

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 13 2020

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No.: 2019-002038

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. 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 Prezvy, Rivers Reach at Pocotaligo, LLC, Rivers Reach Realty, LLC, and Jon Does 1-10, ... Third-Party Defendants.

RECORD ON APPEAL
VOLUME TWO

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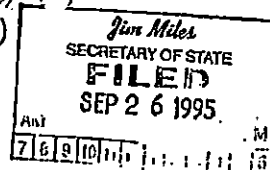
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EXHIBIT C

ARTICLES OF INCORPORATION OF
BULL POINT HOMEOWNERS
ASSOCIATION, INC., AND “ASSOCIATED
DOCUMENTS”

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
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. ☒ 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 address of the principal office of the nonprofit corporation is 1700 Sunset Blvd
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 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. ☒ 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): _____

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)

(only if named in articles) Signature of director

(only if named in articles) Signature of director

11. Each incorporator must sign the articles.

Stancel E. Kirkland
Signature of incorporator

Signature of incorporator

Signature of incorporator

FILING INSTRUCTIONS

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

Apr 24 2018
REFERENCE ID: 1804231836503


Mark H. Kirkland
CLERK OF COURT - BEAUFORT COUNTY

ARTICLES OF INCORPORATION

BULL POINT HOMEOWNERS ASSOCIATION, INC.

1. In compliance with S33-31-10 of the South Carolina Code of Laws (1976), as amended, the undersigned, have this date voluntarily associated themselves together for the purpose of forming a Corporation not for profit and do hereby certify that the name of the Corporation is Bull Point Homeowners Association, Inc. (hereinafter referred to as the "Association").

2. The principal office of the Association is located at 1700 Sunset Blvd., Post Office Box 5709, West Columbia, South Carolina, 29171. Stancel E. Kirkland is hereby appointed the initial registered agent of this Corporation.

3. This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed is to provide for maintenance, preservation and architectural control of the residence lots and common area within that certain tract of property known as the Bull Point Property, and to promote the health, safety and welfare of the residents within the above-described property, and any additions thereto as may hereafter be brought within the jurisdiction of this Association for the purpose of:

(a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as the "Declaration"), applicable to the property recorded or to be recorded in the RMC Office for Beaufort County and as the same may be amended from time to time as herein provided, said Declaration being incorporated herein as if set forth verbatim;

(b) fix, levy, collect and enforce payment by any lawful means or charges or assessments pursuant to the terms of the Declaration, and to pay all expenses in connection therewith, and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) acquire, own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the Association;

(d) borrow money, with the assent of two-thirds of each class of members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

Apr 24 2018

REFERENCE ID: 1604231836503


Paul H. Hines
CLERK OF COURT FOR SOUTH CAROLINA

(e) dedicate, sell or transfer all or any part of the common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication or transfer shall be effective unless an instrument has been signed by two-thirds of each class of members agreeing to such dedication, sale or transfer.

(f) exercise any and all powers, rights and privileges which a Corporation organized under the Non-Profit Corporation Law for the State of South Carolina may now or hereafter have or exercise.

4. Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association, including contracts, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as a security for performance of any obligation. Membership shall be pertinent to and may not be separated from ownership of any lot which is subject to assessment by the Association.

5. The Association shall have one (1) class of voting memberships as described in the By-Laws of the Association.

6. The affairs of this Association shall be managed by a Board of three (3) Directors who need not be members of the Association. The number of Directors may be changed by amendment of the By-Laws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

(a) Stancel E. Kirkland	1700 Sunset Blvd. West Columbia, SC 29169
(b) Jerry L. Eddins	Post Office Box 3455 Cayce-West Columbia, SC 29171
(c) Robert L. Wolfson	652 South Reeves Street Dataw Island, SC 29920

At the first annual meeting, the members shall elect one (1) Director for a term of one (1) year, one (1) Director for a term of two (2) years and one (1) Director for a term of three (3) years. At each annual meeting thereafter, the members shall elect one (1) Director for a term of one (1) year.

7. The Association may dissolve with the assent given in writing and signed by not less than two-thirds of each class of members. Upon dissolution of the Association, other than merger or consolidation, the assets of the Association shall be dedicated to the appropriate public agency to be used for purposes similar to these for which this Association was created. In the event such

Apr 24 2018

REFERENCE ID: 1804231836503

Mark Hamrick
SECRETARY OF THE COUNTY

dedication is refused, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, thrust or other organization to be devoted to such similar purposes.

8. The Corporation shall exist perpetually.

9. Amendment of these Articles shall require the assent of seventy-five (75%) percent of the entire membership.

10. The Association shall manage and control the common areas, subject to the rights of Declarant and rights of owners set forth in the Declaration of Covenants, Conditions, and Restrictions recorded in the Office of the RMC for Beaufort County, South Carolina.

IN WITNESS WHEREOF, for purposes of forming this Corporation under the laws of the State of South Carolina, we, the undersigned, hereby constitute as the Incorporators of this Association have executed these Articles of Incorporation this 22 day of September, 1995.

WITNESSES:

Christa Harris
Holly Moore

BULL POINT HOMEOWNERS ASSOCIATION, INC.

Stancel E. Kirkland
STANCEL E. KIRKLAND

EXHIBIT D

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

PART 1

EXHIBIT "A"

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

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BULL POINT PLANTATION is made this 17th day of January, 2000, by BULL POINT LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY.

WITNESSETH:

WHEREAS, Bull Point LLC, "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, 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, now, 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 1

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 and Phase II).

(b) "Architectural Review Board of Bull Point" shall mean and refer to the committee who shall be appointed by the Association's 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 Article 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 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 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.

(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 purchase 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, sub-Lease, 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.

(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 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.

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

(w) "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.

(x) "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 Register of Deeds Office for Beaufort County, South Carolina, any installment land sales contract covering any Lot, the Owner of such Lot 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 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 until all such payments are made, although the purchaser is given use of such Lot.

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

(z) "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.

(aa) "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.

(bb) "Site Plans" 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, and recorded in Register of Deeds Office for Beaufort County in Plat Book 54, Page 40 and plat showing Bull Point Subdivision Phase II, a section of Tomotley Plantation, Sheldon Township, prepared by Gasque & Associates, Inc., dated November 8, 1995, and recorded in the Register of Deeds Office for Beaufort County in Plat Book 55, Page 76. Additional plats shall be included for future phases under this definition.

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ELECTRONICALLY FILED - 2018 Dec 03 9:14 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345

ARTICLE II PLAN OF DEVELOPMENT

2.01 Plan of Development of Property The property shall consist of Phase I and Phase II lots as shown in section 1.01 (bb). The dimensions of the Lots are shown on the Site Plan. All Lots within Phase I and Phase II of the Development and in future phases 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 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 owned by the 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 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, 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 Deeds Office 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 and Phase II 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 or sequence, 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 the Dwellings constructed thereon will be restricted exclusively to the residential use and associated activities and amenities 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 design construction to those Dwellings and improvements located elsewhere within the Development.

(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 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 use and associated amenities.

(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 improvement.

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 Deeds 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. 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 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 in the Development.

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. Declarant shall have the right, at its sole option, to install public and/or community water or sewer utilities.

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 lien holder 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 of portions thereof to the Development as hereinabove provided, and, with respect to each Lot located within the Additional Property, to convey to the purchaser thereof the title to the Lot 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 prior written consent of Declarant.

ARTICLE III PROPERTY RIGHTS

3.01 General. Each Lot and Dwelling and 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 and 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 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, and upon such transfer, such former Owner shall simultaneously transfer and endorse to this 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 of lots including the 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, license, 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 the Declaration and the rules, 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) The Declarant shall construct the below described Recreational Amenities, subject to the approval of all required regulatory agencies.

(d) Clubhouse, Tennis Court and Swimming Pool. Declarant shall construct a Clubhouse, two (2) Tennis Courts and a Swimming Pool in Phase III of the Development. Construction of these amenities, or a portion of these amenities, will be commenced within four (4) months from the date of closing on the seventieth (70th) Lot sale to individual purchases in Phase I and II.

3.04 Access. All Owners, by accepting title to Lots or Dwellings conveyed subject to this Declaration, waive all rights, except for limited Common Recreation 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 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 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 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 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 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 the 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, 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 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 and drainage 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, the Owners of residential lots located herein shall have, and there is hereby reserved for their benefit and as an appurtenance to their respective residential lots, 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 owner of a residential unit within any portion of the Additional Property not so added to the Development, such Owner shall pay the Association annual Assessment for the use of the Recreational Amenities and shall be subject to all covenants, rules and regulations pertaining to said use.

3.11 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 of 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 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.

3.12 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.

3.13 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, (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.

3.14 Encroachments. There shall exist valid and perpetual easements, appurtenant to any Lot 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.

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

3.16 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 thirty five feet (35') 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, and Ownership of a Lot shall be the sole qualification for such membership. In the event that fee title to a Lot 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 Mortgages or any other Persons who hold an interest merely as security for the performance of any 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. In the event of multiple Owners of a Lot, 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. When more than one Person holds an interest in any Lot, the vote for such Lot shall be exercised as those Owners of such Lot 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 shall be suspended in the event more than one Person seeks to exercise it. The voting weight appurtenant to each Lot is equal and each Lot 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 therein shall have one (1) vote. Each Owner, by acceptance of a deed or other conveyance for a Lot, 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 shall be the responsibility of the Owner of such Lot. As provided for in Section 5.02 (b) hereof, each shall also be obligated to pay for the cost incurred by the Association for repairing, replacing, maintaining, or clearing any item which is the responsibility of such Owner; but which responsibility of such Owner fails or refuses to discharge. No Owner shall (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a 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 directly affected thereby or benefiting 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 pursuant to Section 3.13 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 Declarant or the Board of Directors determines that: (i) any Owner has failed or refused to discharge properly Owner's obligation with regard to the maintenance, cleaning, repair or replacement of items for which Owner 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 Lot or areas within the lot area not considered a common element or Common Area, are subject, and shall become a lien against such Lot and improvements, on areas of the Lot 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 coverage as is determined to be necessary by the Board of Directors.

(c) The Board or its 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 (ii) 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 interested 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.

(iv) All policies shall contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's directors and officers, the Owners, and their respective families, servants, agents, tenants, guests, and invitees, including, without limitation, the Association's manager.

(v) 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, guests, 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 the defect may be cured.

(e) It shall be the individual responsibility of each Owner at his own expense to provide, as Owner 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 percent (75%) 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 Owners equally in the same manner as annual Assessments are levied and additional special Assessments and 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. 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.

EXHIBIT D

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BULL POINT PLANTATION PART 2

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 percent (75%) 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 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, together with at least seventy-five percent (75%) 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 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 Owner, 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 is 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 Lot 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 Lot 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 Dwellings.

(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 is 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 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 Lot 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 in 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 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, 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. 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 or 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 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 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 Sections 8.02 or any other provision of this Declaration to the contrary, for so long as Declarant shall own any Lot 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 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 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, LLC 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 LLC 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 also transfers the membership in the Association which is an appurtenance to such Lot.

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 such deed or conveyance, is deemed to covenants 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 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 percent (18%) per annum, or at such other maximum interest rate as established by South Carolina law, and court costs and attorneys' fees incurred to enforce or collect such Assessments or recreational

charges, shall be an equitable charge and a continuing lien upon the Lot and 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 sale after the effective date of the Assessment. 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 charges. 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. From and after January 1, 2000, 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 is equal to the 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 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 sold to Owners being added to the Development shall thenceforth pay Assessments which are equal to those imposed upon Lots 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. 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 percent (15%) of the maximum authorized payment for the previous year, and such increased budget shall have been approved as provided above. If any budget at any time proves inadequate for any reasons, 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 interest 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, guest, 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 from unpaid Assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors;

(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 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 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 and/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 Meetings 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 percent (50) 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 pursuant to this Declaration, together with court costs, reasonable attorney's fees, late charges, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Lot 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 of such Owner. Such liens shall be superior to all other liens and encumbrances on such Lot 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 the 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 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 percent (18%) 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 been 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 percent (18%) per annum, all costs of collection (including reasonable attorney's 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, 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 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, 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 which is recorded in the Register of Deeds Office for Beaufort County.

9.10 Certificate. The Treasurer, any Assistant Treasurer, or the manager of the Association shall, within ten (10) days of a written request and upon payment of such fee as is from time to time determined by the Board of Directors, furnish to any Owner or such Owner's Mortgage 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 Certificates 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 on the day on which such Lot 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 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 is first conveyed. Annual and special Assessments for Lots in portions of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot on the later of (i) the day on which such Lot 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 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 which it or its affiliates own and which do not contain occupied residences, provided that Declarant covenants and agrees to pay annual and special Assessments for each Lot owned by Declarant or an affiliate and containing occupied residences. Furthermore, Declarant has the authority hereunder to appoint and remove directors of the Association, provided, however, that the budget, Assessments, and deficiencies, 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.

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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 seven (7) (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 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 place as may be designated by the chairman. Three (3) members 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 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 which 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 building, structures, or other improvements (excepting sidewalks and driveways) on or with respect to any Lot 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 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 Lot shall be undertaken or conducted on any 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 on Lots 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 DOLLARS (\$5,000.00) 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 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 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 from the Lot 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 inches (6") in diameter at a height of six feet (6'), Live Oaks and other significant vegetation on such Lot 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 DOLLARS (\$100.00) 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 which may be covered by Dwellings, building structures, or other improvements, which standards shall be promulgated on the basis of topography, percolation rate of the 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, representatives or agents of the Architectural Review Board shall have the right

during reasonable hours to enter upon and inspect any Lots, 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 specifications 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 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 inches (6") or more at a point of six feet (6') 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 by the Owner of such Lot. All of the landscaping of Lots 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 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 be used as the office of or storage area for any building contractor or real estate developer. Furthermore, the operation of the Recreational Amenities, food and beverage facilities, if any, without limitation the charging and collecting of membership fees, garden plot or mini-farm rentals, dock and boat slip fees, tennis court fees, Health Club fees, and the operation in Common Areas for which a fee may be charged, shall be expressly permitted within the Development exclusive of Lots or Dwelling 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 shall 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 Watercrafts. 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, wharf, dock, or bulkhead space adjacent to Lots 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 mailboxes 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 ATU Septic Systems 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 not 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 DOLLARS (\$50.00) per violation for the violation of these pet restrictions by such Owner, his family, tenants or guest, 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. 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 and its Owner are subject.

(b) Owners shall have the right to own and stall horses on portions of 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 subject to rules and regulations established by 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 guest and invitees and for 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 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 and has no further Additional Property for Development, the Association, which permission may be arbitrarily withheld.

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 lagoon, lake or pond to the Association. The use and enjoyment by Owner of the thirteen (13) acre lake and any other lakes or ponds constructed on the property shall be subject to the rules and regulations as established by the Declarant and the Association. Owners of Lots fronting on the thirteen (13) acre lake and any other future lake or pond as designated by the Declarant, shall be deeded to ownership of a Lot to the high water mark. No docks, boardwalks or other structures may be constructed by individual Lot Owners on fresh water lakes/ponds located in Phase I or Phase II or on additional property.

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 nuisances 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 of the Common Areas which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisances 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 or parking upon any Lot 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, boats, truck (other than pick-up trucks), commercial vehicles of any type, camper, motorcycle, boats, 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 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 Sale 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 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 and permanent 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 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 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.

10.22 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 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 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 three (3) 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, 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.

10.23 Garage. 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 fronting on the navigable water ways 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 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 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. Upon notification by the ARB to an Owner, in writing, that said dock fails to meet acceptable standards, said Lot 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 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. The Architectural Review Board, with the written consent of Declarant, so long as Declarant owns a Lot 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 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 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, the Owners, Occupants, or guests of which are guilty of such violation, (ii) to suspend an Owner's right to vote in the Association, or (iii) to suspend an Owner's right (and the right of such Owner's family, guests, and tenants and of the co-Owners of such Owner and their respective families, guests, and tenants) to use any of 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 followed:

(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 to right to appoint and remove any member of members of the Board of Directors of the Association 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, 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, 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 contract, 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, 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 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 to make or purchase Mortgage loans on any Lot, Dwelling, 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 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.

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, 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 any violation or breach, or threatened violation or breach, by any Person of the provisions of this Declaration, the By-Laws, 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 up 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 and 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 period. 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 percent (75%) 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 rules 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 implications as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance 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 Register of Deeds for Beaufort County, South Carolina. The captions of each Article 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 as thought 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 provisions 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 Mortgagee. In the event an Owner sells, Leases, Mortgages, or otherwise disposes of any Lot, 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 Owner's respective Lots. 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 _____ day of _____, 2000.

Signed, sealed and Delivered in the Presence of:

DECLARANT:
BULL POINT, LLC
A South Carolina Limited Liability Company

BY: _____

Its: Managing Partner

BY: _____

Its: Managing Partner

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.

SWORN TO and subscribed to before me this _____ day of _____, 2000.

Notary Public for South Carolina
My Commission Expires: _____

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

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, a section of Tomotley Plantation, Garden'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.

PHASE II, BULL POINT PLANTATION

All those certain pieces parcels and Lots of land, with improvements thereon, being in Sheldon Township, Garden's Corner, Beaufort County, South Carolina, containing 92.91 acres as shown on a plat of the Bull Point subdivision, Phase II, a section of Tomotley Plantation, prepared by David Gasque, R.L.S., dated November 8, 1995 and recorded in the Office of the RMC for Beaufort County on February 5, 1995, in Plat Book 55 at page 76. Said plat being incorporated herein and made a part hereof by reference for a more complete description.

EXHIBIT E

BYLAWS OF BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.

9/15 RB
Bull Point
Plantation
11055

BEAUFORT COUNTY SC - ROD
BK 3729 Pgs 591-599
FILE NUM 2019001999
01/10/2019 02:25:30 PM
REC'D BY rhina RCPT# 917703
RECORDING FEES \$15.00

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

AFFIDAVIT TO RECORD

IN RE: Bull Point Plantation Property Owners Association, Inc.

The undersigned officer of Bull Point Plantation Property Owners Association, Inc., (the "Association") hereby certifies that the document attached hereto as Exhibit A are the Bylaws of the Association and were duly adopted by the Board of Directors of the Association and that the same are being recorded in order to comply with the South Carolina Homeowners Association Act, Title 27, Chapter 30, Section 110, et. seq.; South Carolina Code of Laws (1976).

Bull Point Plantation Property Owners
Association, Inc.

By: _____

William E. Gavigan,
President

SWORN TO BEFORE ME THIS
10th day of January, 2019

Kalea E. Little

Notary Public for South Carolina

KALEA E. LITTLE
Notary Public - State of South Carolina
My Commission Expires July 6, 2027

ELECTRONICALLY FILED - 2019 Jul 02 4:49 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345

ELECTRONICALLY FILED - 2019 Sep 20 11:31 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345

EXHIBIT A

Bylaws

of

Bull Point Plantation

Property Owners Association, Inc.

BY-LAWS

OF

BULL POINT HOMEOWNERS ASSOCIATION, INC.

ARTICLE I - NAME AND LOCATION

The name of the Corporation is Bull Point Homeowners Association, Inc., hereinafter referred to as the "Association". The principal office of the Corporation shall be located at 1700 Sunset Boulevard, West Columbia, South Carolina, but meetings of the Members and Directors shall be held at such places within the State of South Carolina, County of Beaufort, as may be designated by the Board of Directors.

