, corporation, or other legal entity, as the Board of Directors shall determine, and may be bounded in such a manner as the Board of Directors may require, with the cost of acquiring any such bond to be a common expense. In addition, the Association may pay for, and the Board of Directors may hire and contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Association.

8.04 Management Agreement. Bull Point Plantation Company or an affiliate shall be employed as the manager of the Association and the Development for such period of time as Declarant has the right to appoint and remove officers and directors of the Association, with the option on the part of Bull Point Plantation Company or its affiliates to renew such employment for three (3) successive one year terms from and after the termination of such appointment and removal right. Every grantee of any interest in the Development by acceptance of a deed or other conveyance of such interest, shall be deemed to ratify such management agreement.

8.05 Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association. The shares of the owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a lot or dwelling also transfers the membership in the Association which is an appurtenance to such lot or dwelling.

8.06 Rules and Regulations. As provided in Article XII hereof, the Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the lots, dwellings, and common areas, which rules and regulations shall be consistent with the rights and duties established by this Declaration.

ARTICLE IX
ASSESSMENTS

9.01 Purpose of Assessments. The assessments for common expenses and limited common expenses provided for herein shall be used for purposes including, but not limited to: repairing private streets (except those located within a privately owned lot), walkways and like community areas, private lighting systems, storm drainage and other non-publicly owned or political bodies' grounds, maintenance building(s) and related property, security and cable television lines, maintaining the common waterfront, lagoons and other bodies of water in a clean and orderly condition, repairing damage caused by common area erosion, replacing any existing landscaping; providing for pest control when needed; and for the general purposes of prompting the recreation, health, safety, welfare, common benefit, and enjoyment of the owners and occupants of the Development, and maintaining the Development and preservation of an attractive community appearance, and, maintaining the privacy, security and general safety of the owners and occupants of the Development; all as may be more specifically

authorized from time to time by the Board of Directors. The limited common assessments for common expenses shall be used for upkeep and maintenance of the limited common elements as designated by the Declarant.

9.02 Creation of Lien and Personal Obligation of Assessments. Each owner of a lot or dwelling, 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: (a) annual assessments, such assessments to be established and collected as provided in Section 9.03 hereof, (b) special assessments, such assessments to be established and collected as provided in Section 9.04 hereof, (c) individual or specific assessments against any particular lot or dwelling which are established pursuant to the terms of this Declaration, including, but not limited to, fines as may be imposed against such lot or dwelling in accordance with Article XII hereof. Any such assessments or recreational charges, together with late charges, simple interest at the rate of eighteen (18%) percent per annum, or at such other maximum interest rate as established by South Carolina law, and court cost sand attorneys' fees incurred to enforce or collect such assessments or recreational charges, shall be an equitable charge and a continuing lien upon the lot or dwelling, the owner of which is responsible for payment. Each owner shall be personally liable for assessments or recreational charges coming due while he is the owner of a lot or dwelling, and his grantee shall take title to such lot or dwelling 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 or recreational charges shall not apply to the holder of any first priority institutional mortgage or to the holder of any mortgage securing a loan made by Declarant, its affiliates, successors, or assigns, and who takes title to a lot or dwelling through foreclosure or to any purchaser of such lot or dwelling at such foreclosure sale. In the event of co-ownership of any lot or dwelling, all of such co-owners shall be jointly and severally liable for the entire amount of such assessments and recreational charts. Assessments and recreational charges shall be paid in such manner and on such dates as may be fixed by the Board of Directors, provided that unless otherwise provided by the Board, the annual assessments shall be paid in equal monthly installments.

9.03 Computation of Annual Assessments. Each owner of a lot and each owner of a dwelling shall pay the Association the sum of SEVEN HUNDRED FIFTY AND NO/100 ($750.00) DOLLARS per year per lot or dwelling.

From and after January 1, 1995, it shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated common expenses during the coming year, such budget to include a capital

contribution or reserve account if necessary for the capital needs of the Association. The annual assessment for each lot and/or dwelling is equal to the total annual budget divided by the total number of lots. The board shall cause the budget and the proposed total of the annual assessments to be levied against lots, dwellings or other commercial or business buildings as may be required for the following year to be delivered to each owner at least fifteen (15) days prior to such meeting. Upon the addition of the additional property or any portion thereof to the Development, assessments shall continue to be equal and the lots and dwellings being added to the Development shall thenceforth pay assessments which are equal to those imposed upon lots and dwellings previously in the Development. In such event, the Association's budget shall be accordingly revised by the Board, without the necessity of approval by the owners, to include common expenses and assessments related to such additional lots and dwellings. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either (i) Declarant, for so long as Declarant has the authority to appoint and remove directors and officers of the Association, or (ii) a vote of a majority of the votes of the owners who are voting in person or by proxy at such meeting. Notwithstanding the foregoing, in the event the proposed budget is not approved or 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 assessments in effect for the then current year shall be increased in proportion to the percentage increase, if any, for the then current year, in the Consumer Price Index (all Urban Consumers, United States City Average, All Items 1957-59=100), or its successor index, or at the option of the Board may be increased up to fifteen (15%) percent of the maximum authorized payment for the previous year, 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 Section 9.04 hereof. The common expenses to be funded by the annual assessments may include, but shall not necessarily be limited to, the following:

(i) management fees and expenses of administration, including legal and accounting fees;

(ii) utility charges for utilities serving the common areas and charges for other common services for the Development, including trash collection and security services, if any such services or charges are provided or paid by the Association.

(iii) the cost of any policies of insurance purchased for the benefit of all the owners and the Association as required or permitted by this 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;

(iv) the expenses of maintenance, operation, and repair of those portions of the common areas which are the responsibility of the Association under the provisions of this Declaration;

(v) the expenses of the Architectural Review Board which are not defrayed by plan review charges;

(vi) ad valorem real and personal property taxes assessed and levied against the common areas;

(vii) the expenses for conducting recreational, cultural, or other related programs for the benefit of the owners and their families, tenants, guests, and invitees;

(viii) 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 dwellings.

(ix) 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 form 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.

(x) the establishment of a mosquito and tick control program; and

(xi) for such further items that the Board may, in its discretion, deem necessary.

9.04 Special Assessments. In addition to the annual assessments authorized above, the Association, acting through its Board of Directors, may levy, in any assessment year, special assessments for common expenses, applicable to that year only, provided that except as otherwise permitted in Sections 6.02 and 7.01 hereof, any such assessment shall be approved by (i) Declarant, for so long as Declarant owns any lot or dwelling primarily for the purpose of sale or has the unexpired option to

add the additional property or any portion thereof to the Development, and (ii) by a majority of the votes of the owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the provisions of Section 9.06 hereof. The Board of Directors may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted. Such special assessments are to be pro-rated among the lots and dwellings equally as provided with respect to annual assessments.

9.05 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 or dwellings. The individual assessments provided for in this Section 9.05 shall be levied by the Board of Directors and the amount and due date of such assessments so levied by the Board shall be as specified by the Board.

9.06 Limited Common Element Assessments. Any expenses of the Association for the maintenance and upkeep of limited common elements which shall be assessed against the owners designated to have the right and use of the limited common element.

9.07 Notice of Meeting and Quorum. Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized under Section 9.03 and 9.04 hereof, shall be sent to all members not less than fifteen (15) days nor more than forty-five (45) days in advance of such meetings. With respect to annual meetings, the presence of members or proxies entitled to cast over fifty (50%) percent of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be the presence in person or by proxy of members having one-third (1/3) of the total votes of the Association. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

9.08 Liens. All sums assessed against any lot or dwelling pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such lot or dwelling in favor of the Association. Furthermore, all recreational charges which are charged by an owner, his family, tenants, or guests with respect to his use or the use by his family, tenants, or guests of the recreational amenities shall be the personal obligation of such owner and shall be an equitable charge and continuing lien against the lot or dwelling of such owner. Such liens shall be superior to al other liens and encumbrances on such lot or dwelling except only for (i) liens of ad valorem taxes, and (ii) liens for all sums unpaid on a first

priority institutional mortgage or on any mortgage to Declarant, 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 thc contrary, the subordination of assessments and recreational charges to the lien of such mortgages shall only apply to such assessments and recreational charges which have become due and payable prior to a foreclosure. All other persons acquiring liens or encumbrances on any lot or dwelling after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments and recreational charges as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

9.09 Effect of Non-payment; Remedies of the Association. Any assessments or recreational charges of any owner or any portions thereof which are not paid when due shall be delinquent. Any assessments or recreational charges delinquent for a period of more than ten (10) days after the date when due shall incur a late charge in an amount as may be determined by the Board from time to time and shall also commence to accrue simple interest at the rate of eighteen (18%) percent per annum. A lien and equitable charge as herein provided for each assessment or recreational charge shall attach simultaneously as the same shall become due and payable, and if an assessment or recreational charge has not bee paid within thirty (30) days, the entire unpaid balance of the assessment or recreational charge may be accelerated at the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such assessment or recreational charge shall include the late charge established by the Board of Directors, interest on the principal amount due at the rate of eighteen (18%) percent per annum, 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 or recreational charge 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 or dwelling, vests in the Association and its agents the right and power to bring all actions against him personally for the collection of such assessments and recreational charges 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 or dwelling 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 and recreational charges provided for herein, including by way of illustration but not limitation, non-use of the common areas or abandonment of his lot or dwelling, and an owner shall remain

personally liable for assessments, recreational charges, interest, and late charges which accrue prior to a sale, transfer, or other conveyance of his lot or dwelling.

9.10 Certificate. The Treasurer, any Assistant Treasurer, or the manager of the Asscciation 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 said Treasurer, Assistant Treasurer, or manager setting forth whether the assessments and recreational charges for which such owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest, and other penalty charges. Such certificate shall be conclusive evidence of payment of any assessments and recreational charges stated therein.

9.11 Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each lot and dwelling on the day on which such lot or dwelling is conveyed to a person other than Declarant and shall be due and payable in such manner and on such schedule as the Board of Directors may provide. Annual assessments and any outstanding special assessments shall be adjusted for such lot or dwelling according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such lot or dwelling is first conveyed. Annual and special assessments for lots and dwellings in portions of the additional property hereafter submitted to the terms of this Declaration shall commence with respect to each such lot and dwelling on the later of (i) the day on which such lot or dwelling is conveyed to a person other than Declarant or (ii) the day of the recording of the amendment to the Declaration so submitting such parcels, and annual and special assessments for each such lot and dwelling shall be adjusted according to the number of months then remaining in the fiscal year of the Association and the number of days then remaining in the month in which such assessments commence. Anything contained herein to the contrary notwithstanding, Declarant shall not be responsible for the payment of annual or special assessments on lots or dwellings which it or its affiliates own and which do not contain occupied residences, provided that Declarant covenants and agrees to pay annual and special assessment for each lot and dwelling owned by Declarant or an affiliate and containing occupied residences. Furthermore, Declarant shall fund any deficit which may exist between assessments and the annual budget of the Association for so long as Declarant has the authority hereunder to appoint and remove directors of the Association, provided. however, that the budget, assessments, and deficit, if any, shall be annually reviewed by Declarant, and the Board of Directors, and during such period Declarant's obligation for funding deficits shall only be up to the amount of the Association's budget.

ARTICLE X
ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

10.01 Purpose. In order to preserve the natural setting and beauty of the Development, to establish and preserve a harmonious and aesthetically pleasing design for the Development, and to protect and promote the value of the Development, the lots and dwellings and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article X. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article X.

10.02 Architectural Review Board. The Board of Directors shall establish the Architectural Review Board which shall consist of up to five (5) (but not less than three (3)) members, all of whom shall be owners and who may or may not be members of the Board of Directors, provided that prior to the termination of Declarant's right to appoint and remove officers and directors of the Association, such members do not have to be owners. The regular term of office for each member shall be one year, coinciding with the fiscal year of the Association. Any member appointed to the Board may be removed with or without cause by the Board at any time by written notice of such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. Notwithstanding the foregoing to the contrary, any member appointed to the Architectural Review Board by the Board shall be subject to the prior approval of Declarant until the date which is three (3) years from and after the date of which Declarant's right to appoint and remove officers and directors of the Association is terminated. The Architectural Review Board shall elect a chairman and he, or in his absence, the vice chairman, shall be the presiding officer at its meetings. The Architectural Review Board shall meet at least once in each calendar month, as well as upon call of the chairman, and all meetings shall be held at such places as may be designated by the chairman. Three (3) member shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or a proxy at a meeting of the Architectural Review Board shall constitute the action of the Architectural Review Board on any matter before it. The Architectural Review Board is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Architectural Review Board in performing its functions set forth herein. Each member of the Architectural Review Board may be paid a stipend or honorarium as from time to time determined by the Board.

10.03 Permitted Improvements. No improvements of any nature whatsoever shall be constructed, altered, added to, or maintained upon any part of the Development, except (i) for

dwellings and other improvements which are constructed by Declarant, (ii) such improvements as are approved by the Architectural Review Board in accordance with this Article X, or (iii) improvements which pursuant to this Article X do not require the consent of the Architectural Review Board.

10.04 Construction of Improvements.

(a) All buildings, structures, or other improvements (excepting sidewalks and driveways) on or with respect to any lot or dwelling shall be located only within the setback lines specified by guidelines established by the Architectural Review Board, provided that the Architectural Review Board shall be empowered to grant variances with respect to such setback lines. To assure that dwellings and other structures will be located so that the maximum view, privacy, and breeze will be available to each dwelling or structure, dwellings and structures will be located with regard to the topography of each lot and dwelling taking into consideration the location of trees and vegetation and other aesthetic and environmental considerations, as well as the precise site and location of any other dwellings or structures within the Development.

(b) No construction of improvements on any lot or dwellings shall be undertaken or conducted on any Saturdays, Sundays, or holidays as established by the Architectural Review Board except for (i) construction activities of Declarant, (ii) emergency situations involving the potential loss, injury, or damage to person or property, and (iii) as otherwise permitted by the Architectural Review Board.

(c) The Architectural Review Board, in its sole discretion, may require that any contractor and/or subcontractor, exclusive of those of Declarant, for any planned improvements within the Development post payment and/or performance bonds with the Architectural Review Board to assure that such contractor or subcontractor shall satisfactorily complete such improvements, such bonds to be in the name of the Association and to be in form and amount satisfactory to the Architectural Review Board.

Furthermore, the Architectural Review Board, in its sole discretion, may require that an owner place in escrow with the Architectural Review Board a sum of no more than FIVE THOUSAND AND NO/100 ($5,000.00) DOLLARS in order to assure the completion of all improvements, including landscaping, in accordance with approved plans and specifications, within the time periods provided in this Section 10.04 and in Section 10.06 hereof. The exterior of any improvements permitted by this Declaration shall be completed within one year after the construction of same shall have been commenced, except where the Architectural Review Board allows for an extension of time because such completion within such time is

impossible or would result in great hardship to the owner or builder thereof due to strikes, national emergencies, fires, floods, lightning, earthquakes, or other casualties. In the event that such improvements or landscaping are not completed in accordance with approved plans and specifications within the provided periods, the Architectural Review Board shall be entitled to collect on or enforce any payment or performance bonds required hereunder so as to ensure the proper completion of any such improvements. Furthermore, the Architectural Review Board shall be entitled to retain any sums so held in escrow as a penalty for such failure to complete, and such sums shall be remitted to and shall be the property of the Association. Any such sums so held in such escrow shall, at the discretion of the Architectural Review Board, be invested so as to earn interest, and any interest earned thereon shall be paid to the owner making such escrow deposit, if his escrow deposit is refunded, or, if remitted to the Association, shall be the property of the Association.

(d) Dwellings may not be temporarily or permanently occupied until the exteriors thereof have been completed. No temporary house, shack, tent, barn, or other outbuilding shall be permitted on any lot or dwelling at any time, except as provided in Section 10.19 hereof and except for temporary structures for social functions as may be permitted by rules and regulations promulgated by the Board. during the continuance of construction by an owner such owner shall require its contractors to maintain the lot or dwelling in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers. Upon completion of construction, such owners shall cause its contractors to immediately remove all equipment, tools, and construction material and debris form the lot or dwelling on which such construction has been completed.

10.05 Architectural Approval. To preserve the architectural and aesthetic appearance of the Development, no construction of improvements of any nature whatsoever shall be commenced or maintained by any owner, other than Declarant, with respect to the construction or exterior of any dwelling or with respect of any other portion of the Development, including, but not limited to, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, docks, wharves, bulkheads, boat slips, boathouses, exterior lights, garages, guest or servants' quarters, stables or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including if required by the Architectural Review Board, a survey showing the location of trees of six (6) inches in diameter at a height of six

(6) feet, live oaks and other significant vegetation on such lot or dwelling showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external design, location, and appearance in relation to surrounding structures, vegetation and topography by the Architectural Review Board. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Architectural Review Board, and the other copy shall be returned to the Owner marked "approved" or "disapproved". The Architectural Review Board shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys retained in accordance with the terms hereof. The fee initially established for such review shall be ONE HUNDRED AND NO/100 ($100.00) DOLLARS for submission, and the Architectural Review Board shall have the right to increase this amount from time to time. Notwithstanding the foregoing, an owner may make interior improvements and alterations within his dwelling without the necessity of approval or review by the Architectural Review Board. The Architectural Review Board shall have the sole discretion to determine whether plans and specification submitted for approval are accepted to the Association. In connection with approval rights and to prevent excessive drainage or surface water run-off, the Architectural Review Board shall have the right to establish a maximum percentage of a lot or dwelling which may be covered by dwellings, buildings structures, or other improvements, which standards shall be promulgated on the basis of topography, percolation rate of the soil, soil types and conditions, vegetation cover, and other environmental factors. Following approval of any plans and specifications by the Architectural Review Board, representatives or agents of the Architectural Review Board shall have the right during reasonable hours to enter upon and inspect any lots or dwelling, or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the Architectural Review Board shall determine that such plans and specifications have not been approved or are not being complied with, the Architectural Review Board shall be entitled to enjoin further constructions and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In the event the Architectural Review Board fails to approve or disapprove in writing any proposed plans and specifications within forty-five (45) days after such plans and specification shall have been submitted, such plans and specifications will be deemed to have been expressly approved. Upon approval of plans and specifications, no further approval under this Article X shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.j. clearing and grading, pouring of footings, etc.) or unless such plans specifications are materially altered or changed. Refusal of

approval of plans and specifications may be based by the Architectural Review Board upon any grounds which is consistent with the objects and purposes of this Declaration, including purely aesthetic consideration, so long as such grounds are not arbitrary or capricious.

10.06 Landscaping Approval. To preserve the aesthetic appearance of the Development, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed by any owner other than Declarant, unless and until the plans therefor have been submitted to and approved in writing by the Architectural Review Board. The provisions of Section 10.05 hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. Such plans shall include a calculation of the area to be covered by grass lawns versus the area to be left in a natural state, and the Architectural Review Board shall be entitled to promulgate standards with respect to such coverages. Furthermore, no hedge or shrubbery planting or newly planted tree(s) which obstructs sight-lines at elevations as established by the Architectural Review Board shall be placed or permitted to remain on any lot or dwelling within the Development.

No owner other than Declarant, shall be entitled to cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of six (6) inches or more at a point of six (6) feet above ground level, without obtaining the prior approval of the Architectural Review Board, provided that dead or diseased trees which are inspected and certified as dead or diseased by the Architectural Review Board or its representatives, as well as other dead or diseased shrubs, bushes, or other vegetation, shall be cut and removed promptly from any lot or dwelling by the owner of such lot or dwelling. All of the landscaping of lots and dwellings must be completed within ninety (90) days of issue of certificate of occupancy.

All landscaping shall be maintained by the owner to the level equal to or greater than the landscape plan originally approved by the Architectural Review Board. Such maintenance shall include watering, weeding, using herbicides, removing dead branches, mowing grass and replenishing mulches (pine straw, bark, etc.) so as to maintain a neat appearance.

10.07 Approval Not a Guarantee. No approval of plans and specifications and no publication of architectural standards shall be construed as representing or implying that such plans, specifications or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any dwelling or other improvement built in accordance therewith will be designed and/or built in a good and workmanlike manner. Neither

Declarant, the Association, nor the Architectural Review Board shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article X, nor any defects in construction undertaken pursuant to such plans and specifications.

10.08 Use of Lots and Dwellings. Except as permitted by Section 3.09 and 10.20 hereof, each lot and dwelling shall be used for residential purposes only, and no trade or business of any kind may be carried on therein. The use of a portion of a dwelling as an office by an owner or his tenant shall not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic, provided that in no event shall any lot or dwelling be used as the office of or storage area for any building contractor or real estate developer. Furthermore, the operation of the recreational amenities, foods and beverage facilities, if any, without limitation the charging and collecting of membership, garden plot or mini-farm rentals, dock and boat slip fees, tennis court, and the operation in common areas for which a fee may be charged, shall be expressly permitted within the Development exclusive of lots or dwellings and shall not be deemed to be a violation of the terms of this Section 10.08. Lease or rental of a single family dwelling shall not be considered to be a violation of this covenant so long as the lease is in compliance with rules and regulations as may be promulgated and published from time to time by the Board of Directors. All leases hall be required to be in writing, and, prior to the commencement of any such lease, the owner shall provide the Secretary of the Association and the managing agent of the Association, if any, with copies of such lease. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration and the rules and regulations adopted hereunder;

10.09 Boats and Watercraft. a). No persons shall be entitled to live or reside on any yacht, boat, or other watercraft from time to time docked, moored, or otherwise located within the Development, provided that the Board of Directors may establish rules and regulations permitting the temporary occupancy of any such yachts, boats, or other watercraft. In addition, no sewage effluent, treated or otherwise, shall be discharged from any yacht, boat, or other watercraft into any lagoon, pond, or other body of water within or adjacent to the Development. Owners and their tenants shall not be entitled to lease or rent any boat slips, boathouses, or wharf, dock, or bulkhead space adjacent to lots or dwellings to persons other than other owners or their tenants. b). The Board of Directors shall establish rules and regulations for the use of community docks and other facilities by the owners and their guests.

10.10 Signs. Except as may be required by legal proceedings, no signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of

any improvements, trees, or utility structures located within the Development, without the express written permission of the Architectural Review Board. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the Architectural Review Board and may be arbitrarily withheld.

Notwithstanding the foregoing, the restrictions of this Section 10.10 shall not apply to Declarant or its assigns. In addition, the Board of Directors, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on any portion of the common areas and within those easement areas established in Section 3.15 hereof.

10.11 Mail Boxes. All mail boxes shall be constructed in compliance with guidelines established by the Architectural Review Board which may be amended from time to time by the Architectural Review Board.

10.12 Antennas. Antennas guidelines shall be established by the Architectural Review Board and may be amended from time to time by the Architectural Review Board. No radio or television signal nor any electro-magnetic radiation is permitted to originate from any lot which may interfere with the receipt of any television or radio signal within the Development.

10.13 Security Systems. Inasmuch as Declarant or the Association shall install a central security system within the Development, with the capability of providing security services to each dwelling and other buildings within the Development, each owner shall install and maintain such security system to and within each dwelling and other buildings. Declarant assumes no liability for any installed security systems.

10.14 Water Wells and Septic Tanks. Water wells and septic tanks shall be installed in compliance with the South Carolina Department of Health and Environmental Control regulations and other applicable governmental regulations. The location of the water well and septic tanks shall be submitted to the Architectural Review Board at the time of submission of plans for construction of a dwelling and shall be subject to the approval of the Architectural Review Board.

10.15 Pets.

(a) With the exception of Declarant and as provided in Section 10.15(b), no animals, livestock, birds, or poultry of any kind shall be raised, bred, or kept by any owner, his family, tenants or guests, upon any portion of the Development, provided that a reasonable number of generally recognized house pets may be kept in dwellings, subject to rules and regulations adopted by the Association, through its

Board of Directors, and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the common areas. Pets shall be under leash at all times when walked or exercised in any portion of the common areas or on property now owned by a pet owner, and no pet shall be permitted to leave its excrement on any portion of the common areas, and the owner of such pet shall immediately remove the same. Upon the written request of any owner, the Board of Directors may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 10.15(a), a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board shall have the right to require the owner of a particular pet to remove such pet from the Development if such pet is found to be a nuisance or to be in violation of these restrictions. The Board of Directors shall have the further right, subject to Section 12.03 hereof, to fine any owner (in an amount not to exceed FIFTY AND NO/100 ($50.00) DOLLARS per violation for the violation of these pet restrictions by such owner, his family, tenants or guests, and an owner shall be liable to the Association for the cost or repair of any damage to the common areas caused by the pet of such owner, his family, tenants or guests, or of an occupant of such owner's lot or dwelling. Any such fine or cost of repair shall be added to and become a part of the portion of any assessment next coming due to which such lot or dwelling and its owner are subject.

(b) Owners shall have the right to own and stall horses on the subject property subject to rules and regulations as established by the Board of Directors.

10.16 Hunting and Fishing. No hunting will be allowed on property dedicated to the within Declaration. Fishing will be allowed in the Development in areas from time to time designated by Declarant or the Board of Directors.

10.17 Limitations as to Use of Bodies of Water. The lagoons, lakes, ponds and other bodies of water within the Development are intended for the use and enjoyment of the Declarant and the Association, their guests and invitees and the enhancement of the Development. To provide for the full enjoyment of the aforesaid water courses and bodies of water and to preserve water quality and to minimize erosion due to water turbulence, no boats and no combustion type engines shall be operated in said water courses or bodies of water within the Development without the written consent of Declarant, so long as Declarant owns a lot or dwelling primarily for the purpose of sale or has the unexpired option to add additional property or any portion thereof to the

Development, and after the Declarant has sold all its lots or dwellings and has no further additional property for development, the Association, which permission may be arbitrarily withheld.

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Declarant retains ownership of all bodies of water referred to above and expressly reserves unto itself, its successors and assigns, every reasonable use and enjoyment of said lagoons, water courses and other bodies of water in a manner not inconsistent with this Declaration. It is further expressly recognized that said lagoon and bodies of water perform valuable drainage functions requiring water levels to be raised and lowered from time to time in connection with the Development. Declarant expressly retains all rights to adjust water levels as requirements dictate.

Declarant shall have the right at its sole discretion, to deed any lagoons, lake or pond to the Association. The use and enjoyment of the seventeen (17) acre lake and/or any other body of water shall be subject to the rules and regulations as established by the Declarant and the Association.

10.18 Nuisances. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Development, nor shall any nuisance or odors be permitted to exist or operate upon or arise from the Development, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Development. Noxious or offensive activities shall not be carried on in any lot or dwelling or in any part of the common areas, and each owner, his family, tenants, guests, invitees, servants, and agents shall refrain from any act or use of a lot or dwelling or of the common areas which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the occupants of other portions of the Development or which could result in a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except fire alarm devices used exclusively for such purposes, shall be located, used or placed within the Development. Nor shall any materials such as peat bags, hose reels, left over lumber, etc. be allowed to be stored in outside areas within public view. Also, without limiting the generality of the foregoing, except within screened service yard, air drying of clothes is prohibited, nor shall any clothing, rugs or other items be hung over any railing, fence, hedge or wall.

10.19 Motor Vehicles, Trailers, Boats, Etc. Each owner shall provide for parking of their automobiles off streets and roads within the Development after the issuance of a certificate of occupancy of the dwellings. Subject to the terms of this Section

10.19 there shall be no outside storage of parking upon any lot or dwelling within any portion of the common areas (other than areas provided therefor within the common areas, if any) of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), commercial vehicles of any type,k camper, motorized camper or trailer, boat or other watercraft (other than in boat slips or other docking facilities) boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of combustion driven or towed transportation devices. Furthermore, the Board of Directors may at any time prohibit mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, and other vehicles, or any of them, from entering and/or being kept, placed, stored, maintained, or operated upon any portion of the Development if in the opinion of the Board of Directors such prohibition shall be in the best interests of the Development. No owners or other occupants of any portion of the Development shall repair or restore any vehicle of any kind upon or within any lot or dwelling within any portion of the common areas, except (i) within enclosed garages or workshops or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. In Declarant's discretion, rental storage space for the above mentioned vehicles, boats, etc. may be provided in Declarant's maintenance area.

10.20 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of lots and/or dwellings or the developing of lots, dwellings, common areas, and additional property, including, without limitation, the installation and operation of sales, construction trailers, and temporary residential trailers and offices, signs and model dwellings, provided that the location of any construction trailers of any assignees of Declarant's rights under this Section 10.20 shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use dwellings as model residences, and to use any dwelling as an office for the sale of lots and/or dwellings and for related activities.

10.21 Multiple Ownership. No lot or dwelling may be owned by more than four (4) owners at any one time. For purposes of this restriction, a married couple constitutes a single owner. Furthermore, no lots or dwellings may be sold under any time-sharing, time-interval, or similar right-to-use programs. Notwithstanding the foregoing to the contrary, a lot or dwelling may be owned by a corporation or partnership so long as such corporation or partnership does not have more than four (4) designated users; provided, however, that the foregoing prohibition

shall not apply to Declarant, its affiliates, or their respective successors or assigns. Designated user(s) shall be filed with the Board of Directors upon closing of said lot and shall be updated annually.

10.23 Repurchase Option. Subject to the provisions of Section 13.06 hereof, Declarant hereby reserves unto itself and its successors and assigns the right and option to purchase any lot or dwelling within the Development which is offered for sale by the owner thereof, such option to be at the price and on the terms and conditions of any bona fide offer for such lot or dwelling which is acceptable to such owner and which is made in writing to such owner by a third party. Upon the receipt of any such offer by an owner, such owner shall promptly submit a copy of the same to Declarant, and Declarant shall have a period of thirty (30) days from and after the presentation of such offer to Declarant in which to exercise its purchase option by giving such owner written notice of such exercise. If Declarant fails to respond or to exercise such purchase option within said thirty (30) day period, Declarant shall be deemed to have waived such purchase option. If Declarant declines to exercise such option, Declarant shall execute an instrument evidencing its waiver of its repurchase option, which instrument shall be in recordable form. In the event that Declarant does not exercise its purchase option and such sale to a third party is not consummated on such terms within six (6) months of the date in which the offer is transmitted to Declarant, the terms and limitations of this Section 10.22 shall again be imposed upon any sale by such owner. If Declarant shall elect to purchase such lot or dwelling, the transaction shall be consummated with sixty (60) days following delivery of written notice by Declarant to such owner of Declarant's decision to so purchase such lot or dwelling.

10.22 Garages. All detached dwellings are required to have a covered carport or garage in accordance with guidelines as are established by the Architectural Review Board and as may be amended from time to time by the Architectural Review Board.

ARTICLE XI
SPECIAL RESTRICTIONS AFFECTING ALL WATERFRONT, LAGOON AND MARSHLAND AREAS

11.01 Conditions for Erection of Docks and Decks. Owners of lots or dwellings fronting on the navigable water may erect docks which are approved by Declarant upon the property located between the outer boundary of their lots or parcels and contiguous to same and the low water mark upon complying with the following terms and conditions:

(a) Complete plans and specifications, including site, color or finish must be submitted to the Architectural Review Board, with the written consent of Declarant, so long as

Declarant owns a lot or dwelling primarily for the purpose of sale or has the unexpired option to add additional property or any portion thereof to the Development.

(b) Written approval of the Architectural Review Board, with the written consent of Declarant, so long as Declarant owns a lot, dwelling primarily for the purpose of sale or has the unexpired option to add additional property or any portion thereof to the Development is obtained.

(c) Written approval of any local, state or federal governmental departments or agencies which have jurisdiction over construction in or near salt marshlands must be secured.

Any alteration of the plans and specifications or of the completed structure must also be submitted to the Architectural Review Board in writing and the Architectural Review Board's approval in writing must be similarly secured prior to construction, the Architectural Review Board reserving the same rights to disapprove alterations as it retains for disapproving the original structure.

11.02 Maintenance of Docks and Decks. All lot or dwelling owners who construct or cause to be constructed said docks, must maintain said structures in good repair and keep the same safe, clean and orderly in appearance at all times, and further agree to paint or otherwise treat with preservatives all wood or metal located above the high water mark, exclusive of pilings and to maintain such paint or preservatives in an attractive manner. The Architectural Review Board shall be the judge as to whether the docks are safe, clean, and orderly in appearance, and properly painted or preserved in accordance with reasonable standards. Where the Architectural Review Board, with the written consent of Declarant, so long as Declarant owns a lot or dwelling primarily for the purpose of sale or has the unexpired option to add additional property or any portion thereof to the Development, notifies the particular lot or dwelling owner in writing that said dock fails to meet acceptable standards, said lot or dwelling owner shall thereupon remedy such conditions within thirty (30) days to the satisfaction of the Architectural Review Board, and that failing to so remedy such conditions, the lot or parcel owners hereby covenant and agree that the Architectural Review Board, with the written consent of Declarant, so long as Declarant owns a lot or dwelling primarily for the purpose of sale or has the unexpired option to add additional property or any portion thereof to the Development, may make the necessary repairs, but is not obligated to make such repairs or take such actions as will bring the said dock up to acceptable standards, all such repairs and actions to be at the expense, solely of the lot owner in question and the Architectural Review Board, with the written consent of Declarant, so long as Declarant owns a lot or dwelling primarily for the purpose of sale or has the unexpired option to

add additional property or any portion thereof to the Development, shall be entitled to reimbursement for such expenditures in the same manner and under the same terms as is provided in Section 9.09.

11.03 Entry by Board of Directors, Architectural Review Board or Declarant. Whenever the Board of Directors, Architectural Review or Declarant is permitted by these covenants to correct, repair, clean, preserve, clear out or do any action on the property of any lot or dwelling, or on the easement areas adjacent thereto, entering the property and taking such action shall not be deemed a trespass.

ARTICLE XII
RULE MAKING

12.01 Rules and Regulations. Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of lots, dwellings and the common areas and facilities located thereon. 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, cancelled, 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 Declarant, for so long as Declarant owns any lot or dwelling primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development.

12.02 Authority and Enforcement. Subject to the provisions of Section 12.03 hereof, upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments or recreational charges, 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 or dwelling, 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 (ii) 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 recreational amenities, 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, guest, 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.

12.03 Procedure. Except with respect to the failure to pay assessments or recreational charges, 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 Development for violations of the Declaration, the By-Laws, or any rules and regulations of the Association, unless and until the following procedure is follows:

(a) Written demand to cease and desist from an alleged violation shall be served upon the owner responsible for such violation specifying:

(i) The alleged violation;

(ii) The action required to abate the violation; and

(iii) 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 By-Laws or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

(b) Within twelve (12) 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:

(i) The nature of the alleged violation;

(ii) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;

(iii) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and

(iv) The proposed sanction to be imposed.

(c) The hearing shall be held in an 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 of 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.

ARTICLE XIII
GENERAL PROVISIONS

13.01 Control by Declarant. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BY-LAWS OF THE ASSOCIATION, Declarant hereby retains the right to appoint and remove any member or members of the Board of Directors of the Association and any officer or officers of the Association as provided by and for the term set forth in Section 8.01 hereof. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section 13.01 and the provisions of Section 8.01. Upon the expiration of the period of Declaration's right to appoint and remove directors and officers of the Association pursuant to the provisions of Section 8.01 and this Section 13.01, such right shall pass to the owners, including Declarant if Declarant then owns one or more lots or dwellings, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board of Directors, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

13.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Records of the Office of the Clerk of Court for Beaufort County, South Carolina, without the approval of any owner or mortgagee; provided, however, that, with the exception of the addition of any portion of the additional property to the terms of this Declaration, (i) in the event that such amendment materially alters or changes any owner's right to the use and enjoyment of his lot, dwelling, or the common areas as set forth in this Declaration or adversely affects the title to any lot or dwelling, such amendment shall be valid only upon the written consent thereto by a majority

in number of the then existing owners affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Notwithstanding the foregoing to the contrary, the expiration or termination of the right of Declarant to appoint and remove any directors and officers of the Association shall not terminate Declarant's right to amend the Declaration for the purpose of submitting the additional property or any portion thereof to the provisions of this Declaration as provided in Section 2.02 hereof. Any amendment made pursuant to this Section 13.02 shall be certified by Declarant as having been duly approved by Declarant, and by such owners and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each owner, by acceptance of a deed or other conveyance to a lot or dwelling, agrees to be bound by such amendments as are permitted by this Section 13.02 and further agrees that, if requested to do so by Declarant, such owner will consent to the amendment of this Declaration or any other instruments relating to the Development, (a) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which shall be in conflict therewith, (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any lots or dwellings to this Declaration, (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchase to make or purchase mortgage loans on any lot, dwelling, or other improvements subject tot his Declaration, or (d) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgages on the lots, dwellings, or other improvements subject to this Declaration.

13.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 13.02 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or by members of the Association. Such amendment must be approved by owners holding at least three-fourths (3/4) of the total votes in the Association; provided, however, (i) that

any amendment which materially and adversely affects the security title and interest of any mortgage must be approved by such mortgagee, and (ii) during any period in which Declarant owns a lot or dwelling primarily for the purpose of sale or has the unexpired option under this Declaration to add the additional property or any portion thereof to the Development, such amendment must be approved by Declarant.

(c) The agreement of the required percentage of the owners and, where required, Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Association which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

13.04 Enforcement. Each owner shall comply strictly with the By-Laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to his lot or dwelling, 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 Declarant, the Board of Directors on behalf of the Association, or, in a proper case, by an aggrieved owner. Should 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 this Declaration, the By-Laws, and the rules and regulations 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 that Declarant, the Association, or any aggrieved owner, in addition to 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 Declarant, the Association, or any aggrieved owner in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto nor shall be deemed a waiver of the right to enforce such right, power, or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any

action be brought or maintained by anyone whatsoever against 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 beach, by any person of the provisions of this Declaration, the By-Lass, or any rules and regulations of the Association, however long continued.

13.05 Duration. The provisions of this Declaration shall run with and bind title to the property, shall be binding upon and inure to the benefit of all owners and mortgagees and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect for a period of thirty (30) years from and after the date of the recording of this Declaration, provided that right sand easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewal periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration, if, during the last year of an initial thirty (30) year period or the last year of any ten (10) year renewal period, seventy-five (75%) percent of the total votes of the Association are cast in favor of terminating this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination shall be filed of record in the Records of the Clerk of Court for Beaufort County, South Carolina, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any property, by acceptance of a deed or other conveyance therefore, thereby agrees that the provisions of this Declaration shall run with and bind title to the property as provided hereby.

13.06 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Mrs. Barbara Bush, wife of U.S. President George Herbert Walker Bush.

13.07 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully

effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordnance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record on the Records of the Clerk of Court for Beaufort County, South Carolina. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of South Carolina.

13.08 General and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

13.09 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

13.10 Rights of Third Parties. This Declaration shall be recorded for the benefit of Declarant, the owners, and their mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Declarant and mortgagees as herein provided, the owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

13.11 Notice of Sale, Lease, or Mortgage. In the even an owner sells, leases, mortgages, or otherwise disposes of any lot or dwelling, the owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

13.12 No Trespass. Whenever the Association, Declarant, the Architectural Review Board, and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any

other action within any portion of the Development, the entering thereon and the taking of such action shall not deem to be trespass.

13.13 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States mail, postage pre-paid. All notices to owners shall be delivered or sent to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such owners' respective lots or dwellings. All notices of the Association shall be delivered or sent in care of Declarant to Declarant's main office in Beaufort, South Carolina, or to such other address as the Association may from time to time notify the owners. All notices to Declarant shall be delivered or sent to Declarant's office in Beaufort, South Carolina, or to such other address as Declarant may from time to time notify the Association. Notices to mortgagees shall be delivered or sent to such addresses as such mortgagees specify in writing to the Association.

IN WITNESS WHEREOF, duly authorized officers of the undersigned Declarant have executed this Declaration under seal, this 22nd day of September, 1995.

Signed, sealed and delivered in the presence of:

Clarmaine D. Cato

Barbara W. Shepherd

DECLARANT:

BULL POINT LLC,
A South Carolina Limited Liability Company

BY: Steven E. Kuklad

Its: Managing Partner

BY: Robert L. Woolfson

Its: Managing Partner

ATTEST:

_____

Its: _____

Clarmaine D. Cato

Barbara W. Shepherd

METROPOLITAN PROPERTIES, INC.

BY: Steven E. Kuklad

Its: President

ATTEST:

Roberta A. Wesson
Its: Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me this undersigned witness who, on oath, says that (s)he saw the within named BULL POINT LLC, a South Carolina Limited Liability Company, by its Managing Partners, sign, seal, and as its act and deed deliver the within written Agreement and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

Charmaine D. Cash

SWORN TO and subscribed to before me this 22nd day of September 1995.

Barbara H. Shepherd
Notary Public for South Carolina
My Commission Expires 3-23-99

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me this undersigned witness who, on oath, says that (s)he saw the within named METROPOLITAN PROPERTIES, INC., a South Carolina Corporation, by its President, and its Secretary sign, seal, and as its act and deed deliver the within written Agreement and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

Charmaine D. Cash

SWORN TO and subscribed to before me this 22nd day of September 1995.

Barbara H. Shepherd
Notary Public for South Carolina

My Commission Expires;
3-23-99

EXHIBIT "A"

All that certain piece, parcel or tract of land, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, being that portion of Tomotley Plantation known as Bull Point, consisting of 694.1 acres, more or less, and two out islands containing 18.5 acres and 5.0 acres, as will be more fully shown on that certain plat entitled plat of Tomotley Plantation, Sheldon Township, Beaufort County, South Carolina, prepared by Rod C. Spann, R.L.S., and R. D. Trogdon, Jr., R.L.S., dated March 31, 1981, and recorded in the RMC Office for Beaufort County, South Carolina on January 23, 1985, in Book 32 of Plats, at Page 201.

AND ALSO: **ALL** of Seller's right, title and interest in and to all marshlands, tidelands and freshwater and saltwater wetlands as shown on the above referred to plat of Tomotley Plantation.

LESS AND EXCEPTING THEREFROM, ALL that certain piece, parcel or tract of land, with improvements thereon, containing 15.08 acres and being more particularly described in the Title of Real Estate from Norman H. Volk, as Trustee, (Seller), to the South Carolina Department of Highways and Public Transportation, (Purchaser), dated the 19th day of October, 1992, and recorded in the RMC Office for Beaufort County, South Carolina on March 10, 1993, in Book 620 of Deeds, at Page 1240.

The plat of Tomotley Plantation is incorporated herein and made a part hereof by reference for a more complete description of the 694.1 acre tract, the 18.5 acre tract, the 5.0 acre tract and all marshlands, tidelands and freshwater and saltwater wetlands as shown on the above referred to plat.

EXHIBIT "B"

PHASE I, BULL POINT PLANTATION COMPANY

All those certain pieces, parcels, lots of land located in the Sheldon Township, Beaufort County, South Carolina, containing 53 lots as shown on a plat showing the Bull Point subdivision, Phase I, as section of Tomotley Plantation, Gardner's Corner, prepared by David Gasque, R.L.S., dated September 21, 1995 and recorded in the Office of the RMC for Beaufort County on September 26, 1995, in Plat Book 54 at Page 40. Said plat being incorporated herein and made a part hereof by reference for a more complete description.

D. Kirkland
39

75¢ Cash

1 SEP 25 AM 9:38

BK 805 PG 218
FOLDER#

273

EXHIBIT

2

ARTICLES OF INCORPORATION,
Bull Point Plantation Owners Association, Inc.

Jon Attridge, et al. v. The Board of Directors of
Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Feb 05 2020
REFERENCE ID: 467903

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Filing ID: 200205-1105009

Filing Date: 02/05/2020

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF INCORPORATION
Nonprofit Corporation – Domestic
Filing Fee $25.00

Pursuant to S.C. Code of Laws Section 33-31-202 of the 1976 S.C. Code of Laws, as amended, the undersigned corporation submits the following information

1. The name of the nonprofit corporation is

   BULL POINT PLANTATION OWNERS ASSOCIATION, INC

2. The initial registered office (registered agent's address in SC) of the nonprofit corporation is
   2216 Moss Street

   (Street Address)

   Beaufot, South Carolina 29902

   (City, State, Zip Code)

   The name of the registered agent of the nonprofit corporation at that office is

   WILLIAM E. GAVIGAN

   (Name)

   I hereby consent to the appointment as registered agent of the corporation.

   (Agent's Signature)

3. Check "a", "b", or "c", whichever is applicable. Check only one box.

   a. ☐ The nonprofit corporation is a public benefit corporation.

   b. ☐ The nonprofit corporation is a religious corporation.

   c. ☒ The nonprofit corporation is a mutual benefit corporation.

4. Check "a" or "b" whichever is applicable

   a. ☒ This corporation will have members.

   b. ☐ This corporation will not have members.

5. The principal office of the nonprofit corporation is
   2216 Moss Street

   (Street Address)

   Beaufot, South Carolina 29902

   (City, State, Zip Code)

Form Revised by South Carolina Secretary of State, August 2016
F0014

SC Secretary of State
Mark Hammond

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Feb 05 2020
REFERENCE ID: 467903

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

BULL POINT PLANTATION OWNERS ASSOCIATION, INC

Name of Corporation

oration is either a **public benefit** or **religious corporation** complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation. **If you are going to apply for 501(c)(3) status, you must complete section "a".**

a. ☐ Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

☐ If you choose to name a specific 501(c)(3) entity to which the assets should be distributed, please indicate the name of the selected entity.

OR

b. ☐ If the dissolved corporation is not described in Section 501(c)(3) of the Internal Code, upon dissolution of the corporation, the assets shall be distributed to one or more public benefit or religious corporation or to one or more of the entities described in (a) above.

☐ If you chose to name a specific public benefit, religious corporation or 501(c)(3) entity to which the assets should be distributed, please indicate the name of the selected entity.

7. If the corporation is mutual benefit corporation complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

a. ☒ Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.

b. ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows [See S.C. Code of Laws Section 33-31-202(c)].

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Feb 05 2020

REFERENCE ID: 467903

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

BULL POINT PLANTATION OWNERS ASSOCIATION, INC

Name of Corporation

9. The name and address of each incorporator is as follows (**only one is required, but you may have more than one**).

William E. Gavigan
(Name)

2216 Moss Street
(Business Address)

Beaufot, South Carolina 29902
(City, State, Zip Code)

(Name)

(Business Address)

(City, State, Zip Code)

(Name)

(Business Address)

(City, State, Zip Code)

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles.

William E Gavigan
(Name – only if names in articles)

William E. Gavigan
(Signature of Director)

(Name – only if names in articles)

(Signature of Director)

(Name – only if names in articles)

(Signature of Director)

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Feb 05 2020

REFERENCE ID: 467903

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

BULL POINT PLANTATION OWNERS ASSOCIATION, INC

Name of Corporation

11. Each incorporator listed in #9 must sign the articles

William E. Gavigan
(Signature of Incorporator)

(Signature of Incorporator)

(Signature of Incorporator)

12. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date/time is: 02/28/2020

EXHIBIT

3

ARTICLES OF INCORPORATION, dated September 26, 1995,
ARTICLES OF AMENDMENT, dated July 5, 2006, and
ARTICLES OF AMENDMENT, dated February 4, 2015
(*Bull Point Plantation Property Owners Association, Inc.*)

Jon Attridge, et al. v. The Board of Directors of
Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

Jim Miles
SECRETARY OF STATE
FILED
SEP 2 6 1995
AM 7 8 9 10 11 12 1 2 3 4 5 6 M

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
JIM MILES
NONPROFIT CORPORATION
ARTICLES OF INCORPORATION

1. The name of the nonprofit corporation is Bull Point Homeowners Association, Inc.

2. The initial registered office of the nonprofit corporation is 1700 Sunset Blvd
Street & Number,
West Columbia Lexington SC 29169
City, County, State, Zip Code

The name of the registered agent of the nonprofit corporation at that office is Stancel Kirkland

3. Check (a), (b), or (c) whichever is applicable. Check only one box.

a. [ ] The nonprofit corporation is a public benefit corporation.

b. [ ] The nonprofit corporation is a religious corporation.

c. [x] The nonprofit corporation is a mutual benefit corporation.

4. Check (a) or (b), whichever is applicable:

a. [x] This corporation will have members.

b. [ ] This corporation will not have members.

5. The address of the principal office of the nonprofit corporation is 1700 Sunset Blvd
Street & Address,
West Columbia Lexington SC 29169
City, County, State, Zip Code

6. If this nonprofit corporation is either a public benefit or religious corporation (box a. or b. of ¶ 3. is checked), complete either (a) or (b), whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.

a. [ ] Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of a by the court of common pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

b. [ ] Upon dissolution of the corporation, consistent with law, the remaining assets of the corporation shall be distributed to: _____

_____

7. If the corporation is a mutual benefit corporation (box "c" of ¶ 3. is checked), complete either (a) or (b), whichever is applicable, to describe how the [remaining] assets of the corporation will be distributed upon dissolution of the corporation.

a. [x] Upon dissolution of the mutual benefit corporation the [remaining] assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.

b. [ ] Upon dissolution of the mutual benefit corporation the [remaining] assets, consistent with law, shall be distributed to _____

_____

_____

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See § 33-31-202(c) of the 1976 South Carolina Code, the applicable comments thereto, and the instructions to this form): _____

95-019403BC

9. The name and address (with zip code) of each incorporator is as follows (only one is required):

Name	Address (with zip code)
Stancel E. Kirkland	1700 Sunset Blvd, West Columbia, SC 29169

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

Stancel E Kirkland
Signature of director (only if named in articles)

Signature of director (only if named in articles)

Signature of director (only if named in articles)

11. Each incorporator must sign the articles.

Stancel E Kirkland
Signature of incorporator

Signature of incorporator

Signature of incorporator

FILING INSTRUCTIONS

1. Two copies of this form, the original and either a duplicate original or a conformed copy, must be filed.

2. If space in this form is insufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk which will allow for expansion of space on the form.

3. This form must be accompanied by the filing fee of $25.00 payable to the Secretary of State.

Form Approved by South Carolina
Secretary of State Jim Miles
June 1994

CERTIFIED TO BE A TRUE AND CORRECT COPY AS TAKEN FROM AND COMPARED WITH THE ORIGINAL ON FILE IN THIS OFFICE

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

NONPROFIT CORPORATION
ARTICLES OF AMENDMENT

AUG 14 2006

SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY WITH BLACK INK

Pursuant to the provisions of Section 33-31-1005 of the 1976 South Carolina Code of Laws, as amended, the applicant delivers to the Secretary of State these articles of amendment.

1. The name of the nonprofit corporation is Bull Point Homeowners Association, Inc.

2. Date incorporated September 26, 1995

3. Specify (a) the text of every amendment adopted, and (b) list when each amendment was adopted.

A. To change the name from Bull Point Homeowners Association, Inc. to Bull Point Property Owners Association, Inc. with an address change to 97 Bull Point Drive, Seabrook, South Carolina 29940. (Principal + Registered)

B. July 5th 2006

4. ☑ By checking this paragraph #4 the applicant represents that (a) approval of the amendment by the members was not required, (b) the amendment was approved by a sufficient vote of the board or directors or the incorporators. (Do not check this paragraph #4 if member vote was required or if the required vote of directors or incorporators was not obtained.)

5. If the approval of the members was required to adopt the amendment(s), provide the following information:

   (a) Designation (Classes of Membership)

   (b) Number of memberships outstanding

   (c) Number of votes entitled to be cast by each class entitled to vote separately on the amendme

   (d) Number of votes of each class indisputably voting on the amendment

   (e) Complete one of the following as appropriate

      (i) Total number of votes cast for and against the amendment by each class entitled to vo separately

      (ii) Total number of undisputed votes cast for the amendment by each class which was sufficient for approval for that class

FILED, 08/14/2006
BULL POINT PROPERTY OWNERS ASSOCIATION, INC
Filing Fee $110.00

Bull Point Homeowners Association, Inc.

Name of Corporation

6. ☐ By checking this paragraph #6 the applicant represents that approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to Section 33-31-1030 of the 1976 South Carolina Code of Laws, as amended, and that the approval was obtained. (Do not mark paragraph #6 if either of these statements is not true.)

7. If the amendment provides for an exchange, reclassification, or cancellation of memberships, provisions for implementing the amendment must be set forth here if provisions are not contained in the amendment itself _____

_____

_____

8. ☐ If this corporation is converting from either a public benefit or religious corporation into a mutual benefit corporation, mark this paragraph #8 which certifies that a notice, including a copy of the proposed amendment, was delivered to the South Carolina Attorney General at least twenty days before the consummation of the amendment.

Date 5 July 2006

Bull Point Homeowners Association, Inc.
Name of Corporation

Stancel E. Kirkland Sr.
Signature or Officer

Stancel E. Kirkland, Sr. PRESIDENT
Type or Print Name and Office AND Developer of BullPoint LLC.

FILING INSTRUCTIONS

1. Two copies of this form, the original and either a duplicate original or a conformed copy, must by filed.
2. If the space in this form is insufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk which will allow for expansion of space on the form.
3. This form must be accompanied by the filing fee of $10.00 payable to the Secretary of State.

Return to: Secretary of State
P.O. Box 11350
Columbia, SC 29211

EXHIBIT

4

ARTICLES OF INCORPORATION, dated January 2, 2007, and
ARTICLES OF DISSOLUTION, dated March 21, 2013
(*Bull Point Plantation Property Owners Association*)

Jon Attridge, et al. v. The Board of Directors of
Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE
Feb 06 2020
REFERENCE ID: 468445
Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

1 COPY

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF DISSOLUTION
FOR A
NONPROFIT CORPORATION

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to the provisions of Section 33-31-1404 of the 1976 South Carolina Code of Laws, as amended, the undersigned corporation submits the following Articles of Dissolution:

1. The name of the corporation is: Bull Point Plantation Property Owners Association

   Date incorporated: 1/2/2007

2. The dissolution was authorized on 3/6/2013

3. Choose one of the following by marking the appropriate box.

   ☐ The resolution authorizing the dissolution was duly adopted by the members pursuant to Section 33-31-1402 of the 1976 South Carolina Code of Laws, as amended.

   ☐ The resolution authorizing the dissolution was duly adopted by a majority of the Board of Directors, as approval by the members was not required (Section 33-31-1402(b) of the 1976 South Carolina Code of Laws, as amended.)

   ☑ The resolution authorizing the dissolution was duly adopted by a majority of the incorporators pursuant to Section 33-31-1401 of the 1976 South Carolina Code of Laws, as amended.

4. If approval by the members was required, please provide the following information pursuant to Section 33-31-1404(a) (5) (i) and (ii) of the 1976 South Carolina Code of Laws, as amended.

   (a) Designation (Classes of membership): _____

   (b) Number of memberships outstanding: _____

   (c) Number of votes entitled to be cast by each class entitled to vote separately on dissolution: _____

   (d) Number of votes entitled to be cast by each class indisputably voting on dissolution:

   _____

   (e) Complete one of the following as appropriate:

   (i) Total number of votes cast for and against dissolution by each class entitled to vote separately: _____

   (ii) Total number of undisputed votes cast for dissolution by each class which was sufficient for approval for that class: _____

130405-0104 FILED: 03/21/2013
BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATIO
Filing Fee: $10.00 ORIG
Mark Hammond South Carolina Secretary of State

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Feb 06 2020
REFERENCE ID: 468445

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

5. If approval by third person(s) other than the members, directors, or incorporators was required, such approval was obtained.

6. If a public benefit or religious corporation, notice to the Attorney General, required by Section 33-31-1403 of the 1976 South Carolina Code of Laws as amended has been given.

7. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date/time is: _____

[NOTE: A delayed effective date shall not be later than the 90th day after the date this document is filed by the Secretary of State.]

Bull Point Plantation Property Owners Association
Name of Corporation

3/6/2013
Date

Stancel E Kirkland
Signature

Stancel Kirkland
Type or Print Name

Incorporator
Position of Officer

AFFIDAVIT AFFIRMING AUTHORITY TO EXECUTE ARTICLES OF DISSOLUTION FOR A NONPROFIT ORGANIZATION

Filed pursuant to South Carolina Code of Laws § 33-31-1402 (f)

I do solemnly swear or affirm, under penalty of perjury, that I have the authority, either in my own right or on behalf of the board or other entity or group, to execute articles of dissolution for Bull Point Plantation Property Owners Association, a nonprofit organization.
(Must match entity name on record with Secretary of State's office)

Stancel Kirkland
Officer's Printed Name

Stancel E Kirkland
Officer's Signature

Anna E. Smith
Notary's Printed Name

Sworn to and subscribed before me
This 20th day of March, 2013.

aesmith
Notary's Signature

Notary Public of South Carolina

Date 3/20/13

My Commission Expires: June 23 2021

Form Revised by South Carolina, Secretary of State, March 2012

EXHIBIT

4

ARTICLES OF INCORPORATION, dated January 2, 2007, and
ARTICLES OF DISSOLUTION, dated March 21, 2013
(*Bull Point Plantation Property Owners Association*)

Jon Attridge, et al. v. The Board of Directors of
Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

070125-0025 Filed: 01/02/2007
BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION Filing Fee: $25.00 ORIG
Mark Hammond South Carolina Secretary of State

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

NONPROFIT CORPORATION
ARTICLES OF INCORPORATION

Pursuant to Section 33-31-202 of the South Carolina Code of Laws, as amended, the undersigned corporation submits the following information:

1. The name of the proposed corporation is BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION

2. The initial registered office of the corporation is 114 BARNABY BLUFF
(Street Address)

SEABROOK (City) BEAUFORT (County) SC (State) 29940 (Zip)

and the initial registered agent at such address is STANCEL KIRKLAND
(Print Name)

I hereby consent to the appointment as registered agent of the corporation:

Electronically filed on SCBOS. Signature not required.
(Agent's Signature)

3. Check "a", "b", or "c" whichever is applicable. Check only one box:

a. ☐ The nonprofit corporation is a public benefit corporation.

b. ☐ The nonprofit corporation is a religious corporation.

c. ☑ The nonprofit corporation is a mutual benefit corporation.

4. Check "a" or "b", whichever is applicable.

a. ☐ The corporation will have members.

b. ☑ The corporation will not have members.

Each incorporator must sign

BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION
Name of Corporation

5. The address of the principle office of the nonprofit corporation is:

114 BARNABY BLUFF
Street Address

SEABROOK — City
BEAUFORT — County
SC US — State
29940 — Zip

6. If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.

a. ☐ Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principle office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

b. ☐ Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to:

_____

7. If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

a. ☑ Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, to those persons to whom the corporation holds itself out as benefiting or serving.

b. ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to

_____

8. The optional provisions, which the nonprofit corporation elects to include in the articles of incorporation, are as follows (See 33-31-202(c) of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instructions to this form).

9. The name, address, and signature of each incorporator is as follows (only one is required):

Name	Address	Zip Code
BULL POINT POA	114 BARNABY BLUFF SEABROOK SC US	29940

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION

Name of Corporation

11. Each incorporator must sign the articles.

Signature Page Attachment to South Carolina Business One Stop (SCBOS) For The State of South Carolina Secretary of State

This page must be completed, scanned and submitted as an attachment when filing on SCBOS. Attach additional pages as needed.

Type of Filing: ARTICLES OF INCORPORATION (Non Profit Corporation)

Proposed Corporation Name:
Bull Point POA

Signature of Incorporators (each incorporator must sign):

Stancel Kirkland — Name
Stancel E Kirkland — Signature

Name — Signature

Name — Signature

Signature of Directors (only if named in articles):

Name — Signature

Name — Signature

Name — Signature

Fax or e-mail your completed forms to:
SC Secretary of State
(803) 734-1610 FAX
SCSOS1@InfoAve.Net
(Please e-mail signature forms in the following file formats o
Adobe .PDF, .GIF, or .JPEG extensions.)

EXHIBIT

5

MINUTES OF SPECIAL MEETING OF THE INTERIM BOARD OF DIRECTORS OF BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION,
dated January 17, 2020

Jon Attridge, et al. v. The Board of Directors of Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

MINUTES OF SPECIAL MEETING OF THE INTERIM BOARD OF DIRECTORS OF BULL POINT PROPERTY OWNERS ASSOCIATION

Date of Meeting: January 17, 2020

Meeting Location: Bull Point Club House
114 Barnaby Bluff
Seabrook, SC 29940

Meeting commenced: 1:00 p.m.

Meeting adjourned: 4:30 p.m.

Present at the meeting were: Joseph D'Ambrosio, Mary D'Ambrosio, Gary Okey, Lamar Nix, Robert Brendza. All Interim Board Directors waived Notice of this Special Meeting.

SUBJECT OF THE MEETING: Continue discussions and make necessary motions etc. to further POA business.

Minutes of Prior Meetings: Minutes of BOD Meeting held Dec. 11, 2019 were reviewed and approved.

Financial Report: Although no formal report was given, discussion was had concerning the need to pass the budget and begin collecting assessments.

Old Business: (1) The meeting with Attorney Mary Sharp was held. See 2 below.

New Business: The following matters were discussed and voted upon as indicated:

1. Discussion and Resolution concerning increasing the number of members of the Board of Directors from 3 to 5.

After a discussion of the pros and cons of increasing the number of Board members from 3 to 5, the following resolution was discussed and passed:

RESOLUTION

A copy of the subject Resolution is attached hereto and incorporated herein by reference as if fully set forth

Adopted this 17th day of January, 2020.