ARTICLE II - DEFINITIONS

Section 1. "Association" shall mean and refer to Bull Point Homeowners Association, Inc., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Restrictions, Charges and Liens, and such additions thereto as may be hereafter brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 4. "Lots" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area or Easement Area.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more person or entities of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Declarant" shall mean and refer to Bull Point Homeowners Association, Inc., its successors and assigns.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Restrictions, Easements, Charges and Liens applicable to the Properties recorded in the RMC Office of Beaufort County, South Carolina.

Section 8. "Member" shall mean and refer to those persons entitled to membership as provided for in the Declaration.

ARTICLE III - MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the date of

incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at the hour of 6:30 o'clock p.m. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of 40% of the Members who are entitled to vote.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, together with a proxy, postage prepaid, at least fifteen (15) days before such meeting to each Members entitled to vote thereat, addressed to the Members' address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. Quorum and voting at meetings or the Membership is governed by the Declaration.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his lot.

ARTICLE IV - BOARD OF DIRECTORS

Section 1. Number. The affairs of this Association shall be managed by a Board of three (3) Directors, who need not be Members of the Association. The election of Directors is subject to the terms of Article VIII (Administration) of the Declaration.

Section 2. Term of Office. At the first annual meeting the Members shall elect one (1) Director for the term of one (1) year, one (1) Director for the term of two (2) years, and one (1) Director for the term of three (3) years; and at each annual meeting thereafter the Members shall elect one (1) Director for a term of one (1) year.

Section 3. Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 4. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the Directors. Any action so approved shall have the same

effect as though taken at a meeting of the Directors.

ARTICLE V - NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual Meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many appointments for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members of Non-Members.

Section 2. Election. Election to the Board of Directors shall be made by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The three (3) persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI - MEETING OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time and place on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by or at the request of the President of the Association, or by any two (2) Directors, after not less than three (3) days notice to each Director.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every Act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII - POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board shall have the following powers:

(a) to adopt and publish rules and regulations governing the use of the Common Properties and facilities and the personal conduct of the Members and their guests and invitees thereon, and to establish penalties for the infraction thereof.

(b) suspend the voting rights and right to use recreational facilities, if any, of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations.

(c) to exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Membership by other provisions of these By-Laws or the Declaration.

(d) declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

(e) employ a manager, an independent contractor, or other such employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting where such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote.

(b) supervise all officers, agents and employees of this Association and see that their duties are properly performed.

(c) as more fully provided in this Declaration to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period.

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period.

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the Owner personally obligated to pay the same.

(d) issue, or cause an appropriate office to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association.

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may be deemed appropriate.

(g) cause the Common Area to be maintained.

ARTICLE VIII - OFFICERS AND THEIR DUTIES

Section 1. Enumeration. The Officers of this Association shall be a President, Vice-President, who shall at all times by Members of the Board of Directors, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of Officers shall take place at the first meeting of the Board of Directors following such annual meeting of the Members.

Section 3. Term. The Officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign or shall be removed or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

Section 5. Resignation and Removal. Any Officer may be removed from office with or without cause by the Board. Any Officer may resign at any time given written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice, or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any other office except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the Officers are as follows:

(a) President - shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other

written instruments and shall co-sign all checks and promissory notes.

(b) Vice-President - shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board;

(c) Secretary - shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it to all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association, together with their addresses; and shall perform such other duties as required by the Board;

(d) Treasurer - shall receive and deposit in appropriate monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare any annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting; and deliver a copy of each to the Members.

ARTICLE IX - COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided for in the Declaration, and a Nominating Committee, as provided for in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purposes.

ARTICLE X - BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at a reasonable cost.

ARTICLE XI - ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments, which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six (6%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose

the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas or abandonment of his Lot.

ARTICLE XII - CORPORATE SEAL

The Association shall have a seal in circular form having within, its circumference the words "BULL POINT HOMEOWNERS ASSOCIATION, INC."

ARTICLE XIII - AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B Membership.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE XIV - MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of the incorporation.

In the event of a conflict between the By-Laws and the Declaration of Covenants and Restrictions for the Bull Point Property, then the terms of the Declaration of Covenants and Restrictions shall control.

IN WITNESS WHEREOF, I, being the President of the Bull Point Homeowners Association, Inc. have hereunto set my hand this 21st day of September, 1995.

Witnesses:

Bull Point Homeowners Association,
Inc.

BY: [Signature]

BY: _____

BY: _____

EXHIBIT F
AFFIDAVIT OF WILLIAM E. GAVIGAN
WITH EXHIBIT A THROUGH L
PART 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAU FORT	)	
	)	Civil Action No.: 2018-CP-07-2345
Jon H. Attridge, <i>et al.</i> ,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF WILLIAM E. GAVIGAN
vs.	)	
	)	
The Board of Directors of Bull Point	)	
Plantation Property Owners Association,	)	
Inc., <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

I, BILLY GAVIGAN, hereby declare as follows:

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

History of GSI, LLC's Acquisition of Bull Point Plantation

2. Bull Point Plantation is a residential development in Beaufort County, South Carolina that was established in 1995. Bull Point Plantation operates through a "Declarant" and a homeowners association.

3. The homeowners association is currently named the Bull Point Plantation Property Owners Association, Inc. ("BPPPOA").

4. Prior to December 28, 2012, the Declarant of the Bull Point development was Bull Point, LLC. In 2012, German American Capital Corporation ("GACC") was foreclosing on

Bull Point, LLC's interest in most of Bull Point Plantation, and I was asked to testify at a hearing regarding certain aspects of Bull Point Plantation. It was around that time that I first began to consider the possibility of acquiring Bull Point Plantation.

5. In late 2015, I received a communication by Tom DeMint, enclosing a brochure in connection with the sale of Bull Point Plantation.

6. On or about February 1, 2016, GSI, LLC and DB Aster, LLC entered into a purchase and sale agreement, pursuant to which DB Aster would sell to GSI, among other things, (1) a parcel of real property containing twenty-seven (27) improved, single-family, residential lots and one hundred fifty-three (153) undeveloped acres (see Agreement, § 1.1.1), and "certain intangible personal property related to the Land including, without limitation, the Declarant Rights." (See Agreement, § 1.1.2).

7. The closing did not occur, among other things, because there was a disagreement about whether the 27 improved lots were in fact improved. Thereafter, GSI commenced that action entitled *GSI, LLC v. DB Aster, LLC*, which was pending in the United States District Court (hereinafter the "GSI Action").

8. During the pendency of the GSI Action, GSI conducted written discovery to DB Aster and served business records subpoenas on third parties, including the BPPPOA. One category of documents requested from the BPPPOA were the Minutes of the Board of Directors. In response to said request, the BPPPOA produced a set of documents, Bates Stamped BPPOA_000001 through BPPOA_000084, inclusive (hereafter the "BPPPOA Board Minutes").

9. I reviewed the BPPPOA Board Minutes prior to GSI, LLC moving forward with its purchase of Bull Point Plantation. Based on my review of the BPPPOA's Minutes, and the

assignment of the Declarant's Rights from Bull Point, LLC to DB Aster, LLC in December 2012, I understood and believed two key points:

- a. That DB Aster, LLC was the Declarant to Bull Point Plantation and had acquired all rights to and under the Declaration.
- b. That the Declarant had the authority under the Declarant to appoint and remove officers and members of the Board of Directors.

10. But for my understanding that DB Aster, LLC was the Declarant and, further, that the Declarant had the authority to appoint and remove officers and members of the Board of Directors of the BPPPOA, GSI, LLC would not have executed the purchase agreement discussed below. The key statements in the BPPPOA Board Minutes package that I reviewed, and upon which I relied, are as follows:

- a. In the Minutes for the 2013 Annual Meeting of the Bull Point Property Owners Association, Inc. held November 17, 2012, prepared on December 4, 2012 by Russ Dimke, Secretary/Treasurer (*attached as Exhibit "A"*):
 - i. Attended by 122 owners.
 - ii. The Minutes stated: Stancel Kirkland, the Managing Member of Bull Point, LLC, the Declarant, "appointed himself (President) and Bobbi Kirkland (Vice President) as voting directors from Bull Point, LLC for this upcoming year. Stan noted they will serve until such time [as] a new Declarant takes Bull Point, LLC's place."
- b. In the Minutes of the February 1, 2013 Board of Directors Meeting, prepared on February 2, 2013, by Russ Dimke, Secretary/Treasurer (*attached as Exhibit "B"*):
 - i. These Minutes included an introductory paragraph. The paragraph included the following Header: "CHANGE OF DECLARANT & NAMING OF NEW BOARD MEMBERS". (Capitals in original.)
 - ii. The introductory paragraph then stated: "*The Declarant Rights as specified in the Bull Point Plantation Covenants have now been legally transferred from Bull Point LLC to DB Aster, LLC.*" (Emphasis added.)
 - iii. "As a result, per the Covenants, DB Aster has officially removed Stan and Bobbie Kirkland from the POA Board and appointed Steve Mansfield (as

president) and Brian Jackson (as vice president) to take their place (see copy of letter attached)."

- iv. In a discussion about a possible transfer of Lot 223 to the POA, the POA Board Minutes stated: "Now that Bull Point LLC no longer has the Declarant rights, . . ."
- c. In the Minutes of the March 14, 2013 Board of Directors Meeting, prepared on March 18, 2013, by Plaintiff Russ Dimke, Secretary/Treasurer (*attached as Exhibit "C"*):
 - i. The Minutes noted that Steve Mansfield was the POA's President.
 - ii. The Minutes noted that Plaintiff Jay Coleman attended in his capacity as a Director, Plaintiff Dick Lovett as the Director of Operations, Russ Dimke as the Secretary/Treasurer, and 20 other members.
 - iii. The Minutes noted that "DB Aster has become the Declarant."
 - iv. The Minutes noted that "DB Aster is the Declarant."
- d. In the Minutes for the 2014 Annual Meeting of the Bull Point Property Owners Association, Inc. held November 21, 2013, prepared on December 8, 2013 by Russ Dimke, Secretary/Treasurer (*attached as Exhibit "D"*):
 - i. Stated that Steve Mansfield was the POA Board President.
 - ii. Stated that "DB Aster, LLC [was] the current Bull Point Declarant, per our Covenants."
 - iii. In response to an owner's comments regarding election of Directors, the Board President stated: "under the Covenants, the Declarant (DB Aster) can appoint the entire Board but has elected to continue, for 2014, the past practice initiated by Bull Point LLC (the previous Declarant) which allowed the membership to vote for one voting Board member and one non-voting Board representative."
- e. In the Minutes for the 2015 Annual Meeting of the Bull Point Property Owners Association, Inc. held December 2, 2014, prepared on December 11, 2014 by Russ Dimke, Secretary/Treasurer (*attached as Exhibit "E"*):
 - i. Attendance included Wayne Cousar (Director), Ron Lambe (Director), Pete Marzluff (Director of Operations), Russ Dimke (Secretary/Treasurer), and John Curtin (POA VP), who works for Gibraltar Capital, a principal of GACC and parent of DB Aster, LLC.
 - ii. The prior year's Minutes were approved unanimously.

- iii. The POA Vice-President informed the members "that the Declarant, DB Aster, LLC, [had] appointed John [Curtin] as Board President and Steven Mansfield as Board Vice President."
 - f. In the Board Minutes for January 9, 2015, which were prepared by plaintiff Wayne Cousar, Secretary (*attached as Exhibit "F"*):
 - i. A request by plaintiff Lamar Nix to consolidate Lots 146 & 14 was discussed. Subsequently, the Minutes stated: "This request was denied for the following reasons: ... The current declarant [*i.e.*, DB Aster, LLC] also disapproved of this request." Plaintiffs Wayne Cousar, Russ Dimke, Ron Lambe, Pete Marzluff were listed as having attended the meeting.
 - g. In the Minutes for the 2016 Annual Meeting of the Bull Point Property Owners Association, Inc. held on November 16, 2015 (*attached as Exhibit "G"*):
 - i. Attendance included Plaintiffs Lambe, Marzluff, Attridge, Okey, as well as the Declarant's employee John Curtin (POA President).
 - ii. The prior year's Minutes were approved.
 - h. In the Minutes for the 2017 Annual Meeting of the Bull Point Property Owners Association, Inc. held on November 16, 2016 (*attached as Exhibit "H"*):
 - i. Attendance included Plaintiffs Lambe, Marzluff, Okey, and Lovett, as well as the Declarant's employees John Curtin (POA President) and Joe Steinheiser (POA Secretary/Treasurer).
 - ii. The prior year's Minutes were approved.
 - iii. The POA Vice-President informed the members "that the Declarant, DB Aster, LLC, [had] appointed John [Curtin] as Board President and Steven Mansfield as Board Vice President."
11. Following mediation and based on my due diligence, including the reliance on the POA Board Minutes and the previous Assignment of Declarant Rights from December 2012, (*"Assignment of Rights Under Declaration," dated December 28, 2012, attached as Exhibit "I"*), which led to my understanding and belief that DB Aster, LLC was the Declarant, on or about August 10, 2017, GSI, LLC, DB Aster, LLC, and GACC, the parent of DB Aster and the owner of a judgment by GACC against Bull Point, LLC for \$1,653,071.87 (hereinafter the "Judgment"), entered into a Purchase and Sale Agreement (hereinafter the "Purchase

Agreement”), pursuant to which GSI, LLC was to acquire, among other things, certain real property, improvements, the “Declarant Rights,” the “Development Rights,” and the Judgment.

12. Pursuant to the Purchase Agreement, on August 18, 2017, DB Aster, LLC executed a *Title to Real Estate* in favor of GSI, LLC in consideration for \$1,200,000.00, pursuant to which it assigned all its interest in Bull Point Plantation. The Title to Real Estate was recorded August 21, 2017, in Book 3600, at Pages 2571-2578.

13. Pursuant to the Purchase Agreement, on August 18, 2017, DB Aster, LLC also executed that document entitled *Assignment and Assumption of Declarant’s Rights*, pursuant to which DB Aster, LLC transferred to GSI, LLC all of its rights as the Declarant. The Assignment was recorded with the Register of Deeds on August 21, 2017, in Book 3600, at Pages 2597-2586. (*Assignment and Assumption of Declarant’s Rights, dated August 18, 2017, attached as Exhibit “J”*).

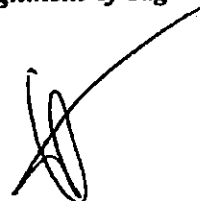
14. On August 21, 2017, GSI, LLC executed a *Title to Real Estate* in favor of Bull Point SC, LLC, pursuant to which it assigned all its interest in Bull Point Plantation. The Title to Real Estate was recorded August 21, 2017, in Book 3600, at Pages 2594-2600.

15. On August 21, 2017, GSI adopted the *Seventeenth Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation* (the “Seventeenth Amendment”). The Seventeenth Amendment was recorded on August 21, 2017, in Book 3600, at Pages 2638-2640. (*Seventeenth Amendment attached as Exhibit “K”*).

16. On August 21, 2017, GSI, LLC executed that document entitled *Assignment of Rights Under Declaration*, pursuant to which GSI, LLC transferred to Bull Point SC, LLC all of its rights as the Declarant. The Assignment was recorded with the Register of Deeds on August

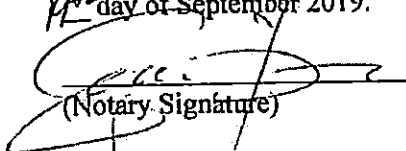
21, 2017, in Book 3600, at Pages 2641-2643. (*Assignment of Rights Under Declaration, dated August 21, 2017, attached as Exhibit "L"*).

17. Further the affiant sayeth not.



William E. Gavigan

Sworn and subscribed to this
PL day of September 2019.


(Notary Signature)

My commission expires:

GERILYN PRICE
Notary Public, State of South Carolina
My Commission Expires 10/22/2028

EXHIBIT A

MINUTES OF BULL POINT PROPERTY
OWNERS ASSOCIATION 2013 ANNUAL
MEETING

Minutes
Bull Point Property Owners Association
2013 Annual Meeting
November 17, 2012

At approximately 1:55 pm, the meeting was called to order by POA Board President Stan Kirkland who welcomed everyone to the 2013 Property Owners Association Annual Meeting. Russ Dimke, Secretary/Treasurer of the POA, verified and reported the proxies. The total number of votes represented at the beginning of the meeting including those members in attendance was 122 which were 55% of the total eligible membership of 221 votes. Russ noted that of the 249 potential votes (lots), 28 lots are delinquent on their POA dues thus ineligible to vote.

Stan proceeded to seek questions or corrections regarding the 2012 Annual Meeting minutes. Mike Cataldo commented that the current team managing the POA has done a good job but he would like to see a more proactive Declarant (Developer). He asked if Stan would consider stepping aside and give up the Declarancy role to DB Aster*. Stan responded that he (Bull Point LLC) is still the Declarant and by attending this meeting he is continuing to serve the POA in this capacity. Stan went on to note there are legal issues yet to be addressed and he expects to meet with DB Aster's representatives in the near future to resolve them which would allow the Declarancy to pass onto DB Aster.

There were no other comments or questions. Stan called for a motion to accept the 2012 minutes as written. A second was received from the floor and the Minutes of the 2012 POA Annual Meeting were unanimously approved by all attending.

Stan turned the meeting over to Russ Dimke to present the Forecast and Budget Review.

Russ referenced the details of the 2012 Budget, 2012 Forecast and the 2013 Budget included in the Annual meeting package sent out to all property owners. He first noted the 2012 Forecast is expected to be about \$11,000 more than the 2012 Budget of \$451,000. A key contributing factor was a \$6000 shortfall in 2012 Revenue resulting primarily from lower than anticipated construction activity which impacted Gate entry fees.

2012 Community Service expenses are forecast to be \$5000 more than Budget partially due to \$4300 more in Real Tax. This is the result of Bull Point LLC deeding over all the remaining common property in Phases 1 through 6 in late 2011 thus it was not included in the Budget. In addition, POA also decided in mid year to expand the Lake Bellinger pond maintenance agreement to include all the POA's three lakes (Bellinger, Pocotaligo, and IZARD) which resulted in an increase over Budget of \$3000. We have been satisfied with the results at Lake Bellinger and wanted to add the two newer lakes before algae and cattail growth becomes a problem.

** In 2011, Bull Point LLC (BP LLC) mortgage holder, BB&T began a foreclosure action. In late 2011, BB&T sold this mortgage as part of a group of similar mortgages to German American Capital Corporation (GACC). This company is controlled by Gibraltar which in turn is controlled by Toll Brothers, a major US home builder/developer. A Gibraltar controlled subsidiary, DB Aster LLC, is now the owner of record of the 32 mortgaged Bull Point LLC lots as well as future undeveloped Phase 7.*

Partially offsetting these over Budget expenses were a saving in Contract labor costs for 2012 of \$4000 as several painting projects were delayed by the Clubhouse roof issue and the availability of our preferred contractor.

The 2012 Budget was based on 182 lots paying dues. Actual dues collections were significantly more as a result of the foreclosure of 32 Bull Point LLC lots in July. The new lot owner, DB Aster, paid the POA dues on these lots for the balance of 2012. Russ further noted partial year dues were also collected on several Bull Point LLC controlled lots which were separately foreclosed by various banks during the year.

The net result is that during 2012 the POA has collected \$60,000 more in dues than budgeted. Therefore, even though the 2012 Budget Net Income/Expenses are forecast to be \$11,000 more than planned, we still project to have \$49,000 in excess operating budget funds left at year end.

Russ asked if there were any questions regarding the 2012 Forecast before continuing onto the 2013 Budget. Lamar Nix asked about the ownership status of the bridge to Big Bull Island. Russ responded and Stan confirmed that once the Developer completes an amenity or a road etc., the ongoing responsibility and maintenance of that item passes to the POA. Dick Lovett, Director of Operations at Bull Point, commented that the wooden bridge is showing signs of deterioration, and he is currently seeking professional engineering input to recommend what maintenance and repairs we may need to consider in the near term. Dick went onto to note that the long term costs of maintaining this bridge is expected to be significant.

Lamar also asked if the \$3000 for gate maintenance included in the 2013 Budget was enough given all the trouble we have had with the previous gate. Dick noted the new gate has a 1 year warranty which should take us through most of 2013.

Given the new gate was under discussion, Russ asked Dick to provide an overview of the new electronic gate system. Dick first noted that the new gate was placed into initial service earlier this week. The full implementation of the new gate system will be phased in over the next few months. To begin, the old existing "clickers" (electronic remote control openers) will activate the new gate but will eventually be exchanged for reprogrammed clickers which are compatible with the features of the new system. After the exchange is completed, the system will be fully implemented and any unaccounted old clickers will no longer activate the gate. Before 2007, the distribution of the clickers was not tightly controlled and recorded but will be from this point forward.

Dick continued by pointing out that one of weaknesses of the old gate system is having one entry code for all POA members. Once a member provided the entry code to a service provider, for example, that code could easily be passed onto to many other unauthorized non residents. The new system, however, will now assign a unique 4 digit number to each POA member which his or her guests will use to gain entry after gate hours. Dick noted the digital display on the new entry phone will display only the residents name and not their telephone number. The system also has the capability to track all after hour entries for members/residents as well as their guests. Dick noted the POA office will email all POA members with more detail information as this implementation takes place.

Terry Stone asked if there is a plan for the old gate if any. Dick responded that the old gate will be used to replace the wooden gate now at the Maintenance entry near the Huspah Baptist Church. It will just be a locked gate with no electronic opener.

Suzanne Gallup commented that the nighttime visibility at the Front Gate area makes it difficult to see the entry roadway. Dick responded that the state will not allow us to add lights near our Route 17/21 entry. The POA plans to repaint the yellow edges of the concrete island adjacent to the highway sometime before December 1. Although this should help, the POA project list for 2013 includes investigating improved lighting around the Gate house which should further help overall night visibility.

Russ then went onto the review of the 2013 Budget versus the 2012 Forecast. He noted that with the improved dues collection expected to continue into next year, the 2013 Operating Budget includes a little more proactive funds for such things as maintenance and repairs. Russ commented that over the last 3 years we probably cut the budget a bit too much leaving Dick Lovett no room to address any things other than basic and emergency type repairs.

Russ began the 2013 review by highlighting total net Revenues/Expenses in the proposed 2013 Budget are \$480,000 or \$18,000 more than the 2012 Forecast.

2013 Revenues are expected to be \$6,000 more this coming year as housing construction starts are expected to be slightly better. This will positively impact Gate fee income.

Community Service Expenses are planned to be \$24,000 more versus 2012. Labor and associated expenses account for about one half of this increase driven by higher health insurance costs, higher Contract labor activity (painting) versus 2012, and a modest 2% average wage increase. A year-to-year increase cost of \$4,000 is associated with the full year effect of expanding the lake/pond maintenance program to now include Lake Pocotaligo and Lake Izard. A new budget category this year is \$2500 in funds for minor Dock/walkway repairs and additional routine maintenance. When more extensive repair or replacement are needed, they will be continued to be addressed as specific projects approved by the POA elected representatives and funded via the Contingency Fund.

Russ then commented that the 2013 Budget for property owner functions has been increased to \$2500. This will allow the POA to at least partially support many of the events which over the last few years of austerity conditions have been almost totally funded by individual property owners. These funds will also be used to support some modest seasonal decorations at the front gate and Clubhouse areas.

The 2013 Budget reflects the improved level of dues collection experienced in the second half of 2012. We project 224 lots (out of 249) will pay dues in 2013. This compares to the 2012 Budget which reflected Bull Point LLC financial problems and thus anticipated collection on only 182 lots. The new budget still projects that 18 privately owned as well as 6 previously designated Developer "investor" lots will likely not pay dues in 2013. Russ noted that POA liens have been placed on all these lots including the investor lots. Bull Point LLC does still own one lot (lot 223) for which no dues will be forthcoming. However, this lot is fully mortgaged to the POA and we expect once the Declarancy is resolved, the lot will be deeded over to the POA.

For the last few years to keep the total dues at a reasonable level, we temporarily reduced the Contingency Fund contribution from \$400 to \$200 per lot to help offset the impact of Bull Point LLC's non payment of dues. With our financial outlook now much improved, the POA 2013 Budget includes a return to the \$400 per lot Contingency level to resume building our now depleted reserves.

For 2013 we plan to take \$15,000 of the anticipated 2012 year end excess and carry it over the next year.

Russ summarized that the proposed 2013 Budget including the \$400 per lot Contingency contribution would result in 2013 dues of \$2477 or a 4.5% decrease versus the 2012 dues of \$2595 per lot.

There were no other questions from the floor, so Stan Kirkland called for a vote to approve the 2013 Budget. All in attendance approved the budget unanimously.

Russ continued by reviewing the 2012 Contingency Fund activity noting that \$163,000 has been spent through mid October this year. The largest expenditure of \$64,000 was to repair the wind damaged metal roof on the Clubhouse. He noted that the POA insurance deductible for wind damage is 5% of the value of the building or \$72,000. He went on to note that the POA has obtained legal council for the purpose of potentially bringing suit against the original Clubhouse contractor since it was determined that the roof's failure was the result of improper installation. The POA lawyer advised that to have any reasonable chance for recovery in this proposed action, the original party who contracted for the Clubhouse, Bull Point LLC (Stan), needs to be named as one of the primary plaintiffs along with the POA. Stan has yet to agree to this until he has a chance to discuss with the lawyer why Bull Point LLC needs to be so named. Terry Stone pointed out that the legal timeframe limit to initiate the suit is rapidly approaching and Stan agreed to contact the POA lawyer next week. Russ commented that if the POA decides to proceed on a suit, all costs associated with this action will be paid out of the Contingency Fund.

Returning to his review of Contingency Fund spending in 2012, Russ said \$26,000 was spent to replace the existing dump truck. The dump body and hydraulic system on the old truck finally gave out and it did not make sense to spend the significant repairs costs on such an old vehicle. A new dump truck of this type would cost in the range of \$100,000 so we choose to find a good condition used truck since it would primarily be used within Bull Point. After a lengthy search, a good condition truck was purchased for \$26,000 including some minor repairs to bring it up to very good condition.

In 2012, \$22,000 was spent to complete the Lake Izard project. Russ noted the spending included the purchase of number of heavy duty bridge supports at a very low cost. This allowed the POA to not only build a much more substantial bridge to the main island in the expanded lake but add a second bridge to the adjoining island. This will greatly enhance the Lake Izard amenity for picnicking and fishing.

Russ also noted another opportunity the POA took advantage of in 2012 was the purchase of below market cost crushed stone (ballast) from the local contractor clearing the old rail line in Beaufort. We were able to obtain enough material at a cost of \$6000 to resurface almost all of our unpaved amenity roads and parking areas.

Before the end of 2012, we also expect to spend an additional \$25,000 of the Contingency reserves primarily to replace the front gate controls and the gate itself (\$21,000 and now almost complete) and continue surveying and marking the POA common property turned over to the POA by Bull Point LLC late in 2011 (\$4,000).

Additions to the fund during 2012 include the \$200 per lot dues contribution to the Contingency Fund (\$41,000), and \$34,000 from the expected year end operating surplus of \$49,000. The other \$15,000 (of the \$49,000) will carryover to the 2013 Budget. Further during 2012, we estimate we will collect a net \$25,000 in delinquent dues from prior years. Even with these better than expected inflows, we project a year end Contingency fund balance to fall to about \$410,000 versus the \$490,000 balance at the beginning of 2012.

Looking ahead to 2013, there are several major projects/repairs we already know we will face next year. The bottom of the "kiddie" pool has developed a crack which must be repaired in early 2013 before the pool opens next spring. This repair is expected to cost about \$5,000 to \$10,000. Also the main pool will likely need to be repaired/resurfaced in 2013. We will have the main pool reevaluated in December to make this decision. The expected to cost in the \$60,000 range.

Further, the current Maintenance utility vehicle, the ATV "Gator", needs to be replaced at an expected cost of less than \$10,000.

We plan to have an independent audit of the POA financials done again during 2013. The last audit was done in 2011 at a cost of \$4750.

There are a number of other likely projects on the potential list for 2013 including (1) some major dock and walkway repairs, (2) an all weather low deck or concrete pad for picnic tables and grill on the Lake Izard Island, and (3) improved lighting at the entrance area.

With more lots expected to pay dues in 2013 now at the \$400 contingency contribution rate, we expect to add about \$90,000 to the fund. However, this will likely be absorbed with just the projects we already expect noted above.

Russ turned over the meeting to Dick Lovett to provide a review and update on major POA projects during 2012. Dick first noted that three of his agenda topics; the Lake Izard, Clubhouse Roof repair, and replacement Gate projects, have already been cover at length as a part of Russ's presentation. Dick did suggest that all members in attendance stop by the new Lake Izard park area to see the completed amenity.

Dick continued by informing the group that his Maintenance staff plan on putting a natural walkway around part of Lake Pocotaligo to allow better recreational access to this amenity.

He also passed along some very recent input he has received from the Corp of Engineers regarding the erosion problems we have at the dock/deck area on Magnolia Island. The initial input from the Corp indicates the POA may have to add significant rock (rip-rap) to stabilize the area to keep the erosion from eventually threatening the entire island. The cost to address this issue could be as much as \$50,000. Dick will continues to gather more information on the options available to address this issue and see what and when action may be needed in 2013.

Dick concluded his remarks by asking if there were any questions from the attendees. Michele Swilpa asked if the POA was able to obtain any scrap value for the damaged copper roof removed from the Clubhouse. Dick responded that we were able to sell the copper for about \$17,000.

Next on the agenda was the ARB report by ARB chairperson Sandy Dimke. She reported that the Stone/Hearn and Marzluffs houses were the only two homes completed during 2012. The ARB estimates 3 to 4 homes to be under construction in 2013. Currently one house is being built (Peers) and just this week the Riordan's final plans were approved with construction to begin by year end. Sandy noted that the Riordans have chosen Allen Patterson as their builder who is also constructing the Peers home.

She reminded those in attendance that per the Covenants and ARB guidelines, any exterior modification of an existing home including repainting need to be submitted and approved by the ARB.

Sandy took the opportunity to announce that Jane Hearn has joined the ARB Board replacing Dick Garrett.

She then referenced the plan to establish a "Bull Point Beautification Committee" made up of three property owners. Their task would be to recommend ecologically sound landscape and associated improvements for the common areas. Their recommendations would be reviewed and approved by the ARB and then presented to the POA Board for consideration. Initial funding for any projects would be through the Contingency Fund. Sandy noted that a summary of the scope and responsibilities for the new committee was available at the meeting. She asked anyone considering volunteering take a copy.

Richie Swilpa suggested that the ARB consider charging a fixed amount for gate fees per house instead of the current per entry fee for construction vehicles. This may be a better option when one contractor is building more than one house in Bull Point and thus his subcontractors may pay one entry fee versus two or more. Dick Lovett noted the history has been that only a few of the contractors main employees purchase long term passes while the majority of the subcontractors buy short term (daily/weekly) passes each time their portion of the construction is needed. He also noted the heavy delivery trucks (lumber, etc.) pay each time they enter. Russ further commented that the entry fees were raised within the last year and we charge much more for heavy multi axle trucks which put the largest stress on our roads.

The next agenda item was a report from the Wildlife Committee chaired by Bill Wehmer. He reported that the committee had requested and the Board approved purchase and placement of several low cost digital "game" cameras. These cameras periodically take photos over a long timeframe which when reviewed can provide input on the number of deer present as well as their overall appearance/health. Bill noted the average number of deer the cameras caught at one time was 10 to 15. Dick Lovett said DNR experience that an area usually has at least 10 times the number of deer caught on such cameras so it appears Bull Point now has somewhere between 100 and 200 deer. Bill continued by reporting that his committee reviewed the photos and it appears that some of the deer looked unhealthy/undernourished. He suggested that the Board consider removing 10 to 15 deer per year.

Terry Stone pointed out that Amendment 15 added to the Covenants in March 2010 defines and outlines the procedures to address such wildlife issues. He noted the creation of a Wildlife plan and policy as specified in the amendment has not yet been fulfilled. Therefore Terry felt the recommendation of the current Wildlife committee should not be acted upon until the policy and terms of Amendment are in place. After much discussion, Board Member Russ Dimke responded that he agrees that the POA Board should review and take action to properly satisfy the scope and terms of the Amendment. Further he noted that this issue be addressed by the new POA Board after the expected change in Declarancy takes place. Russ stated that in the interim, the recommendations of the current Wildlife Committee would be tabled.

Next on the agenda were general questions or comments from the membership. Mike Cataldo suggested that the POA consider joining a state wide HOA organization which may be a source to help the POA. Stan responded that he aware of the organization Mike referenced and it is focused on Condo type HOA's and has little if any application to the Bull Point type POA.

Mike then asked if the POA has a long term strategic plan and, if so, is it available to the membership. Russ responded that a strategic plan as such does not exist. He noted, however, that Bill Wehmer has headed the effort over the last few years to gather input from the membership to identify and prioritize future amenity improvements and additions. Russ acknowledged that in his view, long range planning is a Board responsibility and the Board is currently under the control of the Declarant (Bull Point LLC). In recent years Bull Point LLC financial problems has effectively made any such long planning mute. Stan recommended the matter be taken up by the Board when the expected new Declarant (DB Aster) is in place.

Terry Stone asked Stan when the Declarancy transfer is expected to take place. Stan responded that legal issues need to be resolved first and he hopes to meet with them soon. He could not project when this may occur. Stan was then asked to transfer the Declarancy to the POA in the interim. Stan said he would not do so citing again the legal issues and also noting that there were monetary judgments versus Bull Point LLC in need of resolution.

The final agenda item was the election of POA Board members for 2013. Stan appointed himself (President) and Bobbi Kirkland (Vice president) as voting directors from Bull Point LLC for this upcoming year. Stan noted they will serve until such time a new Declarant takes Bull Point LLC's place.

He then opened the floor to nominations for the other voting Board member position (Secretary/Treasurer) currently held by Russ Dimke. Russ was nominated from the floor to serve another one year term as the property owner's voting Board member. The nomination was seconded and the attending membership voted unanimously in favor of his re-election.

Another member then nominated Jay Coleman to serve another one year term as the non-voting property owner Board member. The nomination was seconded and the attending membership voted unanimously in favor of his re-election.

Stan Kirkland thanked all those who attended and adjourned the meeting.

Respectfully submitted by
Russ Dimke
Secretary/Treasurer - Bull Point POA
December 4th, 2012

EXHIBIT B
MINUTES OF BOARD OF DIRECTORS
MEETING OF BULL POINT PROPERTY
OWNERS ASSOCIATION
FEBRUARY 1, 2013

**Minutes
Board of Directors Meeting
Bull Point Property Owners Association
February 1, 2013**

CHANGE OF DECLARANT & NAMING OF NEW BOARD MEMBERS

The Declarant Rights as specified in the Bull Point Plantation Covenants have now been legally transferred from Bull Point LLC to DB Aster, LLC. As a result per the Covenants, DB Aster has officially removed Stan and Bobbie Kirkland from the POA Board and appointed Steve Mansfield (as president) and Brian Jackson (as vice president) to take their place (see copy of letter attached).

Steve visited and toured Bull Point along with the President of Gibraltar, Roger Brush, on February 1st. Following the tour, a brief POA Board meeting was held to begin the operations of the new Board. The minutes of that Board meeting follows:

February 1, 2013 POA Board Meeting:

The meeting was called to order by Steve Mansfield. Steve first stated there would be no changes to the team currently managing the day-to-day operations of the POA. Russ Dimke and Jay Coleman remain as the POA representatives and Dick Lovett as Director of Operations. Russ will continue as Secretary/Treasurer and voting Board Member. Also present at the meeting was Roger Brush.

The topics covered during the meeting were:

NORMAL BEGINNING OF THE YEAR BOARD DECISIONS/ACTIONS

PLACING LIENS ON LOTS

The Board granted authority for the POA Secretary/Treasurer, Russ Dimke, to place liens on all lots who have not paid their 2013 dues by February 15th, 2013.

OPERATIONS PER THE 2013 BUDGET

The Board granted blanket authority to the POA management team (Dick, Jay, and Russ) to operate the POA (make decisions, pay bills, etc.) within the limits/scope of the approved 2013 Budget.

OTHER CURRENT PENDING BOARD DECISIONS/TOPICS:

TRANSFER OF LOT 223 TO THE POA

Now that Bull Point LLC no longer has the Declarant rights, Stan Kirkland (Bull Point LLC) has agreed to deed this lot over to the POA in lieu of foreclosure by the new POA Board. A signed copy of the associated quick deed prepared by the POA law firm has been received from Stan. Due to the Deficiency Judgment, DB Aster has a claim to any and all of Bull Point LLC's remaining assets. Therefore, DB Aster has already agreed to "release" this Bull Point LLC asset from the judgment in order to complete the transfer of ownership. The

required legal documents should be completed and filed with the Beaufort County Register of Deeds sometime later this month.

CHANGE TO POA'S REGISTERED "AGENT"

Russ informed the new Board that the official agent of the POA (per the South Carolina Secretary of State files/website) is still Stan Kirkland with an address in Columbia, SC. Russ noted as a result, some legal notification pertaining to the POA may not be reaching us. The Board directed Russ Dimke to work with the POA law firm to determine what is required to change the "agent" to reflect the new POA organization.

POTENTIAL LEGAL ACTION REGARDING DAMAGED CLUBHOUSE ROOF

Jay and Russ summarized for the new Board the events and POA actions to date regarding the damage and replacement of the Clubhouse roof which occurred in 2012. They noted the previous Board (Stan) would not allow the POA to pursue a potential lawsuit to try and recover the POA's out of pocket costs. Such a lawsuit would name Bull Point LLC (along with the original Clubhouse contractor, etc.) as one of the defendants.

Now that Stan is no longer in control of the POA, the new Board granted Jay and Russ the authority to determine the legal steps and costs associated with pursuing this lawsuit. Russ will first set up a conference call with the POA lawyer (Brian Pitts) and Steve Mansfield to review the legal efforts to date and help decide if the costs to pursue this action make sense versus the potential of recovery.

CONTRIBUTION TO SHELDON FIRE COMPANY FOR A RESCUE ATV VEHICLE.