Motion was made by Gary Okey and Seconded by Lamar Nix to pass the proposed Resolution. The vote of the Board of Directors was unanimous to pass the Resolution

2. The retention of Mary E. Sharp, Esquire to collect delinquent assessments owed the POA.

Members of the Board met with Ms. Sharp to discuss her representation of the POA in collecting delinquent assessments. Ms. Sharp subsequently provided an engagement letter setting forth the terms of representation. These terms were reviewed by the Board and it was decided to retain Ms. Sharp. A motion was made by Gary Okey and seconded by Joe D'Ambrosio to retain Ms. Sharp to provide legal services and counsel to collect delinquent assessments owed the POA. The vote was affirmative and unanimous.

3. The retention of the firm of Crowley Wechsler & Associates, LLC to perform a forensic audit of the books and other POA documents to ascertain if the previous Board of Directors had mishandled POA funds

After the Interim Board of Directors assumed the leadership of Bull Point as a result of Judge Mullen's November 18, 2019 Order, it was discovered that the previous Board of Directors had over spent the budget by several thousands of dollars and that the funds contained in the ARB Escrow account had been withdrawn and believed used to pay ordinary operating expenses. The Interim Board felt it owed the POA members a fiduciary responsibility to account for this over spending and removal of ARB Escrow Funds. It was discussed and decided that a professional specializing in negligent and fraudulent transfer of funds should be retained. The Crowley Wechsler firm was interviewed and found to be well qualified to perform the services requested for a reasonable fee.. A motion to retain the Crowley Wechsler Firm was made by Mary D'Ambrosio and seconded by Gary Okey. The vote was affirmative and unanimous.

4. Discussion concerning the status of the case concerning the termination of employment of Geri Price and Sallie Rogers as employees of the POA

Confirmation was obtained from Megan Cofresi of CNA Insurance and Derek Newberry, Esquire attorney assigned by CNA that both Geri Price and Sallie Rogers claims of retaliation based on workers' comp claim against the POA will be covered by our CNA policy. In addition, Ms. Price complaint to the Dept. of Labor will also be covered. There will not be coverage for either's parties unemployment compensation claim.

5 Discussion concerning potential changes to the voting procedures to make voting easier for the members was discussed. In particular, the following potential changes were discussed:

a. Electronic voting
b. Reduce the percentage required to constitute a quorum
c. Continued live streaming of the meetings.
d. Extend voting period beyond meeting

All these proposed changes will be evaluated and if found to benefit the members, the process to implement the changes will be reviewed and set in motion.

Next Meeting:
The time, date and agenda for the next Board meeting were not set.
At approximately 4:30 p.m. a Motion was made by Gary Okey and Seconded by Lamar Nix to adjourn the meeting. The vote was affirmative and unanimous.

RESOLUTION

WHEREAS, the Board is authorized under the Declaration and the By-Laws to set the date, terms and manner by which annual assessments and recreational charges must be paid and if not paid will be declared delinquent; (Declaration 9.02 and 9.09) and;

WHEREAS, the Declaration (9.09) states that any assessments or recreational charges of any owner or any portion thereof which are not paid when due shall be delinquent and furthermore sets forth the terms and conditions by which a late charge and interest shall begin to accrue at the rate of 18% per annum if the assessment is paid more than ten (10) days after the due date and;

WHEREAS, pursuant to Declaration section 12.02 and 12.03 upon failure of a member to timely pay assessments when due, the Board shall have the power to suspend an owner's right to vote in the Association and;

WHEREAS, the Declaration at section 9.07 prescribes the quorum for the annual meeting shall be, "(t)he presence of members or proxies entitled to cast over fifty (50%) of all votes of the Association and;

WHEREAS, in the event the provision in section 9.07 is found to be ambiguous as to whether "all votes of the Association" means 50% of all owners or 50% of all owners who are entitled to vote at the specific upcoming meeting scheduled for February 15, 2020 and;

WHEREAS, the Board pursuant, to section 13.07 is empowered to make constructions that best affect the general plan of development when there may be ambiguities in a provision of the Declaration

NOW THEREFORE, We the Board adopt the following Resolution:

RESOLVED, The Board has declared January 31, 2020 as the date when annual assessments are due in full.

RESOLVED, to avoid any possible ambiguity with the language contained in section 9.07 of the Declaration, the Board, being empowered by the provisions of section 13.07 of the Declaration to make constructions that best effects the general plan of the development when an ambiguity may exist in a provision of the Declaration finds that the provision in section 9.07 of the Declaration which states that, "(t)he presence of members or proxies entitled to cast over fifty (50%) of all votes of the Association..." requires the presence of members and proxies of a majority of the votes entitled to be cast at the meeting scheduled for February 15, 2020.

RESOLVED, The Board believes the construction as applied in the preceding paragraph as applied to section 9.07 of the Declaration best carries out the general plan of development for the Association.

RESOLVED, The Board has declared that only proxies received and verified by the election committee no later than 8:00 p.m. on Friday, February 14, 2020 shall count towards establishing a quorum for the election to be held on February 15, 2020 and;

RESOLVED, The annual assessment shall be paid in one single payment and not pursuant to installment payments of any kind or duration;

RESOLVED, that any member who has not paid their entire annual assessment in full by January 31, 2020 shall be automatically declared delinquent pursuant to the Declaration section

9.09 and thus will be deemed to be a member not in good standing and as such will not have the right to vote in Association elections until the annual assessment is paid in full; and

RESOLVED, that any member who is delinquent in their payment of annual assessments will incur a late charge and interest charges at the rate of 18% per annum if assessments are paid more than ten (10) days after the due date (January 31, 2020).

RESOLVED, that any member who fails to pay their full assessment timely shall be responsible for all costs and expenses, including reasonable attorney fees and court costs, incurred by the POA in attempting to collect the annual assessment that are allowed by law and the Declaration and By-Laws.

Motion to adopt the proposed Resolution was made by Robert Brendza and Seconded by Lamar Nix. The vote to adopt the Resolution was unanimous.

Adopted and Immediately Made Effective this 17th day of January 2020.

Respectfully submitted by the Interim Board of Directors

Joseph D'Ambrossio, President
Mary D'Ambrosio, Treasurer
Robert P. Brendza, Secretary
Lamar Nix, Member
Gary Okey, Member

EXHIBIT

6

AMENDED DEED,
dated September 27, 2007

Jon Attridge, et al. v. The Board of Directors of
Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

5/11 RB

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AMENDED DEED

This Amended Deed is executed by Bull Point, LLC (hereinafter referred to as "Grantor") for and in consideration of the sum of Five and 0/100 Dollars ($5.00) and no other valuable consideration to Grantor in hand paid at and before the sealing of these presents by Bull Point Property Owners Association, Inc. (hereinafter referred to as "Grantee")

Whereas, Grantor deeded to Grantee a portion of the within deeded property by Deed dated 29 December 2006 and recorded in the Beaufort County, South Carolina Register of Deeds Office on 29 December 2006 in Book 02499 Pages 0738-0741 and,

Whereas, the property description in the above deed did not reference a recorded plat and transferred a portion of the within property and,

Whereas, the Grantor is desirous of executing the within deed to transfer 8.24 acres as described below.

KNOW ALL MEN BY THESE PRESENTS, that, Grantor has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the Grantee, its successors and assigns, forever, the following described property, to wit:

All that certain piece, parcel and tract of land, with improvements thereon being shown as The Bull Point Clubhouse containing 8.24 acres on a plat prepared by Gasque and Associates Inc. dated 2 July 2007 and recorded in the Beaufort County, South Carolina Register of Deeds Office on 10 September 2007 in Book 00121at Page 0153. Said plat being incorporated herein and made a part thereof for a more complete description.

RECORDED
2007 Nov -19 08:26 AM
Sharon G. Burris
BEAUFORT COUNTY AUDITOR

Grantee's Address: 114 Barnaby Bluff
Seabrook, South Carolina 29940

This deed prepared by: Stancel E. Kirkland, Attorney0at-Law
97 Bull Point Drive
Seabrook, SC 29940

BEAUFORT COUNTY SC- ROD
BK 02637 PGS 0819-0823
DATE: 10/11/2007 02:44:14 PM
INST # 2007075821 RCPT# 513999

ADD DMP Record 11/16/2007 04:57:40 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	027	000	0217	0000	00

TMS: R700 027 000 217 0000

Derivation: This being a portion of the property conveyed to Bull Point LLC by Deed from Metropolitan Properties, Inc. dated January 23, 1997 and recorded in the Office of the Register of Deeds for Beaufort County on January 31, 1997 in Book 918 at Page 2559.

Said Property is conveyed subject to all obligations, restrictions, limitations, covenants and benefits as contained in the Declaration of Covenants, Conditions, and Restrictions for Bull Point Plantation dated the 22nd day of September, 1995, and recorded in the RMC Office for Beaufort County on September 26, 1995 in Book 805 at Page 218, as amended, and all other easements and restrictions of record. Also subject to the Real Property Agreement dated September 27th 2007 and recorded in the Beaufort County Register of Deeds Office on ~~September~~ October 11th 2007 in Book 02637 on Pages 0812-0814.

Grantor also Quit-Claims to the Grantee, its successors and assigns, forever, its right, title and interest in and to the land located between the DHEC/OCRM critical line and the mean high water mark.

TOGETHER with all and singular the Rights, Members, Hereditament and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto **BULL POINT PROPERTY OWNERS ASSOCIATION, INC.,** its successors and assigns forever. And the Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the premises unto the Grantee, its successors and assigns, against itself and its successors and assigns and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal this 27th day of September 2007.

Signed, Sealed and Delivered in the Presence of:

WITNESS:

Teresa O'Connell

GRANTOR: BULL POINT, LLC

By: Dale E Kirkland

Its: Managing Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) **PROBATE**

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within-named Grantor sign, seal and deliver the within Deed; and that (s)he with the other witness whose signature appears above, witnessed the execution thereof.

Witness

SWORN to before me this 27th
day of September 2007.

Notary Public for South Carolina
My Commission Expires: February 7, 2017

DEED PREPARED BY:

Stancel E. Kirkland, Esquire
97 Bull Point Drive
Seabrook, South Carolina 29940

4

EXHIBIT "A"

ALL that certain piece, parcel and tract of land, with improvements thereon shown as 7.37 acres, more or less. Clubhouse site Phase VIII Bull Point Plantation on the composite Master Phasing Plan dated March 17 2003 and revised Jul76 19 2006 by Andrews Engineering Co., Inc. The completed amenities located on the property include Swimming Pool Complex with Pool House, Clubhouse, and Tennis Court Complex and Detention Pond.

LESS AND EXCEPTING THEREFROM All that certain piece, parcel or tract of land consisting of 1.16 acres, more or less as shown on Exhibit A1 attached hereto.

Derivation: This being a portion of the property conveyed to Bull Point LLC by Deed from Metropolitan Properties, Inc. dated January 23, 1997 and recorded in the office of the Register of Deeds for Beaufort County on January 31, 1997 in Book 918 at Page 2559.

TMS: R700 027 000 217 0000
Key: 11605954

Deed prepared by: Stancel E. Kirkland

EXHIBIT

7

OPP to MOTION TO DISMISS

Jon Attridge, et al. v. The Board of Directors of
Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

ELECTRONICALLY FILED - 2020 Sep 23 6:51 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701895

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Joseph P. D'Ambrosio and Mary A. D'Ambrosio, Plaintiffs, v. William E. Gavigan, Paul Nolan, Robert Britt, Dennis Ratchup, Unknown "John Doe," Bull Point SC, LLC, Michael Carey, James Riordan, Eugene Stone, Gary D. Grant, and James McDonnell, Defendants.	C.A. NO.: 2018-CP-07-1895 **PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO MOTION OF DEFENDANT GARY GRANT TO DISMISS AND GAVIGAN MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT**

In rebuttal to Defendant, Gary Grant's Response In Support of Motion To Dismiss filed September 22, 2020, and Gavigan's Motion to Dismiss or in the Alternative for Summary Judgment, the Plaintiff's file this Supplemental Memorandum in Opposition to Grant's Motion to Dismiss or in the Alternative for More Definite Statement.

Grant's Argument of Intracorporate Immunity In Opposition to the Civil Conspiracy Count is Misplaced Due to the Personal Stake Exception Recognized by South Carolina Courts

Defendant, Grant's response argues he is entitled to immunity under the intracorporate conspiracy doctrine[1]. In making this argument, Grant relies heavily on a federal district court opinion in *Smith v. Palmetto Denture Care, P.A*. (D. S.C. 2018). That case – while not binding as it is not a state appellate decision – provides a helpful analysis of the intracorporate conspiracy, including the "Personal Stake Exception" stating:

[1] As stated in Plaintiffs' earlier Memorandum, many of Defendants' arguments overlap. All of the arguments made in this Memorandum are respectfully submitted as to arguments made by the other Defendants as applicable.

ELECTRONICALLY FILED - 2020 Sep 23 6:51 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701895

> "South Carolina courts have allowed claims of civil conspiracy when there are allegations that officers, directors, employees or agents of a corporation are acting in furtherance of their personal interests and not the interests of the corporation or if they are acting outside the scope of their authority with the corporation. *See Cricket Cove Ventures, LLC v. Gilland*, 701 S.E.2d 39 (S.C. Ct. App. 2010) (holding that the intracorporate immunity doctrine did not apply to a developer's civil conspiracy claim where the developer alleged that individual county council members had a personal stake in preventing the developer from moving forward with its development plans); *Pridgen v. Ward*, 705 S.E.2d 58 (S.C. Ct. App. 2010) (holding the independent personal stake exception applied under South Carolina law where a former employee alleged that a former co-worker developed a personal vendetta against him because he refused his former co-worker's request to make false statements in a report). *Smith v. Palmetto Denture Care, P.A*. at pp.13-14.

Therefore, the case that the Defendant relies on, along with the line of cases it cites to, specifically sets out the well-recognized rule of law that the intracorporate conspiracy doctrine does not apply where the Amended Complaint alleges conspiratorial acts that were done out of desire for personal gain or personal motives, *as opposed to being done on behalf of or to benefit the corporation.* The personal gain of the Defendants in committing the conspiratorial acts is a common theme that runs through the Amended Complaint and is in particular highlighted in the 12 subparagraphs of paragraph 11 some of which are summarized below:

a. Wrongfully entering Plaintiffs' property without permission or consent *for the purpose of promoting home ownership in Bull Point Plantation to prospective homeowners*;

b. Levying assessments against Plaintiffs that were unfounded and frivolous under the BPPPOA governing documents for the purpose of harassing Plaintiffs' who had questioned the BPPPOA Board of Directors management and spending practices;

c. Retaining counsel for the purpose of discriminating against and/or causing harm to Plaintiffs who had questioned the BPPPOA Board of Directors management

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and spending practices, including, but not limited to, attempting to squash Plaintiffs' rights of free speech as well as use and enjoyment of the Bull Point development by bringing a lawsuit intended to economically pressure Plaintiffs through attorney's fees they would incur in defense and other damages requested;

d. Employing counsel to frivolously file motions for contempt and other legal process against the Plaintiffs , once again in an attempt to stifle their free speech and cause severe economic pressure through attorney's fees they would incur in defense and other damages requested;

e. Sending Plaintiffs threatening, harassing and defamatory emails in violation of Plaintiff's quiet enjoyment and rights of privacy, including claiming that Plaintiffs had sent fraudulent communications to other members of BPPPOA and threatening Plaintiffs with "disciplinary actions" and suspension, restriction, and/or limitation of member POA privileges for their legitimate communication with other BPPPOA members;

f. Allowing ARB Escrow Account funds, comprised of members' deposits which were to be held in trust pending completion of construction, to be misused and /or misspent causing the ARB Escrow Account to now be unable to pay back members' deposits.

g. Mismanaged, overspent and neglected BPPPOA Contingency Fund (CF) account in such a manner as to cause the likelihood of an increase in POA annual assessments and special assessments in the future, including, but not limited to, using the CF monies for unauthorized purposes, using the CF monies

ELECTRONICALLY FILED - 2020 Sep 23 6:51 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701895

> for operating expenses, using the CF monies *for projects that involved self-dealing and conflicts of interest.* [emphasis added]

It is the Plaintiff's position that all of the allegations of the Amended Complaint as a whole state that the Defendants abused their authority with the POA for their own personal gain, not for the benefit of the POA. In particular, paragraph 77. l. (cited above as g.) plainly states that the Defendants were using Capital Reserve Account monies (called "CF monies") for projects that involved self-dealing and conflicts of interest[2]. "Self-dealing" clearly indicates personal gain. "Conflicts of interest" clearly indicates that their actions conflicted with that of the POA's interests, and therefore, were not for the benefit of the POA. Accordingly, the Amended Complaint does allege that the Defendants acted for personal motives and their Motion to Dismiss based on the intracorporate conspiracy doctrine should be denied.

Grant misinterprets paragraphs 16 and 30 of the Amended Complaint alleging that the Defendant's conduct was performed "while acting within the scope or capacity of their positions on the BPPOA Board of Directors…" as providing immunity. (See, para. 30 of the Amended Complaint[3]). This language is a far cry from alleging that the Defendants' conspiratorial acts were performed *on behalf of* the POA/corporation. In fact, the Amended Complaint would necessarily have to allege how the Defendants came to be in their position of power over the Plaintiffs in order to explain how they then abused that power for personal motives. Plaintiffs' Amended Complaint in this regard is no different than the Amended Complaint upheld by the *Cricket Cove* Court (cited above) alleging that the defendants were members of a County Council Board.

In order for intracorporate immunity to apply as argued by the Defendants, the Amended Complaint would have to allege that the conspiratorial acts were performed for the benefit of or

[2] Subparagraph a. also alleges personal gain in promotion of home sales to prospective purchasers.
[3] In fact, paragraph 16 of the Amended Complaint alleges that Grant acted in his "putative" capacity.

on behalf of the POA. The Amended Complaint is completely devoid of language that the Defendants' conspiratorial acts were conducted for the benefit of the POA. To the contrary, the Complaint, while alleging the Defendants purported to act in the capacity of their positions on the "BPPPOA Board of Directors, officers, directors, in-house counsel, committee members, employees and/or agents", goes on to allege conduct that is for their own personal gain and was in effect ultra vires (See, e.g., paragraphs 77. l. and 81).

Of note, paragraph 77 of the Amended Complaint names the Defendants personally, not the POA, and alleges that they committed the specific acts that follow *by virtue of their positions* with the POA—as opposed to on behalf of the POA. Stated another way, paragraph 77 states that the Defendants used and misused their positions of authority with the POA for personal gain. In fact, paragraph 81 alleges that the object of the conspiracy was that the *personally named Defendants* conspired to stifle the Plaintiffs from questioning their management practices and to stop the Plaintiffs from communicating to other members of the community. This points out the Defendants' personal motives to remain in power as putative heads of the POA. In other words, their conspiratorial acts were directed toward protecting their own individual and personal desires to remain in control of the POA and keep their personal positions of power. Based on this, the Amended Complaint contains allegations of personal motivation and the intracorporate conspiracy doctrine does not apply.

It is also pointed out that the Amended Complaint does not name the POA as a defendant or seek damages from the POA. Had plaintiffs intended to allege that the Defendants were acting on behalf of the POA, it would make sense that they would name the POA as a party. The fact that they have not serves to further corroborate that the Amended Complaint sets out a cause of action for civil conspiracy against the Defendants for acts in furtherance of their personal motives.

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In conclusion, it is respectfully submitted that the Amended Complaint sets out conspiratorial acts alleged to be performed by the Defendants for personal gain and therefore, Defendants' respective Motions to Dismiss arguing the intracorporate conspiracy doctrine should be denied. In the alternative, to the extent this Court finds that the Amended Complaint does not state a prima facie cause of action on this issue, Plaintiffs respectfully request that this Court decide the motions without prejudice and with leave to amend to include additional language.[4]

Grant's Claims of Lack of Standing Based On "Bull Point Plantation Property Owners' Association" (With No "Inc.") Are Based On a Misreading of the Complaint And the Defendants' Questionable Use of the POA's Name in Various Pending Litigation

For the Court to understand the long and tortured history of the name of the entity that has for 25 years operated as the POA association in charge of the Bull Point development would take more time than the undersigned believes necessary (or my guess is that the Court would enjoy expending), given the point of the argument this section intends to make. Suffice it to say that certain of the Defendants have, in various lawsuits, alternately claimed that the true and legal entity name is either: a) Bull Point Plantation Property Owners Association, Inc.; b) Bull Point Plantation Owners Association, Inc.; c) Bull Point Property Association, Inc.; d) Bull Point, LLC; and/or e) Bull Point SC, LLC. See, **EXHIBITS 1, 2, 3 and 4[5].** Plaintiffs will rely on their earlier Memorandum on the POA name issue. Plaintiffs will also rely on the Memoranda filed in some of the various pending actions in which certain the Defendants have claimed one of

[4] Defendant Grant's Motion includes a request for a more definite statement in this regard.

[5] Under South Carolina law a motion to dismiss is governed by the four corners of the complaint and all of the allegations of the complaint should be read in the light most favorable to the pleading party. It is the Plaintiff's position that the numerous exhibits filed by the Defendants ask this Court to go outside the four corners of the Amended Complaint and therefore, should not be relied upon. However, to the extent the Court intends to rely on these exhibits, Plaintiffs have filed the Exhibits attached.

the above names applies or does not apply-- depending on which circumstance serves their purpose[6]. Those memoranda are attached hereto as **EXHIBITS 5 and 6** are incorporated herein.

To get to the point of this section, and hopefully to demonstrate why parsing through the POA name history is unnecessary, is that, due to the fact that the Defendants have alternatively claimed various legal names for the POA, the Plaintiffs intentionally plead their Amended Complaint with the generic name "Bull Point Property Owners Association (without the "Inc."). Stated another way, the POA association referred to in Plaintiffs' Amended Complaint refers to whichever association the Defendants claim they were in control of when they committed the acts alleged in the Amended Complaint. Wary that the Defendants might defend the Amended Complaint contending that it does not correctly name the POA entity they were operating (as has been done in other litigation—see for example Defendants' Motion for Judgment on the Pleadings in Attridge et al v. Gavigan et al, Case. No. 2018-CP-07-2345 pending in this Circuit before the Hon. Carmen T Mullen.), Plaintiffs opted to generically plead "Bull Point Property Owners' Association (without the "Inc.") to mean the association the Defendants were operating.

Accordingly, Defendants' reading of the Amended Complaint to mean the dissolved legal entity known as "Bull Point Plantation Property Owners Association" is misplaced as that is not the entity referred to in the Amended Complaint. Therefore, Defendants' Motion to Dismiss on these grounds should be denied. Defendants can, through discovery, investigate this issue further if necessary. Plaintiffs would submit that it is not necessary due to the fact that, as argued above, they were not performing the acts alleged on behalf of any specific association, but rather on behalf of themselves.

[6] The extensive amount of pending cases and litigation dealing with this and other issues related to the Bull Point development is discussed, hopefully not more than is necessary, in the section below dealing with the Motion to Consolidate currently pending in this case.

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Plaintiffs Have Adequately Stated a Cause of Action for Breach of Fiduciary Duty And Other Duties For Which Defendants Are Not Immune From Personal Liability

Plaintiffs will rely on the arguments and authority stated in their earlier Memorandum on this issue with the exception of including the argument that the Defendants, by the acts alleged, possess liability by virtue of assuming a fiduciary duty towards the Plaintiffs. See, *Madison v. Babcock Ctr., Inc.*, 371 S.C. 123, 638 S.E.2d 650 (2006); *Adkins v. I'On Co., LLC,* No. 5588, 2018 S.C. App. LEXIS 63 (Ct. App. Aug. 8, 2018) and *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711 (2003)

Defendants Claim That Property in Phases 3 and 5B Are Not Subject To The Governing Bull Point Declaration and Therefore, that Owners in Those Phases Are Not Members Of The Association, is Currently Pending Before Another Judge in This Circuit and in Federal Court. Accordingly, the Interests of Justice, Judicial Consistency, Judicial Economy and the Risk To Non-Parties Weigh In Favor of This Court Deferring on This Issue.

Defendants contend that Phases 3 and 5B are not part of the Bull Point POA and are not subject to the governing Declaration. From this they argue, in this and other cases alternatively, that they do not have to pay assessments on their properties in those phases and that owners in those phases are not POA members and/or cannot sit on the Board of Directors[7]. This despite the fact that when they were in control of the POA, they levied and collected assessments against all owners in these phases as well as subjected them to ARB guidelines under the governing Declaration. This issue has been raised by the Defendants in one way or another in the following list of extensive litigation they have caused to be filed:

1. Attridge et al v. Gavigan et al – Case. No. 2018-CP-07-2345 (main claim)

[7] The applicable Declaration does not prohibit nonmembers from sitting on the Board of Directors. In fact, one of the Defendants, Michael Carey, was a nonmember on the Board of Directors controlled by certain Defendants during their tenure as the putative Board.

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2. Attridge et al v. Gavigan et al – Appeal
3. Gavigan/Bull Point SC v. Pellecchia, et al – counterclaim in Attridge
4. Gavigan v. Huspah, D'Ambrosio et al – 3d party claim in Attridge
5. Bull Point POA v. Brendza et al – Case. No. 2019-CP-07-0085 (filed by the Defendants in this action during their tenure)
6. Brendza/Okey v. Gavigan, Quick et al – counterclaim in Brendza;
7. Bull POA v. Gavigan – Case. No. 2020-CP-07-00817 (for return of Community Common Properties Deeded to a company controlled by one the Defendants prior to Judge Mullen's Order removing the prior Board)
8. Gary Grant v. Bull Point POA – Phase III/VB action in federal court, Case No.9:20-cv-01582-RMG-MGB (Dec. Action raising Phase 3/5B issue)
9. Gavigan v. Bull POA – crossclaim in Phase III/VB action in federal court
10. D'Ambrosio v. Gavigan et al – this case
11. Gavigan, Stone et al v. D'Ambrosio – counterclaim in this case
12. Bull Point POA v. Bull Point BOD – Case No. 202-CP-07-01829 (believed to be filed by one of the Defendants in this case or his companies to be filed on behalf of the Bull Point POA despite the November 18, 2019 order of Hon. Carmen T Mullen

As you can see from the above, it is the Plaintiff's position that some of the Defendants or companies they own have dedicated a considerable amount of time to filing or causing to be filed Bull Point related lawsuits. The Phase 3/5B issue is present, either squarely or tangentially, in most if not all of the above cases. With the exception of the federal action and this case, the majority and possibly all of the above cases are before or will be before Judge Mullen. Judge Mullen currently has several significant motions and causes of actions with common questions of law or fact pending before her as of the date of this writing. Additionally, although, a written order to this effect has not been provided, it is believed in good faith that an administrative agreement exists in which Judge Mullen will be hearing all Bull Point related cases. This is currently the subject of a Motion to Consolidate pending before this Court.

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Furthermore, Judge Mullen's November 18, 2019 Order removing the prior Board of Directors also ordered that they not interfere with the governance of the Bull Point POA. See, attached **EXHIBIT 7** at para. 4 of the Relief Granted section. Granting the Defendants' Motion on the Phase 3/5B grounds may be used to collaterally attack the ability of the POA to collect assessments, administer its ARB Rules for construction of houses in progress, and prevent its Board of Directors from conducting critical daily operations. This would greatly affect the governance of the POA and therefore, may run afoul of Judge Mullen's Order. The Phase 3/5B issue is the main issue before the federal court in the case cited above in which numerous other POA members are named as parties. As such, a ruling on the Phase 3/5B issue by this Court poses a substantial risk of inconsistent rulings and jurisdictional problems should the federal court ruled differently, which may only serve to create further litigation.

It should also be noted that it is believed in good faith that the newly filed Bull Point POA v. Bull Point BOD, Case No. 202-CP-07-01829 (attached as **EXHIBIT 8**), was filed at the direction of or with involvement of one or more of the Defendants in this case as it was filed by law firms representing some of the Defendants or their companies in much of the Bull Point related litigation. It is astounding to note that at paragraph 31 of that Complaint *it alleges that lots in Phase 3 of the Bull Point development are in fact subject to the governing Declaration and therefore, those owners are members of the POA*. This is directly contrary to the position of the Defendants in this case. As you can see from this, Defendants appear to be "playing both sides of the fence" and are asking this Court to rule on an issue critical to all Bull Point POA members with only providing this Court with a small sliver of the full story.

For the reasons expressed above, it is respectfully requested that this Court defer ruling on the Phase 3/5B issue to allow it to be decided by Judge Mullen and/or the federal court it is

currently before. As this is an issue of such tremendous importance to the Bull Point community, it is respectfully requested that the Court defer ruling to allow intervention or joinder of the Bull Point POA and/or its members who will be greatly affected or in the alternative to allow counsel for the POA to file an amicus brief on the issue with this Court. .

Conclusion

For the reasons set out above, Defendant Grant's Motion to Dismiss or in the Alternative for a More Definite Statement as to the Tenth and Eleventh Causes of Action and Gavigan's Motion to Dismiss or in the Alternative for Summary Judgment should be denied.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served upon all counsel of record via e-filing this 23rd day of September, 2020.

Respectfully Submitted,

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/s/ Joseph P. D'Ambrosio

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Co-Counsel for Plaintiffs, MARY A. D'AMBROSIO and JOSEPH P. D'AMBROSIO

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EXHIBIT

8

AFFIDAVIT OF
BARRY JOHNSON, ESQ.

Jon Attridge, et al. v. The Board of Directors of
Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

Exhibit "H"

Affidavit of B. Johnson

GSI, LLC, et al. v. DB Aster, LLC, et al.
Civil Action No. 9:16-cv-02552-RMG

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AFFIDAVIT OF BARRY L. JOHNSON

Personally appeared before me, the undersigned notary public in and for the State of South Carolina, an individual known to me, and known to me to be, one Barry L. Johnson who, having been first duly sworn, sayeth and giveth his affidavit as follows:

1. I am an adult citizen and resident of Beaufort County, South Carolina.

2. I am a licensed attorney-at-law in the State of South Carolina and have been thus licensed since 1971. I have practiced my full legal career in Beaufort County, South Carolina. Since 1996, I have practiced with the same firm, now known as Johnson & Davis, PA.

3. My firm and I were retained by the Bull Point Plantation Property Owner's Association, Inc. Operations Committee to represent it and be its counsel.

4. In the course of that representation, I spoke twice, both times by telephone, with Janelle Iturbe, employed in some capacity by DB Aster, LLC. The first time that I spoke with Ms. Iturbe was some days prior to what she reported to me was to be a scheduled mediation in a case pending in South Carolina, related to Bull Point, and involving DB Aster, LLC and certain companies affiliated with Billy Gavigan. The second time that I spoke with Ms. Iturbe was a day or so after the mediation had apparently taken place in that case. I told Ms. Iturbe that I understood the confidentiality rules pertaining to mediations, and that we could not discuss what went on in the mediation, and that I simply wanted to know if the mediation had been successful or not in resolving the case. Ms. Iturbe told me that the mediation had not been successful in resolving the case; we did not discuss what went on in the mediation.

FURTHER, AFFIANT SAYETH NAUGHT.

Barry L. Johnson, SC Bar #3006

SWORN to before me this 19th
day of May, 2017

Notary Public for South Carolina
My Commission Expires: 10/16/2019

EXHIBIT

9

ORDER DENYING
MOTION TO QUASH

Jon Attridge, et al. v. The Board of Directors of
Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE FOURTEENTH JUDICIAL CIRCUIT COURT OF COMMON PLEAS CIVIL ACTION NO.: 2019-CP-07-00085
BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC., Plaintiff/Counterclaim Defendant, vs. ROBIN BRENDZA, RUSSELL DIMKE, GARY OKEY, RONALD LAMBE, AND JOHN DOES 1-10, Defendants/Third-Party Plaintiffs, vs. BULL POINT SC, LLC, WILLIAM E. GAVIGAN, MICHAEL CAREY, JAMES RIORDAN, QUICK GROUP, LLC, EUGENE STONE AND CHRIS J. QUICK, Third-Party Defendants.	**ORDER DENYING MOTION TO QUASH**

This matter Came before this Court for hearing on December 19, 2019, on the Motion to Quash of Defendants/Third-Party Plaintiffs Gary Okey and Ronald Lambe ("Okey and Lambe") pursuant to Rule 45(c)(3)(A), SCRCP. In their motion, Okey and Lambe seek to quash a subpoena *duces tecum* served on March 27, 2019 – nearly nine months ago – by the Third-Party Defendants to Johnson & Davis, PA, a law firm in Bluffton, South Carolina. The subpoena requests:

> All documents concerning the work product, memoranda, legal opinions, notes, affidavits, pleadings, subpoenas, bills, drafts and all file documents related to Bull Point Operations Committee or Bull Point Plantation Property Owners Association, Inc., together with all documents referenced in the Exhibit A.

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"Exhibit A" is the bill and description of services rendered by Johnson & Davis, PA to the "Bull Point Operations Committee" from January 17, 2017 to August 14, 2017.

For the reasons listed below, this Court DENIES the Motion to Quash and ORDERS that the documents be produced to the Third-Party Defendants within ten (10) days of the date of this Order.

PERTINENT BACKGROUND

Initially, the Bull Point Plantation Property Owners Association, Inc. ("POA") brought this case, *inter alia*, to recover $10,757.66 of POA funds that Defendants Lambe, Brendza, Dimke, and Okey wrongfully converted their own use to pay the legal bill from Johnson & Davis, PA.

In response, these Defendants – including Okey and Lambe – brought a number of counterclaims against the POA and third-party claims against Third-Party Defendants. Specifically, Okey and Lambe have brought the following six (6) third-party causes of action against Third-Party Defendants William E. Gavigan, Michael Carey, James Riordan, Eugene Stone, and Chris J. Quick (hereinafter the "Third-Party Defendants"[1]), for (1) defamation, (2) civil conspiracy, (3) conversion, (4) invasion of privacy, (5) intentional infliction of emotional distress, and (6) negligence. Okey and Lambe base these claims on allegations that the Third-Party Defendants, who were at various times members of the POA's Board of Directors, publicized a supplemental forensic accounting report which addresses the use of POA funds to pay Johnson & Davis, PA for these expenses. The forensic accounting report found that:

- The engagement of Johnson & Davis, PA and the payment of POA funds to Johnson & Davis, PA were not duly authorized by the POA.

[1] Bull Point SC, LLC and the Quick Group, LLC are also Third-Party Defendants but did not serve the subpoena that Okey and Lambe now seek to quash.

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- Okey and Lambe and Operations Manager Marzluff did not have any authority to engage Johnson & Davis, PA or authorize use of POA funds to make payments to Johnson & Davis, PA.

- The services rendered by Johnson & Davis, PA appear to be unrelated to purposes permitted under the POA's rules (the "CCRs"), but instead appear to be solely in the service of ***the purely personal benefit*** of Okey, Lambe, Marzluff, and others.

The claims brought against the Third-Party Defendants allege, in part, that the findings of this forensic accounting report have impeached the Defendants' "honesty, integrity, virtue, and reputation," and the Third-Party Defendants defamed them by publicizing the findings of the forensic accounting report to members of the POA. (Third-Party Complaint, ¶¶ 99-105). The Defendants also allege that the Third-Party Defendants engaged in a conspiracy to commission and generate the forensic accounting report in order to injure the Defendants via allegedly false conclusions. (Third-Party Complaint, ¶¶ 106-109).

THE MOTION TO QUASH

Okey and Lambe seek to quash the subpoena under Rule 45(c)(3)(A), SCRCP, on the following grounds:

- Okey and Lambe – not the Bull Point Property Owners Association, Inc. or the "Bull Point Operations Committee" – are the true clients of Johnson & Davis, PA, and have never waived their privilege over the documents that are the subject of the subpoena.

- In the event that the Association is the "client" of Johnson & Davis, PA, the Third-Party Defendants "are not, and never were, members of the Board of Directors of the Association," and therefore "not in privity with the relationship between the Association and Attorney Johnson and would, therefore, have no control or right to access Attorney Johnson's file."[2]

[2] Also, Okey and Lambe argue that, if the Association is the "true client" of Johnson & Davis, PA, the Third-Party Defendants who are members of the Association would in any event not be entitled to review privileged documents, as that privilege belongs to the Association.

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(Supplemental Memorandum in Support of Motion to Quash). At the hearing, Okey and Lambe also argued that the information sought by the subpoena is not relevant to the proceedings before the Court.

STANDARD OF REVIEW

In this matter, Defendants seek to quash the subpoena in question under Rule 45(c)(3)(A), SCRCP, which provides as follows:

> (3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:
>
> (i) fails to allow reasonable time for compliance; or
>
> (ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
>
> (iii) **requires disclosure of privileged or otherwise protected matter and no exception or waiver applies**; or
>
> (iv) subjects a person to undue burden.

Rule 45, SCRCP (emphasis added).

When considering a motion to quash or for a protective order, the burden of proof is with the party objecting to the discovery to establish that the challenged production should not be permitted. *HDSherer LLC v. Nat. Molecular Testing Corp.*, 292 F.R.D. 305, 308 (D.S.C. 2013). Further, a party seeking to assert an attorney-client privilege bears the burden of establishing that it exists and has not been waived. *State v. Love*, 275 S.C. 55, 59, 271 S.E.2d 110, 112 (1980). Whether a communication is privileged is for the trial judge to decide in the light of a

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preliminary inquiry into all of the facts and circumstances, and this determination by the trial judge is conclusive in the absence of an abuse of discretion. *Id*.

RULING

I. DEFENDANTS HAVE FAILED TO SHOW THAT THE MATTERS SUBJECT TO THE SUBPOENA ARE SHIELDED BY ATTORNEY-CLIENT PRIVILEGE.

A. DEFENDANTS MAY NOT ASSERT THE PRIVILEGE.

As an initial matter, Defendants have failed utterly to support their contention that they – individually – were the "true" clients that hired Barry Johnson "in their capacity as representatives for the existing owners at Bull Point Plantation and not the Association itself, as they are and were minority owners in the Association during developer control." (Motion to Quash, p. 2).

Defendants have failed to show that they have standing to assert an attorney-client privilege because Mr. Johnson has directly stated that his firm represented the "Bull Point Operations Committee" of the Bull Point Property Owners Association, Inc. He stated so (1) in a letter to the POA dated January 10, 2018, in which he states that he believes that his firm's "legal obligations run to that committee," and (2) in a sworn affidavit dated on May 19, 2017, in which he swore that his "firm and I were retained by the Bull Point Plantation Property Owner's Association, Inc. Operations Committee to represent it and be its counsel." (Exhibits 18 and 26 to the Supplemental Forensic Accounting Report). Indeed, even his bills reference his client as the "Bull Point Operations Committee."

These representations belie the unsupported and unsworn assertions of Okey and Lambe that the "Bull Point Operations Committee" was a fictitious organization. Incredibly, they represent to the Court that "there was no validly created Operations Committee; rather, it was a name used to refer to the owners who hired the attorney." (Motion to Quash, p. 3). Notably, the

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forensic accounting report notes that Johnson actually referenced emails "regarding their committee name" and "naming their committee." (Supplemental Forensic Accounting Report, p. 5).

B. EVEN IF OKEY AND LAMBE COULD ASSERT THE PRIVILEGE, IT HAS BEEN WAIVED BY DISCLOSURES TO THIRD PARTIES.

Furthermore, even if Okey and Lambe were represented by Johnson in their individual capacities, they have waived their privilege. The bills themselves indicate that Johnson communicated with Annette Goodell, an administrator at the POA, concerning the covenants of the POA on February 22, 2017 in the course of his legal work.[3] Goodell has denied ever being an agent of Okey or Lambe individually, but nevertheless communicated directly with Johnson concerning the substance of the representation. Moreover, an e-mail dated June 6, 2017, from one third-party, James Goodwin, to other third parties includes references to the "legal opinion" procured by Ron Lambe concerning the rights of the Declarant and the rights over the Contingency Fund. It is axiomatic that "any voluntary disclosure by a client to a third party waives the attorney-client privilege not only as to the specific communication disclosed but also to all communications between the same attorney and the same client on the same subject. *Marshall v. Marshall*, 282 S.C. 534, 538, 320 S.E.2d 44, 46-47 (S.C. App. 1984).

Therefore, under these circumstances, I find that Okey and Lambe have failed to shoulder their burden to prove that they have standing to assert an attorney-client privilege regarding the documents that are the subject of the subpoena. Further, to the extent that they did have

[3] In her deposition, Ms. Goodell states that she does not remember the content of her communications with Mr. Johnson, but does not deny that they took place, and states that such communications "could have been" in the ordinary course of her business. (Goodell Deposition, pp. 58-59). However, she specifically affirmed that she was never employed by Okey, Lambe, or Marzluff. (Goodell Deposition, p. 60).

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standing, they have waived their privilege through voluntary disclosure of the substance of the representation to third parties.

II. DEFENDANTS HAVE FAILED TO SHOW THAT THE MATTERS SUBJECT TO THE SUBPOENA ARE BEYOND THE SCOPE OF PROPER DISCOVERY.

As set forth above, Third-Party Defendants seek these documents in part to support their defense to Defendants' claim against them, most notably the claims for defamation and civil conspiracy. The relevance of these documents to these claims is readily apparent.

Defendants are suing the Third-Party Defendants by asserting that the supplemental forensic accounting report – which concerned the nature of the representation of Johnson and Davis, PA, and the impropriety of POA's payment of the legal bills – was false. In fact, these Defendants assert that the Third-Party Defendants knew that they lacked proof to support their conclusions, including the assertions that Mr. Johnson was advising the "Operations Committee" on subjects that are unrelated to the purposes of the POA's contingency funds, and indeed, that Mr. Johnson was advising the "Operations Committee" on the ways that private individuals could use contingency funds to purchase the development's Declarant rights for their private purposes. (Supplemental Forensic Accounting Report, pp. 4-9).

By claiming that Third-Party Defendants defamed them by stating that Okey, Lambe, and others used POA funds to pay for legal advice to the POA's "Operations Committee" when in fact the legal advice served only the private interests of a few individuals, the Defendants have placed the substance of the legal advice received from Mr. Johnson in question. In fact, examination of the substance of the documents in question from Johnson & Davis, PA ***is essential*** to the resolution of Defendants' claims.

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For these reasons, I find that the Third-Party Defendants must be allowed to defend themselves by referring to the ***very documents*** of which Defendants seek to prevent disclosure. Defendants have failed to shoulder their burden to quash the subpoena on this ground.

III. DEFENDANTS CANNOT ASSERT PRIVILEGE ON BEHALF OF THE POA TO PREVENT DISCLOSURE OF THESE DOCUMENTS.

Most curiously, Defendants appear to attempt to assert a privilege on behalf of another party – the POA. Of course, they cannot do so.

As an initial matter, any person or entity objecting to a subpoena must do so within 14 days of service of the subpoena. Rule 45(c)(2)(B), SCRCP. Counsel for the POA was properly served with the subpoena on March 27, 2019, and at no time since the subpoena was issued – a period of nearly nine months – has anyone acting on behalf of the POA moved to quash the subpoena. Any theoretical attempt by the POA to assert a privilege at this point has been waived. *See, e.g., City of St. Petersburg v. Total Containment, Inc.*, 2008 WL 1995298, at *2 (E.D. Pa. May 5, 2008) (citing numerous cases regarding denial of untimely objection to subpoena).

Further, Defendants cannot assert a privilege that does not belong to them. A privilege must be asserted by the party that actually holds the privilege. *Love*, 275 S.C. at 59, 271 S.E.2d at 112. Defendants have failed to shoulder their burden to quash the subpoena on this ground.

CONCLUSION

For these reasons stated above, the Motion to Quash of Defendants/Third-Party Plaintiffs is DENIED. Johnson & Davis, PA must produce the documents covered by the subpoena within ten (10) calendar days of this Order.

AND IT IS SO ORDERED.

_____

The Honorable Michael G. Nettles
Presiding Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina
_____, 2019

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Beaufort Common Pleas

Case Caption: Bull Point Plantation Property Owners Association Inc VS Robin Brendza , defendant, et al

Case Number: 2019CP0700085

Type: Order/Quash

So Ordered

s/ The Honorable Michael G. Nettles #2140

ELECTRONICALLY FILED - 2019 Apr 02 1:49 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700085

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Bull Point Plantation Property Owners Association, Inc., Plaintiff, vs. Robin Brendza, Russell Dimke, Gary Okey, Ronald Lambe, and John Does 1-10, Defendants/Third-Party Plaintiffs, vs. Bull Point SC, LLC; William E. Gavigan, Michael Carey, James Riordan, Quick Group, LLC, Eugene Stone and Chris J. Quick, Third-Party Defendants.	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-07-00085 **DEFENDANTS/THIRD-PARTY PLAINTIFFS GARY OKEY AND RONALD LAMBE'S MOTION TO QUASH**

PLEASE TAKE NOTICE that Defendants/Third-Party Plaintiffs Gary Okey and Ronald Lambe, by and through their undersigned attorneys, will move this Court for an Order, pursuant to Rule 45(c)(3)(A) of the South Carolina Rules of Civil Procedure, to quash the subpoena issued by Third-Party Defendants, attached as Exhibit A, because the information sought is protected by the attorney-client privilege.

Background

The original suit was filed by Bull Point Plantation Property Owners Association (the Association) over the alleged misappropriation of funds by Defendants Okey and Lambe for using funds of the Association to hire an attorney from Barry & Johnson to advise them on litigation over the ownership of Bull Point Plantation. Bull Point Plantation was previously owned by the developer/declarant DB Aster. At some point, GSI, Inc., owned by William Gavigan, entered into a contract to purchase Bull Point Plantation from DB Aster. The deal fell through and GSI brought suit for specific performance of the sale. The Association, at all times

relevant, was under a declarant's control. While the litigation was pending, Okey and Lambe, upon advice and approval of the then-declarant and President of the Association, hired an attorney, Barry Johnson, to advise them on the ongoing litigation between DB Aster and GSI. The attorney represented the individuals in their capacity as representatives for the existing owners at Bull Point Plantation and not the Association itself, as they were and are minority owners in the Association during developer control.

Later, William Gavigan—who is the new owner of Bull Point Plantation through Bull Point SC, LLC, and is the Association's President—had a forensic audit of the Association's financial records performed and discovered the Defendants used funds from a certain account of the Association to hire Attorney Johnson. Gavigan requested the entire file of Johnson & Davis related to the work performed on behalf of the owners, but was denied based on claims of privilege. As a result, Gavigan filed suit on behalf of the Association, seeking a return of the funds used to hire Attorney Johnson.

The Defendants answered the Complaint filed by the Association, denying any wrongdoing and asserting various counterclaims, and filed a Third-Party Complaint against Gavigan, other members of the Board of Directors of the Association, and the entity that performed the forensic audit. The Third-Party Complaint was served on all Third-Party Defendants by March 20, 2019.

On March 27, 2019, counsel for Third-Party Defendants William E. Gavigan, Michael Carey, James Riordan, Eugene Stone, and Chris J. Quick issued a subpoena, requesting Johnson & Davis provide all documents related to its work performed for "Bull Point Operations Committee."

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Argument

"The attorney-client privilege protects against disclosure of confidential communications by a client to his or her attorney." *Crawford v. Henderson*, 356 S.C. 389, 395, 589 S.E.2d 204 (Ct. App. 2003). "The privilege is strictly construed to protect only confidences disclosed within the relationship." *Id.* (quoting *State v. Owens*, 309 S.C. 402, 407, 424 S.E.2d 473, 477 (1992)). "To establish an attorney-client privilege, the person asserting the privilege must show that the relationship between the parties was that of attorney and client and that the communications were confidential in nature." *Id.* "In order to obtain the status of a client, the person must communicate in confidence with an attorney for the purpose of obtaining legal advice. The advice or assistance must be sought with a view to employing the attorney professionally whether or not actual employment occurs." *Id.* (citation omitted). "The attorney-client privilege belongs to the client and may only be waived by him" or her. *Tucker v. Honda of S.C. Manuf., Inc.*, 354 S.C. 574, 577, 582 S.E.2d 405, 407 (2003).

Here, Okey and Lambe, in their capacity as individual owners of Bull Point Plantation, sought and obtained legal advice from Attorney Johnson regarding the litigation over the ownership of Bull Point Plantation. The Association did not communicate with Attorney Johnson to obtain legal advice. The subpoena requests files regarding work performed on behalf of "Bull Point Operations Committee."[1] Although the name indicates it is a committee of Bull Point Plantation, there was no validly created Operations Committee; rather, it was a name used to refer to the owners who hired the attorney. Accordingly, the clients are Okey and Lambe, not the Association. *See Crawford*, 356 S.C. at 407, 424 S.E.2d at 477 ("In order to obtain the status of a client, the person must communicate in confidence with an attorney for the purpose of obtaining legal advice."). Therefore, everything within the file of Attorney Johnson is protected

[1] The exhibit to the subpoena will be provided to the Court at a hearing on the Motion to Quash.

by the attorney-client privilege and can only be waived by Okey or Lambe. *See Tucker*, 354 S.C. at 577, 582 S.E.2d at 407 ("The attorney-client privilege belongs to the client and may only be waived by him.").

Conclusion

WHEREFORE, Defendants/Third-Party Plaintiffs respectfully request this Court quash the subpoena issued by Third-Party Defendants because it requests material protected by the attorney-client privilege, which may only be waived by the clients—Defendants Okey and Lambe.

This 2nd day of April, 2019.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, L.L.P.

By: *s/Douglas W. MacKelcan*
DOUGLAS W. MACKELCAN
State Bar No.: 76332
SKYLER C. WILSON
State Bar No.: 102865
Attorneys for Defendants Robin Brendza, Russell Dimke, Gary Okey and Ronald Lambe

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
dmackelcan@carlockcopeland.com
swilson@carlockcopeland.com
Ph: 843-727-0307

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	CASE NO.: 2019-CP-07-00085
Bull Point Plantation Property Owners Association, Inc.,	
Plaintiff,	**CERTIFICATE OF SERVICE**
vs.	
Robin Brendza, Russell Dimke, Gary Okey, Ronald Lambe, and John Does 1-10,	
Defendants/Third-Party Plaintiffs,.	
vs.	
Bull Point SC, LLC; William E. Gavigan, Michael Carey, James Riordan, Quick Group, LLC, Eugene Stone and Chris J. Quick,	
Third-Party Defendants.	

I hereby certify that I have this day served a copy of the within and foregoing ***Defendants/Third-Party Plaintiffs Gary Okey and Ronald Lambe's Motion to Quash***, upon all parties to this matter via electronic mail and/or regular U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Ian S. Ford, Esq.
Ainsley F. Tillman, Esq.
Ford Wallace Thomson, LLC
715 King Street
Charleston, SC 29403
Ian.Ford@FordWallace.com
Ainsley.Tillman@FordWallace.com
Counsel for Plaintiff

Maryann E. Blake, Esq.
Woodard & Butler, LLC
P.O. Box 1906
Walterboro, SC 29488
Mablake1@lowcountry.com
Counsel for Plaintiff

Eugene Hamilton Matthews, Esq.
Richardson Plowden
P.O. Drawer 7788
Columbia, SC 29202
gmatthews@richardsonplowden.com
Counsel for Third-Party Defs. Michael Carey, William E. Gavigan, Chris J. Quick, James Riordan, Eugene Stone

Courtesy copy emailed to private counsel for Defendants/Third-Party Plaintiffs Okey and Lambe
Barry L. Johnson, Esq.
Johnson & Davis, PA
10 Pinckney Colony Road
Bluffton, SC 29909
barry@jd-pa.com

This 2nd day of April, 2019.

s/Douglas W. MacKelcan
DOUGLAS W. MACKELCAN

Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
Ph: (843) 329-8346

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EXHIBIT

10

RETAINER AGREEMENT,
dated January 25, 2017
(*Johnson & Davis, PA*)

Jon Attridge, et al. v. The Board of Directors of
Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

Barry Johnson

From: Gay Reed
Sent: Thursday, February 02, 2017 2:34 PM
To: Gary Okey; Ron Lambe; Pete Marzluff
Cc: Barry Johnson
Subject: RE: Bull Point POA
Attachments: 20170202_Engagement Agreement_fully signed.pdf

Attached, for your records, is a fully-executed copy of the firm's Engagement Agreement.

Thanking you,

Gay E. Reed, Legal Assistant
JOHNSON & DAVIS, PA
The Victoria Building, Suite 200
10 Pinckney Colony Road
Bluffton, SC 29909
(843) 815-7121
(843) 815-7122 Fax
gay@jd-pa.com

Both Gay E. Reed and JOHNSON & DAVIS, PA, intend that this message be used exclusively by the addressee(s). This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unauthorized disclosure or use of this information is strictly prohibited. If you have received this communication in error, please permanently dispose of the original message and notify Gay E. Reed immediately at the number above. Thank you.

BLJ E-Mails_000382

JOHNSON & DAVIS, PA

ATTORNEYS AND COUNSELORS AT LAW

BARRY L. JOHNSON*
HUTSON S. DAVIS, JR. **

* Certified S.C. Mediator and Arbitrator
** Certified S.C. Mediator

THE VICTORIA BUILDING
SUITE 200
10 PINCKNEY COLONY ROAD
BLUFFTON, SC 29909

TELEPHONE (843) 815-7121
TELEFAX (843) 815-7122

BARRY L. JOHNSON
BARRY@JD-PA.COM

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AGREEMENT FOR THE ENGAGEMENT OF LEGAL SERVICES

We, **Bull Point Plantation Property Owners Association, Inc.**, the undersigned clients (collectively, "Client"), do hereby retain **JOHNSON & DAVIS, PA**, The Victoria Building, Suite 200, 10 Pinckney Colony Road, Bluffton, South Carolina, 29909, as our attorneys to represent us in the following matter: *advise Client regarding Declarant's rights issues, concerning Bull Point Plantation and Client and others and to represent Client in all mater related thereto.*

("Matter").

In consideration of the services provided to us, we agree to pay **JOHNSON & DAVIS, PA** a retainer of $0.00 towards **JOHNSON & DAVIS, PA**'s work in the Matter including, but not limited to, the following: (a) fees for hourly rates of $350.00 for attorney time; (b) fees for hourly rate of $100.00 for paralegal, legal assistant and law clerk time; and (c) all costs and expenses. Costs and expenses include, but are not limited to, filing fees, court reporter charges, service of process fees, facsimile transmissions, courier services, travel expenses (including hotels, meals and airline or automobile mileage charges and parking fees), expenses related to motions, hearings, trial, expert witness fees, long distance and cellular telephone charges, copy costs, UPS/Fed Ex charges and postage.

Client specifically understands, agrees, represents and acknowledges the following terms and conditions of representation by **JOHNSON & DAVIS, PA** in the Matter:

1. All fees for time charges are to be billed and paid in minimum increments of one-tenth (1/10) hour and are calculated portal-to-portal. Client agrees that, if **JOHNSON & DAVIS, PA**'s

representation in the Matter continues after December 31, 2017, **JOHNSON & DAVIS, PA** has the right to adjust its hourly rates upward to reflect its then-current billing structure, and so on after December 31 of each subsequent calendar year.

2. All costs and expenses are billed and paid at actual costs, except that internally-generated photocopies and printouts are billed at $0.15/page for black and white copies, $0.25/page for color copies and telefacsimile copies are billed at $0.25/page. Automobile mileage charges are billed at IRS standard mileage rates.

3. Upon request of **JOHNSON & DAVIS, PA**, Client will promptly pay, additionally, separately and directly, for any mediator fees, arbitrator fees, court reporter fees, investigations, experts, appraisals, surveys, accounting and valuation fees, photography, exhibit preparation, *et cetera* (collectively, "Separate Charges"), as deemed needed by **JOHNSON & DAVIS, PA** for the Matter. Client acknowledges that it is not the policy or responsibility of **JOHNSON & DAVIS, PA** to advance fees and the costs of Separate Charges.

4. Interim billings will be made, usually on a monthly basis, by **JOHNSON & DAVIS, PA** to Client ("Billings"). Billings are due for client's payment immediately upon Client's receipt, whether received by email, surface mail or telefacsimile.

5. The Retainer is not intended to be applied to interim Billings of **JOHNSON & DAVIS, PA** to Client, but only to the final such Billing; provided, however, that JOHNSON & DAVIS, PA may, in its sole discretion, apply any balance in the Retainer to any unpaid Billing at any time.

6. **JOHNSON & DAVIS, PA**, in its sole discretion, has the right to require Client's replenishment or increase in the Retainer, in the event of untimely payment of Billings by Client, and/or for future fees, costs and expenses and risk associated with discovery, motion hearings, mediation proceedings, arbitration proceedings and trial.

7. Client hereby authorizes **JOHNSON & DAVIS, PA** to act as Client's attorneys in the Matter. Client hereby agrees that **JOHNSON & DAVIS, PA**, in its sole discretion, will determine its staffing of the

work on the Matter. Client authorizes **JOHNSON & DAVIS, PA**, in its sole discretion, to grant extensions of time to other parties in the matter when deemed appropriate and to seek to obtain any and all information necessary to the disposition of the Matter.

8. Client agrees to cooperate with **JOHNSON & DAVIS, PA** in every respect and to keep it fully and timely informed as to Client's address(es), phone number(s), telefacsimile number(s) and email address(es).

9. Client represents that he/she/they/it has/have not filed for bankruptcy protection and agrees to notify **JOHNSON & DAVIS, PA** immediately if and when a bankruptcy filing, whether voluntary or involuntary, is made by or against any Client, and then to supply **JOHNSON & DAVIS, PA** with the bankruptcy case number, venue court, and contact information for bankruptcy counsel.

10. Client agrees that **JOHNSON & DAVIS, PA** may withdraw from representing Client in the event of Client's non-payment or untimely payment of Billings or of Separate Charges, or of **JOHNSON & DAVIS, PA**'s request(s) for replenishment or increase in the Retainer, or Client's failure to cooperate or timely respond to **JOHNSON & DAVIS, PA**'s requests, etc. In addition, Client may withdraw from this Agreement on thirty (30) days written notice to **JOHNSON & DAVIS, PA**.

11. In the event that suit or other proceedings are instituted by **JOHNSON & DAVIS, PA** against Client to collect the Billings or Separate Charges, Client will pay, additionally, all reasonable attorney's fees, costs and expenses incurred therefrom by **JOHNSON & DAVIS, PA**, as well as the time, costs and expenses of **JOHNSON & DAVIS, PA**'S attorneys and staff personnel devoted to such collection process, determined in accordance with the above-stated time, rate and cost factors.

12. Client agrees that **JOHNSON & DAVIS, PA** has, and shall have, a lien on all settlements, proceeds, property, other recovery, papers, documents and files in Client's Matter to secure payment by Client of Billings and Separate Charges.

13. When this matter has been concluded, Client instructs **JOHNSON & DAVIS, PA** to destroy this file after a holding period of six years.

14. **This Agreement for the Engagement of Legal Services does not contain any provisions regarding any appeal work or process. Should an appeal become desirable, a new agreement for the engagement of legal services will need to be made, if agreeable, between Client and JOHNSON & DAVIS, PA.**

This Agreement for the Engagement of Legal Services is made and entered into by the Client and **JOHNSON & DAVIS, PA** as of the date(s) set forth below.

Gay E. Reed 2/2/17
Witness Date

JOHNSON & DAVIS, PA

By: _____
Barry L. Johnson, Attorney & President

CLIENT:

BULL POINT PLANTATION OWNERS ASSOCIATION, INC.

Annette Bodell 1/30/17
Witness Date

By: _____
It's: SEC/TREAS

EXHIBIT

11

RETAINER AGREEMENT,
dated May 25, 2017
(*Nexsen Pruet*)

Jon Attridge, et al. v. The Board of Directors of
Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

NEXSEN|PRUET

Jeffrey S. Tibbals
Member
Admitted in MD, VA, DC, SC

May 25, 2017

Mr. Joseph Steinheiser
Bull Point Plantation Owners
Association, Inc.
114 Barnaby Bluff
Seabrook, SC 29940

Re: Response to May 8, 2017 Subpoena Issued to Bull Point POA, in case captioned GSI, LLC, et al. v. DB Aster, LLC, et al.

Dear Mr. Steinheiser:

Thank you for choosing Nexsen Pruet, LLC to serve as counsel on your behalf in the above-referenced matter. We always want our clients to be fully informed and comfortable with our services and charges. Therefore, when asked to represent a new client, we find it helpful to explain our policies and practices with regard to our services and billings. This letter describes the basis on which we will represent you and bill for our services.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach

1. Professional Undertaking. I will have primary responsibility for your representation in the matter referred to above, though other attorneys and legal assistants may be used in this matter in the best exercise of our professional judgment. We will endeavor to assist you in a professional manner and to the best of our abilities, but we cannot guarantee the outcome of any given matter.

2. Scope of Engagement. You have asked us to represent Bull Point POA in connection with that certain subpoena dated May 8, 2017, issued by Bryan Raymond, in connection with the case captioned *GSI, LLC, et al. v. DB Aster, LLC,* et al., Civil Action No. 9:16-cv-2552-RMG, pending in the United States District Court for the District of South Carolina.