Bull Point's nearby fire station, Sheldon, is soliciting the residents and communities it serves to help fund the purchase of an all terrain vehicle (ATV) to be used to reach injured/ill residents in rural/wooded areas inaccessible to their existing emergency trucks. Dick Lovett noted the excellent cooperation and support Sheldon fire and ambulance station has provided to Bull Point Maintenance over the years (resolving emergency gate access and lake water dry hydrants improvements). He also pointed out that other nearby communities (including Bray's Island) have already made significant contributions. It was also discussed that such a vehicle may be of great value to Bull Point residents and their guests to provide emergency medical service to common areas such as Magnolia Island the Lake Izard islands. Russ therefore asked the Board to authorize Jay and himself to determine and make a modest contribution from the Bull Point POA in support of this ATV. The Board approved Russ's request.

ONGOING PROJECTS/ACTIVITIES

REFURBISHING OF THE MAIN POOL, KIDDIE POOL, AND SPA

Dick, Jay and Russ reported to the new Board that as a follow-up to the POA annual meeting last November, it was determined that the main pool, kiddy pool, and spa needed to be refurbished/resurfaced before opening in 2013. Bids were obtained and a supplier (Year

Round Pools) chosen to do the work. Work should begin in March and be completed by early May. The cost of the project will be \$55,000 and paid for with Contingency Funds.

SURVEY AND STAKING OF POA COMMON AREAS

Russ informed the new Board that this project was begun late last year. The area surrounding the Sales office has been completed. Next on the list will be the Bird Sanctuary.

AUDIT OF POA FINANCIAL RECORDS/BOOKS

Russ also informed the new Board that per the 2013 Annual Meeting minutes, he has proceeded to arrange for an independent CPA audit of the POA books. This should take place in March. The last (and only other audit of the POA books) was for the year 2010 completed in early 2011.

SET TIME/DATE FOR NEXT BOARD MEETING

Steve Mansfield plans to visit Bull Point again within the next month at which time another POA Board meeting will be held and all POA members will be welcome to attend and meet Steve. The POA office will send out via email to the membership the date and time of this meeting when finalized.

Prepared by Russ Dimke
Secretary/Treasurer, Bull Point POA
February 4, 2013

EXHIBIT C
MINUTES OF BOARD OF DIRECTORS
MEETING OF BULL POINT PROPERTY
OWNERS ASSOCIATION
MARCH 14, 2013

**Minutes
Board of Directors Meeting
Bull Point Property Owners Association
March 14, 2013**

The meeting was called to order by POA Board president Steve Mansfield. Also attending were Board members Jay Coleman, Russ Dimke and Director of Operations, Dick Lovett. Annette Goodell, Office Manager, also participated where noted below. Over 20 POA members audited the meeting.

The minutes from the February 1st, 2013 Board meeting and were noted and approved.

Opening Comments by Steve Mansfield

Steve introduced himself to all in attendance as the Director of Asset Development for Gibraltar Asset Management Services, a wholly owned subsidiary of Toll Brothers Inc. He then explained how they came to own property in Bull Point. He noted Gibraltar is set up to buy portfolios of non performing loans. Bull Point LLC's loan was part of a group of 82 loans acquired, consisting of properties scattered throughout the East Coast and Southeast. Steve is one of several asset managers at Gibraltar and Bull Point is now one of the properties under his responsibility.

Steve then explained that the company that originally bought the Bull Point loan was German American Capital Corporation which is a partnership between Gibraltar and Deutsche Bank. When German American Corporation took ownership as a result of the foreclosure of the Bull Point LLC loan, the property was assigned to the holding company DB Aster, LLC. DB Aster, LLC is also jointly owned by Gibraltar and Deutsche Bank.

Steve noted that Toll Brothers has no interest in building homes in Bull Point since it does not fit their footprint or market.

Steve's task is to determine the condition and status of a property and eventually sell it. As for Bull Point, there are no current plans to date to market or sell the lots. Market conditions and the economy will determine when such a plan will be put on place. In the interim, Steve commented, "we are in a holding pattern."

Russ thanked Steve for his comments and noted that Steve has made himself readily available to the POA via phone. He also appreciated that Steve had already become directly involved with several of the most involved POA issues including the legal action involving the Clubhouse Roof. At this point the meeting moved onto the agenda items.

MAJOR ONGOING TOPICS/ITEMS:

UPDATE/STATUS TRANSFER OF LOT 223 TO THE POA

Russ informed the Board that although Bull Point LLC deeded over this lot to the POA, a title search revealed that there are two legal claims against Bull Point LLC that predate our mortgage

thus we do not yet have a clear title. The two claims are a Deficiency Judgment by an individual against BP LLC and a general property lien by the SC Department of Revenue against BP LLC. Through our lawyer we have contacted both of these parties to ask them to "release" our lot from their claims. To date neither has agreed to do so. Our lawyer will follow-up again but if unsuccessful, the POA will have to proceed to a foreclosure court action. This will cost us about \$3000 but will set aside both claims allowing us a clear title and future ability to sell this lot if we so choose.

UPDATE/STATUS OF LEGAL ACTION REGARDING DAMAGED CLUBHOUSE ROOF

Russ reported that the legal documents have all been prepared and a Civil Action lawsuit was filed in the Beaufort County on March 4, 2013. Our complaint names as defendants Bull Point LLC, Genesis Construction Inc., and Quality Roof Systems, Inc. along with the principal owners of these last two firms, William Mischler and Ronnie Brogdon. Responses to our complaint from the defendants should be made within the next 60 days. At that point, Steve and Russ will review the discovery information with our lawyer and decide if the potential for some recovery (versus the legal cost to do so), is sufficient for the POA to proceed further.

CHANGE IN POA'S "REGISTERED AGENT" FROM STAN KIRKLAND

Russ noted the forms have been completed and sent to the SC Secretary of State's office to replace the POA's ("Bull Point Property Owners Association Inc.") official registered agent from Stan Kirkland to Russ Dimke with the address also changed to the POA office at 114 Barnaby Bluff. For reasons unknown, the SC state records indicate a second corporate name for the POA remains on file (Bull Point Property Owner's Association without the "Inc.") so forms have also been prepared to dissolve this now unused name.

UTILITY (ELECTRICITY) SERVICE YET TO BE INSTALLED TO ALL AREAS OF BULL POINT

Steve commented that he will be contacting SCR&G to confirm that electric service will be extended to any existing Bull Point Lot when a home on such lot begins construction. Steve noted in his experience this has always been the case elsewhere in the country and fully expects this is not an issue here at Bull Point.

OTHER PROJECTS/TOPICS:

SUMMARY OF 2012 ACTUAL FINANCIAL RESULTS

Annette presented the total actual 2012 Income and Expense numbers by first noting POA income was \$23,451 which was slightly less than the 2012 forecast of \$24,650 included in the 2013 Budget package. She noted that ARB application fees and Interest/late fees on dues were both a little less than anticipated.

Actual results on the Expense side were better than expected with total expenses coming in at \$476,439, a favorable variance of \$10,530 versus the Budget package forecast for 2012. Payroll and related expenses (Medical Insurance Premiums) and a delay in implementing Lake Maintenance service contract at Lake Iward were the major factors of this variance.

The overall result was that the POA's 2012 Net Revenues/Expenses were \$476,439 or \$9331 less than forecast. Russ commented that if any POA member wishes to have a copy of the year end income/expense report, it would be available by contacting Annette.

Annette continued by noting the year end operating cash account once adjusted for 2012 payables and the planned \$15,000 carryover of funds to the 2013 Budget, still resulted in \$5266 left to be added to the Contingency Fund. She noted that with this addition, the Contingency Fund January 1, 2013 balance was \$414,393. Russ noted that 2013 Budget package anticipated January 1 Contingency Fund balance of approximately \$410,000.

PAYMENT OF 2013 DUES AND PLACING OF LIENS

Annette reported that the 2013 Budget was based on 224 lots paying dues or a total of \$554,848. She noted that to date the POA has collected \$549,117 in 2013 dues, about \$5700 less than planned. She went on, however, to report that payments on 5 additional lots are expected to add another \$10,685 to the total and we expect to exceed the 2013 collection target.

Russ noted that there were 4 new (not already liened) lots which have not paid any 2013 dues to date. Liens were prepared and placed on those lots on March 11.

AUDIT OF POA BOOKS & 2012 FEDERAL/STATE TAX RETURNS

Annette noted that our tax accountant has completed and submitted both our federal and state tax returns. As expected we have owe no taxes to either entity but did have to pay an associated South Carolina annual fee of \$25.

Annette also reported that work has begun on the POA's Financial Audit. Russ commented that once the audit is completed and presented to the Board, it will be placed on the POA website.

REFURBISHING OF POOL AND SPA

Dick Lovett reported that the work to refurbish the main pool, kiddy pool, and spa is scheduled to begin within the next week. He cautioned members that the work is extensive and the entire area will remain unavailable for use until the project is completed. In addition to the pool work, POA Maintenance will be repairing and repainting the fence surrounding the pool and spa. He expects the work to be finished in time to allow opening of the pool in May.

SURVEY AND STAKING OF COMMON PROPERTY

Dick noted the POA plan to survey and stake all the major common areas will continue throughout most of this year. Since our needs are not an urgent and to get a favorable survey rate, surveying will only take place when Andrews & Burgess has open time to fill in its schedule.

CONTRIBUTION TO LOCAL FIRE COMPANY FOR ATV RESCUE VEHICLE

Russ reported that the Board decided to contribute \$1000 to the Sheldon Fire Company to support its purchase of an all terrain rescue vehicle. This will be used for access/rescue work where regular emergency and ambulance vehicles can not go. Russ noted several areas at Bull Point like Magnolia Island and the new Lake Izard island park where an ATV may be critical to provide quick access to an ill or injured member. Dick added the Sheldon fire chief noted the ATV will be fully equipped for medical use and will cost in excess of \$40,000.

NEW ITEMS:**APPROVE POA 2013 ENTERTAINMENT GUIDELINES AND AUTHORIZE COMMITTEE**

Russ pointed out that that for the first time in several years, some funds to support Property Owner functions were included in the 2013 Budget. He noted that in the last few years individual members have been organizing and mostly self funding a number of events which many members attended and enjoyed. In an effort to continue this tradition but take the financial burden off the sponsoring member(s), The Board is authorizing a Entertainment Committee be formed and the available funds be allocated per the Committee's recommendations. Guidelines for this Committee have been prepared and reviewed by the Board.

The Board officially approved the guidelines and formation of the Committee. Russ stated an email will be send to all members with the Guidelines attached asking for volunteers to serve on the Committee.

POA PROJECT LIST/PRIORITIES FOR 2013

Dick noted that late last fall he, Russ and Jay developed an extensive list of projects/ maintenance items the POA would likely have to address in the next 1 to 2 years. At the beginning of this year knowing DB Aster/Gibraltar would replace Bull Point LLC, we then prioritized and reduced the list of items we felt we needed to do and had the resources accomplish in 2013.

The first such project now already well underway was to address major maintenance and infrastructure items at the River Cabin. The original shrubs surrounding the cabin had grown so large they blocked the river view from the porch as well as the ventilation. In addition the thick bushes tended to hold too much moisture next to the wooden building. Most of the old shrubs have now been removed or significantly reduced. After a few rotting boards are replaced, the Cabin/porch will be cleaned and painted/stained where needed. The drooping fan blades on the porch will also be replaced and a new, much safer metal fire pit has been installed made from a recycled material. The existing gravel entrance walkways on the parking lot side of the Cabin will be replaced with paving blocks to allow better access for wheelchairs and strollers. Jay Coleman is also investigating purchasing and installing a small wall mounted propane gas heater to expand the cabin's usefulness during the winter months.

Dick continued by noting the planned 2013 POA projects in the Clubhouse area. He reported bids are now being sought to sand and paint the rusty fire suppression piping on the Clubhouse exterior. We also plan to restrain all the porches/decking during the year.

The issue of the unfinished Clubhouse Developer items was discussed. This includes the missing stove/hood in the kitchen, the lack of gas fireplace logs, and the uncovered/missing deck over the fire suppression tank. Steve noted that DB Aster has become the Declarant and is a fellow dues paying lot owner, but is not the Developer. Thus any funds spent to complete these

items will be the POA's responsibility (via Contingency Funds). The Board designated Jay and Russ to review and recommend a course of action on these items.

Dick then resumed his summary of planned 2013 projects. Again this year, a significant amount of ongoing repairs/partial replacements involving the docks wooden walkways will be prioritized to continue to extend the life of these assets.

In the area of pathway maintenance, where the tree roots have broken through dislodging most of the asphalt, the asphalt will be removed. The tree roots will then be cut, dug up, and removed and a temporary gravel surface will be installed. When we have enough repaving needs to allow us to attract a competitive asphalt price, these areas will be repaved but likely not until next year. Dick also noted the pavement on a portion of Quintine Court has loosened and may also have to be temporarily replaced with a gravel surface in 2013.

In the Boatyard storage area, Dick reported that the old front gate has been installed at the "back" access entrance. Adding permanent lighting poles has been investigated but is not recommended by SCE&G who notes that may attract more theft than deter it due to the isolation of that area. Instead motion activated lights have been added to the maintenance building. Another planned improvement this year is the installation of a wash down station in the Boat/RV area. There already is a well and power in the area so this can be added at a minimal cost.

Dick concluded by noting that to help keep in place the recent work to shore up the road shoulders with fill dirt, quotes to hydro seed those disturbed area are now being sought. If the cost is reasonable, seeding will be done this spring.

EROSION OF DOCK/DECK AT MAGNOLIA ISLAND

Russ stated one of the highest priority items identified for 2013 was the need to address the erosion taking place at the dock area on Magnolia Island. In summary, the dock area at the bend in Hespah Creek is being carved out at an alarming rate and is now already undercutting the walkway and deck in that area. Dick has obtained input from DEHEC and the who advised rip rap (rock) or a bulkhead needs to be added to stem the erosion. The next step is to seek input from the Army Corp of Engineers and other engineering sources to identify what our options are including permanently removing the dock, deck, and walkway in that area. Even that option will still need to include some investment to halt the erosion. At the same time we are seeking quotes from maritime contractors who could barge in and install rip rap. Russ and Dick noted this is likely a \$50,000+ issue so as much input as possible will be gathered before an action plan is implemented.

RESPONSIBILITY/RESOLUTION OF DEVELOPER PROPERTY LINES

Russ commented that he expects at least a few property line issues to come up in the future involving the original platting of Bull Point by the Developers (Bull Point LLC). Russ noted any such future issues should therefore be addressed by the Developer and not the POA. Steve noted that DB Aster is the Declarant but has not taken the place of the Developer. The Board decided to review any such problems when they occur and try to help resolve them.

SET TIME/DATE FOR NEXT BOARD MEETING:

Steve agreed to hold another POA meeting at Bull Point within the next 6 to 8 weeks depending on his travel schedule to our area. He remains available via phone should we need to make a Board decision in the interim.

The formal meeting was then concluded but Steve remained for a while to meet the attending members and answer their individual questions.

Prepared by Russ Dimke
Secretary/Treasurer, Bull Point POA
March 18, 2013

EXHIBIT F
AFFIDAVIT OF WILLIAM E. GAVIGAN
WITH EXHIBIT A THROUGH L
PART 2

EXHIBIT D
MINUTES OF BULL POINT
PROPERTY OWNERS ASSOCIATION
2014 ANNUAL MEETING
NOVEMBER 21, 2013

Minutes
Bull Point Property Owners Association
2014 Annual Meeting
November 21, 2013

At approximately 6:35 pm, the meeting was called to order by POA Board President Steve Mansfield welcoming everyone to the 2014 Property Owners Association Annual Meeting. Steve introduced himself as well as John Curtin who are both associated with DB Aster, LLC, the current Bull Point Declarant, per our Covenants.

Russ Dimke, Secretary/Treasurer of the POA, verified and reported the proxies. There were 125 votes represented at the beginning of the meeting (including those members in attendance and their proxies) which was 54% of the total eligible membership of 231 votes. Member lots that are delinquent on their POA dues were ineligible to vote. Russ noted a quorum of votes (50% or more) was present and the meeting officially proceeded.

Russ sought comments or corrections regarding the 2013 Annual Meeting minutes. There were no comments or questions from the floor. Steve called for a motion to accept the 2013 minutes as written. A second was received from the floor and the Minutes of the 2013 POA Annual Meeting were unanimously approved by all attending.

Steve then noted that he and John Curtin will be the DB Aster appointed members of the Board for 2014 serving as President and Vice President respectively. He then informed the membership of his plan to schedule quarterly POA Board meeting at Bull Point during 2014. These meeting would be open to the entire membership to attend.

Russ informed the attendees that there will be a change in the order of agenda versus the one sent out with the Budget package. Voting on the two Property Owner Representatives to the Board (originally agenda item 9B) would now take place at this time. This year there were two candidates for the non-voting Board position therefore requiring a secret ballot. Voting, at this point of the meeting, allowed time for the votes to be tabulated and the results reported before the end of the meeting. The two candidates for the non-voting position were Claudia Hoffman and Wayne Cousar. Russ Dimke was nominated to continue as Secretary/Treasurer and voting member of the Board.

POA member Terry Stone suggested that both candidates just be added to the board. Steve responded that under the Covenants, the Declarant (DB Aster) can appoint the entire Board but has elected to continue, for 2014, the past practice initiated by Bull Point LLC (the previous Declarant) which allowed the membership to vote for one voting Board member and one non-voting Board representative. Terry clarified his concern that the two members voted in also become the entire Committee that controls the Contingency Fund per Amendment 14 of the Covenants. He proposed more property owners be added to this important committee which is responsible to manage the Contingency Fund now totaling over \$400,000. Steve suggested this should more appropriately be discussed during the Property Owners Proposal part of the agenda (9A) later in the meeting.

Ballots for the election were then distributed and collected for tabulation by Annette Goodell, POA Office Manager.

Returning to the agenda, Russ referenced the details of the 2013 Budget, 2013 Forecast and the 2014 Budget included in the Annual Meeting package sent out to all property owners. He first noted that the

most significant event of 2013 was the mid year retirement of long time Director of Operations, Dick Lovett, and the naming of Pete Marzluff to replace him. Russ stated the transition was seamless due to the dedication and professionalism of these two outstanding individuals. Their efforts were key to the tightly controlling costs and as a result the 2013 Forecast is expected to be about \$4,000 less than the 2013 Budget of \$480,000. Contract labor costs were greater than planned due to the mid year transition in the Director of Operation position from Dick Lovett to Pete Marzluff. This was more than offset by forecasted savings versus Budget for lake maintenance, medical insurance premiums, HVAC repairs/maintenance, utility costs, and common area real estate taxes.

The 2013 Budget assumed that dues would be paid on 224 of the 249 total lots. Actual collections were better than budgeted because several lots in foreclosure completed the process to Bank ownership. We now expect 2013 dues will be paid on about 231 lots. This should result in dues collection of approximately \$15,000 more than what was budgeted. We are therefore forecasting to end 2013 with about \$19,000 to carry over to the next year and/or add to the Contingency Fund balance.

Russ began the 2014 Budget review by stating the total net Revenues/Expenses in the proposed 2014 Budget are \$499,474 or \$23,000 more than the 2013 Forecast. 2014 Revenues are expected to be at the same level as experienced in 2013 as a housing construction activity (gate fees) is forecast to be about the same next year.