3. Fees. We take into account many factors in charging for services rendered. The principal factor is usually our schedule of hourly rates in effect at the time the services are rendered. Our hourly rates for attorneys and other staff members are based on years of experience, and level of professional attainment. Currently, our rates for attorneys range from $185 to $675 per

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1772
F 843.414.8219
E JTibbals@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

hour. My current billable rate is $395 per hour. Our rates for legal assistants and law clerks range from $105 to $200 per hour. The schedule is reviewed periodically and adjusted as and when we deem it appropriate. Normally the attorney with primary responsibility for your representation will review all statements before they are rendered to ensure the charges are appropriate.

4. Expenses. Often it is necessary for us to incur expenses for items such as travel, lodging, meals, telephone calls, and deposition transcripts. Similarly, some matters require substantial amounts of costly ancillary services such as photocopying, word processing, computerized legal research, and staff overtime. In order to allocate these expenses fairly and keep billing rates as low as possible for those matters which do not involve such expenditures, these items are separately itemized on our statements as "expense advances". Some "expense advances" represent out-of-pocket costs, some represent an allocation of overhead costs associated with the items described above, and others represent a combination of both factors.

5. Retainers. In certain matters, we require payment before rendering service. We may ask for a retainer when we are about to start a trial or similar large undertaking, or when a client is new and has no payment history with us. Also, when we foresee substantial disbursements on a particular matter, we may ask you to pay them directly or to fund them in advance. Any such advance payment is held by us in our escrow account. You agree we have the right, without notice and in our own discretion, to apply all or a portion of such funds against past due billings or other amounts owing to us. In the event we draw against an advance payment, we reserve the right to suspend work on your behalf until such time as the deposit is replenished in full. The balance of any advance payment against future billings remaining at the conclusion of a matter for which we have been paid in full will be refunded to you.

6. Billings. Our statements generally will be prepared and mailed in a few days after the end of any month in which services are rendered and disbursements are made. We expect prompt payment, and in no event later than thirty (30) days from the date of the statement.

7. Late Payments. We are confident that you will make every effort to pay us promptly. Occasionally, however, a client has difficulty in making timely payments. To avoid burdening those clients who pay their statements promptly with higher fees reflecting the added costs we incur as a result of clients who are delinquent, a monthly service charge of 1.5% is added for late payments. This charge is assessed on amounts which remain unpaid for more than thirty (30) days from the date the bill was rendered. In no event will the

service charge be greater than permitted by applicable law. We reserve the right to suspend all work if amounts billed remain unpaid for more than thirty (30) days. In the unlikely event that we are required to institute legal proceedings to collect fees and costs, the prevailing party will be entitled to a reasonable attorneys' fee and other costs of collection. Naturally, we do not expect any such problems will arise between us and we look forward to a wholly amicable relationship.

8. Termination. You will have the right to terminate our representation at any time. We will have the same right, subject to our obligation to give you reasonable notice to arrange alternative representation and where required to obtain permission of the judge before whom a litigation matter is pending.

Please review the foregoing and, if it meets with your approval, sign a copy of this letter and return it to me in the enclosed envelope. We look forward to working with you.

With best regards, I am

Very Truly Yours,

NEXSEN PRUET, LLC

Jeffrey S. Tibbals

The undersigned consents to Nexsen Pruet, LLC's legal representation as counsel on the terms and conditions set forth in this letter.

BULL POINT PLANTATION OWNERS ASSOCIATION INC.

Date: 5-25-17

By: Joseph Steinheiser

Its: President

EXHIBIT

12

PROPOSED SEVENTEENTH AMENDMENT,
and related emails
from January 2016 to mid- 2017

Jon Attridge, et al. v. The Board of Directors of
Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

Barry Johnson

From: Pete Marzluff <pmarzluff@bullpointpoa.com>
Sent: Wednesday, March 15, 2017 10:50 AM
To: Barry Johnson
Cc: Lambe; Okey
Subject: Amendment 17
Attachments: Seventeen Amendment to the Covenants, DRAFT, changes accepted, comments removed.doc

Follow Up Flag: Follow up
Flag Status: Completed

Barry,
As Gary mentioned, I have the task of forwarding the proposed amendment 17 to you for another review. I have incorporated the changes we discussed and hi-lighted the changes in yellow. Paragraph 3 gives a timeline for Director's terms, paragraph 4 adds the most important section on day to day operations, paragraph 8 modifies the payment of dues by the declarant on a sliding scale (pay nothing for first year of ownership, 50% for the next 2 years, and full payment going forward years 4 and beyond). I hope that the verbiage isn't overly complicated or obtuse. Finally, the last sentence in paragraph 9 allows appointing and approving of ARB members by the 8.04 group. The sentence in that paragraph that indicated prior approval of the board was removed.

w/r

Pete Marzluff
Director of Operations
Bull Point Plantation POA
114 Barnaby Bluff
Seabrook, S.C.
29940

pmarzluff@bullpointpoa.com

843-379-9940 (O)

www.bullpointpoa.com

STATE OF SOUTH CAROLINA	)	SEVENTEENTH AMENDMENT TO DECLARATION
	)	OF COVENANTS, CONDITIONS, AND
	)	RESTRICTIONS FOR BULL POINT
	)	PLANTATION

This seventeenth Amendment to the Declaration of Covenants, Conditions and Restrictions of BULL POINT PLANTATION is made this ____ day of _____, 2016 by DB ASTER LLC, a Delaware Limited Liability Company hereinafter referred to as "Declarant".

WITNESSETH

WHEREAS, BULL POINT, LLC and METROPOLITAN PROPERTIES INC., executed a Declaration of Covenants, Conditions, and Restrictions for BULL POINT PLANTATION dated 22nd day of September, 1995 which was recorded in Deed Book 805 at Page 218 on September 26, 1996 in the Office of the Register of Deeds for Beaufort County, South Carolina (the "Declaration") and:

WHEREAS, the Declarant has to date executed seventeen Amendments to the Declaration including two (2) different fifteenth Amendments, which all have been recorded in the Register of Deeds Office for Beaufort County, South Carolina; and

WHEREAS, all the previous amendments have been deleted with the exception of the Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, the two (2) Fifteenth, and a Sixteenth Amendments; and

WHEREAS, Declarant is desirous of entering into this Seventeenth Amendment amending the Declaration as previously amended, as provided for herein; and,

NOW, THEREFORE, Declarant hereby further amends the Declaration and its amendments as follows:

1. Fifteenth Amendments (2): The Amendment to the Declaration dated the 12th day of November, 2009 and recorded in Deed Book 2941 at Page 1746 on March 18, 2010 in the Office of the Register of Deeds Beaufort County, South Carolina is hereafter to be referred to as "Amendment Fifteen A".

The Amendment to the Declaration dated the 10th day of October, 2011 and recorded in Deed Book 3092 at Page 2121 on October 24, 2011 in the Office of the Register of Deeds Beaufort County, South Carolina is hereafter be referred to as "Amendment Fifteen B".

2. Article I, Section 1.01 Definitions of the Declaration is hereby amended as follows:

After the word "Plantation" on line 2 of Subsection (e) add the word "Property"

Further the following definition is added as Subsection (cc):

"(cc) Member in Good Standing" shall mean and refer to those Owners who are not in default in payment of any assessments, fees, or fines by the Association. Only Members in Good Standing shall be eligible to vote in Association matters including at the Annual Meeting."

3. Article VIII, Section 8.01 Common Areas (ADMINISTRATION) of the Declaration is amended as follows:

At the beginning of this section add "8.01 (a) Board of Directors. Until such time as the Association is assigned the Declarant rights, the Board of Directors of the Association shall consist of four (4) persons: three (3) voting members; the President, the Vice President, and the Secretary/Treasurer. The fourth member will be a non voting Director. The President and Vice President positions will be appointed by the Declarant and need not be members of the Association. The Secretary/Treasurer and the non voting Director must be Members in Good Standing of the Association and be elected or confirmed by the membership at the Annual Meeting. At such time as the Declarant rights are assigned to the Association, all board members will be elected or confirmed by members in good standing at the Annual Meeting or by ballot if transfer of declarancy to the POA occurs more than 2 months before the next Annual Meeting. The makeup of the Board may be further modified by the Association By-Laws once declarancy transfers to the POA.

Further, change the previous "8.01 Common Areas." to "(b) Common Areas."

Further, after the word "Board of Directors" in line 18 of Common Areas add "it so appoints".

Further, add a new sub-section "(c) Nominating Procedures. Nominating and voting procedures will be as determined by the Board of Directors and may be further modified by the By-Laws."

4. Article VIII, Section 8.04 Management Agreement of the Declaration is deleted in its entirety.

5. Article IX, Section 9.02 Creation of Lien and Personal Obligation of Assessments of the Declaration is amended as follows:

All of the last sentence after the word "Directors" on line 35 is deleted.

6. Article IX, Section 9.03 Computation of Annual Assessments of the Declaration is amended as follows:

On line 26 after "directors and officers of the Association" add "per section 8.01"

Further, on line 27 change "majority of the votes of the Owners" to "majority of the votes of the Members in Good Standing"

7. Article IX, Section 9.07 Notice of Meeting and Quorum of the Declaration is amended as follows:

On line 4 after the words "shall be sent" add the words "via letter or electronic mail"

Further, replace the word "member" on both line 7 and line 12 with "Members in Good Standing".

Further, on both line 8 and on line 12, before the word "votes" add the word "eligible".

8. Article IX, Section 9.11 Date of Commencement of Annual Assessments of the Declaration is amended as follows:

On line 20 after the words "Declarant shall" remove the word "not".

Further on line 22 delete all the remainder of this section after the words "lots which it or its affiliates own."

9. Article X, Section 10.02 Architectural Review Board of the Declaration is amended as follows:

Delete Section10.02 in its entirety and replace with the following:
"10.02 The Architectural Review Board. The Board of Directors shall establish the Architectural Review Board which shall consist of up to seven (7) members but not less than three (3) members. It is required that the majority: (three on a board of five (5) or five on a board of (7) seven) be property owners in good standing. It is suggested that a registered architect and landscape architect or designer fill two voting positions on the board. These members may, but are not required to be Owners. The board shall also employ a non-voting administrator. Alternate board members may be appointed on a non-voting basis (unless acting for an absent board member). The regular term of office for each member shall be one year, coinciding with the fiscal year of the Association. ARB members may apply for an extension of their term at the discretion of the Board. Any member appointed to the board may be removed with or without cause by the Board at any time by written notice of such appointee, and successor or successors appointed to fill such vacancy shall serve the remainder of the term. Any member appointed to the ARB by the Board shall be subject to the prior approval of the Board of Directors. The Architectural Review Board of Directors shall elect a chairman. The chairman, or in his absence, the vice chairman, shall be the presiding officer at meetings. The ARB shall meet at least once in each calendar month, as well as upon call of the chairman. Three members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority shall constitute the action of board. With prior Board of Directors

approval, the ARB is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors and/or attorneys, as well as the Bull Point Operations Manager in order to advise and assist the ARB in performing its functions set forth herein. Any member of the ARB may be paid a stipend or honorarium from time to time as determined by the Board."

10. Article X, Section 10.04 Construction of Improvements Subsection (c) of the Declaration is amended as follows:

On lines 12 and 13 of Subsection (c) replace the words "FIVE THOUSAND AND NO/100 ($5000)" with "EIGHT THOUSAND AND NO/100 ($8000) or such other fee determined by the Board of Directors"

11. Except as amended herein, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has set forth their hands and seals this day and year first written above.

WITNESSES:

DECLARANT
DB ASTER, LLC
A Delaware Limited Liability Co.

_____

By:_____

_____

Its:_____

STATE OF _____)
)
COUNTY OF_____)

ACKNOWLEDGEMENT
_____(state ref. code)_____

I, the undersigned notary public, do hereby certify that the within named DB ASTER, LLC, a Delaware Limited Liability Company, by its managing members personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness to before me this ____ day of _____, 2016.

_____
Notary Public for ____(state)_____
My Commission Expires:_____

Annette Goodell

From: Ron Lambe <rlambe@hargray.com>
Sent: Monday, January 4, 2016 1:19 PM
To: Annette Goodell Bull Point POA
Subject: Proposed Draft of the 17th Amendment to the Covenants
Attachments: Seventeen Amendment to the Covenants.doc

Annette,

Please copy the body of this e-mail and the attachment contents and make 4 copies of each for our meeting at 1400.

Thank you!!!

Ron

Wayne, Ron, Pete, Gary:

Per your request, I have gone through the current Covenants and constructed a new Amendment 17 (attached). The goal is to change just those sections which conflict most with how we actually run the POA & ARB. It should also allow the POA to put in place the new By-Laws which I drafted over a year ago. If you recall, I sent my By-Laws draft to Smoot & Pitts to review and Brian Pitts noted the numerous conflicts with Covenants which made my proposal unworkable.

I used the same general type format for this amendment as Stan did in the past although he was not very consistent in some cases.

Here is a summary of the 10 areas I changed:

Item 1 - Addresses Stan's numbering error of having two 15th Amendments
Item 2 - Updates the POA to the correct name. I also added a Definition of the "Member in Good Standing" which we use in voting etc.
Item 3 - Adds the current structure of the Board of Director versus the all appointed Board by the Declarant. It also attempts to keep the Declarant from removing the two members voted in by the membership.
Item 4 - This section needs to be eliminated since Bull Point LLC still specifically has the right to collect a fee to "manage" the POA. The way I read this section the ability to implement this did pass on to the "Declarant".
Item 5 - This could be left just as is but most of the last sentence is not needed and introduces the idea of "equal monthly installments" .
Item 6 - The key change here is to define who can vote (not every "Owner" but" Members in Good Standings" only) and what constitutes a 50% majority etc. It also limits the ability of the Declarant of remove voted in members by referencing the revised Section 8.01 (Item 3)
Item 7 - This allows the use of electronic mail as a notification method
Item 8 - This is perhaps is the most sensitive change we need. The changes formally puts in place the Declarant paying dues on its Lots. It also includes the concept of dues being paid when the Declarant adds any new lots (I.e. Phase 7)"is added to the Development". The current wording would allow no dues being paid on Developer lots "until conveyed to a person other than the Declarant". If we get a new Declarant there is nothing stopping them from not paying for the current 32 DB Aster lots. As a counterbalance you will see I removed the last part of this section which obligates the Declarant from making up any shortfalls in the Budget.
Items 9 - These are the changes which replaces the Covenant defined structure and with the actual structure now in use.
Item 10 - This updates the Covenants to the escrow amount we now charge and also allows the Board to heretofore

EXHIBIT

13

JOHNSON FILE
(22 pages relating
to the Declarant Rights)

Jon Attridge, et al. v. The Board of Directors of
Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

Bull Point Core Documents 000022

Barry Johnson

From: Gary Okey <nancygary44@gmail.com>
Sent: Wednesday, April 12, 2017 3:04 PM
To: Barry Johnson
Cc: Ron Lambe; pmarzluff
Subject: "Operating Committee/Investment group questions

Follow Up Flag: Flag for follow up
Flag Status: Completed

Barry,

The three of us as the so called "Operating Committee" have been talking to Bob Wolfson and several others who have emerged as a leadership group for those property owners interested in purchasing the Declarancy. Some questions have emerged which we would like to run by you:

1. As an incentive for investors to join Bob's group and to allow them the possibility of turning a profit on their investment, we would like to offer them some sort of graduated dues reduction plan for the 28 or 29 lots that they would purchase from DB Aster along with the Phase 7 property and the Declarancy. For example we might offer a total "dues holiday" for the first year or two followed by a declining percentage reduction for the following 2-3 years. The formula could allow for some flexibility based on the number of lots sold by the investor LLC each year.

Under this approach, we would not be spending Contingency Fund monies but reducing the contributions that we make to the fund each year from property owner dues. (We are currently allocating $400 of each property owner's dues to the Contingency Fund.) Assuming the Declarancy is transferred from the investor group to the Operating Committee (or whatever successor group of property owners might be set up), do you see any legal problems in our exempting some lots (the 28-29 until they are sold) either totally, or in part, from regular dues assessments?

2. The investor group has asked us to think about the possibility of making a loan to the investors from the Contingency Fund. The numbers they gave us were between $300-400,000. As we understand it, this money would not be used to help achieve the purchase price with DB Aster, but would be distributed in some fashion after the purchase of lots and Declarancy to give the investors some assurance that they would have some return on their investment sooner rather than later. Pete and I don't think much of this idea (Ron hasn't had a chance to weigh in as he is traveling), but we wanted to get your legal perspective on whether something like this is either a.) legal, or b.) practical.

A related, but much simpler approach would involve our purchasing the Declarancy from the investor group shortly after they obtain it from DB Aster. We would explain the purchase as a straight purchase of control over our own destiny and the ability to preserve our current property values and neighborhood. Assuming full notice to all property owners and a chance for them to weigh in with their opinions on the purchase, do you see any legal problem with this approach?

3. A third question involves the possibility of a Billy Gavigan or someone like him trying to build duplexes or other multifamily housing either on the first 28-29 lots or in Phase 7. Ron has spoken with a Ms Austin, Manager of the Beaufort County Zoning Office. She apparently knows Mr. Gavigan quite well and said "we would not approve duplexes for your development." She also told Ron that a Declarant cannot change the covenants without a 2/3 vote of all property owners, which is not our understanding. Is it your understanding that a Declarant would have to apply to the Beaufort County Zoning Office for permission to build multi-family housing at Bull Point and that that it would be very unlikely that such a request would be granted? Clearly we would still face the problem of an outside Declarant changing the ARB Guidelines and Board to build a very different type of home here. But the duplex approach would change everything about this place.

Finally, this is just a request for a billing clarification. On your firm's March statement there are a few entries totaling about one hour of your time for conferences, etc. with Bob Wolfson. As we told Bob today, as long as you see no conflicts of interest, we have no objection to your representing us and Bob's group. But they are a separate entity and we would like you to bill them separately for any legal services you provide them. Bob understands and hopefully you can set up a separate billing arrangement with Bob or other representatives of his group. And if you could send us a revised March statement with the Wolfson time removed, we'd appreciate it.

We all think the next couple of weeks will tell the tale on whether a proposal to DB Aster will get off the ground. Thanks very much for your assistance Barry.

Gary

From: Gary Okey [mailto:nancygary44@gmail.com]
Sent: Saturday, April 29, 2017 3:02 PM
To: Barry Johnson
Cc: Ron Lambe; pmarzluff
Subject: Fwd: Missing Attachment to the previous e-mail

Barry,

I have forwarded to you a quite detailed and thoughtful analysis of one of our neighbors, Jim Goodwin, who is part of the leadership team of the group looking into the purchase of the Declarancy and lots from DB Aster. The group is hosting meetings this coming Tuesday, Wednesday and Thursday evenings to try and generate support for the purchase. Ron, Pete and i will be at the meetings and are quite sure we will get questions which you are currently researching, but which are now particularly timely:

1. Are there any legal problems if the "Operations Group" agrees to waive a portion or all of the annual assessment for the lots purchased for a set period of years, or until the lots are sold?

2. Could we agree to purchase the Declarancy from the Investment Group shortly after they obtain it, using Contingency Fund monies? If we could do so legally, would/should we first have to obtain consent from either a majority or super majority of the property owners?

If you could give us some guidance before the first meeting which is at 6:00 p.m. on Tuesday we would appreciate it. If this isn't possible, please give us as much information as you can and we will tell our neighbors the additional questions are still being looked into. Thanks Barry.

Gary

Begin forwarded message:

From: "JAMES G GOODWIN JR" <jgoodwi@clemson.edu>
Subject: Missing Attachment to the previous e-mail
Date: April 28, 2017 at 10:25:25 PM EDT
To: "steve@andrewsburgess.com" <steve@andrewsburgess.com>, "janetandrews843@gmail.com" <janetandrews843@gmail.com>, "all5js@gmail.com" <all5js@gmail.com>, "steve.bahlmann@gmail.com" <steve.bahlmann@gmail.com>, "beaufortem@gmail.com" <beaufortem@gmail.com>, "gbankov@aol.com" <gbankov@aol.com>, "tomtocarol@yahoo.com" <tomtocarol@yahoo.com>, "caroltotom@gmail.com" <caroltotom@gmail.com>, "gbosiack@gmail.com" <gbosiack@gmail.com>, "harriettwb@gmail.com" <harriettwb@gmail.com>, "brendza4@aol.com" <brendza4@aol.com>, "robin.brendza@bentley.com" <robin.brendza@bentley.com>, "mmbgmb@centurylink.net" <mmbgmb@centurylink.net>, "mjmbright@gmail.com" <mjmbright@gmail.com>, "rjcole131@gmail.com" <rjcole131@gmail.com>, "librarylady86@gmail.com" <librarylady86@gmail.com>, "maryjoed@bellsouth.net" <maryjoed@bellsouth.net>, "karendekel@gmail.com" <karendekel@gmail.com>, "deb3113@aol.com" <deb3113@aol.com>, "pfenig@gmail.com" <pfenig@gmail.com>, "suzanne.gallup@raveis.com" <suzanne.gallup@raveis.com>, "laurelmarketing1@aol.com" <laurelmarketing1@aol.com>, "bigpisano@cableone.net" <bigpisano@cableone.net>, "JAMES G GOODWIN JR" <jgoodwi@clemson.edu>, "c_a_goodwin@hotmail.com" <c_a_goodwin@hotmail.com>, "swgray@yahoo.com" <swgray@yahoo.com>, "nancygary44@gmail.com" <nancygary44@gmail.com>

James G. Goodwin, Jr., PhD
Professor Emeritus of Chemical Engineering
Clemson University
Cell 864-650-3807

Bull Point Core Documents 000027

Barry Johnson

From: Gary Okey <nancygary44@gmail.com>
Sent: Saturday, April 29, 2017 3:02 PM
To: Barry Johnson
Cc: Ron Lambe; pmarzluff
Subject: Fwd: Missing Attachment to the previous e-mail
Attachments: 2017-04-27_CURRENT SITUATION.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Barry,

I have forwarded to you a quite detailed and thoughtful analysis of one of our neighbors, Jim Goodwin, who is part of the leadership team of the group looking into the purchase of the Declarancy and lots from DB Aster. The group is hosting meetings this coming Tuesday, Wednesday and Thursday evenings to try and generate support for the purchase. Ron, Pete and i will be at the meetings and are quite sure we will get questions which you are currently researching, but which are now particularly timely:

1. Are there any legal problems if the "Operations Group" agrees to waive a portion or all of the annual assessment for the lots purchased for a set period of years, or until the lots are sold? yes - no authority

2. Could we (who (POA?)) agree to purchase the Declarancy from the Investment Group shortly after they obtain it, using Contingency Fund monies? If we could do so legally, would/should we first have to obtain consent from either a majority or super majority of the property owners?

If you could give us some guidance before the first meeting which is at 6:00 p.m. on Tuesday we would appreciate it. If this isn't possible, please give us as much information as you can and we will tell our neighbors the additional questions are still being looked into. Thanks Barry.

Gary

Begin forwarded message:

From: "JAMES G GOODWIN JR" <jgoodwi@clemson.edu>
Subject: Missing Attachment to the previous e-mail
Date: April 28, 2017 at 10:25:25 PM EDT
To: "steve@andrewsburgess.com" <steve@andrewsburgess.com>, "janetandrews843@gmail.com" <janetandrews843@gmail.com>, "all5js@gmail.com" <all5js@gmail.com>, "steve.bahlmann@gmail.com" <steve.bahlmann@gmail.com>, "beaufortem@gmail.com" <beaufortem@gmail.com>, "gbankov@aol.com" <gbankov@aol.com>, "tomtocarol@yahoo.com" <tomtocarol@yahoo.com>, "caroltotom@gmail.com" <caroltotom@gmail.com>, "gbosiack@gmail.com" <gbosiack@gmail.com>, "harriettwb@gmail.com" <harriettwb@gmail.com>, "brendza4@aol.com" <brendza4@aol.com>, "robin.brendza@bentley.com" <robin.brendza@bentley.com>, "mmbgmb@centurylink.net" <mmbgmb@centurylink.net>, "mjmbright@gmail.com" <mjmbright@gmail.com>, "rjcole131@gmail.com" <rjcole131@gmail.com>, "librarylady86@gmail.com" <librarylady86@gmail.com>, "maryjoed@bellsouth.net"

<maryjoed@bellsouth.net>, "karendekel@gmail.com" <karendekel@gmail.com>, "deb3113@aol.com" <deb3113@aol.com>, "pfenig@gmail.com" <pfenig@gmail.com>, "suzanne.gallup@raveis.com" <suzanne.gallup@raveis.com>, "laurelmarketing1@aol.com" <laurelmarketing1@aol.com>, "bigpisano@cableone.net" <bigpisano@cableone.net>, "JAMES G GOODWIN JR" <jgoodwi@clemson.edu>, "c_a_goodwin@hotmail.com" <c_a_goodwin@hotmail.com>, "swgray@yahoo.com" <swgray@yahoo.com>, "nancygary44@gmail.com" <nancygary44@gmail.com>

James G. Goodwin, Jr., PhD
Professor Emeritus of Chemical Engineering
Clemson University
Cell 864-650-3807

Current Situation

Concerned Bull Point Property Owners
4/27/17

1. Current Status of Bull Point Declarancy Law Suit

Law suit deals with Sale of Bull Point Declarancy & Property of DB Aster to Gavigan LLC.

DB Aster negotiated to sell to Gavigan LLC the rest of its ownership of Bull Point Plantation, including

1) the Declarancy
2) 29 existing lots
3) 153 acres of woodland in Phase 7.

The price for all that now stands at $1.2 million.

Gavigan did not show up for the closing even after an extension in June of 2016. DB Aster withdrew the offer, and Gavigan sued. In the past 1-2 months, the case went to mediation; but Gavigan did not accept the mediated result. The case is now moving forward with a trial sometime in the future, perhaps in 4-6 months. At any time, Gavigan could accept the deal on the table, resulting in the sale going through. or the deal could be modified and mutually accepted.

2. Three Possible Resolutions

a. Gavigan wins the suit and acquires B.Pt property and Declarancy.

- He would be in **total control of the POA Board and the ARB**.
- He could keep the covenants as is. (doubtful)
- He could keep the covenants but **build cheap 2000 sq. ft. houses** selling at $200-300K/house)
- He could **try to change the covenants** (or create the 153 acres as a slightly different entity with different rules) allowing smaller houses, duplexes, etc.
- He will almost certainly **NOT pay POA fees** since this is not required of the Declarant until 2020.
- Homeowner-investors could negotiate to buy the Declarancy and property from him. This would, probably, significantly raise the current purchase price from $1.2 million to something significantly more ($1.6-3 million?), since he would know we would want it and to provide a ROI to his investors.
- Some of the homeowners could enter into extended/constant litigation to attempt to enforce the current covenant and rules & regulations. This would involve **legal costs which would never be recoverable.** There is a basis for such litigation but the outcome is unknown. **On-going law suits would drive away potential property/home buyers and depress**

property values during the period of litigations. It might be hard to get widespread participation by the homeowners and money for legal expenses.

b. **DB Aster wins suit but sells to a 3rd party.**
   - DB Aster, if it wins the law suit with Gavigan LLC, will put the property back on the market for significantly more than $1.2 million ($1.8-2 million).
   - An unknown group of outside investors (3rd party) buying the offer would probably focus on maximizing profit of the investment – not necessarily on preserving Bull Point as initially planned.
   - Such a group would probably **NOT pay POA fees** since it is not required. 11/2020
   - Homeowner-investors could negotiate to buy the Declarancy/property from this party. This would, most likely, significantly raise the purchase price from $1.2 million to $3 million since the 3rd party would want to make a significant profit flipping it since it would be giving up making significantly more over 5-10 years.

c. **DB Aster settles the law suit with Gavigan LLC (pays him to drop the suit) and sells the Declarancy and property to BPt Homeowner-Investors.**
   - We could preserve the character and value of Bull Point pursuant to the developed plan.
   - The Homeowners (represented by those who are investors) would gain access and control of the Declarancy, 29 existing lots and 153 acres of undeveloped Bull Point property.
   - The cost would probably be $1.2 million + the cost to DB Aster to get Gavigan LLC to drop the law suit ($75,000 or more, perhaps). Gavigan will surely want to recoup all his costs to date + make a profit. Realistic cost to do this would be $1.2-1.4 million.

1.4-1.8

3. Important Facts From BPt Declaration (Covenants)

a. **Expiration date of the BPt Declarancy (barring amendment of the Covenants:**

Sept. 22, 2020 **25 years** from the filing of the **original Declaration**, Sept. 22, 1995, as long as the Declarant owns at least 1 lot.

Sept. 22, 2025 For 30 years from filing of the Declaration, the Declarant may submit additional property to be included in the Declaration – **right to amend Plan of Development**. Fewer or more lots than originally planned and different common areas are permitted (limitations only from Zoning Commission and Beaufort County). Multi-family or less expensive houses???

b. Governance

There is nothing in the Covenants or Amendments spelling out how the property owners elect 1 voting POA board member and the Declarant appoints 2 others – thus controlling the Board. This seems to have just been permitted by the Declarant (Bull Point LLC) and followed since that time without any change of the Covenants.

The Covenants say that for 25 years the Declarant has the power "to appoint and remove all the POA Board members."

According to the Covenants, **the POA Board appoints all the members of the ARB.** Thus, the ARB is also **determined by the Declarant.**

The only person not appointed by the Declarant (according to the Covenants) is the Homeowner member(s) of the Contingency Fund Committee elected annually by the Property Owners at the Annual Meeting.

c. Amendment of the covenants of B.Pt.

The Declarant can amend the Covenants during the 25-year period provided the amendment does not "materially alter or change any Owner's right to the use and enjoyment of his lot, Dwelling, or the Common Areas as set forth in the Covenants… or adversely affects the title to any lot." If that is the case, the amendment can only go through with "the written consent of a majority of the then existing Owners affected." [Section 13.02 Amendments by Declarant, **Amendment 9**, page 53]

"The right to the use and enjoyment of property" in legal terms is broad and generally can include 4 types of harm: (1) physical harm to the person's property, (2) physical harm to the person(s) occupying the property, (3) mental disturbance or annoyance of the person(s) occupying the property, and (4) **interference that causes economic loss or depreciation of the property**. It would be on this basis that the Bull Point Homeowners would probably litigate changes in the size, occupancy, and value of homes being built. However, there would be no guarantee that the litigation would win. Furthermore, **it may be hard to litigate until after damage is done to the community value.**

expert witness testimony

The **POA Board of Directors** or **the members of the POA** can propose amendments, but they must pass with a vote of 75% of the total votes of the POA. However, the **Declarant** (during the 25-year Declarancy period) **can veto** ("must approve") the amendment.

d. **Could a declarant successfully petition the County to change the existing land density at Bull Point to build condos/apartments etc?**
   - Within the existing developed portion of Bull Point?
   - Within the undeveloped 153 acres of Bull Point?

   PERHAPS???

? Capacity & Declarant to amend Covts + extend powers past 2023 2025?

e. **Assessment of Owners**

Could all home & property owners be assessed a fixed amount to fund the initiative to buy out the declarant? This would **preclude the need for investors** and the "POA" would become the Declarant and owner of the property up for sale.

Voluntary

Probably not, since this would have to be done by the POA Board that is totally controlled by DB Aster according to the Covenants. It would be self-serving by DB Aster to force the BPt property owners to essentially buy itself (DB Aster) out. It would possibly be illegal or challengeable in court, and/or something that DB Aster would not want to get involved in because of the current law suit and in order not to impede its exit from Bull Point. Lot owners who are trying to sell their lots would probably be significantly opposed to being taxed ca. $6,000 each in addition to the normal annual POA fee.

f. **Contingency Fund of the POA**

The Contingency Fund can only be expended upon approval by the POA elected representative(s) who are property owners (cannot be the Declarant) and who was/were elected by a majority of property owners or their proxies at the Annual Meeting of the POA. [**Amendment 15b (Oct. 10, 2011)**]

Changeable by D ?

Could the Declarant take over and use the Contingency Fund for whatever the Declarant wished? **Not according to the current Covenants** [**Amendment 15b** (Oct. 10, 2011)].

Could the current BPt POA or the property owners use funds from the POA to help purchase (with a buy-in or a loan) the Declarancy and property from DB Aster? **It only would be possible if the property owners on the Contingency Committee approve sicj an expenditure.** However, **nothing** in Amendment 15b of the BPt Covenants **precludes this** if they feel this would be in the interest of the property owners "to acquire additional Common Areas and/or other amenities for the enjoyment of the Members" **[see Amendment 15b, amended Article IX, section 9.03, subsection (ix)].**

look again

However, the Contingency Fund does not contain nearly enough money to completely buy out DB Aster. Also, if all of the Fund was used, this would leave Bull Point exposed if a genuine emergency arose necessitating major expenditures.

One possibility could be to pursue the possible **sale of the Declarancy** to the Property Owners after the investors buy the Declarancy and Property from DB Aster – with appropriate guarantees put into the Declaration by amendment to protect what the investors wished to do (unlikely to be at odds with the non-investors of the POA).

So, it could be possible that the POA might find a way to participate in or facilitate the acquisition of the BPt Declarancy and properties for the benefit of all the property owners.

4. Most Likely Solution to Take Property Owner Control of the Declarancy

a. Put together **an investment group of BPt Property Owners**.
b. Incorporate as an LLC (Huspah Properties, LLC).
c. Attempt to get DB Aster to settle law suit out of court and sell Declarancy and property to Huspah Properties, LLC and possibly in part to the POA ultimately..
d. Market properties and consider putting some land into nature conservancy to return all invested capital + profit to investors within a maximum of 7 years.

5. Statement of Huspah Properties, LLC Intentions

Huspah Properties, LLC *desires to maintain the Bull Point Covenants and Operations as they are and to maintain Bull Point Plantation as a friendly community brought together by a common love of nature and the beauty of the Lowcountry. Any development will be consistent with the current vision of Bull Point as a place of beauty and value. As part of its purchase* Huspah Properties, LLC *would become the Declarant for the last 3 years of existence of the Declarancy. While the investors are not motivated simply by a desire to invest in real estate development for profit but rather to maintain the unique status of Bull Point as a community, it is only natural that there be some possibility for profit given the capital invested and financial liability assumed by each of the investors. The investors consider themselves Bull Point home/property owners and neighbors first and foremost and event-driven investors second.*

6. Plan for Purchase of B.Pt. Declarancy and DB Aster Property

Raising of Capital

- Purchase by interested homeowners of shares in Huspah Properties, LLC
- 1 share = $10,000

- Total number of shares = 200
- Initially sell up to 140 shares to raise ca. $1.4 million
- At least 60 shares would be held in reserve if needed to raise additional capital following a vote by the stockholders. Vote would be proportional to the number of shares held.
- It is possible that to raise the total amount necessary, a loan of $400,000-600,000 might be necessary – guaranteed to the extent possible by the value of the property.

7. Steps Required

- Presentation of Plans to the Homeowners and Lot owners.
- Signing up of investors with level of commitment (no. of shares).
- Letter of Intent to DB Aster from Huspah Properties, LLC to alert DB Aster.
- Decision of DB Aster to pursue settlement of case and sale to Huspah Properties, LLC.
- Input of investment from participants and possible arrangement of a loan to Huspah Properties, LLC if additional monies are needed.
- Signing of Contract-to-Purchase by Huspah Properties, LLC with DB Aster.
- DB Aster negotiations with Gavigan LLC.
- Settlement of Gavigan Law Suit.
- Purchase of Declarancy and property from DB Aster by Huspah Properties, LLC.

8. What would be the personal liability to an individual Investor?

It is planned to raise ca. $200,000 more than the purchase price to be used for expenses during the initial 1-2 years. This would be used to cover:

- property taxes
- marketing costs
- administration and legal Fees

until they would be paid for by on-going lot sales. The Declarant does not have to pay POA fees on existing lots that it has not sold. Thus, for up to 3 years, POA fees would not be paid for lots held. After September 2020, POA fees would have to be paid for lots held by Huspah Properties, LLC. It is important to note, in order to get the Declarancy in the hands of at least a subset of BPt property owners, the financial aspects of the deal have to be reasonable in order to maximize property owner participation.

If a loan had to be taken out for initial purchase or development, most of it should be able to be guaranteed by the value of the property purchased/held. For too large a

loan, a bank might require at least part be guaranteed personally by the shareholders. However, this is unacceptable to most potential investors and will be avoided.

The financial plan for Huspah Properties, LLC suggests that payback of the initial investment to the stockholders should be able to start the first year of operation, based on a projected sale of 4 lots in that initial year. However, a more conservative expectation would be that payback to investors would begin in year 2.

9. Financial Plans and Pay Back

Plans call for a payback to shareholders of all their capital spent on purchase of stock within 7 years along with potential profit and tax write-offs.

Option 1:

a. Market and sell existing 28 lots over 7 years.
b. Put Phase 7 (153 acres) into nature conservancy in perpetuity and get Tax Write-off (maybe as much as $5 million, divided up among the stock holders and usable for up to 5 years).
c. **Projected ROI = 12.2%/year for 7 years** (including taxes saved).

Option 2:

a. Market and sell existing 28 lots over 7 years.
b. Develop Phase 7 (153 acres) into 45 lots with a 10-acre lake and a 40-acre park.
c. Put 40-acre park and 10-acre lake into nature conservancy in perpetuity and get Tax Write-off (maybe as much as $1.3 million, divided up among the stock holders and usable for up to 5 years).
d. **Projected ROI = 17.8%/year for 7 years** (including taxes saved).

Option 3:

a. Market and sell existing 28 lots over 7 years.
b. Sell to a Developer 113 acres of Phase 7 (153 acres) to be subdivided into 45 lots with a 10-acre lake.
c. Put 40-acre park into nature conservancy in perpetuity and get Tax Write-off (maybe as much as $1 million, divided up among the stock holders and usable for up to 5 years).
d. Keep Declarancy for POA.
e. **Projected ROI = 7.1%/year for 7 years** (including taxes saved).

OPTION #1

We Sell the 28 Existing Lots and put 153 acres into Nature Conservancy			
Initial Purchase Price			**$1,300,000**
Capital for Initial Operating Expenses			**$100,000**
No. of Investment Shares @ $10,000/share	140	$1,400,000	
28 Lots sold over 7 years SALES Commission | Expenses			
Revenue			$1,821,450
Less: Operating Expenses			($475,740)
Liability to Investors			($1,400,000)
Net on Total Intital Investment			($54,290)
Net/share on initial investment			($388)
Tax Deduction for putting 153 acres into nature conservancy			**$5,000,000**
Value of Tax Deduction for 25% tax bracket (useable over 5 years)			$1,250,000
per share for 140 shares			**$8,929**
Return over and above each $10,000 Share (assuming 25% tax bracket)			**$8,541**
Total ROI			85%
ROI/Year (assuming 7 years)			**12.2%**

OPTION #2

We Sell the 28 Existing Lots and Develop the 153 acres

10 Acre Lake, 40 Acre Park all put into nature conservancy

Initial Purchase Price			**$1,300,000**
Capital for Initial Operating Expenses			**$100,000**
No. of Investment Shares @ $10,000/share	140	$1,400,000	
Revenue: 28 Lots sold over 7 years			$1,821,450
Less: Operating Expenses			($475,740)
Liability to Investors			($1,400,000)
Net on Total Intital Investment			($54,290)
Net/share on initial investment			($388)
153 acre development			
Average Sales Price per Lot		71,133	
Total Lots		45	
Total Sales			$3,200,985
Less:			
Infrastructure Costs		(1,281,000)	
Bond to Cover Development Costs	4%	(62,992)	
Property Taxes for Two Years	3%	(68,582)	
Comm, Taxes, Admin, Legal		(293,810)	
Total Expenses			($1,706,384)
Return over and above Investment			$1,494,601
Per Share	For 140 shares		**$10,676**
Tax Deduction for putting 50 acres into nature conservancy			**$1,200,000**
Value of Tax Deduction for 25% tax bracket (useable over 5 years)			$300,000
per share	for 140 shares		**$2,143**
Return over and above each $10,000 Share (assuming 25% tax bracket)			**$12,431**
Total ROI			124%
ROI/Year (assuming 7 years)			**17.8%**
POA Benefit Additional Revenue / Year	45 lots	$2,711	$121,995

OPTION #3

We Sell the 28 Existing Lots, Sell 113 acres to a Developer, and Put 40-Acre Park in Nature Consevancy			
Initial Purchase Price			**$1,300,000**
Capital for Initial Operating Expenses			**$100,000**
Initial Purchase Price			**$1,300,000**
Capital for Initial Operating Expenses			**$100,000**
No. of Investment Shares @ $10,000/share	140	$1,400,000	
28 Lots sold over 7 years			
Revenue			$1,821,450
Less: Operating Expenses ?			($475,740)
Sale of 113 acres to a Developer			$500,000
Liability to Investors			($1,400,000)
Net on Total Initial Investment			$445,710
Net/share on initial investment			**$3,184**
Tax Deduction for putting 40 acres into nature conservancy			**$1,000,000**
Value of Tax Deduction for 25% tax bracket (useable over 5 years)			$250,000
	per share	for 140 shares	**$1,786**
Return over and above each $10,000 Share (assuming 25% tax bracket)			**$4,969**
Total ROI			50%
ROI/Year (assuming 7 years)			**7.1%**
POA Benefit Additional Revenue / Year	45 lots	$2,711	$121,995

Barry Johnson

From: Barry Johnson
Sent: Sunday, April 30, 2017 4:03 PM
To: 'Gary Okey'
Cc: Ron Lambe; pmarzluff; Gay Reed
Subject: RE: Missing Attachment to the previous e-mail

PROTECTED, CONFIDENTIAL, ATTORNEY-CLIENT COMMUNICATION AND ATTORNEY WORK PRODUCT

To: Bull Point Operations Committee
Attention: Mr. Gary Okey

Gary,

In considering your below two questions in email of April 29, 2017, and my current responses, I have taken into account and reviewed the following:

1. Mr. Jim Goodwin's 11 page analysis;
2. The comments and queries in your email to me of April 12, 2017;
3. Certain provisions of the Covenants and Amendments.

Covenant and Amendment considerations underlying all responses by Johnson:

1. What is the scope of the authority of the Contingency Fund Committee?

A. The so-called Fifteenth Amendment dated October 11, 2011, provides in pertinent parts that it amends the Covenants

(i) to allow the Contingency Fund to be "disbursed pursuant to Covenants Section 9.03 Subsection (ix)" and then it amends that Subsection (ix)
;

(ii) Covenants Section 9.03 Subsection (ix), now constituted in what is called the Ninth Amendment to the Covenants, prior to the so-called Fifteenth Amendment dated October 11, 2011, provided as follows:

> "The Common Expenses to be funded by the annual Assessments may include, but shall not necessarily be limited to, the following . . . (ix) 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 repaired 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 by time to time by the Board of Directors.*" (*Italics* added.)

(iii) as amended by the so-called Fifteenth Amendment dated October 11, 2011, the Covenants Section 9.03 Subsection (ix) thereafter reads as follows:

> "(ix) the establishment and maintenance of the Contingency Fund (a) to provide 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 repaired required as a result of casualties which are not funded by insurance proceeds, (c) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments or liens, as well as from emergency expenditures and other matters, and (d) to acquire additional Common Areas and/or other amenities for the enjoyment of the Members, *all as may be authorized from time to time by the Board of Directors and approved by the elected representative(s).*"
> (*Italics* added.)

(iv) The Covenants Section 1.01(h) defines Common Areas as follows:

> "'Common Areas' shall mean and refer to all real and Personal Property now or hereinafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas are to be owned by the Association at a time in the sole discretion of the Declarant, in the future set by the Declarant. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment therein."

> [Note: despite having been capitalized in the foregoing definition of Common Areas, the term "Personal Property" is not defined in the definitions portion of the Covenants. We have not exhaustively reviewed the Covenants to assess whether there is, nevertheless, a definition, for purposes of these Covenants, of "Personal Property" contained elsewhere in the Covenants."]

(v) The Covenants' definitions portion does not contain a definition of "amenities". There is, however, a stated definition of the term, "Recreational Amenities", to wit:

> "'Recreational Amenities shall include such recreational facilities and improvements as are from time to time located within the Common Areas and easement areas established pursuant to Section 3.03 hereof."

> [Arguendo, the language in the so-called Fifteenth Amendment dated October 11, 2011 "other amenities" is different from "Recreational Amenities". However, at this time, we have not done the legal research to determine applicable statute and/or case law applicable to any such distinction.]

(vi) The Bull Point Operating Committee has no authority except as extended to it by the Association Board of Directors either on a "general operations" basis, or on an *ad hoc*, issue

basis, and all such exercises of the Board's grants of authorizations should be documented by contemporaneous, well-drafted, fully-signed minutes or resolutions. The Bull Point Operating Committee cannot lawfully make a loan to Huspah Properties, LLC, nor lawfully give it money, unless (as somewhat discussed below) via the authorization of the Association Board of Directors, even to acquire Common Areas or "other amenities".

B. What does all this Covenant language mean for the scope of authority of the use of the Contingency Fund by the Bull Point Operating Committee to use those funds?

(i) No portion of the Contingency Fund can be used without authority of the Board of Directors of the Association, and the elected property owner representative.

(ii) Even with authorization by the Board of Directors of the Association, and of the elected property owner representative, the Contingency Fund resources can only be used for one of the four purposes outlined in

Covenants Section 9.03 Subsection (ix) as amended by the so-called Fifteenth Amendment dated October 11, 2011. I do not see that the first three apply to the set of issues raised in the context of DB Aster, Gavigan and Huspah

Properties LLC (to be formed).

Analyzing the fourth (d) purpose for use of the Contingency Fund, as outlined in the so-called Fifteenth Amendment dated October 11, 2011, we have to ask and answer some questions"

(aa) Are the 28/29 lots Common Areas or an additional amenity?

Johnson Answer Today: these lots are not Common Areas nor are they Recreational Amenities. Don't know if they fit in the category of "other amenities".

(bb) Is the 153 acres Common Areas or an additional amenity?

Johnson Answer Today: these 153 acres are not Common Areas nor are they Recreational Amenities, but would probably be so if acquired to be converted to a park or open space

(with or without a conservation easement in tax parlance). Don't know if they fit in the category of "other amenities".

(cc) Is the Declarancy a Common Area or an additional amenity?

Johnson Answer Today: The Declarancy is not a Common Area. Don't know if it fits in the category of "other amenities".

(dd) Would DB Aster vote (Association Board of Directors) to authorize the use of the Contingency Fund, with appropriate definitions of uses, to acquire the lots, acreage and/or Declarancy, or to lend money for these purposes?

Johnson Answer Today: That depends on their risk assessment, which right now is in a fluid, not static, state. Ultimately, I think this will be an incremental process:

(AA) putting together the Huspah Properties, LLC group with funding/subscription agreements or funded into cash escrow (?our or some other firm's trust account);

(BB) putting together a letter of intent from Huspah to DB Aster with contingencies re settlement of Gavigan Lawsuit, re removal of Lis Pendens, re price and terms acceptance by DB Aster, re whatever participation is deemed necessary from the Association, re approval by the Bd of Directors and the elected representative of the financial, and any other, participation of the Association;

(CC) DB Aster accepting the LOI;

(DD) DB Aster settling with Gavigan and getting the title clouds removed;

(EE) Contingent contracts between DB Aster and Huspah, and between the Association and Huspah;

(FF) BD of Directors action to satisfy the contractual conditions;

(GG) Closing between DB Aster and Huspah; Closing between the Association and Huspah, at which the Declarancy would be transferred to the Association.

uestions Raised in Mr. Okey's (EM) memos of April 12, 2017 and April 29, 2017, summarized as follows:

1. Can the Bull Point Operating Committee offer Huspah Properties, LLC a concession on dues?

Johnson Answer Today: Such a concession cannot be made without authorization from the Association Board of Directors. I don't see this as necessary, anyway, with the projected sell out in 4 years, and the protection of someone stepping into the shoes of the Declarant from paying dues on "developer lots" until 2020. I believe some construction by contract regarding the assignment of the Declarancy to the Association could include, even by Covenant amendment if necessary, protection of that dues relief to 2020, in the context of transfer of the Declarancy to the Association. Just my opinion.

2. Are there legal problems arising from exemption some "developer lots' from dues until they are sold?

Johnson Answer Today: Yes, there would be legal problems from a straight-up exemption. See response to Question 1. Above.

3. Are there legal problems arising from the Bull Point Operating Committee or the Association making a loan from the Contingency Fund to Huspah Properties, LLC for it to acquire the property and operate it to sell out?

Johnson Answer Today: Yes, there would be legal problems from such a loan by the Bull Point Operating Committee. The Association might be able to make such a loan. See detailed discussion it Item 1.B. above.

4. Are there legal problems arising from the Bull Point Operating Committee or the Association straight-up purchasing the Declarancy from Huspah Properties, LLC shortly after it acquires the Declarancy from DB Aster?

Johnson Answer Today: Again, the Bull Point Operating Committee has no such authority. The Association could probably justify it as explained in Mr. Okey's April 12, 2017 memo, but that justification may not be sufficient to overcome a legal challenge on the compliance with Covenants Section 9.03 Subsection (ix), as amended. See detailed discussion from Item 1.B. above.

5. Is it Johnson's understanding that a Declarant would have to apply to the Beaufort County Zoning Office for permission to build multi-family housing at Bull Point and that it would be very unlikely that such a request would be granted?

Johnson Answer Today: In the absence of having reviewed the Beaufort County Zoning Department's files on Bull Point, and the then (at inception) and current Beaufort County zoning laws (now, the Community Development Code), I can not say for sure whether such an application and approval would be necessary, but I strongly expect that would be the case. If such an application and approval is necessary, I think it unlikely that such a request would be granted.

[Note, if I missed any of the questions, I apologize and will take them up as soon as you may point that out to me.]

Observations and Queries re Mr. Goodwin's analysis:

1. As to Point 1., Current Status of Bull Point Declarancy Law Suit, in addition to the deal on the table, at any time, that deal could be modified to the satisfaction of DB Aster and Gavigan and they could settle. So, that situation remains fluid.

2. As to Point 2., I have no input on the cost to settle and/or acquire, other than that would be skeptical of the numbers in the range of $1.2MM to $1.4MM.

3. As to Point 3.c., litigation over damage to property values would require, in addition to legal fees and costs, one or more very expensive expert witnesses in community development and valuations.

4. As to Point 3.e., Involuntary assessments of property owners (and home owners) for funding, is problematic, but see detailed discussion above at Item !.B.

5. As to Point 5, the suggestion that the Covenants be maintained "as they are" begs the question of any needed or desirable amendments of the Covenants to accomplish the purposes of the Association to acquire the Declaancy and to control the ARB and the destiny of the Bull Point community. So, I would expect greater flex in that portion of the Huspah Properties, LLC Statement of Intentions, at least from property owner standpoint.

6. As to Point 8, note the possibility that any required personal guarantee issues could, maybe, be handled with a series of limited or pro-rata guarantees. If only a few owners were to step up with personal guaranty of such al loan, perhaps Huspah Properties, LLC would compensate them with additional shares in Huspah, or some distributional preferences.

Gary, for confidentiality and privilege purposes, I do not recommend to you and your Committee that my opinions be shared but that they be used to guide your Committee's strategy and input into discussions and decisions.

Please let me know if you need further input from me or if you wish us to undertake more detailed studies of the Covenants, the statutes, the case law, County zoning ordinances and/or the County Zoning Department's files on Bull Point.

Thanks,
Barry
April 30, 2017

Barry L. Johnson, Attorney at Law
JOHNSON & DAVIS, PA
The Victoria Building, Suite 200
10 Pinckney Colony Road
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(843) 815-7121
(843) 815-7122 (facsimile)

Both Barry L. Johnson and JOHNSON & DAVIS, PA, intend that this message be used exclusively by the addressee(s). This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unauthorized disclosure or use of this information is strictly prohibited. If you have received this communication in error, please permanently dispose of the original message and notify Barry L. Johnson immediately at 843-815-7121. Thank you.

From: Gary Okey [mailto:nancygary44@gmail.com]
Sent: Saturday, April 29, 2017 3:02 PM
To: Barry Johnson
Cc: Ron Lambe; pmarzluff
Subject: Fwd: Missing Attachment to the previous e-mail

Barry,

I have forwarded to you a quite detailed and thoughtful analysis of one of our neighbors, Jim Goodwin, who is part of the leadership team of the group looking into the purchase of the Declarancy and lots from DB Aster. The group is hosting meetings this coming Tuesday, Wednesday and Thursday evenings to try and generate support for the purchase. Ron, Pete and i will be at the meetings and are quite sure we will get questions which you are currently researching, but which are now particularly timely:

1. Are there any legal problems if the "Operations Group" agrees to waive a portion or all of the annual assessment for the lots purchased for a set period of years, or until the lots are sold?

2. Could we agree to purchase the Declarancy from the Investment Group shortly after they obtain it, using Contingency Fund monies? If we could do so legally, would/should we first have to obtain consent from either a majority or super majority of the property owners?

If you could give us some guidance before the first meeting which is at 6:00 p.m. on Tuesday we would appreciate it. If this isn't possible, please give us as much information as you can and we will tell our neighbors the additional questions are still being looked into. Thanks Barry.

Gary

Begin forwarded message:

From: "JAMES G GOODWIN JR" <jgoodwi@clemson.edu>
Subject: Missing Attachment to the previous e-mail
Date: April 28, 2017 at 10:25:25 PM EDT
To: "steve@andrewsburgess.com" <steve@andrewsburgess.com>, "janetandrews843@gmail.com" <janetandrews843@gmail.com>, "all5js@gmail.com" <all5js@gmail.com>, "steve.bahlmann@gmail.com" <steve.bahlmann@gmail.com>, "beaufortem@gmail.com"

<beaufortem@gmail.com>, "gbankov@aol.com" <gbankov@aol.com>, "tomtocarol@yahoo.com" <tomtocarol@yahoo.com>, "caroltotom@gmail.com" <caroltotom@gmail.com>, "gbosiack@gmail.com" <gbosiack@gmail.com>, "harriettwb@gmail.com" <harriettwb@gmail.com>, brendza4@aol.com" <brendza4@aol.com>, "robin.brendza@bentley.com" <robin.brendza@bentley.com>, "mmbgmb@centurylink.net" <mmbgmb@centurylink.net>, "mjmbright@gmail.com" <mjmbright@gmail.com>, "rjcole131@gmail.com" <rjcole131@gmail.com>, "librarylady86@gmail.com" <librarylady86@gmail.com>, "maryjoed@bellsouth.net" <maryjoed@bellsouth.net>, "karendekel@gmail.com" <karendekel@gmail.com>, "deb3113@aol.com" <deb3113@aol.com>, "pfenig@gmail.com" <pfenig@gmail.com>, "suzanne.gallup@raveis.com" <suzanne.gallup@raveis.com>, "laurelmarketing1@aol.com" <laurelmarketing1@aol.com>, "bigpisano@cableone.net" <bigpisano@cableone.net>, "JAMES G GOODWIN JR" <jgoodwi@clemson.edu>, "c_a_goodwin@hotmail.com" <c_a_goodwin@hotmail.com>, "swgray@yahoo.com" <swgray@yahoo.com>, "nancygary44@gmail.com" <nancygary44@gmail.com>

James G. Goodwin, Jr., PhD
Professor Emeritus of Chemical Engineering
Clemson University
Cell 864-650-3807

EXHIBIT

14

ATTESTED VERIFIED
AMENDED COMPLAINT

Jon Attridge, et al. v. The Board of Directors of
Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

JON H. ATTRIDGE and JANET L ATTRIDGE, ROBERT W. BANKOV, VIRGINIA J. BANKOV, TOM BOLTON, GUY I. COLLIER, NANCY L. COLLIER, RICHARD JAY COLEMAN, MARLENE COLEMAN, RUSSELL G. DIMKE, SANDRA A. DIMKE, JAMES G. GOODWIN JR., CAROL A. GOODWIN, GEORGE J. LOVETT, WILNA W. LOVETT, PETER MARZLUFF, DEBORAH C. MARZLUFF, GARY OKEY, NANCY OKEY, MICHAEL PELLECCHIA, JANICE S. PELLECHIA, FRANK H. ROBERTS SR., RICHARD SWILPA, MICHELE GALLANT, PHYLLIS K. KAUPP-SEAS, ROBERT P. BRENDZA, and ROBIN E. BRENDZA individually and in their derivative capacity on behalf of BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION,

Plaintiffs/Counterclaim Defendants,

-vs-

THE BOARD OF DIRECTORS OF BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC.; BULL POINT SC, LLC; WILLIAM E. GAVIGAN; MICHAEL CAREY; and JAMES RIORDAN,

Defendants/Counterclaimants,

and

BULL POINT SC, LLC and WILLIAM E. GAVIGAN,

Third-Party Plaintiffs,

-vs-

JOSEPH P. D'AMBROSIO, MARY D'AMBROSIO, MICHAEL POWERS, HARRIET BOSIACK, ROBERT WOLFSON, JAMES HAYES, STEVE ANDREWS, RON LAMBE, DAVE PREZVYS, RIVERS REACH AT POCOTALIGO, LLC, RIVERS

Civil Action No. 2018-CP-07-2345

VERIFIED AMENDED COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, AND ACCOUNTING (NON-JURY)

REACH REALTY, LLC AND JOHN DOES 1-10,

Third-Party Defendants.

Plaintiffs, Jon H. Attridge, Janet L. Attridge, Robert W. Bankov, Virginia J. Bankov, Tom Bolton, Guy I. Collier, Nancy L. Collier, Richard Jay Coleman, Marlene F. Coleman, Russell G. Dimke, Sandra A. Dimke, James G. Goodwin Jr., Carol A. Goodwin, George J. Lovett, Wilna W. Lovett, Peter W. Marzluff, Deborah C. Marzluff, Gary Okey, Nancy Okey, Michael Pellecchia, Janice S. Pellechia, Frank S. Roberts Sr., Richard Swilpa and Michele Gallant, Phyllis A. Knaupp Seas, Robert P. Brendza and Robin E. Brendza, by and through undersigned counsel, individually and derivatively on behalf of the Bull Point Plantation Property Owners Association, Inc., submit this Amended Complaint and allege the following upon personal knowledge unless otherwise stated:

This lawsuit centers on a private waterfront residential community located in Seabrook, Beaufort County, South Carolina, called Bull Point Plantation. The Articles of Incorporation for Bull Point Homeowners Association (now known as Bull Point Plantation Property Owners Association) were filed on September 26th, 1995. The original Declaration of Covenants, Conditions and Restrictions of Bull Point Plantation were recorded on September 26th, 1995. These Declarations have been amended from time to time. The Ninth Amendment, recorded February 4th, 2000, substantially revised the original Declaration of Covenants, Conditions and Restrictions of Bull Point Plantation. This document is referred to hereafter as the Declarations.

The Articles of Incorporation and the Declarations, along with the Bylaws, are the governing documents for the Bull Point Plantation Property Owners Association (the "POA"). The Articles of Incorporation provide, among other things, that the Directors of the POA are to be elected by the members. The South Carolina Nonprofit Corporations Act provides that in the event

of a conflict among governing documents, the Articles of Incorporation take precedence.

The Declarations set out rights and duties of the members, the POA, and the Declarant. The Declarations provide, in section 1.01(j), "'Declarant' shall mean and refer to Bull Point, LLC [the original Declarant, unrelated to the Defendant Bull Point SC, LLC] which has executed this Declaration with respect to the Property and the Additional Property at the time of such transfer to said successor-in-title, or any party which acquires said Declarant's entire interest with respect to the Property and the Additional Property at the time of such acquisition pursuant to Foreclosure of a Mortgage encumbering said Declarant's interest in the Property and the Additional Property."

In or about August 2017, Defendant Bull Point SC, LLC acquired from GSI, LLC (another company owned by Gavigan), most but not all of GSI, LLC's interest in the Property of Bull Point Plantation. Immediately prior thereto, GSI, LLC had purchased from an unrelated company named DB Aster, LLC, most but not the entire interest of the original Declarant, Bull Point, LLC. Even though the Defendant Bull Point SC, LLC purported to acquire the Declarant's rights from GSI, LLC, in fact the Declarations do not permit the Declarant's rights to be assigned to either GSI, LLC or to the Defendant Bull Point, SC, LLC, because these companies did not acquire the entire interest of Bull Point, LLC and because they did not acquire the interest pursuant to foreclosure.

Even though the Defendant Bull Point SC, LLC is not the Declarant, since its acquisition of most of the Declarant's property interests it has held itself out as the Declarant and has purported to exercise the rights of the Declarant. Among other things, the Defendant Bull Point SC, LLC has purported to appoint all the members of the POA Board, including appointing Defendant Gavigan President. These appointments are invalid, both because Defendant Bull Point SC, LLC is not the Declarant and because the aforesaid Articles of Incorporation require that POA Directors be elected by the members of the POA. Additionally, Bull Point SC, LLC, Gavigan, and/or their

related companies that own Lots in Bull Point Plantation have failed to pay dues and assessments on their properties, and the Defendant Directors have failed to collect the dues and assessments owed on those properties.