Community Service Expenses are planned to increase by \$23,000 in 2014. Most of the increase is in labor and associated expenses. Contract Labor will increase due to the full year compensation impact in the change in Director of Operations position and addressing repainting needed at Clubhouse and other amenities. We also plan to hire a temporary person during the summer grass maintenance season to free some of our Maintenance personnel to implement our 2014 project/improvement plans (see Contingency Fund section below). An expected rise in medical insurance premiums and an average wage increase of 1.8% are also factors in the labor cost increase.

Utilities Cost during 2013 benefited from the very wet summer which kept lake water levels high and reduced our water pump usage. We cannot expect these conditions to repeat in 2014 thus we have budgeted a more normal utility usage resulting in a \$2,000 year to year increase. On the plus side, we are budgeting Gas, Oil, and Propane costs to be \$1000 less than this year since we expect fuel usage to be reduced by Maintenance using an ATV vehicle versus using the backhoe for certain tasks. We plan to purchase this vehicle sometime within the next few months.

The 2014 Budget assumes continuation of the improved level of privately and Bank-owned lot dues collection. During 2013 we eventually collected dues on 231 lots. Although financial conditions appeared to have stabilized, we are aware of at least 5 lots which paid dues in 2013 likely going into Foreclosure in 2014 and thus not pay dues this coming year. We do see, however, a few other currently delinquent lots completing the foreclosure process to at least partially offset the above noted concerns. As a result, the 2014 Budget is based on 229 lots paying dues.

As we have been able to do the past few years, we plan to take \$15,000 of the anticipated 2013 year end excess and carry it over to the next year.

Russ summarized that the proposed 2014 Budget including the \$400 per lot Contingency contribution would result in 2014 dues of \$2516 or a 1.8% increase versus the 2013 dues of \$2477 per lot.

There were no other questions concerning the Budget from the floor. Steve Mansfield called for a vote to approve the 2014 Budget. All in attendance approved the budget unanimously by voice vote.

Russ continued by reviewing the 2013 Contingency Fund activity noting that the POA ended 2012 with a Contingency Fund Balance of \$409K almost exactly what was estimated (\$410K) when we developed the 2013 Budget last October (see last year's Budget package).

Year-to-date, through mid October 2013, the POA has spent \$91K in Contingency funds. The major expenditures included \$58K for repair and resurfacing of the main pool/spa/kiddy pool, \$8K to repair, repaint, and make improvements to the River Cabin, \$4K in Legal Fees associated with the seeking reimbursement from the original contractor for last year's Clubhouse Roof repair, and \$3K for surveying costs to define and mark the boundaries of POA common property. We also funded an independent CPA audit of the POA's financial records and procedures which cost \$4K. Results of this audit are posted on the POA website.

Before the end of 2013, we also expect to spend up to an additional \$27K of the Contingency reserves to (1) replace one of our commercial lawn mowers (\$9K), (2) purchase an ATV (\$10K) as a second maintenance vehicle, (3) complete the River Cabin improvement project (\$1K) including adding a supplemental heater to allow more use during the winter, (4) purchase and install new deer resistant shrubs/plants in the Clubhouse area (\$3K), (5) rental of mini back hoe (\$3K) to complete drainage improvements and erosion control around the lakes, and (6) obtain additional outside engineering input to address repairs/improvements to the deteriorating Magnolia Island causeway (\$1K).

On the positive side, in addition to the \$400 per lot dues contribution to the Contingency Fund during 2013 (\$93K), we now expect to add \$4K to the fund from the expected 2013 year end operating cash surplus of about \$19K. The other \$15K (of the \$19K) will carryover to the 2014 Budget. During 2013, we estimate we will collect a net \$35K in delinquent dues from prior years. Interest on the Contingency Fund balance and an insurance reimbursement added another \$8K to the fund. Taking all projected inflows and outflows into account, we project a year end Contingency fund balance to increase to approximately \$430K versus the \$409K balance at the beginning of 2013.

Looking ahead to 2014, we expect to add about \$92K to the Contingency Fund from the budgeted 229 lots paying dues.

There are several major improvement projects and/or repairs we have prioritized for 2014 the most significant of which is the Repair and Improvement of the Causeway to Magnolia Island. We have recently had an outside engineering firm evaluate this bridge. The positive news is that the piers are still in good condition but as expected the walkway structure is quite deteriorated. We may be able to do some interim repairs to extend the life of the bridge for a couple of years at most, but it appears to make more economic sense to replace and improve (widen) the entire walkway structure entirely this coming year. We expect to be able to some of the work in-house but the material cost will likely be in excess of \$25K.

We also plan to (1) Stabilize and Enclose Area around Clubhouse Water Tank, (2) Make Repairs and perform Ongoing Maintenance to Big Bull Island Bridge and (3) Upgrading Lighting and Video Surveillance at Front Gate. Russ noted more details on these projects were included in the Budget Package write up.

Other expected costs using Contingency Funds next year include the Legal Costs to foreclose on Lot 223 (about \$4K). We also may have Legal Costs if we decide to proceed to trial on recovering the cost of the 2012 Clubhouse roof repairs which were the result of a faulty installing of the copper roof. In both items noted above any funds recovered resulting from these legal actions, including later sale of Lot 223, will be added back into the Contingency Fund.

Russ turned over the meeting to Pete Marzluff to provide a review and update on major POA projects during 2013. Pete first noted that the most significant project of 2013, the repair and resurfacing of the pool, spa, and kiddie pool was completed on time and within budget. Also part of this project was the repair and repainting of the area surrounding the pool which was done in house.

Pete then highlighted the extensive work to repair, repaint, and improve the River Cabin. He invited all to take a look and give their feedback at the recently completed work including the installation of walkway and entry pavers which should greatly improve accessibility yet maintain the rustic nature of this special spot in our community. He noted the commercial thickness pavers were cut fitted and installed by our own Maintenance crew. The new metal fire pit has already been utilized and enjoyed by many members. Given we have some pavers leftover, the plan is to install them to better access the fire pit area.

Pete continued by informing the members that the results of an engineering review by Steve Andrews (Andrews & Burgess Engineering) of the original drainage plans for Bull Point Development were better than expected with only a few areas that still need to be addressed. Part of the work has already been completed using our in-house personnel and the reminder of the work will take place in the next few months.

Pete summarized the work done to date to repair and stabilize the Magnolia Island dock area. Russ reminded the group that a year ago the POA had received several outside contractor cost estimates to stabilize the eroding area with extensive rip/rap or a bulkhead. All the quotes exceeded \$50,000 with one quote at \$250,000. Pete reported that we have made the repairs in house to shore up and repair the dock and associated deck. A new support piling and significant structural repairs were required which we were able to do in house. We also deposited 20,000 pounds of rip/rap on the eroding stream bank and plan to add 10,000 pounds more this winter. It appears this will slow the erosion at that site, such that we can avoid or significantly delay the need for a high cost long term fix.

A member asked if there was any regulatory issue with this work. Dick Lovett, who began this project before the transition, commented that input and approval from all relevant agencies including DHEC was in place before work began.

Pete then concluded by announcing a plan to redo landscaping the front of the Clubhouse with deer resistant planting. It is currently under ARB final review and was available at the meeting for those members who wish to take a look at it. The installation of the new plantings will be done using our Maintenance personnel after the first of the year.

Member Lamar Nix complemented Pete for his proactive work to trim and remove dead trees along the roadways and common areas of the plantation. He especially thanked Pete for making the rented equipment available after hours so the maintenance personnel could do similar work on member's private property. Russ noted that a resident voiced a concern that such after hours work done by POA workers using POA rented equipment could be insurance liability issue. Pete informed everyone that this issue has been addressed for the future. We now require that the maintenance personnel, who do such work after hours, form a Business LLC with their own insurance. The POA will then rent the equipment to them for after hours work.

At this point, the results of the election were available and Steve Mansfield announced that Wayne Cousar was elected as the non-voting member of the Board for 2014 replacing Jay Coleman. Russ Dlinke, who was unopposed, was elected to continue as Secretary/Treasurer and voting member of the Board.

Next was a report on ARB activity for 2103 by Sandy Dimke, Chairperson of the ARB. She first thanked the other property owners on the ARB, Jane Hearn and Wayne Cousar, for their service to the community. Sandy then continued by noting there were two houses completed during the year; the Peers and the Riordau's. There is currently one house under construction, the Morton's on Barnaby Bluff. The ARB will be meeting in December to review a final application for Bright (Lot 12).

Sandy concluded her report by noting that one (1) dock permit was approved by the ARB in 2013. She also commented that with Wayne now elected to serve on the POA Board; the ARB will need to replace him. She requested than anyone interested in joining the ARB contact her.

Moving on to New Business portion of the agenda, Russ first noted the desire of a number of residents to establish a Community Garden somewhere within Bull Point. Selecting a location for the garden and preparing the site is expected to occur next spring. The garden will be managed as a Club with the expenses to establish the site (fencing, etc.) recaptured via garden plot rental fees of the garden participants. Claudia Hoffman and Karen Dekel are leading this effort and have already begun putting together garden guidelines using input from similar community gardens at Habersham and Dataw.

The second topic for discussion requested by several members was the request for a more prominent sign to promote Bull Point at our entrance. Steve addressed this topic by announcing that DB Aster is now working on a marketing plan for its properties within Bull Point. Part of the plan will include placing a new sign at the entrance. Plans for the new sign are expected to be submitted to the ARB for approval early next year.

The last New Business topic was the recommendation by member Terry Stone that additional elected property owner representatives be added to the Contingency Fund Committee which reviews and decides how these funds are spent. After a general discussion, the membership voted to add one additional member to the Committee via a special election in conjunction with the next POA Board meeting the first quarter of next year. The new member along with Wayne Cousar and Russ Dimke will then comprise the Committee for 2014.

Steve then asked if there were any other Questions or Comments from the floor. Member Gary Okey voiced his concern regarding the potential deer overpopulation issue which was tabled during last year's annual meeting in anticipation of the change in Declarant to DB Aster. Russ responded that no action has yet taken place on a first step which was to develop an overall "Wildlife Plan" per Amendment 15 of the Covenants. Gary stated he closely reviewed this Amendment and it actually states three distinct items;

- (1) There can be no recreational or sport hunting on Bull Point
- (2) There can be non recreational hunting for wildlife control
- (3) There should be an overall Wildlife Plan

Gary pointed out that first two items are not linked to the last item, that is Amendment 15 would therefore allow the Board to take any necessary actions in this area without completion of the plan noted.

There were no other questions or comments.

Steve Mansfield thanked all those who attended and adjourned the meeting.

Respectfully submitted by
 Russ Dimke
 Secretary/Treasurer - Bull Point POA
 December 8th, 2013

EXHIBIT E
MINUTES OF BULL POINT
PROPERTY OWNERS ASSOCIATION
2015 ANNUAL MEETING
DECEMBER 2, 2014

Minutes
Bull Point Property Owners Association
2015 Annual Meeting
December 2, 2014

John Curtin, Vice President of the POA Board, began by introducing himself and noting that he works for Gibraltar Capital and also represents DB Aster LLC, the current Bull Point Declarant. John reported that Steve Mansfield, Director of Asset management for Gibraltar and current President of the POA, was unable to attend this year's meeting.

At approximately 6:35 pm, the meeting was called to order by Russ Dimke, Secretary/Treasurer of the POA, welcoming everyone to the 2015 Property Owners Association Annual Meeting. Also present were non-voting Board member Wayne Cousar, Contingency Committee member Ron Lambe, and Director of Operations for the POA, Pete Marzluff.

Russ continued by verifying and reporting the proxies. There were 127 votes represented at the meeting (including those members in attendance and their proxies) which was 55% of the total eligible membership of 231 votes. Member lots that are delinquent on their POA dues were not eligible to vote. Russ noted a quorum of votes (50% or more) was present and the meeting officially proceeded.

John sought comments or corrections regarding the 2014 Annual Meeting minutes. There were no comments or questions from the floor. John called for a motion to accept the 2014 minutes as written. A second was received from the floor and the Minutes of the 2014 POA Annual Meeting were unanimously approved by all attending.

Next on the agenda, Russ referenced the details of the 2014 Budget, 2014 Forecast and the 2015 Budget included in the Annual Meeting package sent out to all property owners. He first noted that our Director of Operations, Pete Marzluff, has done an outstanding job controlling costs and keeping expenditures within the 2014 Budget parameters. This was critical since our Gate receipts were \$7000 less than planned due to lower construction activity negatively impacting budgeted gate fees. This was more than offset by lower Community Service Expenses which were \$20,000 less than budgeted.

Maintenance wages were \$8000 less than planned because we did not hire part time additional help for the high activity late spring/early fall period. We were able to manage through this period with just our normal staff. Further, one of our hourly maintenance employees, who is also a professional painter, helped repaint the Clubhouse. Some of his wages were charged to the Clubhouse painting project and thus reduced our Maintenance wages expense in 2014.

\$4000 was saved by switching providers for our employee health insurance plan. Our Real Estate taxes were \$2000 less than anticipated as we were able to get the Maintenance area and building reclassified at the much lower common property tax rate. Smaller gain in a number of other expense categories added up to another \$6000 in gains versus the 2014 budget.

The 2014 Budget assumed that dues would be paid on 229 of the 249 total lots. When the Budget package was sent out to the membership, we had collected dues on 229 lots, exactly as planned. Russ went on to report that just in the last couple of weeks an additional 2 lots have paid 2014 dues as a result of the Delinquent Dues Collection Program.

Russ summarized the 2014 Forecast versus Budget by noting the \$10,000 in Revenue shortfall will be overcome by a \$20,000 expense saving resulting in an anticipated \$10,000 savings in total net Revenues/Expenses. Russ stated that \$9,000 of the \$10,000 will carry over to the 2015 Budget. At this point Russ listed the various POA events which have or will take place during 2014 and acknowledged and thanked the POA members who organized and hosted them. They include;

- Memorial Day Picnic (hosted by Marzluffs, Colliers, Parks, et. al.)
- Ice Cream Social (Colliers/Dimkes)
- October Fest (Swilpas, Hoffmans, Oudars)
- Annual Meeting Buffet (POA office)
- Holiday Gala (Leigh Wolfson and the Entertainment Committee)
- New Years Eve Party and Fireworks (Swilpas, Hoffmans, Oudars).

Russ went on to note there are 3 upcoming events already planned for early 2015:

- Santa Helena Foundation historical presentation on January 13th (Parks, Dimkes)
- Cuba Night on January 23rd (Goodwins, Dimkes)
- Oyster Roast (Roberts) date TBD

Returning to the agenda, Russ continued by reviewing the proposed 2015 Budget. He compared the new budget with the 2014 Forecast which is more meaningful than comparing it to the 2014 Budget.

He noted that for 2015, Revenues were planned to be at \$21,000, basically the same level as the 2014 Forecast. No increase of construction activity is anticipated (two homes under construction during the year) but there is the possibility to have more housing starts next year.

Community Service Expenses are planned to increase by \$20,000 in 2015. Most of the increase is in labor and associated expenses which make up over 70% of our budget expenses. Labor Costs and associated expenses are expected to increase by \$10K, primarily due increased upkeep and maintenance for the aging Tennis Courts. In addition there is the 2015 impact (\$2K) of wage increases for hourly personnel implemented in late 2014. Use of Contract Labor for painting is planned to increase by \$1K and we expect an increase in Medical Insurance premiums (\$1K).

In non-labor areas, with the Clubhouse complex over 9 years old and the other amenity structures well over 10 years old, we are budgeting increased needs for Electrical, Plumbing and HVAC repairs/replacement of our infrastructure. Also, we are now using a professional landscaping firm to better care for the planting at the Gate House and Clubhouse which will impact year to year cost by \$1K. All other non -labor expense categories are budgeted to increase by \$6K primarily due to inflation.

The 2015 Budget assumes a slight improvement of privately and Bank-owned lot dues collection. Versus the 2014 Budget of 229 lots paying dues, we expect 230 lots paying dues in 2015. Russ noted that over time the recently implemented Delinquent Dues Collection program should help reduce the number of delinquent properties.

Russ summarized that the proposed 2015 Budget of \$509K would result in lot dues of \$2573 in 2015 including the \$400 per lot Contingency contribution. This is an increase of \$57 (2.3%) versus the 2014 dues of \$2516 per lot.

There were no questions concerning the Budget from the floor. Russ then called for a vote to approve the 2015 Budget. All in attendance approved the budget unanimously by voice vote.

Russ continued by reviewing the 2014 Contingency Fund activity noting that the POA began 2014 with a Contingency Fund Balance of \$480K. This was greater than we estimated when we developed the 2014 Budget last October (see last year's Budget package). The higher total was due to lower 4th quarter Contingency spending than anticipated and more unspent 2013 operating funds than forecast.

Year to date through late October 2014, the POA has spent \$29K in Contingency funds. The major expenditures include: \$9K for painting the Clubhouse; \$6K in Legal Fees associated with collection of delinquent dues and the foreclosure of lot 223; \$4K for new and improved lighting at the front gate area; \$4K for a used ATV as a second Maintenance vehicle; \$2K to redo the landscaping in front of the Clubhouse; \$2K for equipment rental to shape the banks of Lake Izard; \$1K to replace and upgrade the holiday decorations for the Clubhouse; and \$1K for a Deer Density Survey.

Before the end of 2014, we estimate we will spend an additional \$33K of the Contingency reserves for: additional legal and court fees associated with the collection of delinquent dues (\$15K), construction of fencing and covering to screen the Clubhouse water tank (\$16K), and \$2K in legal and court fees to complete the foreclosure of Lot 223.

On the positive side, in addition to the \$400 per lot dues contribution to the Contingency Fund during 2014 (\$91K), we expect to add \$1K to the fund from the expected 2014 year end operating cash surplus of about \$10K. The other \$9K (of the \$10K) will carryover to the 2015 Budget. Further during 2014, we have collected \$16K in delinquent dues from prior years. Interest on the Contingency Fund balance added another \$6K to the fund. Taking all projected inflows and outflows into account, at the time the Budget package was sent out to the members, we projected our year end Contingency Fund balance to increase to approximately \$532K. However, with the unanticipated collection of more delinquent dues over the past couple of weeks, we now estimate the year end fund balance to be near \$550K.

Although we continue to slowly build our Contingency reserves, Russ noted we will certainly face significant infrastructure costs in the not too distant future. One such area is the repair and repaving of the roads and walking paths within Bull Point. The cost to resurface all of our paved areas alone would be significantly more than the \$550K noted above. We are now in the initial phase of developing a multi year plan to address this need.

Several major improvement projects and/or repairs have been identified as potential Contingency funded projects for 2015. High on the list is the **Repair and Improvement of the Causeway to Magnolia Island**. We had previously reported to the membership that the supporting structure of this causeway is sound but the walkway structure is quite deteriorated. We plan to begin the first phase of the repairs during 2015. We hope to be able to repair/replace about 1/3 of the walkway in 2015, using in-house labor. The material costs next year are expected to be at least \$5K.

Also on the list are the **Repairs and Ongoing Maintenance to Big Bull Island Bridge**. This is a project we had hoped to begin in 2014 but has been delayed into 2015. Overall the bridge is structurally sound with the exception of a number of splintering road surface planks. We were also advised that once the planking is replaced, we can slow future deterioration by periodically pressure washing the bridge and applying a wood sealant. Since we have no water source near this bridge, we are considering drilling a well on the common property at one end of the bridge to provide the water for the recommended ongoing

maintenance. The estimated cost to repair the bridge including the well is expected to be in the \$10K range.

The Dock Ramps to the floating docks at both the Magnolia Island and Huspah Landing are over 15 years old and in poor shape. For long term life and maintenance, we will ask the Contingency Committee for funds to replace both with aluminum ramps at an estimated cost of \$7K.

In addition to above major items, we expect the Committee to consider using Contingency funds for; (a) further repairs to the Magnolia Island deck pilings adjacent to the dock, (b) Repairs/rebuilding of the floating docks at Huspah Landing, (c) adding gas service and gas fireplace logs at the Clubhouse, (d) an automated external Defibrillator for the Clubhouse/Pool area, (e) additional legal and court fee associated with delinquent dues collection, (f) installation of a "living fence" around the Clubhouse water tank enclosure as suggested by the ARB, (g) construction costs associated with establishing a Community Garden, and (g) purchase and installation of sound/PA system at the Clubhouse. Wayne Cousar and Ron Lambe commented that the wires for speakers were installed at the time the Clubhouse was built and there are methods to identify their location. Russ also clarified the funds needed to initially establish the Community Garden will be repaid to the POA over time via user fees.

Russ turned over the meeting to Pete Marzluff, Director of Operations for the POA, to review the major projects accomplished during 2014. Pete began by noting the Clubhouse landscaping project completed early in the year is still in need of some follow-up work associated with repairing/replacing the automated irrigation system. Pete commented that the repainting of the Clubhouse was completed more safely and efficiently by renting a lift to access the hard to reach areas. He praised the quality painting job done by Bull Point resident and contract painter, Guy Collier, and Bull Point Maintenance staff member Don Robinson, who is also a professional painter.

Pete then noted that Guy also repainted all the wood structures surrounding the tennis courts. A new type of thicker paint, "Restore", was applied which better filled in the cracks in the wood surface. It also resulted in a more non-skid surface on the wooden stairs. Pete invited the members to take a look at the Courts to see the attractive results. Over time the durability and attractiveness of this paint will be evaluated for applications elsewhere in Bull Point.

Also early this year the lighting at the front entrance was upgraded. Work remains to identify and then repair or replace the underground wiring causing occasional shorts in the system. While on the topic of the front entrance, Pete pointed out that the large dent on one of the gate arms was recently caused by a sub contractor who tried to exit while the gate was still open from a previous vehicle. He was in the middle of the road and thus did not trip the sensor which opens/keeps open the gate and thus the gate closed and hit his truck. Our gate personnel observed this incident and the sub contractor will be paying for the repairs to the gate. Pete went on to remind the members to stay to right and come to a stop when exiting at the plantation to be sure the sensor activates the gate properly.

Pete continued by summarizing the ongoing efforts to stabilize the dock area on Magnolia Island. More rock was brought in again this year and likely we will need to do so in future years to keep the status quo. Pete noted that additional piling supporting the deck at the dock would significantly improve the situation. As Russ mentioned earlier, we hope to replace the dock ramp at this location with an aluminum one in 2015. If we do so, it will require the POA contracting with a barge company to transport the new

ramp to the site. The same type barges typically carry equipment to drive in piling so it makes sense to have a couple of new piles installed when we bring in the new ramp. This will be further evaluated and put to the Contingency Fund Committee to consider in 2015. POA member, Tony Santagati, commented he has had dock work done recently at a reasonable price and will provide the contractor information to Pete so he can include them in our bidding process related to this project.

The service yard structure surrounding the Clubhouse fire suppression water tank is now nearly complete. Pete noted the covering of the tank was a man made decking material which looks good and is maintenance free. In a few months after the pressure treated lumber has a chance to cure, the side walls of the enclosure will be painted green to match the Clubhouse. Pete thanked Ron Lambe who acted as the POA's advisor and supervisor on this project. Russ then noted that the first part of this project was to construct a retaining wall around the below grade portion of the tank which our maintenance personnel did early in the year. This was critical to stop the erosion in the area which was undermining the corner of the Clubhouse as well as being a safety hazard.

Pete informed the members of some recent quotes we have solicited to have the most deteriorated portions of roads and paths repaved. This would include a portion of Quintyne Court, a portion of the road leading to Big Bull Island, the worst parts of the walkways, and the edges of the main roads where chunks of pavement are now breaking off. The initial estimate for work is \$75,000. Although we may be able to delay implementing this work this coming year, we certainly will have to address it by 2016.

POA member, Jim Riordan, asked Pete about the status of the new sign at the entrance to Bull Point. John Curtin responded by apologizing for the delay which was caused by "red tape" requirements within Gibraltar which has held up payment of the sign. To speed the installation, the POA Board has approved paying for the sign after which DB Aster will then reimburse the POA.

Next was a report on ARB activity for 2104 by Sandy Dimke, Chairperson of the ARB. She first noted that there has not been a lot of construction activity this year. There was one house completed, the Morton's on Barnaby Bluff, and one house currently under construction, the Bright's on Bull Point Drive. She continued by stating that at least two lot owners have indicated they plan to start construction in 2015 but have yet to submit anything to the ARB. Sandy also reported that the ARB approved two dock permit this past year (Bankov and Nix).

The ARB also reviewed and approved a POA request to thin out the smaller trees in the large median area of Bull Point Drive just after you pass the gate into the Plantation. This should allow the remaining trees, especially the live oaks, to grow more robustly. The ARB also approved the removal of small trees and shrubs by our Maintenance staff at the edges of our roadways which should open up the canopy and allow the road edge grass to grow. This will be done selectively and gradually over the next few years as to be nearly unnoticeable.

Before moving onto the election of officers, Russ provided more details of the **Delinquent Dues Collection Program**. He stated that the POA has over \$150,000 of aged unpaid dues on our balance sheet and have started more aggressive legal actions to collect them. We are pursuing all **current and prior owners** owing the POA \$2000 or more going back to 2011. This group includes 11 current and former owners of a total of 17 lots. There are only a few cases where we can not take legal action specifically those involving recent bankruptcy or death of the owner. He noted although filing for bankruptcy does free a person from his debts, it only does so only up to the date of filing for such bankruptcy. If he/she continues to own a Bull Point post bankruptcy, lot the dues and penalties again

accrue after that file date. He also noted that owners who lost their lot via a bank foreclosure remain personally responsible for unpaid dues.

The legal actions will lead to obtaining a Court Judgment against the delinquent owners in the amount owed plus interest, per our Covenants. Such Judgments will stay in place for 7 years and significantly impact the person's credit rating, making it difficult to obtain an auto or home loans etc. This should encourage many of the 11 to settle the Judgment. The total legal costs to obtain these judgments are substantial, estimated to be over \$25K. However, our Covenants allow us to recoup legal costs in addition to the amount owed. To date we have already collected over \$18K as a result of this program. Our goal is to eventually collect at least 50% of the \$150K. The net proceeds of these collections will be added to the Contingency Fund.

Russ then went on to update the membership on the foreclosure of the mortgage on Lot 223. Several years ago when Bull Point LLC was unable to pay its dues to the POA, it agreed to give the POA a mortgage with interest in the amount of \$106K with Lot 223 as collateral. Bull Point LLC has since defaulted on this mortgage and the POA is in the process of taking the legal steps to take ownership of this lot. Since Bull Point LLC has several other judgments and claims against them which predate our mortgage, we must obtain a court sanctioned foreclosure to get clear title. The final court foreclosure "sale" is now scheduled to take place in early January. We do not expect the "sale" will result in any substantial 3rd party bids so the POA will just take over the ownership of the lot. We then will offer it for sale. DB Aster has agreed to consider adding this POA lot to their Bull Point marketing program now under development. All net proceeds from the eventual sale of this lot will be added to the Contingency Fund.

Next on the Agenda was the **Appointment and Election of Board Members and the 3rd Contingency Fund Committee Member for 2015**. John Curtin first informed the membership that the Declarant, DB Aster LLC, has appointed John as Board President and Steve Mansfield as Board Vice President for 2015.

John then listed the three positions up for election by the membership for one year terms beginning January 1st:

- The Secretary/Treasurer and voting member of the Board
- The non voting representative to the Board
- The 3rd member of the Contingency Fund Committee

John called for all those members who had not yet voted to do so and hand them over to Annette Goodell, POA Office Administrator.

While Annette was validating and tabulating the results, Russ updated the membership on the progress to establish By-Laws for the POA. Last year it came to our attention that the By-Laws originally supplied by Bull Point LLC were completely irrelevant to our POA. It was also determined that these By-Laws were never recorded or adopted by the Board thus making them legally mute. As a result, the POA representatives have developed By-Laws specific to how the POA has operated since we took over management of the POA over 5 years ago. These By-Laws are also structured to allow a seamless transition when the Declarant turns over full control of the Board to the POA. The By-Laws are now under review by our legal council to assure they comply with applicable SC laws. Once finalized, the By-Laws will be reviewed, approved, and formally adopted by the POA Board and then posted on the POA website. The By-Laws will include a mechanism for the membership to modify them if they need to do so sometime in the future.

At this point, the results of the election were announced by John:

- Wayne Cousar was elected as Secretary/Treasurer and voting member of the Board
- Ron Lambe was elected as the non voting representative to the Board
- Polly Fenig was elected as the 3rd member of the Contingency Fund Committee

Before adjourning, John asked if there were any other member questions or comments. Bill Wehmer wanted to recognize Russ for all his efforts on behalf of the POA. Russ responded by thanking all the members for all the compliments and kind words he has received over the last few weeks as he prepares to step down from the Board. He then went onto note the contributions made by Pete Marzhuff and especially his predecessor, Dick Lovett, who have played just as large a role in getting the POA on the firm financial footing it enjoys today. He also noted our dedicated Maintenance staff which all members should consider a key part of the Bull Point community.

Member Alan Kitchen voiced his concern of the lake bottom algae growth in Lake Bellinger. Pete responded the condition of the lake is actually much improved versus a few years ago when much larger amounts of floating algae covered most of the surface of this lake. He noted we now used a qualified contractor to periodically treat all the Bull Point lakes to keep the algae and other undesirable growth under control while not harming the fish. Lake Bellinger is also the most shallow of our lakes thus making it the most difficult to keep looking good.

There were no other comments or questions so John adjourned the meeting at approximately 8PM.

Respectfully submitted by
Russ Dimke
Secretary/Treasurer - Bull Point POA
December 11th, 2014

EXHIBIT F
JANUARY 9, 2015 MEETING

On Jan 9 2015 at 9am Pete Marzluff, Ron Lambe, Russ Dimke and Wayne Cousar met at the Bull Point Club house to discuss reducing the deer herd on Bull Point.

Pete reported that the SCDNR had issued 55 permits to Bull Point to harvest deer. This number was arrived at from results from the survey conducted by Folk Land Management and their recommendation to the SCDNR.

It was decided that David Murdaugh would be used for the harvest and that he would find a processor and that the meat would be given to the food bank. This plan was submitted to John Curtin and approved by him.

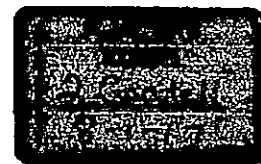
Also discussed was the submission by Lamar Nix to consolidate lots 146&147. This request was denied for the following reasons.

- 1- The other lots where this had been granted was used to build one house that crossed the common lot line.
- 2- These were granted by the early developers who were concerned with lot sales before the POA had any control of the Plantation.
- 3- The current declarant also disapproved of this request.

Wayne Cousar

Sec.

EXHIBIT G
MINUTES OF BULL POINT
ANNUAL MEETING
NOVEMBER 16, 2015



Minutes of Bull Point Annual Meeting 2016

November 16, 2015

The meeting was called to order at 6:30 p.m. by John Curtin, President. John welcomed the group and reintroduced himself to the new POA attendees who did not know him. Secretary/Treasurer Wayne Cousar stated that 62 property owners were present and they held 127 proxy votes to meet quorum.

Next on the agenda was the approval of the 2015 annual meeting minutes. A motion to accept and a second were received from the floor. The minutes were approved.

Pete Marzluff, Director of Operations, reviewed the 2015 budget results. He first compared the 2015 budget to the actual executed results for 2015. He noted the income difference due to fewer building starts, yet an overall excess when compared to budget (\$177). He also noted 3 expense line items over budget: security wages, electrical repairs, and large equipment repairs. The dues collected from 7 lots in excess of budget helped to lessen the effect of these unplanned expenses. In all, expenses exceeded revenues for 2015 by about \$3000.

Pete Marzluff then referred to the 2016 budget. Comparing it to the executed plan for 2015, there's an increase of \$31K. Most of that increase is found in line 39, repairs amenities. Here we have placed for the first time those expenses that would normally be paid for out of contingency funds. The planned purchases and expenses are a new mower, Magnolia causeway repair, pool house kitchenette and a PA system for the clubhouse. Other line items to increase are professional fees for an audit, and to collect delinquent dues from 2015 and previous years. Two mid-year raises are planned for one security and one maintenance employee. A plan to have 24hr gate attendants on Friday and Saturday during the summer has also affected line 18. Line 29 contains an increase to add a battery back up to the gate system.

Mr. Marzluff then spoke about the goal of a one million dollar Contingency Fund. The Board strives to reach this goal as soon as possible. The collection of old dues has netted a gain of \$11,000 to this fund. This year we anticipate putting over \$105K into the contingency fund, the most on record. Pete spoke of the intent of the board to reach the \$1M goal by the end of 2018.

A homeowner questioned the need for 24 hr. security and a discussion followed. Wayne Cousar explained the guest rules and that some infractions had happened over the summer when the gates were not attended. The addition of a gate attendant at night would reduce or eliminate these problems, and is a step toward 24/7/365 gate attendants. All nearby communities have 24 hour gate attendants and as we grow this would be expected at Bull Point as well. Mr. Cousar also talked about the pool house project and how this would keep swimmers and casual users out the Clubhouse. This upgrade will help reduce wear and tear on the Clubhouse while providing an amenity upgrade that will be well done and very functional.

A homeowner again questioned the precedent of increasing the security budget. Mr. Cousar stated it was a step toward eventual 24 hour attendant. Another property owner stated that the cost per lot was insignificant.

A motion was made to accept and seconded to approve the budget as presented.

The budget was approved by those in attendance; there were no nay votes.

The next topic for discussion was the 2015 projects accomplished by the staff (office, maintenance, and security) at Bull Point. Pete Marzluff spoke about the in house repairs to wearing surface on Big Bull Bridge. He then mentioned the use of Constant Contact for owner communications and our new website. The use this year of an online voting survey saved \$700 versus the mailing of a packet to each owner. He congratulated Mr. Jewler for inspiring a recycling program which has saved money in waste removal costs. The money saved exceeds the cost for the maintenance employee time to collect and deliver our recycled materials to the recycling center every other week. He spoke briefly about what can be recycled and how to sort recyclable items.

Mr. Marzluff gave a brief wildlife management report. 34 deer were removed last year, the venison was donated to charitable organizations and the results of this process are obvious around the community. We will harvest a few deer this year during the regular hunting season. Therefore, there will be no need for special permits or a deer survey which will result in a significant cost reduction when compared to 2015.

Ron Lambe gave a more detailed description of the pool house project and how costs were estimated. He has basic plans that can be viewed by anyone interested. The proposed plan adds cupboards and shelves on one wall of the pool house with a full counter top. The other wall will have a small (in length) counter top but also have a sink with purified drinking water outlet, an ice maker, dish washer and full refrigerator. The open area will be large enough and suitable for tables and chairs.

Continuing to discuss 2015 projects, Pete relayed that the five live oak trees that were relocated from the clubhouse parking area are all alive and thriving in their new locations. Recently some dead trees were removed near the Clubhouse and the Goodwin's home. An AED was purchased and installed at the Clubhouse and training will be re-scheduled. He then explained the sudden change in "security" uniforms. The change was precipitated by a visit from SLED, who explained the laws that require both annual training and formal certification for gate attendants to be considered security guards. Since our gate attendants have never either been armed or required to conduct search and seizures or uphold other State statutes, we opted to remove the word "security" from their apparel. This solution was acceptable to SLED.

An owner inquired who he should call in a hostile guest situation. Mr. Curtin replied that if the issue could not be handled in a congenial, neighborly manner than the only other option available is to contact "the police".

Sandy Dimke gave an ARB update. Two homes will be completed in 2015, Bright and Reibel. Currently one home is under construction, Attridge. Two potential home owners have submitted plans for final review this week, Brlaud and Kinard. There remains the potential for 3 new starts this year. Several other property owners are in the beginning stages of submission. She reminded everyone that ARB approval is needed for any exterior change or replacement. Sandy also made a plea for volunteers since Gary Okey is a candidate for non-voting member of the POA board and could potentially be leaving the ARB early next year. Sandy thanked Gary for his service to the community by his service to the ARB.

Annette Goodell, office manager for the POA board, having accumulated the voting results, delivered the results to the president of the POA board for announcement. John Curtin announced the results of the election to the members present. The slate was elected as offered on the ballot; Ron Lamba was elected Secretary/Treasurer with 113 votes, Gary Okay was elected non-voting member with 130 votes and Johan Peers was elected to serve as the third member of the Contingency fund committee with 131 votes. The other two members of the contingency fund committee are the resident voting and non-voting members of the board.

After a brief comment and request from resident Guy Collier for additional volunteers to serve on the Bull Point beautification committee, and there being no further business, the annual meeting was adjourned by John Curtin at 7:34 p.m.

EXHIBIT F
AFFIDAVIT OF WILLIAM E. GAVIGAN
WITH EXHIBIT A THROUGH L
PART 3

EXHIBIT H
BULL POINT PLANTATION AGENDA FOR
THE ANNUAL ASSOCIATION
MEMBERSHIP MEETING



BULL POINT PLANTATION

Property Owners Association

AGENDA ANNUAL ASSOCIATION MEMBERSHIP MEETING

For the year 2017

To be held on

Wednesday, November 16, 2016

1. Prior to commencement of meeting, each member is required to register with Secretary of the Board of Directors.
2. Call to Order -- John Curtin, President Bull Point Plantation POA
3. Certification of Proxies -- Ron Lamba, Secretary/Treasurer
4. Review and Approval of Minutes of 2016 Annual Meeting -- John Curtin
5. 2017 Budget Philosophy -- Ron Lamba
6. 2017 Past dues collection update -- Gary Okey
7. 2016 Forecast Review -- Ron Lamba/Pete Marzluff
8. Presentation and Vote for approval of the 2017 POA Budget -- Ron Lamba/Gary Okey/Pete Marzluff
9. 2016 Project Summary -- Pete Marzluff/Ron Lamba
 - A. Big Bull Bridge wearing surface repair completion
 - B. Pool house make over
 - C. Fire place and microwave upgrade to River Cabin
 - D. Magnolia Island Causeway repair (2/3)
 - E. Removal and storm clean-up of dead trees from Bull Point Drive
 - F. Stump removal
 - G. Road and path repair
10. Committee Reports
 - ARB Activity Update -- Ron Lamba/Karen McArdle
11. New Business:
 - Appointment and Election of new Board and Committee members for 2017
 - POA Board President (one year term)
 - POA Board Vice President (one year term)
 - Election of three (3) Property Owners: one as Secretary/Treasurer of the POA Board (voting), one as the non-voting member to the POA Board, and one to serve as the third member of the Contingency Fund Committee. These positions are to be nominated and elected by the property owners. All are one-year terms.
12. Questions/Comments of Property Owners
13. Adjournment

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Minutes of Annual Meeting Wednesday November 16, 2016

(John Curtin via speakerphone)

2.—John Curtin called to order the meeting at 6:25 pm. He thanked everyone for allowing him to participate by phone from Virginia.