The Defendant Bull Point SC, LLC has also improperly purported to amend the Declarations in order to seize control over the POA's Contingency Fund. At its inception, Bull Point Plantation POA established an assessment plan to pool funds to pay for the expenses of the community. The 1995 Declarations provided for establishment of a capital reserve fund to cover maintenance, repair, and replacement of common areas, to cover emergency casualty repairs not covered by insurance, and to cover unforeseen operating continencies or deficiencies arising from unpaid assessments. In October 2011, the then-Declarant adopted the (second) Fifteenth Amendment to Declarations, which renamed the reserve fund the Contingency Fund, provided for the Contingency Fund to be deposited into a separate bank account, and established a Contingency Fund committee to approve spending from the Contingency Fund account. The committee would comprise Members of the Association other than the Declarant, its employees, agents, or owners, and would be elected by the Members of the Association. The Contingency Fund would be used for the same purposes as the original capital reserve fund, with the addition that it could also be used to acquire additional Common Areas and/or other amenities for the enjoyment of the Members.

Moreover, the purpose and function of the Contingency Fund was to have the Declarant cede operational control of decision making on Contingency Fund monies. In reliance on this concession, Members approved budgets with funds specifically designated to the Contingency Fund to be administered under Member oversight. The then-Declarant agreed to these terms in an arms-length transaction and the Fifteenth Amendment was duly recorded in the Beaufort County Register of Deeds, giving the public, including the Defendants, actual and/or constructive notice.

The Defendant Bull Point SC, LLC claims to have the power to appoint and remove members of the Board of Directors of Bull Point Plantation Property Owners Association, Inc. Bull Point SC, LLC has misused this asserted power to eliminate the Contingency Fund and the Contingency Fund committee, effectively giving itself unfettered control of, and access to, the Contingency Fund, which upon information and belief currently stood at more than eight hundred thousand dollars. In November 2018, at the instruction Gavigan, the Board of Directors held a secret special meeting and voted to ask Gavigan and Bull Point SC, LLC to eliminate the Fifteenth Amendment to the Declarations "based on the operational needs of the community." The Effective Date of the Eighteenth Amendment to the Declarations was November 16th, 2018.

Upon information and belief, the Defendants have caused, and intend to cause in the future, Contingency Fund monies to be spent for purposes not authorized or appropriate for those funds; including, but not limited to, to underwriting the cost of providing utilities infrastructure to unimproved lots that Gavigan, Bull Point SC, LLC, or their related entities own, and to fund their legal fees. The Defendant Bull Point SC, LLC improperly attempted to amend the Declarations, and the Board of Directors breached its fiduciary duties by requesting the amendment, as the misuse of Contingency Funds that Members paid in good faith reliance upon the oversight of the Contingency Fund committee constitutes unlawful self-dealing and is not fair to the Association.

Further, the amendment of the Declarations is impermissible because it materially alters the Members' rights to the use and enjoyment of the Common properties whose maintenance and repair is subject to the Contingency Fund and because: a) Bull Point SC, LLC does not have the legal right to amend the Declarations; and b) even if the Bull Point SC LLC did have that right, not all Owners have consented to the Declarant amending the Declarations.

This action is brought to restore the Contingency Fund, which is vital to the Bull Point Plantation POA, and to place the governance of Bull Point Plantation in its rightful place, a Board

of Directors duly elected by the members of the POA.

PARTIES

1. Plaintiffs Jon H. Attridge, Janet L. Attridge, Robert W. Bankov, Virginia J. Bankov, Tom Bolton, Guy I. Collier, Nancy L. Collier, Richard Jay Coleman, Marlene F. Coleman, Russell G. Dimke, Sandra A. Dimke, James G. Goodwin Jr., Carol A. Goodwin, George J. Lovett, Wilna W. Lovett, Peter W. Marzluff, Deborah C. Marzluff, Gary Okey, Nancy Okey, Michael Pellechia, Janice S. Pellechia, Frank S. Roberts Sr., Richard Swilpa and Michele Gallant, Phyllis A. Knaupp Seas, Robert P. Brendza and Robin E. Brendza own property in Bull Point Plantation Development. They are citizens and residents of the State of South Carolina are or at relevant times have been members of the Bull Point Plantation Property Owners Association, Inc. For the purposes of this Complaint they are representatives of the Bull Point Plantation Property Owners Association and are pursuing the causes of action herein both on their own behalf and derivatively on behalf of the Bull Point Plantation Property Owners Association and against the Bull Point Plantation Property Owners Association and the other Defendants.

2. The Bull Point Plantation Property Owners Association, Inc., ("Bull Point POA" or "Association") is a non-profit corporation organized and existing under the laws of South Carolina, and is located, and has its principal place of business in Beaufort County, South Carolina.

3. Defendant Bull Point SC, LLC ("Declarant") is a separate Limited Liability Company incorporated under the laws of South Carolina and is currently the purported Declarant of Bull Point Plantation (although it does not meet the definition of Declarant under the Declarations). Declarant has its primary place of business in Beaufort County, South Carolina.

4. William E. Gavigan ("Gavigan") is the managing member of Defendant Bull Point SC, LLC and is a citizen of and resides in South Carolina.

5. The individuals named below are, or have been, members of the Board of Directors of the

Bull Point POA and are named in their official capacities (collectively "Directors"):

a. William E. Gavigan is the president of the Board of Directors of the Bull Point Plantation Property Owners Association, Inc., and is citizen of and resides in South Carolina;

b. Michael Carey is, and was during the relevant time period, a member and/or officer of the Board of Directors of the Bull Point Plantation Property Owners Association, Inc., and is a citizen of and resides in South Carolina.

c. James Riordan was during the relevant time period, a member and/or officer of the Board of Directors of the Bull Point Plantation Property Owners Association, Inc., and is a citizen of and resides in South Carolina.

d. Christopher J. Quick is a member and/or officer of the Board of Directors of the Bull Point Plantation Property Owners Association, Inc. and is citizen of and resides in South Carolina.

FACTUAL BACKGROUND

6. Bull Point is a private waterfront community located in in Beaufort County, South Carolina.

7. The Bull Point POA was established through Articles of Incorporation filed on September 26th, 1995 and by Declarations of Covenants, Conditions, and Restrictions for Bull Point Plantation ("Declarations") that were first recorded with the Register of Deeds for Beaufort County, South Carolina on September 26th, 1995, in Book 805, at Page 218. The Declarations empower the Bull Point POA to assess funds from members to pay Bull Point POA's operating expenses. See Section 9 of the Declaration of Covenants, Conditions and Restrictions of Bull Point Plantation (attached hereto as Exhibit 1).

8. Although Defendants Bull Point SC, LLC and Gavigan are not the original developer of the

community, they are bound by the current Declarations, which have been duly enacted and were adopted by the Bull Point POA Board and filed of record with the Beaufort County RMC on February 4th, 2000.

9. On or about October 10th, 2011, the then-Declarant, as a result of negotiations with the Owners/Members of the Bull Point POA, amended the Declarations to create a Contingency Fund, that would be kept in an account separate from the general funds of the Bull Point POA and could be used only for specific purposes and only after being approved by a Contingency Fund committee. The committee would comprise Members of the Association other than Declarant, its employees, agents, or owners. See Fifteenth Amendment to the Declaration of Covenants, Conditions and Restrictions of Bull Point Plantation (attached hereto as Exhibit 2).

10. Since 2011, the Members of the Association have contributed to the Contingency Fund in good faith reliance upon the oversight and controls put into place by the Fifteenth Amendment to the Declarations.

11. On or about September 29th, 2018, the Defendant Board of Directors of the Bull Point POA, at the direction of Defendants Declarant and Gavigan, met and voted: a) to provide a legal defense to "those persons named in the 'D'Ambrosio litigation'", even though the pleadings in that litigation specifically allege that the Defendant Gavigan acted outside his authority as a representative of the Bull Point POA; b) voted to request that the Contingency Fund committee approve payment of up to thirty-five thousand dollars ($35,000.00) to provide power and/or data infrastructure to unimproved lots, including lots owned by Declarant and Defendant Gavigan or their related entities; and c) voted to request that the Contingency Fund committee approve reimbursement legal fees of Defendant Gavigan's legal counsel for legal work ostensibly done on behalf of the POA but in fact done on behalf of Gavigan and Declarant.

12. On or about October 27th, 2018, the Contingency Fund committee met and considered the

foregoing requests of the Board of Directors of the Bull Point POA. The committee rejected the request for reimbursement of legal fees. It approved the payment of up to twenty-five thousand dollars ($25,000.00) to provide power and/or data infrastructure to unimproved lots, but some members opposed this because these expenses should be borne by the individual lot owners, not by the Contingency Fund.

13. On or about November 16th, 2018, at Defendants Gavigan's and Bull Point SC, LLC's instruction, the Defendant Board of Directors held a secret special meeting whereupon it was voted to eliminate the Fifteenth Amendment to the Declarations, "based on the operational needs of the community." See: Letter of William E. Gavigan to Bull Point Members Dated November 17, 2018 (attached hereto as Exhibit 3).

14. The Eighteenth Amendment to the Declarations purports to eliminate the Fifteenth Amendment, thereby eliminating the Contingency Fund and the Contingency Fund committee. See Eighteenth Amendment to the Declaration of Covenants, Conditions and Restrictions of Bull Point Plantation (attached hereto as Exhibit 4). The effect of these changes would be to eliminate independent oversight over the moneys that comprised the Contingency Fund and to permit Defendants Bull Point SC, LLC and Gavigan unfettered access to Association funds, including the former Contingency Fund, subject only to approval by the Board of Directors, which Defendants Declarant and Gavigan control.

A. Amendment of the Declarations

15. The Declarant may amend the Declarations except in certain instances, including that "in the event such amendment materially alters or changes any Owner's right to the use of and enjoyment of his Lot, Dwelling, or the Common Areas as set forth in the Declaration or adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby." See Exhibit 1 Section 13.02.

16. The enactment of Eighteenth Amendment to the Declarations would materially alter and change all Member/Owners' rights to the use of and enjoyment of their Lots, Dwellings, or the Common Areas. The annual assessments, particularly the assessments for the Contingency Fund, are specifically intended to maintain, improve, acquire, and repair Common Areas and amenities, the use and enjoyment of which is expressly made a vested benefit of ownership of property in Bull Point. Thus, enactment of the Eighteenth Amendment would require the written consent of a majority of the Owners, which Defendant Declarant did not obtain.

17. The Declarations also states that "Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 13.02…" See Exhibit 1, Section 13.02. However, not all owners accepted a deed or other conveyance of a Lot[1], some owners accepted a deed or other conveyance of a Dwelling[2], e.g. the buyers purchased a home instead of an unimproved lot. As a result, those owners that were deeded and/or conveyed a Dwelling did not agree to be bound by Amendments to the Declarations made by Declarant under Section 13.02.

18. Bull Point SC, LLC is not the Declarant of Bull Point Plantation. The Declarations provide. In section 1.01(j), "'Declarant' shall mean and refer to Bull Point, LLC which has executed this Declaration with respect to the Property and the Additional Property at the time of such transfer to said successor-in-title, or any party which acquires said Declarant's entire interest with respect to the Property and the Additional Property at the time of such acquisition pursuant to Foreclosure of a Mortgage encumbering said Declarant's interest in the Property and the Additional Property."

Bull Point SC, LLC did not acquire its interest through a foreclosure of a mortgage, but rather through a sale. Also, it did not acquire the entire interest of the Declarant Bull Point, LLC. As a

[1] See Exhibit 1 Section 1.01(t).
[2] See Id. Section 1.01(l).

result, Bull Point SC, LLC does not have the authority to amend the Declarations or to appoint and/or remove members of the POA Board of Directors.

B. Election and Duties of Directors and Officers

19. The Articles of Incorporation of the Bull Point Plantation POA require that Directors of the POA be elected by the members. The South Carolina Nonprofit Corporations Act provides that the provisions of the Articles of Incorporation prevail over conflicting provisions of other governing documents.

20. Throughout the time at issue and at present, Defendant members of the Bull Point POA Board of Directors and Officers owed a fiduciary duty to the Bull Point POA Members.

21. Under South Carolina Code Ann. Sec. 33-31-830(a), the Defendant Directors owe a duty to act in good faith; to act with the care an ordinarily prudent person in a like position would exercise under similar circumstance; and to act in a manner the director reasonably believes to be in the best interests of the corporation.

22. Under South Carolina Code Ann. Sec. 33-31-831, a conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is voidable if the transaction was not fair to the corporation at the time it was entered into.

23. Under South Carolina Code Ann. Sec. 33-31-841, a corporate Officer owes a duty to act in good faith; to act with the care an ordinarily prudent person in a like position would exercise under similar circumstance; and to act in a manner the director reasonably believes to be in the best interests of the corporation.

24. The Defendants have breached the foregoing duties in the following particulars:

a. By requesting and/or approving the expenditure of Contingency Fund monies to pay for the provision of utilities to unimproved lots, including lots which the Defendants

own or in which they have a financial interest;

b. By requesting the expenditure of Contingency Fund monies to pay legal fees that benefit the Defendants but not the Bull Point POA;

c. By causing the enactment of the Eighteenth Amendment and repeal of the Fifteenth Amendment to the Declarations, removing the independent oversight of reserve funds;

d. By causing the enactment of the Eighteenth Amendment and repeal of the Fifteenth Amendment to the Declarations without obtaining the consent of a majority of the Owners.

e. By causing to be approved conflict of interest transactions that are not fair to the Association.

f. By operating under and enforcing an amendment to the Declarations, in violation of their fiduciary and statutory duties.

B. Inspection of Association Records

25. Under South Carolina Code Ann. 33-31-1602(b) and (c) a member is entitled to inspect and copy any the accounting records of the corporation if the member: 1) makes a good faith demand to do so, 2) describes with, reasonable particularity, the purpose and the records the member desires to inspect, and 3) the records are directly connected to the purpose.

26. Under the Declarations, Declarant is responsible for funding deficits up to the amount of the Association's budget, See Exhibit 1, Section 9.11.

27. Declarant promised to pay dues on his approximately 31 lots, although he did not have to per the Declarations. In reliance on this, the Board adopted the stated budget. Declarant never did pay these dues and consequently there was an $80,000.00 deficit in the budget.

28. Declarant then claimed that by not performing budgeted maintenance on community amenities, raising gate fees, and cutting back on other expenses he covered the budget shortfall.

29. On August 16, 2018, a letter was sent to Defendant William Gavigan as registered agent for the POA. The letter requested records that were required to be kept in pursuant to South Carolina Code Ann. Sec. 33-31-1601. The request properly asked to inspect (1) the minutes of all Board of Director Meeting including special or regular meetings; (2) Minutes of any meetings of the Contingency Fund committee; (3) a list of all members of the POA; (4) the POA articles of incorporation and all amendments then currently in effect; and (5) any and all underlying records used to the prepare the POAs financial statements. This list includes: POA financial records themselves for the past year through the present, POA bank account statements, up to date balance sheets, invoices supporting amounts paid from POA bank accounts, and records showing annual dues paid, including by the Declarant. See Letter from Joseph D'Ambrosio et al. to the Board of Directors of the Bull Point POA dated August 16, 2018 attached hereto as Exhibit 5.

30. Declarant, through counsel responded in a letter dated August 25, 2018 and agreed allow inspection of the records listed out in S.C. Code Ann Sec. 33-31-1601(e). This limited list was only what the POA was mandated to keep at its principal office. The letter further asserted that the requests to inspect under S.C. Code Ann. Sections 33-31-1602(b) and (c) was "vague and arguably not in keeping with the intent or letter of the statute." See Letter from Ian Ford Esq. to Joseph P. D'Ambrosio Esq. dated August 25, 2018 attached hereto Exhibit 6.

31. On August 28, 2018 declarant allowed Joseph P. D'Ambrosio and Mary A. D'Ambrosio to inspect and copy a number of records which included balance sheets without any supporting documentation, rendering it impossible to determine the accuracy of the presented balance sheets. The absence of those documents defeated the purpose of the request for inspection and did not comply with Defendants' legal duty.

C. Bull Point POA derivative action allegations

32. Pursuant to Rule 23(b)(1) of the South Carolina Rules of Civil Procedure, Plaintiffs bring this

action derivatively on behalf of and for the benefit of the Bull Point POA to redress injuries suffered, and yet to be suffered, by the Bull Point POA as a direct and proximate result of the Defendants' conduct. The Bull Point Plantation Property Owners Association, Inc. is a named Defendant solely as a party necessary to effect complete relief to the Plaintiffs in their representative capacities.

33. Plaintiffs will adequately and fairly represent the interests of the Bull Point POA and its similarity situated members in this litigation.

34. Plaintiffs are members of the Bull Point POA and were active members of the Bull Point POA during all times relevant to the Defendant's wrongful course of action herein alleged.

35. The wrongful acts complained of herein subject the Bull Point POA to continuing harm.

36. Plaintiffs are the proper parties to enforce the rights of the Bull Point POA, where, as here, the Bull Point POA and its board members failed to enforce such rights.

37. The Defendants' actions complained of herein were not authorized by the Declarations, by-laws, or rules and regulations of the Bull Point POA, nor were they authorized by South Carolina law and are therefore *ultra vires*, unlawful, and unauthorized. As a result, the actions complained of herein are not subject to protection under the business judgment rule, and any reasonable, good faith inquiry into the wrongdoing would conclude that Plaintiffs' claims are legitimate and in the best interests of the Bull Point POA.

38. The acts complained of herein are and will continue to be to the detriment of the Bull Point POA and its members.

39. Defendant's wrongful actions set out herein were willful, in bad faith, and beyond the scope of the authority granted to Defendants and served no legitimate business purpose. As a result, the acts described herein were not, nor could have been, the product of a reasonable, valid, or good faith exercise of business judgment.

40. The Defendant Directors are antagonistic, adversely interested, and have continued and/or

initiated the improper practices complained of herein.

41. In order to bring this suit, the Directors would be forced to sue themselves or persons with whom they have extensive business and personal entanglements, which they will not do, thereby excusing a specific demand on the Directors.

JURISDICTION AND VENUE

42. Plaintiffs bring this action as a declaratory judgment action pursuant to § 15-53-10, et seq., Code of Laws of South Carolina (1976), for the purpose of determining a question in controversy between the parties as more fully appears herein. Plaintiff also brings this action pursuant to the common-law and statutory general jurisdiction of this Court.

43. Venue is appropriate because the acts and omissions complained of herein took place in Beaufort County, South Carolina, and the property that is the subject of this action is located in Beaufort County.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment as to the Contingency Fund, pursuant to S.C. Code Ann. §§ 15-53-10-15-53-140
and Rule 57 SCRCP as to all Defendants)

44. For this cause of action, Plaintiffs incorporate all allegations set forth above as if fully set forth herein.

45. Plaintiffs bring this cause of action against Defendants pursuant to S.C. Code Ann. §§ 15-53-10 through 15-53-140 and Rule 57 of the SCRCP seeking declarations:

a. That the Defendants did not have the authority to amend the Declarations to eliminate the Fifteenth Amendment to the Declarations; and

b. That the Contingency Fund can be used only for the purposes specified in the Fifteenth Amendment to the Declaration, and not for the private benefit of the Declarant or others.

46. The South Carolina Declaratory Judgment Act provides that this Court has the power to declare the rights, status, and other legal relations whether or not further relief is or could be claimed, S.C. Code Ann. §15-53-20.

47. Due to the facts, conditions, and circumstances set forth in this Complaint, an actual and justiciable controversy exists.

FOR A SECOND CAUSE OF ACTION
(Injunction as to the Contingency Fund)

48. Plaintiffs restate and reallege each and every prior allegation above as if fully set forth herein.

49. Plaintiffs will be irreparable harmed if an injunction is not issued enjoining the Eighteenth Amendment to the Declarations from going into effect.

50. Plaintiffs lack an adequate remedy at law to recover damages arising from the elimination of the Contingency Fund and/or the unauthorized disbursement of funds from the Contingency Fund without proper oversight by the elected representatives.

51. Plaintiffs seek an injunction from this Court:

a. Prohibiting the Defendants from repealing or refusing to comply with the (second) Fifteenth Amendment to the Declaration of Covenants, Conditions, and Restrictions of Bull Point Planation;
b. Prohibiting the Defendants from authorizing the expenditure of Contingency Fund monies for purposes other than those authorized by the Fifteenth Amendment, and specifically for the private benefit of the Declarant or others;
c. Imposing a constructive trust upon all moneys comprising the Contingency Fund, to the extent that they have been disbursed or spent for purposes other than permitted by the (second) Fifteenth Amendment to the Declarations;
d. Injunctive relief necessary to enforce the declarations sought in the remaining Causes of Action herein; and
e. Such further injunctive relief as the Court deems appropriate.

FOR A THIRD CAUSE OF ACTION
(Accounting)

52. Plaintiffs restate and reallege each and every prior allegation above as if fully set forth herein.

53. Plaintiffs have made a good faith inquiry for a proper purpose, the purpose of the inspection

and the records sought were described with particularity, and records are directly connected with that purpose.

54. Plaintiffs pray that an accounting of the Bull Point POA and for any other such relief provided by S.C. Code Ann. §§ 33-31-101 *et seq*., as the Court deems appropriate and proper to protect the rights of Plaintiff.

FOR A FOURTH CAUSE OF ACTION
(Failure to allow inspection and copying of records in violation of S.C. Code Ann. §33-31-1601 et seq.)

55. Under South Carolina Code Ann. Sec. 33-31-1601(b) a corporation shall keep appropriate accounting records.

56. Under South Carolina Code Ann. Sec. 33-31-1602(b) a member of a non-profit corporation is entitled to inspect and copy the accounting records of a corporation at a reasonable time and place and location specified by the corporation upon five business days prior notice.

57. South Carolina Code Ann. Sec. 33-31-1602(c) sets out the grounds of a proper request to inspect and copy records and Plaintiffs wrote a letter in good faith, describing with reasonable particularity the purpose and the records sought; and the records requested are directly connected with that purpose and gave more than five business days prior notice. See Exhibit 5.

58. As members of the Bull Point POA, Plaintiffs were entitled to inspect and copy the appropriate accounting records showing the affairs and finances of the Bull Point POA.

59. On August 28, 2018 Defendant provided some accounting records but did not include the documents upon which the balance sheets were based, making it impossible to verify their accuracy.

FOR A FIFTH CAUSE OF ACTION
(Declaratory Judgment as to Declarant's Rights, pursuant to S.C. Code Ann. §§ 15-53-10- 15-53-140 and Rule 57 SCRCP as to all Defendants)

60. Plaintiffs restate and reallege each and every prior allegation above as if fully set forth herein.

61. On August 21, 2017, the 2000 Declarations were the controlling documents that were in effect. These Declarations were properly recorded and had been in place since February 4th, 2000.

62. On December 28th, 2013 Bull Point, LLC purportedly assigned its Declarancy rights to DB Aster, LLC. On August 21, 2017, DB Aster LLC purportedly assigned its Declarancy rights to GSI, LLC as part of a sale of its interests in the property. Shortly thereafter, also on August 21st, 2017, GSI, LLC purportedly assigned its Declarancy interests to Bull Point SC, LLC. GSI, LLC obtained its interest in Bull Point Plantation subject to the Declarations then in place, the 2000 Declarations.

63. Bull Point SC, LLC does not meet the definition of Declarant as set out in the current Declarations, effective in the year 2000. The Declarations state that "'Declarant' shall mean and refer to Bull Point, LLC[3] which has executed this Declaration with respect to the Property and the Additional Property at the time of such transfer to said successor-in-title, or any party which acquires said Declarant's entire interest with respect to the Property and the Additional Property at the time of such acquisition pursuant to Foreclosure of a Mortgage encumbering said Declarant's interest in the Property and the Additional Property.[4] (emphasis added).

64. The 2000 Declarations clearly provide that the only way to acquire the Declarancy is through foreclosure, and neither Defendant Bull Point SC, LLC nor its predecessor GSI, LLC obtained the property pursuant to a foreclosure of the mortgage encumbering the prior Declarant's interest.

65. Bull Point SC, LLC did not acquire its interest through a foreclosure of a mortgage, but rather through a sale. As a result, Bull Point SC, LLC does not have the authority to amend the Declarations or to appoint and/or remove member of the Board of Directors.

[3] Bull Point, LLC and Bull Point SC, LLC are completely unrelated entities
[4] See Id. Section 1.01(j) (emphasis added).

66. In addition, Bull Point SC, LLC did not acquire the entire interest of the Declarant Bull Point, LLC as required by section 1.01(j) of the Declarations. Here, DB Aster, LLC conveyed certain parcels of land to third-parties and reserved rights to repurchase. Further, GSI, LLC, which purchased DB Aster, LLC's interest, did not convey all of that interest to Bull Point, LLC.

67. Additionally, in the purported assignment of the Declarant's rights, Bull Point SC, LLC disclaimed all responsibilities, liabilities and obligations of its predecessor in interest and therefore did not acquire the entire interest of the prior Declarant as required by section 1.01(j) of the Declarations.

68. As a result, under the Declarations, Bull Point SC, LLC is not the Declarant and does not own the Declarant's rights under the Declarations.

FOR A SIXTH CAUSE OF ACTION
(Declaratory Judgment as to Election of Directors, pursuant to S.C. Code Ann. §§ 15-53-10-15-53-140
and Rule 57 SCRCP as to all Defendants)

69. The Bull Point Declarations are "Bylaws" as defined under Section 140(4) of the South Carolina Non-Profit Corporation Act, irrespective of the name or names by which the Declarations/Bylaws have been given.

70. South Carolina State law, specifically the Nonprofit Corporation Act (hereinafter "Nonprofit Corporation Act" or "the Act"), controls Bull Point's governing documents. The Bull Point governing documents acknowledge that State law controls the priority of its governing documents. The Nonprofit Corporation Act orders the priority of the governing documents in the following way: a) First, the provisions of the Act; b) Second, Bull Point Articles of Incorporation; and then c) Bull Point Declarations/Bylaws.

71. Section 33-31-206(b) of the Nonprofit Corporation Act mandates that Bylaws cannot conflict with South Carolina law or Bull Point's Articles of Incorporation.

72. Bull Point Declarations/Bylaws conflict with Bull Point's Articles of Incorporation, as the Articles require the Board of Directors to be elected by the members rather than appointed by the Declarant.

73. Under §§33-31-140(4) and 206(b) of the South Carolina Nonprofit Corporation Act and the Bull Point governing documents, the current Board of Directors is illegally constituted because it was appointed by the Declarant, rather than elected by the members.

FOR A SEVENTH CAUSE OF ACTION
(Declaratory Judgment as to Amendment of Governing Documents, pursuant to S.C. Code Ann. §§ 15-53-10- 15-53-140 and Rule 57 SCRCP as to all Defendants)

74. Section 1021(d) of the South Carolina Nonprofit Corporation Act mandates that an amendment to the Declarations/Bylaws which changes or modifies the method of computation of dues must be approved by the members.

75. Section 33-31-1030 of the Nonprofit Corporation Act mandates that the Declarations/Bylaws of a mutual benefit corporation, such as Bull Point Plantation POA, cannot require an amendment to be approved in writing by a third-party such as the Declarant.

76. Section 13.03, entitled Amendments by Association of the Declarations/Bylaws requires that the Eighteenth Amendment must be approved by a vote of three-fourths (¾) of the members in good standing.

77. Defendant Bull Point SC, LLC's improper enactment of the Eighteenth Amendment to rescind the Fifteenth Amendment violates Sections 33-31-1021(d) and 1030 of the Act and Section 13.03 of the Declarations itself.

FOR AN EIGHTH CAUSE OF ACTION
(Declaratory Judgment as to Repeal of Amendment, pursuant to S.C. Code Ann. §§ 15-53-10- 15-53-140 and Rule 57 SCRCP as to all Defendants)

78. Section 33-31-1021(b) of the South Carolina Nonprofit Corporation Act mandates that Bull Point POA's members may amend or repeal the POA's Declarations/Bylaws even though they

may be amended or repealed by its Board of Directors.

79. Section 33-31-1021(a)(2) of the Act states that Bull Point's Board of Directors may not repeal an Amendment to the Declarations/Bylaws enacted by the members that expressly prohibits the Board of Directors from repealing it.

80. Accordingly, the POA members have the right to repeal the Eighteenth Amendment and enact an Amendment similar to the Fifteenth Amendment, and to also prohibit the Board from repealing it any Amendment without following the rules set out in the Declarations.

FOR A NINTH CAUSE OF ACTION
(Declaratory Judgment as to Responsibility to Pay Assessments, pursuant to S.C. Code Ann. §§ 15-53-10- 15-53-140 and Rule 57 SCRCP as to all Defendants)

81. Plaintiffs restate and reallege each and every prior allegation above as if fully set forth herein.

82. As a result of neither GSI, LLC nor Bull Point SC, LLC being the Declarant as defined by Section 1.01(j) of the Declarations those entities are ordinary Owners under Section 1.01(x) of the Declarations and, as such, are liable for Assessments under Article IX of the Declarations.

83. The liability for assessments owed by entities GSI, LLC, and/or Bull Point SC, LLC began in August 21st, 2017.

84. To date no assessments have been received from the property owned by GSI, LLC and/or Bull Point SC, LLC, and the POA Board has not sought to collect these assessments.

PLAINTIFF'S REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Court inquire into this matter and issue an order:

a. Entering a Declaration as set forth above;

b. Granting injunctive relief as set forth above;

c. Ordering an Accounting of the Association Contingency Fund, as set forth above;

d. Allowing the representative members to inspect and copy the accounting records as set forth above;

e. Requiring an election for directors of the POA Board by the Bull Point POA members be held immediately;

f. Awarding the injunctive relief set forth in the Second Cause of Action above;

g. A declaration that Bull Point SC, LLC is not the Declarant;

h. A declaration that the members of Bull Point POA can repeal the Eighteenth Amendment and enact a new Amendment which may prohibit repeal by the Board;

i. A declaration that the purported powers of the Defendant Bull Point SC, LLC to amend the Declarations/Bylaws are invalid under State law; and

j. A declaration that property owned by Bull Point SC, LLC and GSI, LLC in Bull Point Plantation are subject to assessments and that these assessments have been due since August 21, 2017; and

k. Any further relief that this Court deems just and proper.

Respectfully Submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: _____

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Facsimile: 843-577-7708
Attorney for Plaintiffs

March 22, 2019
Charleston, South Carolina

EXHIBIT

15

ORDER,
dated November 18, 2019

Jon Attridge, et al. v. The Board of Directors of
Bull Point Plantation Property Owners Association, Inc., et al.

Circuit Court
Case No. 2018CP0702345

ELECTRONICALLY FILED - 2019 Nov 18 12:21 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JON H. ATTRIDGE and JANET L ATTRIDGE, ROBERT W. BANKOV, VIRGINIA J. BANKOV, TOM BOLTON, GUY I. COLLIER, NANCY L. COLLIER, RICHARD JAY COLEMAN, MARLENE COLEMAN, RUSSELL G. DIMKE, SANDRA A. DIMKE, JAMES G. GOODWIN JR., CAROL A. GOODWIN, GEORGE J. LOVETT, WILNA W. LOVETT, PETER MARZLUFF, DEBORAH C. MARZLUFF, GARY OKEY, NANCY OKEY, MICHAEL PELLECCHIA, JANICE S. PELLECHIA, FRANK H. ROBERTS SR., RICHARD SWILPA, MICHELE GALLANT, PHYLLIS K. KAUPP-SEAS, ROBERT P. BRENDZA, and ROBIN E. BRENDZA individually and in their derivative capacity on behalf of BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION,

Plaintiffs/Counterclaim Defendants,

-vs-

THE BOARD OF DIRECTORS OF BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC.; BULL POINT SC, LLC; WILLIAM E. GAVIGAN; MICHAEL CAREY; CHRISTOPHER J. QUICK; JAMES RIORDAN; DB ASTER, LLC; AND GSI, LLC,

Defendants/Counterclaimants,

and
BULL POINT SC, LLC and WILLIAM E. GAVIGAN,

Third-Party Plaintiffs,

-vs-

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-07-02345

ORDER

ELECTRONICALLY FILED - 2019 Nov 18 12:21 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345

JOSEPH P. D'AMBROSIO, MARY D'AMBROSIO, MICHAEL POWERS, HARRIET BOSIACK, ROBERT WOLFSON, JAMES HAYES, STEVE ANDREWS, RON LAMBE, DAVE PREZVYS, RIVERS REACH AT POCOTALIGO, LLC, RIVERS REACH REALTY, LLC AND JOHN DOES 1-10,

Third-Party Defendants.

This matter came before the Court on cross motions for partial summary judgment: Plaintiffs' Motion for Partial Summary as well as the Motion for Partial Summary Judgment of Defendants/Counterclaimants Bull Point SC, LLC; William E. Gavigan; Michael Carey; Christopher Quick; James Riordan and Third Party Plaintiffs Bull Point Plantation Property Owners Association, Inc.; Bull Point SC, LLC; and GSI, LLC's (hereinafter collectively "Defendants"). After considering all materials submitted by Plaintiffs and Defendants and hearing arguments, Plaintiffs' Motion for Partial Summary Judgment in GRANTED and Defendants' Motion for Partial Summary Judgment is DENIED.

BACKGROUND

Plaintiffs commenced this suit individually and in their derivative capacity as property owners and members of the Bull Point Plantation Property Owners' Association (the "Association" or the "POA"), for injunctive relief and for a declaratory judgment as to the rights of the Association and its members under the Declaration of Covenants, Conditions and Restrictions of Bull Point Plantation ("Declarations"). In short, Plaintiffs contend that Defendant Bull Point SC, LLC -- which is owned by the Defendant Gavigan -- has wrongly claimed that it is the Declarant of Bull Point Plantation and assumed the Declarant's rights. Plaintiffs allege that Bull Point SC, LLC has wrongly purported to appoint all the members of the POA's Board of Directors (refusing to allow the POA members to elect the POA's Board), to name Gavigan President of the Board,

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and to amend the Declarations. Plaintiffs also contend that the Defendants have breached their fiduciary duties to the POA by, among other things, invading the POA's Contingency Fund and misspending and overspending the POA's money.

In their Motion for Partial Summary Judgment, Plaintiffs seek the following declarations:

1. That under the terms of the Declarations, Defendant Bull Point SC, LLC is not the Declarant and therefore cannot exercise the Declarant's rights and that the actions taken by the Defendant as putative Declarant are invalid; and
2. In the alternative, that even if Bull Point SC, LLC is the Declarant, the South Carolina Nonprofit Corporations Act and the Bull Point Plantation governing documents provide that the members of the Association are entitled to elect the Association's Board of Directors, rather than the Directors being appointed by the Declarant and that an immediate election be held in this regard.

In their competing Motion for Partial Summary Judgment, the Defendants seek the following declarations:

1. That Defendant Bull Point SC, LLC is the Declarant; and
2. That Defendant Bull Point SC, LLC has the right to appoint and remove members of the POA's Board of Directors.

FACTS

A. The Articles of Incorporation, the Declarations, and the Bylaws

Bull Point Plantation is a private waterfront community located in Seabrook in Beaufort County, South Carolina. On September 26, 1995, the Bull Point Plantation Homeowners Association, Inc.[1] was incorporated by filing Articles of Incorporation (hereinafter "Articles") with

[1] The Articles have been amended to change the name of the entity from Bull Point Homeowners Association, Inc. to Bull Point Plantation Property Owners Association, Inc.

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the State of South Carolina Secretary of State. In addition to the standard Nonprofit Corporation Articles of Incorporation form, this document includes a typewritten "Articles of Incorporation, Bull Point Homeowners Association, Inc." The document contains ten articles that set out the framework of the Association. Section 6 sets out the establishment and maintenance of the Board of Directors. It lists the initial three members of the Board of Directors by name. It then proceeds to prescribe the selection of future Directors. Beginning with the first annual meeting, the members of the Association were to elect Directors in staggered terms (e.g., one Director for a one (1) year term, one Director for a two (2) year term, and one Director for a three (3) year term). By the fourth annual meeting, Bull Point Plantation POA members were supposed to be electing members of the Board of Directors every year for one (1) year terms. The Articles of Incorporation make no provision for the Declarant to appoint or remove Directors.

The Declarations were first recorded in 1995, revised in 2000, and amended numerous times thereafter. Among other things, the Declarations define "Declarant" and set out the Declarant's rights. The Declarations define "Declarant" as follows:

> "Declarant" shall mean and refer to Bull Point, LLC which has executed this Declaration with respect to the Property and the Additional Property at the time of such transfer to said successor-in-title, or any party which acquires said Declarant's entire interest with respect to the Property and the Additional Property at the time of such acquisition pursuant to Foreclosure of a Mortgage encumbering said Declarant's interest in the Property and the Additional Property.

Declarations, Section 1.01(j).

The Declarations conflict with the Articles of Incorporation in one important respect, by providing that the Declarant has the authority to appoint and remove members of the Board of Directors. The Declarations purport not to give the members the right to elect Directors until the Declarant's rights expire.

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The POA's Bylaws were reputedly enacted in 1995, but they were first formally recorded on January 10, 2019 in order to comply with the new South Carolina Homeowners Association Act, S.C. Code Ann. Sec. 27-30-110 (2018) et seq. As will be discussed later, when there is any conflict between governing documents, the Nonprofit Corporations Act resolves these conflicts in favor of the Articles of Incorporation.

B. GSI, LLC and Bull Point SC, LLC Purchase

The Bull Point Plantation Property Owners' Association was formed in 1995 by developer Bull Point, LLC[2] in Beaufort County, South Carolina. Bull Point, LLC was eventually unable to meet its financial obligations and filed for bankruptcy protection. Most of Bull Point, LLC's remaining property was foreclosed upon and sold at public auction on January 23, 2012, wherein the developer's lender, German American Capital Corporation ("GACC") submitted a successful credit bid of $5.4 million dollars. On July 9, 2012, GACC acquired Bull Point, LLC's real estate interests in Bull Point Plantation. GACC simultaneously assigned its bid to its affiliated company, DB Aster, LLC. On December 28, 2012, Bull Point, LLC conveyed five additional lots and purported to assign its Declarancy Rights to DB Aster, LLC. The Assignment was recorded on January 8, 2013.

On or about February 23, 2016, DB Aster entered into a contract with GSI, LLC, ("GSI") a Gavigan-owned entity, to sell its remaining Bull Point Plantation property. On or about June 7, 2016, DB Aster declared GSI, LLC in default under the contract. Litigation ensued between GSI, LLC and DB Aster. The parties entered into a new contract on August 9, 2017, and the suit was dismissed on August 10. On August 21, 2017, GSI purchased the property owned by DB Aster for $1.2 million and title was conveyed by Limited Warranty Deed. Also, on August 21, 2017 a

[2] No relation to the purported Declarant Bull Point SC, LLC.

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document was recorded which purported to assign the Declarant's rights from DB Aster to GSI, LLC. On the same day, GSI, LLC assigned most of its interest to Defendant Bull Point SC, LLC, of which Gavigan is also the sole member. GSI, LLC also executed an "Assignment of Rights Under Declaration" to Bull Point SC, LLC. This purported assignment differs from the previous assignments from Bull Point, LLC to DB Aster and from DB Aster to GSI, LLC, in that this assignment "specifically excludes any and all claims, demands, responsibilities, liabilities and obligations of or against Declarant, whether in tort or contract, being an expressed or implied warranty, or resulting from Assignor's acts or failures to act, and arising under the Declaration or Assignor's development activities or the exercise of control of the Bull Point Property Owners Association prior to the date hereof."

Critically, Defendant Bull Point SC, LLC did not acquire the entire interest of the original Declarant, Bull Point, LLC. In fact, it did not acquire the entire interest of the original Declarant's successor, DB Aster, LLC. It did not even acquire the entire interest of DB Aster's immediate successor in title, GSI, LLC. As noted above, DB Aster obtained Declarant Bull Point LLC's interest in the Bull Point Property in 2012. DB Aster did not sell that entire interest to GSI, LLC, however. Between July 2012 and August 21, 2017, when it sold its interest to GSI, LLC, DB Aster made a conveyance of property to the POA. It also sold at least five individual lots. Therefore, GSI, Inc. did not acquire the entire former interest of the original Declarant.

Nor did GSI, LLC convey its entire interest to the Defendant Bull Point SC, LLC. On September 1, 2017 GSI, LLC conveyed a parcel, Lot 260 of Phase V-B, "that being a portion of that same property conveyed to GSI, LLC by DB Aster, LLC …", to Craig Elachie, LLC. Further, GSI, LLC still owns a parcel, Lot 170 located at 87 Barnaby Bluff. Thus, Defendant Bull Point SC, LLC did not acquire the entire interest of GSI, LLC, let alone the entire interest of the

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Declarant Bull Point, LLC. Of course, it did not obtain *any* interest in Bull Point Plantation pursuant to foreclosure of a mortgage, as GSI, LLC purchased its interest from DB Aster and then assigned it to Bull Point SC, LLC.

Nevertheless, since August 2017 Defendant Bull Point SC, LLC has purported to exercise Declarant's rights, among other ways by purporting to remove and appoint the members of the Board of Directors of the Association, including appointing Defendant Gavigan as President; by unilaterally purporting to amend the Declarations; and by not paying assessments on the Lots that it owns individually or through related entities.

On June 13, 2019, Plaintiffs filed their Verified Amended Complaint for Declaratory Judgment, Injunctive Relief, and Accounting. Plaintiffs allege generally, among other things, that Defendant Bull Point SC, LLC is not and never was the Declarant and that it never had the authority to appoint the POA's Board; that all actions undertaken by the appointed POA Board are null and void, including the purported amendments of the Declarations; and that the Defendants breached duties to the Plaintiffs and all other POA members by improperly spending POA funds for their own benefit. Plaintiffs asserted nine separate causes of action: (1) a Declaratory Judgment that the Defendants did not have authority to amend the Declarations, particularly to eliminate the Fifteenth Amendment to the Declarations which gave the POA's members control over the POA's Contingency/Reserve Fund, and that Defendants had no authority to use the Contingency Fund for their own benefit; (2) an Injunction prohibiting the Defendants from having control over the Contingency Fund, particularly by eliminating the Fifteenth Amendment and adopting the Eighteenth Amendment (which purported to give Defendants control over the Contingency Fund), and prohibiting the Defendants from using the Contingency Fund for their

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own benefit;[3] (3) an Accounting of the POA; (4) failure to allow inspection of POA records under S.C. Code § 33-31-1602; (5) a Declaratory Judgment that Bull Point SC, LLC is not and never was the Declarant, making all actions it took as purported Declarant null and void, including but not limited to its amendment of the Declarations and appointments of the POA's directors; (6) a Declaratory Judgment that, regardless of who the Declarant is, the POA members have the right to elect the POA's directors and, thus, the POA's Board of Directors, as appointed by Defendant Bull Point SC, LLC is and has been illegally constituted; (7) a Declaratory Judgment that, regardless of who the Declarant is, Defendant Bull Point SC, LLC's enactment of the Eighteenth Amendment to the Declarations was improper because it was not approved by a vote of three-fourths (3/4) of the POA members in good standing; (8) a Declaratory Judgment that the POA members have the right to repeal the Eighteenth Amendment; and (9) a Declaratory Judgment that, since Defendant Bull Point SC, LLC is not and never has been the Declarant, it is responsible for paying annual assessments on the lots it owns within Bull Point since August 21, 2017, when it acquired the same.

STANDARD OF REVIEW

Summary Judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRCP. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452 548 S.E.2d 868, 874 (2001). "Where a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous." MCG Management of Charleston, Inc. v. Kinghorn Ins. Co., 336 S.C. 542, 546 520 S.E. 2d 820, 822 (Ct.

[3] In their Amended Complaint, Plaintiffs also asked for all "injunctive relief necessary to enforce the declarations sought in the remaining Causes of Action herein; and such further injunctive relief as the Court deems appropriate."

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App. 1999). "*See* S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302-303 (2001) (stating the determination of whether a contract's language is ambiguous is a question of law); Thalia S. ex rel. Gromacki v. Progressive Select Ins. Co., 401 S.C. 395, 399, 736 S.E.2d 863, 865 (Ct. App. 2012) (stating the construction and enforcement of an unambiguous contract is a question of law for the court and thus can be properly disposed of at summary judgment); Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997) (defining an ambiguous contract as one where the terms of the contract are inconsistent on their face or are reasonably susceptible of more than one interpretation); ERIE Ins. Co. v. Winter Constr. Co., 393 S.C. 455, 461, 713 S.E.2d 318, 321 (Ct. App. 2011) ("When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect and the court must construe it according to its plain, ordinary, and popular meaning."). "The fundamental rule in construing covenants and restrictive agreements is that the intention of the parties *as shown by the agreement*, governs." Forest Land Co. v. Black, 216 S.C. 255 57 S.E.2d. 420 (1950) (emphasis added).

"When cross motions for summary judgment are filed, the issue is decided as a matter of law. Wiegand v. U.S. Auto. Ass'n, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)." Neumayer v. Phila. Indem. Ins. Co. (S.C., July 24, 2019).

ANALYSIS

The Court agrees with the Plaintiffs that Defendant Bull Point SC, LLC is not and never was the Declarant and that, even it was the Declarant, the Directors of the POA should have been elected by the POA membership, not appointed by Bull Point SC, LLC. Accordingly, the Court

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grants Plaintiffs' Motion for Partial Summary Judgment and denies Defendants' Motion for Partial Summary Judgment.

I. Defendant Bull Point SC, LLC is not and never was the Declarant of Bull Point Plantation

As stated above, the Declarations define "Declarant" as "Bull Point, LLC … or any party which acquires said Declarant's entire interest with respect to the Property and the Additional Property at the time of such acquisition pursuant to Foreclosure of a Mortgage encumbering said Declarant's interest in the Property and the Additional Property." Bull Point SC, LLC did not acquire any of the interest – let alone the entire interest -- of the original Declarant, Bull Point, LLC through foreclosure. GACC acquired the interest of Bull Point, LLC through foreclosure after Bull Point, LLC filed for bankruptcy. GACC then assigned its interest to its affiliate, DB Aster, LLC. DB Aster ultimately sold its remaining interest to GSI, LLC (owned by Defendant Gavigan) at arm's length for $1.2 million, and GSI, LLC assigned its interest to Bull Point SC, LLC. Defendant Gavigan owns GSI, LLC and Bull Point SC, LLC, but neither he nor they had any relationship to GACC or to DB Aster. In fact, Bull Point SC, LLC litigated against DB Aster over the sale.

Defendant Bull Point SC, LLC did not acquire Bull Point, LLC's entire interest in the Property. After DB Aster obtained GACC's foreclosed interest, it conveyed common areas to the POA and sold at least five lots to separate individuals. Thus, DB Aster did not convey the original Declarant's entire interest to GSI, LLC. Moreover, Defendant Bull Point SC, LLC did not obtain GSI, LLC's entire interest in the remaining Property. Instead, on November 1, 2017, GSI, LLC – *after* its assignment of interests to Defendant Bull Point SC, LLC – GSI, LLC conveyed a parcel, Lot 260 of Phase V-B, to Craig Elachie, LLC, "that being a portion of that same property conveyed to GSI, LLC by DB Aster, LLC … ." Further, GSI, LLC still owns a parcel, Lot 170 located at

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87 Barnaby Bluff. Thus, Defendant Bull Point SC, LLC did not acquire the "entire interest" of GSI, LLC relating to the Property of Bull Point Plantation, let alone the entire interest of the Declarant Bull Point, LLC.

Defendant Bull Point SC, LLC acquired none of its interest in Bull Point Plantation through foreclosure of a mortgage, and it did not acquire Bull Point, LLC's entire interest in the Property. Either of these facts alone disqualifies Bull Point SC, LLC as the Declarant as defined in Section 1.01(j) of the Declarations.

Declarant's rights are assignable if and to the extent the declarations permit assignment. "Restrictive covenants[4] are contractual in nature. Hoffman v. Cohen, 262 S.C. 71, 75, 202 S.E.2d 363, 365 (1974). The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution." Hardy v. Aiken, 631 S.E.2d 539, 369 S.C. 160 (2006). The transferability of Declarant's rights depends on whether the Declarations make them transferable. Highlands Prop. Owners Ass'n, Inc. v. Shumaker Land, LLC, 397 S.C. 432, 437, 724 S.E.2d 685, 687 (Ct. App. 2012) is directly on point. Like this case, Highlands involved a dispute between property owners and a developer hinging on whether the developer was in fact the declarant. In deciding this issue, the Court of Appeals looked to the language of the association's declarations and the definition of "Declarant," which was as follows:

> "Declarant" shall mean and refer to HIGHLANDS DEVELOPMENT LIMITED PARTNERSHIP, or any other person or entity who succeeds to the title of Declarant to any portion of the Properties by sale or assignment of all of the interests of the Declarant in the Properties, *if the instrument of sale or assignment expressly so provides....*

724 S.E.2d at 687 (emphasis by the Court). The developer/putative declarant had acquired certain lots from the prior declarant through a deed that did not refer to or assign the declarant's rights.

[4] The Declarations are, of course, covenants. Their full title is "Declaration of Covenants, Conditions and Restrictions of Bull Point Plantation."

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The purported transfer of declarant rights occurred fourteen months later through a separate assignment document. The Association members, pointing to the fact that the deed did not expressly provide for a transfer of declarant rights, took the position that the developer/putative declarant was in fact not the declarant under the definition in the declarations. This is exactly the situation here. In applying the above definition, the Highland's Court recognized the issue as one of contract law:

> "The law in this state regarding the construction and interpretation of contracts is well settled." Conner v. Alvarez, 285 S.C. 97, 101, 328 S.E.2d 334, 336 (1985). When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect. Ellie, Inc. v. Miccichi, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004). In addition, "[w]here an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." Id. (citing Heins v. Heins, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001)).

Highlands Prop. Owners Ass'n v. Shumaker Land, LLC, 397 S.C. at 437, 724 S.E.2d at 687. Applying the above principles, the Court first found the definition of "Declarant" to be unambiguous. The Court then went on to apply the definition of declarant, looking to the plain language of the definition:

> We find the Covenants, when read in their entirety, support a finding that Shumaker LLC is not the Declarant. As noted previously, Article I, Section 7 of the Covenants defines Declarant as the "HIGHLANDS DEVELOPMENT LIMITED PARTNERSHIP, or any other person or entity who succeeds to the title of Declarant . . . by sale or assignment of all of the interests of the Declarant in the Properties, *if the instrument of sale or assignment expressly so provides."* [emphasis by the Court]. HDLP, as the original Declarant under the Covenants, conveyed the property to Shumaker on July 28, 2006. The deed to Shumaker does not reference any rights held by HDLP as Declarant, nor does the deed purport to transfer any of those rights to Shumaker. Because the deed does not expressly convey the Declarant's rights to Shumaker upon taking title to the seven lots, Shumaker does not qualify as a Declarant under Article I, Section 7 of the Covenants."

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397 S.C. at 437, 724 S.E.2d at 688. In other words, the purported assignee of the declarancy rights was not the declarant because the purported assignment agreement did not meet the requirements set out in the declaration's definition of declarant.

Defendants cite Cullen v. McNeal, 390 S.C. 470, 483, 702 S.E.2d 378, 385 (S.C. App. 2010), *cert. dismissed as improvidently granted*, 411 S.C. 270, 768 S.E.2d 401 (2015) because it permitted assignment of declarant's (there called Developer's) right, but that decision is consistent with Highlands. As it did in Highlands, the Court looked to the definition of declarant (or "Developer") contained in the declarations. In Cullen the definition of Developer recognized two different ways that the developer's rights could be transferred. The definition of Developer included a successor-in-title *or* a successor-in-interest to the original developer. The Court of Appeals held that the putative Developer qualified under the declaration's definition of Developer even though it was not the successor-in-title, because it was the successor-in-interest by assignment. By contrast, the Declaration in this case provides only one way for a successor to acquire the Declarant's rights, and Bull Point SC LLC did not acquire the rights that way. The definition requires that a successor acquire the original Declarant's entire interest by foreclosure. The Defendant Bull Point SC, LLC does not meet this requirement.

Defendants contend that the Plaintiffs should be estopped to deny that Bull Point SC, LLC is the Declarant because some of the Plaintiffs submitted affidavits in this case in which they refer to Bull Point SC, LLC as the Declarant. The Court does not find these affidavits inconsistent with the position the Plaintiffs have taken from the outset of this litigation. In the original Complaint filed on December 3, 2018 – before the subject affidavits were submitted – the Plaintiffs allege, at paragraph 3, "Defendant Bull Point SC, LLC ('Declarant') is a separate Limited Liability Company incorporated under the laws of South Carolina and is currently the purported declarant

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of the Bull Point Plantation (although it does not meet the definition of Declarant under the Declarations).“ The affidavit references to Bull Point SC, LLC as the Declarant are consistent with the Plaintiffs’ contention in this case.

Defendants also point to various past meeting minutes and other documents in which some of the Plaintiffs referred to the assignment of the Declarant’s rights. However, those references were to DB Aster, not to Bull Point SC, LLC. Plaintiffs do not contend in this case that DB Aster did not acquire Bull Point SC, LLC’s Declarant’s rights. Recognizing DB Aster as the Declarant is not inconsistent with Plaintiffs’ contention that Bull Point SC, LLC is not the Declarant.

Finally, Defendants contend that Section 1.01(j) of the Declarations, which defines Declarant, must be read in conjunction with the rest of Declarations, which refer in various places to the Declarant’s “assigns.” These references do not conflict with the unambiguous language of Section 1.01(j), however. Section 1.01(j) does not purport to say that the Declarant’s rights are not assignable; it merely limits assignability to entities that obtain the original Declarant’s entire interest in the Property through foreclosure. It is thus possible for the original Declarant to have “assigns,” so there is nothing anomalous about referring elsewhere in the Declaration to the Declarant and its assigns.

Section 1.01(j) is clear and unambiguous in limiting the definition of Declarant to the original Declarant and “any party which acquires said Declarant’s entire interest with respect to the Property and the Additional Property at the time of such acquisition pursuant to Foreclosure of a Mortgage encumbering said Declarant’s interest in the Property and the Additional Property.” The Defendant Bull Point SC, LLC simply does not meet this definition.

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The Declaration's limitation on assignability of Declarant's rights is not a mere technicality but was obviously intentional on the part of the original developer. The developer clearly did not intend for the Declarant's rights to be bought and sold as a commodity, which would threaten the very integrity of the Bull Point Plantation community. Indeed, the actions of Defendants alleged in the Amended Complaint, if proven, would exemplify the adverse consequences of freely assignable Declarant's rights.

For the foregoing reasons, the Plaintiffs are entitled to a declaration that the Defendant Bull Point SC, LLC is not the Declarant of Bull Point Plantation and that actions taken by Bull Point SC, LLC in connection with the POA Board and amendment of the Declarations are invalid.

II. Regardless of who was or is the Declarant, the POA members have the right to elect the POA's Board of Directors

Even if Defendant Bull Point SC, LLC were the Declarant, its appointment of the Board of Directors was a nullity because it contravened the provisions of the Association's Articles of Incorporation and the South Carolina Nonprofit Corporations Act.[5]

The South Carolina Nonprofit Corporation Act of 1994 (the "Act") governs mutual benefit corporations including homeowners' associations such as the POA. Bull Point's Declarations provide – as they must -- that South Carolina law governs any conflicts in its interpretation. The Act in turn resolves conflicts among governing documents in favor of the articles of incorporation. Section 33-31-206 provides:

> (a) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.
> (b) The bylaws may contain any provision for regulating and managing the affairs of the corporation *that is not inconsistent with law or the articles of incorporation*.

[5] See: S.C. Code Ann. §33-31-10 *et seq*

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The Code defines "bylaws" as, in essence, any governing document other than the articles of incorporation: "'Bylaws' means the code or codes of rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation *irrespective of the name or names by which the rules are designated*." S.C. Code Ann. §33-31-104(4) (emphasis added). The Official Comments to §33-31-104 state, "The term 'bylaws' has a particularly expansive definition. The term refers to the code or codes of rules, other than the articles, adopted for regulation or management of corporate affairs regardless of the name by which such rules are designated." Accordingly, Bull Point's Declarations are referred to as "bylaws" in the Act. The Act allows the Declarations to contain any provision for the operation of the Association that does not conflict with the law or with the Articles of Incorporation.

The Bull Point Plantation Declarations conflict with the Articles of Incorporation in one important respect. The Articles of Incorporation provide for the election of the Board members by the members of the POA, whereas the Declarations purport to allow the Declarant, during the term of the Declarancy, to appoint and remove the members of the POA's Board of Directors. As shown in the statement of Facts above, the POA's Articles of Incorporation provide for the annual election of members of the Board of Directors:

> At the first annual meeting, the members shall elect one (1) Director for a term of one (1) year, one Director for a term of two (2) years and one (1) Director for a term of three (3) years. At each annual meeting thereafter, the members shall elect one (1) Director for a term of one (1) year.

This provision is inconsistent with the Declarations/Bylaws, which purport to allow the Declarant to appoint and remove members of the Board of Directors:

> NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BY-LAWS OF THE ASSOCIATION, Declarant hereby retains to right to appoint and remove any member or members of the Board of Directors of the Association by and for the term set forth in Section 8.01 hereof.

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(capitalization in original). However, the Declarations/Bylaws provide that the Act takes precedence in the event of a conflict among the governing documents:

> Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the South Carolina Code relating to non-profit corporations, this Declaration, the By-Laws, and the Articles, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies among the South Carolina Code, this Declaration, the By-Laws, or the Articles, *the provisions of the South Carolina Code, this Declaration, the By-Laws and the Articles, in that order, shall prevail*, and each Owner of a Lot or Dwelling by acceptance of a deed or other conveyance thereof, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

(emphasis added). Thus, the Declarations expressly conform themselves to the Act, which expressly conforms them to the Articles of Incorporation. The Board of Directors of the Association must therefore be elected by the members, not appointed by the Defendant Bull Point SC, LLC.[6]

Accordingly, Defendants' purported appointment of the Board of Directors was a nullity and the actions of the illegally appointed Board are nullities.

RELIEF GRANTED

Based on these findings, the Court makes the following rulings and grants the following relief:

1. Plaintiffs' Motion for Partial Summary Judgment is granted;

2. Defendants' Motion for Partial Summary Judgment is denied;

[6] The Act elsewhere protects the rights of members to elect their Board members. Section 33-31-804 states, "(a) If the corporation has members entitled to vote for directors, all the directors, except the initial directors, *must be elected* at the first annual meeting of members, *and at each annual meeting thereafter*, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated." (emphasis added).

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3. Plaintiffs' request for Declaratory Judgment in its first cause of action is granted. Defendants did not have the authority to amend the Declarations to eliminate the Fifteenth Amendment and Defendants must immediately relinquish control of the Contingency Fund;

4. The injunction requested in Plaintiffs' second cause of action is granted, as it is necessary to effect the Court's declaratory judgment. Defendants are enjoined from repealing or refusing to comply with the Fifteenth Amendment of the Declarations; Defendants are enjoined from exercising any control over the Contingency Fund; Defendants are enjoined from serving on the POA's Board of Directors (unless elected by the POA members); Defendants are enjoined from taking any actions in further governance of the POA, including scheduling of an Annual Meeting or issuance of a Proposed Budget for 2020; Defendants are enjoined from occupying the offices in the POA clubhouse, and they must vacate the clubhouse offices within 24 hours of the entry of this Order; Defendants are enjoined from exercising any control over the POA funds.

5. Plaintiffs' request for Declaratory Judgment in its fourth cause of action is granted. Defendant Bull Point SC, LLC is not and never was the Declarant and, therefore, all actions it took as purported Declarant, including appointing the POA's directors and amending the Declarations, are void.

6. Plaintiffs' request for Declaratory Judgment in its sixth cause of action is granted. The POA members have and always have had the right to elect the POA's Board of Directors. The Court orders that an election will take place within 90 days of the date of this Order. Defendants shall provide the Plaintiffs with the names and every form

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of contact information they have for all of the POA members. In the meantime, upon entry of this Order, the Defendants, and anyone they appointed to serve, will immediately cease acting as the POA's Board of Directors. To ensure continuity, to provide for orderly governance, to avoid harm to the Bull Point community, and to provide for administrative control over necessary POA functions, the Court appoints an interim Board of Directors consisting of five members of the POA who agree to serve. Plaintiffs are directed to provide the Court, within three days from entry of this Order, the names of the interim Directors. This interim Board of Directors will serve and have the full power and authority of the Board of Directors in accordance with the POA's governing documents and the laws of South Carolina to conduct the affairs of the POA until the POA members can elect a Board of Directors.

7. Plaintiffs' request for Declaratory Judgments in its seventh and eighth cause of action is granted. The Eighteenth Amendment to the Declarations is rescinded and the Fifteenth Amendment is reinstated, providing the POA members control over the POA's Contingency Fund.

8. Immediately upon the Plaintiffs notifying Defendants of the appointment of the interim Board of Directors, the Defendants shall turn over possession of: (a) the clubhouse offices and all property and records (both physical and electronic) located therein, including but not limited to cellular telephones and keys belonging to the POA; (b) all POA check books, credit cards, debit cards, financial records (both physical and electronic). At the same time, Defendants shall sign over to the interim Board all authority and control of all POA financial accounts and provide the interim Board all log-in credentials for all accounts as well as those needed to access the POA's

computers.

IT IS SO ORDERED!

Carmen T. Mullen
Presiding Judge

_____, 2019

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Beaufort Common Pleas

Case Caption: Jon H. Attridge , plaintiff, et al VS Bull Point Plantation Property Owners Association Inc Board , defendant, et al

Case Number: 2018CP0702345

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142