3.—John Curtin asked Ron Lambe for certification of proxies. Ron stated that 68 owners attending held 130 proxies.

4.—John Curtin asked for approval of 2015 meeting minutes. A motion was made, seconded and approved.

5.—2017 Budget Philosophy, Ron Lambe explained that as we had done with the 2016 budget, we will continue to fund former "contingency" items in the operating budget. He also explained that legal expenses for dues collections were such that it was impossible to properly budget for those expenses and since the monies received from these legal actions went directly into the contingency account, we would instead of budgeting for these expenses simply pay for them out of the contingency account as they occurred. We will continue to budget for other legal expenses accordingly.

6.—Past dues collection successes and status was reviewed by Gary Okey. We have changed our legal counsel due to communication and other issues with current Hilton Head lawyer. We have retained the services of Mary Sharp in Beaufort. We have been very pleased with the change to date. When we first started to pursue legal actions against non-paying lot owners, we had 20 cases that we felt were worth the effort to collect from. This past year, we added two more cases. We resolved 11 and continuing to work on 4. We have dropped 3 cases. Expenses to date are \$61500, and we have collected \$68500, \$28000 is expected from settlements this year for a total collected of \$96500. Our conclusion is that the efforts we put into collecting delinquent dues is justified. We also think that these actions send a strong message to other property owners who might consider skipping dues payment. As such, we will continue with 4 open cases.

Question- Expenses of new attorney less than former? Not sure yet. Some work will be performed by staff at lower rate.

Question- What about people that cannot be found, how to collect? Not much we can do. If bank owned, dues are paid by bank.

Question-What about large items going in budget? Pete Marzluff: large items like lawn mowers will continue to be budgeted for in the operations budget but larger equipment like back hoes and tractors will need to be funded out of the contingency account.

Question- Can we ask for attorney fees when collecting? Yes we can also ask for ask for interest, court cost. We go after dues, interest and fees though usually settle for less.

John Curtin- Recognizes effort of collections a lot of work time and expense.

RPPOA 000059

000500

7-2016 Forecast and Review Ron Lambe and Pete Marzluff. Community is in good financial condition. 4 homes under construction, 1 home approved for building and 3 under review adding to great condition. Spending was 1500 greater than budget. Carryover less than thought after hurricane clean up. We have seen increases in the following budget lines maintenance wages, gasoline, diesel, equipment repair and maintenance. Extra 2 dues payments used to buy 2nd install of wood for Magnolia causeway. Revenue +9400. Community service expenses that were up, in particular, insurance and pool chemicals. 2017 budget increase asked for is \$21000. Increased expense lines 16, 17, and 18 salaries. 5 employees who had no raise for 3 years will get an average 3% over a three year period. Most raises are mid-year raises to reduce effect. Increase in security wages again for summer increased coverage at gate Friday and Saturday evenings. Tried this year found no one after midnight so truncated coverage after 6 week review. Medical insurance premiums rising split with employee 50/50. Line 27 tree removal always an issue to be watched. Other items are signage wear and aging, HVAC units aging also. The \$31000 in amenity repairs includes the following items: the last third of the Magnolia causeway, replace wood ramps (2) with aluminum on 2 of our community docks, floating dock decking repair at Huspah, landing bumper repair at Huspah boat ramp, pool deck painting (if a painter can be located), tiki hut inside shelves, 3 swings replaced, road repair Island Way near Johnson lot and cart path damage from hurricane. Budget based on 239 lots dues collected. Contingency to remain at \$400 with a goal of one million, this year added \$130,000 to fund. We relied on the contingency account for the following hurricane damage repair expenses: tree removal \$8900 and excavator rental \$2200.

Projected ending contingency balance is \$783,000 last year \$667K, \$23K more than forecast. Goal by end of 2018 is one million dollars. Once goal is met, we will revisit the amount of we add to our annual dues for contingency purposes. We expect to continue for the foreseeable future to have some amount of money in the annual dues payment for the contingency account.

Gary answered questions regarding contingency fund usage. Possible uses are: replacement and repair of infrastructure, e.g. roads, storm expenses, future amenity repair or expansion, and lastly legal defense fund against a possible new declarant. DB Aster has been fair with POA someone new may want to change rules and guidelines.

Question: Why stop collecting at one million? Answer: Will not stop collecting, but will re-evaluate then.

Pete: Of the \$28000 budgeted for amenity repair (line 39) \$12000 to pool house renovation, River Cabin microwave shelf and cabinet, \$13K to Magnolia Island causeway, \$7400 mower and \$1000 sound system.

How is contingency money invested? 2 multi-year cd's and local money market account. Annual interest increased from about \$6K to \$11K.

Question from Dick Lovett. Was Paul Nowlin compensated for hurricane clean up? Board has discussed and will compensate him out of Contingency Fund. Thank you to Bob Wolfson.

8- Motion to accept budget and a second. Budget passes.

RPPDA 000060

000501

9- Projects review: Big Bull bridge wearing repair complete, Magnolia causeway 1/3 complete with the second third of the required wood purchased, pool house kitchen, River Cabin fireplace replaced some parts and logs, also new microwave and cabinet at River Cabin. Storm clean-up from Matthew and two previous storms. Russ Dimke stated a lot of debris still around Beaufort but that our community looks great. (Applause for maintenance department.) Stump grinding continues with new contractor.

Guy Collier requests new and updated gym equipment.

Mrs. Gallup asked about condition of signage at front gate and when can we replace? We have new sign for right side and will order another by year end.

John Curtin Bull Point fared better than other nearby properties. He thanked Board for their work on budget and commitment to community.

10- Karen McArdle ARB Chairman could not attend due to previous commitment. She wrote a letter read by Ron Lambe. Thank you to Sandy Dimke. 4 homes completed, 4 homes started. Potential for 6 starts in 2017. Reminder to get approval for exterior changes and tree removal of trees over 6" in diameter.

11- New Board members President- John Curtin, Vice President - Joe Steinheiser, Secretary/Treasurer Ron Lambe, Gary Okey Non-voting member and Robin Brendza Contingency fund committee.

12- Questions: Ginny Bankov asked if extra payment to maintenance crew has been discussed? Pete Marzluff stated they will get bonus and likely also an extra bonus this year.

Ron Lambe stated the maintenance crew does appreciate your thanks very much. The crew thanks owners for the lunches and gifts they received.

Meeting adjourned at 7:17 p.m. John Curtin signs off and hangs up.

EXHIBIT I
ASSIGNMENT OF RIGHTS
UNDER DECLARATION
DATED DECEMBER 28, 2012

45W
9 7032
Nelsen

BEAUFORT COUNTY SC - ROD
BK 03205 PGS 2101-2104
FILE #MM 2013001325
01/08/2013 12:59:28 PM
REC'D BY S WASHINGTON RCPT# 679256
RECORDING FEES 9.00

ELECTRONICALLY FILED - 2019 Sep 20 11:31 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

**ASSIGNMENT OF RIGHTS UNDER
DECLARATION (Book 805, Page 218)**

THIS ASSIGNMENT of Rights Under Declaration (Book 805, Page 218) ("Assignment") is made this 28th day of December, 2012, by and between BULL POINT LLC, a South Carolina limited liability company ("ASSIGNOR") and DB ASTER, LLC, a Delaware limited liability company ("ASSIGNEE").

WHEREAS, ASSIGNOR is the holder of certain rights as "Declarant" under the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BULL POINT PLANTATION, recorded September 26, 1995 in the Office of Register of Deeds for Beaufort County in Book 805 at page 218, as supplemented and amended (the said Declaration as supplemented and amended being hereinafter referred to as the "Declaration," and the rights of Declarant thereunder being the "Declarant Rights"); and

WHEREAS, pursuant to that certain Assignment of Bid in Case No. 9:11-cv-00629-SB, In the United States District Court for the District of South Carolina, Beaufort Division dated February 2, 2012, Assignee has acquired from Assignor the property of the development known as "Bull Point Plantation" and subjected to the plan and operation of the Declaration, and in furtherance of said conveyance Assignor has agreed to assign to Assignee all of its Declarant Rights under the Declaration.

NOW, THEREFORE, for and in consideration of the sum of Ten (\$10.00) Dollars paid by ASSIGNEE, the receipt and adequacy and sufficiency of which are hereby acknowledged, ASSIGNOR does hereby agree as follows:

1. Assignment of Declarant Rights. Pursuant to the Declaration, ASSIGNOR hereby transfers, assigns, conveys, bargains, sells, and sets over unto ASSIGNEE, its successors and assigns, absolutely and irrevocably, all of ASSIGNOR'S right, title and interest in and to the Declarant Rights.
2. Assumption of Declarant Rights. ASSIGNEE hereby assumes all duties, obligations, and liabilities of Declarant under the Declaration which arise from or in connection with the Declarant Rights from and after the date hereof. ASSIGNEE'S assumption 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. ASSIGNEE covenants to perform and observe from and after the date hereof each and every duty, and discharge every liability of the Declarant under the Declaration according to the tenor of the terms and conditions of the Declaration, and to be bound by the terms and conditions thereof as if ASSIGNEE were identified in the Declaration as Declarant.

3. Governing Law: This Assignment shall be governed by and construed in accordance with the laws of South Carolina.

IN WITNESS WHEREOF, ASSIGNOR and ASSIGNEE have caused this Assignment to be executed the day and year first above written.

SIGNED, SEALED AND
DELIVERED IN THE
PRESENCE OF:

BULL POINT, LLC

Carol E. Kirkland
Witness Signature

By: Stanley E. Kirkland

Carol E. Kirkland
Notary Signature

Its: Managing Member

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 28th day of December, 2012, by BULL POINT, LLC, by Stanley E. Kirkland, its Managing Member.

Carol E. Kirkland (SEAL)

NOTARY PUBLIC for South Carolina

My Commission expires: November 11, 2022

(AFFIX SEAL)

SIGNED, SEALED AND
DELIVERED IN THE
PRESENCE OF:

DB ASTER, LLC

[Signature]
Witness Signature
[Signature]
Notary Signature

By: [Signature]
Its: Vice President

STATE OF Pennsylvania,
COUNTY OF Montgomery

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 3rd day of January, 2012, by DB ASTER, LLC, by Stephen Mansfield its Vice President.

[Signature] (SEAL)
NOTARY PUBLIC for Montgomery County, Pa
My Commission expires: 4-15-2016
(AFFIX SEAL)

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
HEATHER L. DIXON, Notary Public
Horsham Twp., Montgomery County
My Commission Expires April 15, 2016

SIGNED, SEALED AND
DELIVERED IN THE
PRESENCE OF:

DB ASTER, LLC

By:

Its:

[Signature]
Witness Signature

[Signature]
Notary Signature

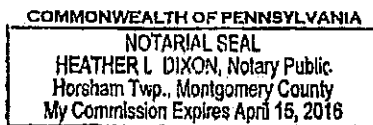
[Signature]
Vice President

STATE OF Pennsylvania
COUNTY OF Montgomery

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 3rd day of January, 2019, by DB ASTER, LLC, by Michael Greiner, its Vice President.

[Signature] (SEAL)
NOTARY PUBLIC for Montgomery County, PA
My Commission expires: 4-18-2016
(AFFIX SEAL)



Prepared by:

Nexsen Pruet, LLC
1230 Main Street, Ste 700
Columbia, SC 29201

EXHIBIT J
ASSIGNMENT AND ASSUMPTION
OF DECLARANT'S RIGHTS
DATED AUGUST 18, 2017

BEAUFORT COUNTY SC - Rm
BK 3400 Pgs 2579-2586
FILE NUM 2017045428
08/21/2017 01:19:51 PM
REC'D BY: sherrill RCPT
RECORDING FEES \$13.00

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

THIS ASSIGNMENT AND ASSUMPTION OF DECLARANT'S RIGHTS
 ("Assignment") is entered into as of the 18 day of August, 2017 (the "Effective Date"), by
 and between DB ASTER, LLC, a Delaware limited liability company (the "Assignor") and GSI
 LLC, a South Carolina limited liability company (the "Assignee").

WHEREAS, the Property, as described in Exhibit "A" attached hereto, is encumbered by that certain Declaration of Covenants, Conditions, and Restrictions for Bull Point Plantation dated September 22, 1995, and recorded in Book 805 at Page 218, in the Office of the Register of Deeds for Beaufort County, South Carolina, as amended (the "**Declaration**"); and

WHEREAS, Assignor is the Declarant under the Declaration; and

WHEREAS, Assignor has agreed to assign and Assignee has agreed to accept and assume all of the rights and obligations of Declarant under the Declaration.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee do hereby agree as follows:

1. Assignment of Rights of Declarant. Assignor does, effective as of the date of the recording hereof, hereby grant, bargain, sell, assign, transfer, and convey to Assignee, its successors and assigns, all of Assignor's rights, title, interest, powers, privileges and immunities as "Declarant" under the Declaration. Accordingly, effective as of the date of the recording hereof, Assignee is hereby designated the "Declarant" under the Declaration, and all rights, title, interest, powers, privileges and immunities of the Assignor in and to such status as "Declarant" under the Declaration shall cease as of the date of the recording hereof. Assignor does hereby covenant and warrant unto Assignee, its successors, successors-in-title and assigns that Assignor has made no other assignment or delegation of any of the rights, title, interest, powers, privileges and

immunities of Assignor as said Declarant, and that Assignor has neither done any act nor failed to do any act which might prohibit Assignee from, or limit Assignee in, acting under any of the provisions of this Assignment or the Declaration.

2. Assumption of Obligations Under Declaration. Assignee, upon the recording of this Assignment, does hereby assume and agree to perform all obligations of Declarant under the Declaration arising from and after the date of recording of this Assignment. Assignor shall in no event be liable for any responsibilities, liabilities, agreements or obligations of Assignee as Declarant or otherwise under the Declaration arising after the recording of this Assignment. Assignee agrees to indemnify and hold Assignor, its shareholders, directors, officers and employees, harmless from and against any claim, cost or expense, including, without limitation, court costs and attorneys' fees actually and reasonably incurred, based on Assignee's exercise of its rights as Declarant or failure to perform its obligations as Declarant under the Declaration on or after the date of this Assignment.

3. Successors and Assigns. The assignment of rights, title, interest, powers, privileges and immunities contained in this Assignment shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

4. Definitions. Unless otherwise defined herein, the capitalized words used in this Assignment shall have the same meaning as set forth in the Declaration.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment and Assumption of Declarant's Rights to be executed under seal as of the Effective Date.

ASSIGNOR:

WITNESSES:

DB ASTER, LLC,
a Delaware limited liability company

Tom King

By: Janelle Sturbe (SEAL)
Name: Janelle Sturbe
Its: Vice-President

Margaret Doyle

By: Joseph Stinkwiser (SEAL)
Name: Joseph Stinkwiser
Its: Vice-President

STATE OF PENNSYLVANIA)

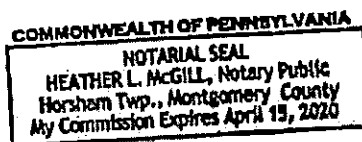
COUNTY OF MONTGOMERY)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of Pennsylvania, do hereby certify that Janelle Sturbe and Joseph Stinkwiser, each Vice-Presidents of DB ASTER, LLC, a Delaware limited liability company personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 16th day of August, 2017.

Heather L. McGill
Notary Public
My commission expires: 4-15-20



ELECTRONICALLY FILED - 2019 Jul 02 4:49 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345

WITNESSES:

[Signature]
[Signature]

ASSIGNEE:

GSI, LLC,
a South Carolina limited liability company

By: [Signature] (SEAL)

Name: William Gavigan

Its: Manager

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that William Gavigan, a Manager of GSI LLC, a South Carolina limited liability company, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 14th day of August, 2017.

[Signature]
Notary Public
My commission expires:

EXHIBIT "A"**Property Description**

[27 Lots, 153 Acres, & 5 Septic Lots - Bull Point]

ALL those certain pieces, parcels or lots of land, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and being shown and designated as Lots 159, 161, and 170, on a plat entitled "Subdivision Plat of Bull Point Plantation, Phase III, a portion of Tomotely Plantation, Prepared for: Bull Point Plantation, LLC, Gardens Corner, Beaufort County, South Carolina," prepared by David E. Gasque, RLS, dated May 2, 2002, and recorded in Plat Book 87 at Page 22 in the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, bounds, courses and distances reference may be had to the aforementioned plat of record.

The property herein is a portion of the same property DB Aster, LLC obtained by Deed by Judicial Order, dated July 5, 2012 and recorded on July 9, 2012, at Book 03156 at Page 0955 at the office of the Register of Deeds for Beaufort County, South Carolina.

TMS No. R700-020-000-0131-0000
 R700-020-000-0133-0000
 R700-020-000-0151-0000

AND ALSO, All those certain pieces, parcels or lots of land, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and being shown and designated as Lot 232, 234, 237, 239, 241, 242, 243, 244, 245, 246, 250, 251, and 252, of Phase IV, Bull Point Plantation on a plat entitled "Subdivision Plat for Bull Point, LLC, Bull Point Plantation, Phase IV, Beaufort County, South Carolina," prepared by Gary Blair Burgess, RLS, Andrews Engineering Co., Inc., dated February 24, 2005, revised March 15, 2005, and recorded in Plat Book 105 at Page 106 in the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, bounds, courses and distances reference may be had to the aforementioned plat of record.

The property herein is a portion of the same property DB Aster, LLC obtained by Deed by Judicial Order, dated July 5, 2012 and recorded on July 9, 2012, at Book 03156 at Page 0955 at the office of the Register of Deeds for Beaufort County, South Carolina.

TMS No. R700-020-000-0197-0000
 R700-020-000-0199-0000
 R700-020-000-0202-0000
 R700-020-000-0204-0000
 R700-020-000-0205-0000
 R700-020-000-0206-0000
 R700-020-000-0207-0000

R700-020-000-0208-0000
R700-020-000-0209-0000
R700-020-000-0210-0000
R700-020-000-0214-0000
R700-020-000-0215-0000
R700-020-000-0216-0000

AND ALSO, All that certain piece, parcel or lot of land, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and being shown and designated as Lots 253, Big Bull Island, Bull Point Plantation, Phase V-A, as shown on that certain plat prepared by Andrews & Burgess, Inc., Engineering Surveying, dated May 19, 2005, last revised on May 9, 2007, entitled "Subdivision Plat for Bull Point, LLC, Bull Point Plantation, Phase V-A, Big Bull Island, Beaufort County, South Carolina" and recorded in Plat Book 119 at Page 195 at the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, bounds, courses and distances reference may be had to the aforementioned plat of record.

The property herein is a portion of the same property DB Aster, LLC obtained by Deed by Judicial Order, dated July 5, 2012 and recorded on July 9, 2012, at Book 03156 at Page 0955 at the office of the Register of Deeds for Beaufort County, South Carolina.

TMS No. R700-020-000-0177-0000

AND ALSO, All those certain pieces, parcels or lots of land, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and being shown and designated as Lots 260 & 261, of Phase V-B, Bull Point Plantation on a plat consisting of two sheets entitled "Subdivision Plat of Phase V-B, Bull Point Plantation, a portion of Tomotley Plantation, Prepared for Bull Point, LLC, Gardens Comer, Beaufort County, South Carolina," prepared by David E. Gasque, RLS #10506, dated November 9, 1998, last revised March 17, 2003, and recorded in Plat Book 92 at Pages 34 & 35 at the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, bounds, courses and distances reference may be had to the aforementioned plat of record.

The property herein is a portion of the same property DB Aster, LLC obtained by Deed by Judicial Order, dated July 5, 2012 and recorded on July 9, 2012, at Book 03156 at Page 0955 at the office of the Register of Deeds for Beaufort County, South Carolina.

TMS No. R700-020-000-0179-0000
R700-020-000-0180-0000

AND ALSO, All those certain pieces, parcels or lots of land, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and being shown and designated as Lot 213, 214, 216, 218, 224, 225, 226, 227, of Phase VI, Bull Point Plantation on a plat entitled "Subdivision Plat for Bull Point, LLC, Bull Point Plantation, Phase VI, Beaufort County, South Carolina," prepared by Gary Blair Burgess, RLS, Andrews Engineering Co., Inc., dated February 24, 2005,

revised March 15, 2005, and recorded in Plat Book 105 at Page 105 in the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, bounds, courses and distances reference may be had to the aforementioned plat of record.

The property herein is a portion of the same property DB Aster, LLC obtained by Deed by Judicial Order, dated July 5, 2012 and recorded on July 9, 2012, at Book 03156 at Page 0955 at the office of the Register of Deeds for Beaufort County, South Carolina.

TMS No. R700-020-000-0232-0000
R700-020-000-0233-0000
R700-020-000-0235-0000
R700-020-000-0237-0000
R700-020-000-0242-0000
R700-020-000-0243-0000
R700-020-000-0244-0000
R700-020-000-0245-0000

AND ALSO, All that certain piece, parcel or tract of land, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, containing 156.465 acres and being shown and designated as Phase VII, Bull Point Plantation on a plat entitled "Boundary Survey for Bull Point, LLC," prepared by K. Merchant, Andrews & Burgess, Inc., dated September 20, 2007, revised December 4, 2007, and recorded in Plat Book 123 at Page 37 in the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, bounds, courses and distances, reference may be had to the aforementioned plat of record.

SAVE AND EXCEPT, All those certain pieces, parcels or lots of land, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, being shown and designated as Septic Lots 253-S, 259-S, 260-S, 261-S and 262-S, Bull Point Plantation on a plat entitled "Boundary Survey for Bull Point, LLC," prepared by K. Merchant, Andrews & Burgess, Inc., dated September 20, 2007, revised December 4, 2007, and recorded in Plat Book 123 at Page 37 in the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, bounds, courses and distances, reference may be had to the aforementioned plat of record.

Subject to that certain 15 Sanitary Sewer Easement as shown on a plat entitled "Boundary Survey for Bull Point, LLC," prepared by K. Merchant, Andrews & Burgess, Inc., dated September 20, 2007, revised December 4, 2007, and recorded in Plat Book 123 at Page 37 in the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, bounds, courses and distances, reference may be had to the aforementioned plat of record.

Subject to any and all applicable Covenants, Restrictions, Conditions, Easements and Rights-of-way as set forth at the office of the Register of Deeds for Beaufort County, South Carolina.

A portion of the property herein is a portion of the same property DB Aster, LLC obtained by Deed

by Judicial Order, dated July 5, 2012 and recorded on July 9, 2012, at Book 03156 at Page 0955 at the office of the Register of Deeds for Beaufort County, South Carolina.

AND

A portion of the property herein is a portion of the same property DB Aster, LLC obtained Quit-Claim Deed, dated August 11, 2014 and recorded August 13, 2014, at Book 3340 at Page 801 at the office of the Register of Deeds for Beaufort County, South Carolina.

TMS No. R700-020-000-0193-000

AND ALSO, All those certain lots of land, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and being shown and designated as Lots 253-S, 259-S, 260-S, 261-S and 262-S, on that certain Subdivision Plat of Phase V-B, Bull Point Plantation, a portion of Tomotley Plantation, prepared for Bull Point, LLC, Gardens Corner, prepared by Gasque & Associates, Inc. dated November 9, 1998, last revised March 17, 2003 and recorded March 18, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 92, at page 34; and further shown on Boundary Survey for Bull Point LLC, Bull Point Phase VII, prepared by K. Merchant, and Michael L. Ray, Andrews & Burgess, Inc. dated September 20, 2007, last revised December 4, 2007 and recorded December 14, 2007 in said Office in Plat Book 123, at page 37; the boundary surveys are specifically incorporated herein by reference and reference to said boundary surveys are craved for the particulars as to metes, courses, distances, size, shape, dimensions, measurements, bounds, and boundaries.

The property herein is the same property DB Aster, LLC obtained by Limited Warranty Deed, dated December 28, 2012 and recorded on January 3, 2013, at Book 03204 at Page 2481 at the office of the Register of Deeds for Beaufort County, South Carolina.

TMS No.: R700 020 000 0190 0000
R700 020 000 0189 0000
R700 020 000 0188 0000
R700 020 000 0187 0000
R700 020 000 0250 0000

EXHIBIT K
SEVENTEENTH AMENDMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
BULL POINT PLANTATION

3
104B
Dartnell
Johnson

BEAUFORT COUNTY SC - ROD
BK 3600 Pgs 2638-2640
FILE NUM 2017045479
08/21/2017 01:34:03 PM
REC'D BY pbaxley RCPT# 861357
RECORDING FEES \$10.00

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

This Seventeenth Amendment to the Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation is made this 21st day of August 2017 by GSI, LLC, a South Carolina limited liability company, (hereafter the "Declarant").

WITNESSETH:

WHEREAS, BULL POINT LLC, a South Carolina limited liability company, and METROPOLITAN PROPERTIES, INC., a South Carolina corporation (collectively the "Original Declarant"), executed that document entitled "Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation," dated the September 22, 1995 (the "Declaration"), which Declaration was recorded in Book of Deeds 805, at Page 218, on September 26, 1996 in the Office of the Register of Deeds for Beaufort County, South Carolina;

WHEREAS, the Original Declarant had executed sixteen (16) Amendments to the Declaration, each of which have been recorded in the Register of Deeds Office for Beaufort County, South Carolina;

WHEREAS, the Ninth Amendment deleted the First, Second, Third, Fourth, Fifth, Sixth and Seventh Amendments in their entirety;

WHEREAS, on January 2, 2004, the Original Declarant executed that document entitled "Twelfth Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation", which document was recorded on January 6, 2004, in Book 183 at Pages 2574-2576 (hereafter the "Twelfth Amendment");

WHEREAS, on December 28, 2012, the Original Declarant executed that document entitled "Assignment of Rights Under Declaration," recorded with the Register of Deeds on January 8, 2013, in Book 3205 at Page 2101, pursuant to which the Original Declarant transferred to DB ASTER, LLC, a Pennsylvania limited liability company, all of its rights as the Declarant;

WHEREAS, on August 18, 2017, DB Aster, LLC executed that document entitled "Assignment of Rights Under Declaration," pursuant to which DB Aster, LLC transferred to GSI, LLC, a South Carolina limited liability company, all of its rights as the Declarant; and

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

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

Seventeenth Amendment - 1

1. The Twelfth Amendment is deleted in its entirety, with the result that the original language of Section 10.20, set forth below, applies hereafter:

"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."

[Remainder of page intentionally blank]

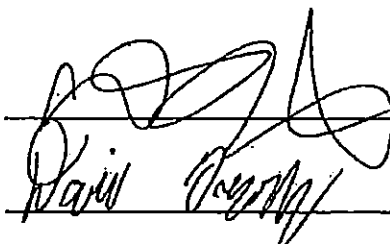
Seventeenth Amendment - 2

2. Except as previously amended, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have set its hand and seals this day and year first written above.

WITNESSES

DECLARANT



GSI, LLC,
A South Carolina limited liability company

By: _____

William E. Gavigan,
Manager

Dated: 08/21/2017 at 10:00 am EST

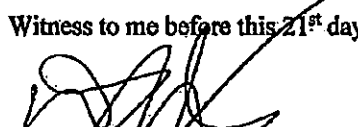
STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

ACKNOWLEDGMENT
under S.C. Code § 30-5-30 (C)

I, the undersigned notary public, do hereby certify that the within named GSI, LLC, a South Carolina limited liability company, by its manager, WILLIAM E. GAVIGAN, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness to me before this 21st day of August 2017.



Notary Public for South Carolina

My Commission Expires: 4/09/2025

Seventeenth Amendment - 3

EXHIBIT L

ASSIGNMENT OF RIGHTS UNDER
DECLARATION DATED AUGUST 21, 2017

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898
Dorrell
Johnson

BEAUFORT COUNTY SC - ROR
BK 3600 Pgs 2641-2643
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REC'D BY pbakley RCPT# 881357
RECORDING FEES \$8.00

STATE OF SOUTH CAROLINA) ASSIGNMENT OF RIGHTS UNDER
COUNTY OF BEAUFORT) DECLARATION (Book 805, Page 218)
)
)

THIS ASSIGNMENT of Rights Under Declaration (Book 805, Page 218) ("Assignment") is made this 21st day of August, 2017, by and between GSI, LLC, a South Carolina limited liability company ("Assignor") and BULL POINT SC, LLC, a South Carolina limited liability company ("Assignee").

WHEREAS, BULL POINT LLC, a South Carolina limited liability company, and METROPOLITAN PROPERTIES, INC., a South Carolina corporation (collectively the "Original Declarant"), executed that document entitled "Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation," dated the September 22, 1995, which Declaration was recorded in Book of Deeds 805, at Page 218, on September 26, 1996 in the Office of the Register of Deeds for Beaufort County, South Carolina (the said Declaration as supplemented and amended being hereinafter referred to as the "Declaration," and the rights of Declarant thereunder being the "Declarant Rights");

WHEREAS, on December 28, 2012, the Original Declarant executed that document entitled "Assignment of Rights Under Declaration," recorded with the Register of Deeds on January 8, 2013, in Book 3205 at Page 2101, pursuant to which the Original Declarant transferred to DB ASTER, LLC, a Pennsylvania limited liability company, all of its rights under the Declaration; and

WHEREAS, on August 18, 2017, DB Aster, LLC executed that document entitled "Assignment of Rights Under Declaration," pursuant to which GSI, LLC transferred to GSI, LLC, a South Carolina limited liability company, all of its rights as the Declarant; and

WHEREAS, on August 21, 2017, GSI, LLC executed that document entitled "Assignment of Rights Under Declaration," pursuant to which GSI, LLC transferred to BULL POINT SC, LLC, a South Carolina limited liability company, all of its rights as the Declarant; and

WHEREAS, Assignor is the Declarant under the Declaration; and

WHEREAS, Assignor has agreed to assign to Assignee, and Assignee has agreed to accept and assume, all of Assignor's rights and obligations under the Declaration.

NOW, THEREFORE, for and in consideration of the sum of Ten (\$10.00) Dollars paid by Assignee, the receipt and adequacy and sufficiency of which are hereby acknowledged, Assignor does hereby agree as follows:

1. Assignment of Declarant Rights. Pursuant to the Declaration, Assignor hereby transfers, assigns, conveys, bargains, sells, and sets over unto Assignee, its successors and assigns, absolutely and irrevocably, all of Assignor's right, title and interest in and to the Declarant Rights.

Assignment of Rights Under Declaration - 1

ELECTRONICALLY FILED - 2019 Sep 20 11:31 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345

ELECTRONICALLY FILED - 2019 Jul 02 4:49 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345

2. Assumption of Declarant Rights. Assignee hereby assumes all duties, obligations, and liabilities of Declarant under the Declaration which arise from or in connection with the Declarant Rights from and after the date hereof. Assignee's assumption 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. Assignee covenants to perform and observe from and after the date hereof each and every duty, and discharge every liability of the Declarant under the Declaration according to the tenor of the terms and conditions of the Declaration, and to be bound by the terms and conditions thereof as if Assignee were identified in the Declaration as Declarant.

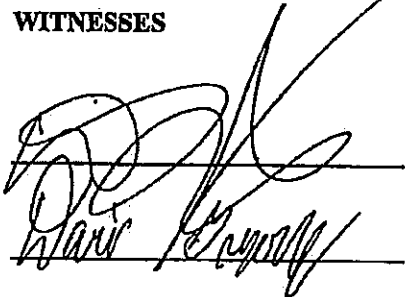
3. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of South Carolina.

[Signatures on following page 3]

Assignment of Rights Under Declaration - 2

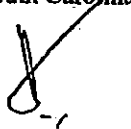
IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment of Rights Under Declaration to be executed the day and year first above written.

WITNESSES



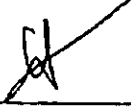
ASSIGNOR

GSI, LLC,
A South Carolina limited liability company

By: 
William E. Gavigan,
Manager

ASSIGNEE

BULL POINT SC, LLC,
A South Carolina limited liability company

By: 
William E. Gavigan,
Manager

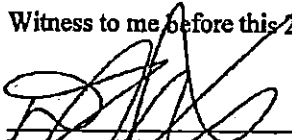
Dated: August 21, 2017 at 11:00 am EST

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT
under S.C. Code § 30-5-30 (C)

I, the undersigned notary public, do hereby certify that William E. Gavigan personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness to me before this 21st day of August 2017.


Notary Public for South Carolina
My Commission Expires: 4/29/2025

Assignment of Rights Under Declaration - 3

EXHIBIT G
AFFIDAVIT OF RUSSELL G. DIMKE

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

)
)
)
**AFFIDAVIT OF
RUSSELL G. DIMKE**

NOW COMES BEFORE ME, the undersigned authority, personally appeared Russel G. Dimke who, after being duly sworn, deposes and states:

1. I am over the age of 18 and am otherwise legally competent.
2. All of the facts stated herein are within my personal knowledge.
3. I currently reside at 80 Tomotley Barony Drive, Seabrook, SC 29940, also known as Lot 6, Bull Point Plantation and have resided here since August 2001 (17 year).
4. At all times relevant to this Affidavit I have been a member in good standing of the Bull Point Plantation Property Owners Association, since 1999.
5. The Fifteenth Amendment to the Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation dated October 10, 2011 and recorded on October 24, 2011 at Beaufort County OR Book 3092, Page 2121 is hereafter referred to as Amendment 15.
6. A number of years before Amendment 15 was adopted, the Bull Point Property Owners Association (POA) Board consisted of three voting members and one non-voting member. The voting members were myself, Russell Dimke, as secretary and treasurer of the POA, Stan Kirkland, the lead partner of Bull Point, LLC, the Declarant, and his wife, Bobbie Kirkland. The non-voting member was Jay Coleman. Both I and Jay Coleman were elected by the POA members. At that time, Stan Kirkland was the head of Bull Point, LLC, the developer and Declarant of the Bull Point POA, as well as being on the POA Board of Directors, a very similar situation as to today where William E. Gavigan is the managing member of Bull Point SC, LLC, the developer and Declarant of Bull Point POA, as well as on being on the POA Board of Directors.
7. As a member of the South Carolina Bar, Stan Kirkland also acted as attorney for Bull Point, LLC, including for the negotiations resulting in Amendment 15.

8. The Bull Point POA Contingency Fund has been funded through a portion of the homeowner (including lot owners) annual dues from Bull Point LLC from as early as 2003. Since the effective date of Amendment 15, the developer/Declarant was not a signatory on the Contingency Fund accounts. Prior to Amendment 15 becoming effective, Stan Kirkland and I agreed that the POA Board policy would be that the Contingency Funds could only be spent with the approval of the POA members who had been duly elected by a majority vote of the entire membership of the Bull Point Property Owners Association. This agreement provided a measure of member input into how the Contingency Funds were used and became the long-standing policy for use of the Contingency Fund accounts. However, during this time, this agreement was not in writing and the POA Board, which was controlled by original developer/Declarant, technically still had ultimate control over and possession of the Contingency Fund accounts.

9. To my knowledge, the Contingency Fund currently has a balance of over \$800,000.00.

10. In the months prior to the adoption of Amendment 15, it became apparent to me that Bull Point, LLC was in financial trouble and could lose control of Bull Point Plantation. I was concerned that the Contingency Funds could be at risk and raided if an unscrupulous company or person became the new Declarant and used the Contingency Fund for unauthorized purposes. Control over the use of the Contingency Fund accounts was, and remains, critical to the use and enjoyment of the Common Areas and amenities of Bull Point. Loss of control over their use would greatly diminish the quality of life of the Bull Point POA membership. Due to this, I wanted to formalize long-standing policy for use of the Contingency Fund accounts and therefore began discussing what later became Amendment 15 with Stan Kirkland. The intent of Amendment 15 was, and remains, to completely separate the POA Board members who were not duly elected by

a majority vote of the entire membership of the Bull Point Property Owners Association, including the developer/Declarant, from having control over the use and disbursement of the Contingency Fund accounts, and to provide control over the use and disbursement of the Contingency Fund Accounts to an autonomous committee of property owners (the "Contingency Fund Committee") elected by all of the Bull Point Property Association members.

11. The intent of Amendment 15 was and remains to be: a) that the membership elected Contingency Fund Members would be autonomous from the non-membership elected members of the POA Board; b) that the membership elected Contingency Fund Members would have sole control over the use and disbursement of monies in the Contingency Fund accounts; and c) to remove from the non-membership elected POA board members any authority and control over the Contingency Fund accounts in this regard. Although the POA Board could request funds from the Contingency Fund Committee, ultimate authority to approve those requests, the amount to be provided in response to the request, and to distribute the funds from the Contingency Fund accounts, was solely with the member elected Contingency Fund Committee. In keeping with the intent of Amendment 15, after it became effective, no non-membership elected POA Board members were signatories on the Contingency Fund accounts. This did not change until Bull Point SC, LLC and Mr. Gayigan became the new developer/Declarant and took over control of the POA Board.

12. In order to prevent a dilution or take-over of the property owners' sole control over the Contingency Fund accounts, it was the further intent of Amendment 15 that any developer/Declarant: a) not be allowed to sit on Contingency Fund Committee; b) not be allowed to have any person who was or is subject to the developer/Declarant's influence run for or sit on

the Contingency Fund Committee.; and c) not be allowed to terminate any membership elected Contingency Fund Committee member.

13. In the months prior to the adoption of Amendment 15, I requested that Stan Kirkland consider adding an amendment to the Bull Point Covenants and Restrictions to formalize in writing the above-mentioned long-standing policy regarding the use and control of the Contingency Funds. Stan Kirkland, as lead member of then developer/Declarant, Bull Point, LLC, and who at the time was a member of the South Carolina Bar Association, asked me to draft an amendment for his review. I did so with the assistance of the POA law firm, Smoot and Pitts. Stan Kirkland negotiated certain changes that he desired to the terms of Amendment 15. The final draft of Amendment 15 was filed in the Official Records of Beaufort County by Stan Kirkland. Amendment 15 was negotiated in an "arms-length" transaction. Stan Kirkland, as the leading member of and attorney for Bull Point, LLC, negotiated the terms of Amendment 15 with me and freely entered into it.

14. It is my understanding that, over the course of the last 7 or so years, many of the Bull Point property owners have relied on Amendment 15 in connection with their decision to approve annual budgets and in approving the amount that each member would be required to contribute to the Contingency Fund each year, myself included.

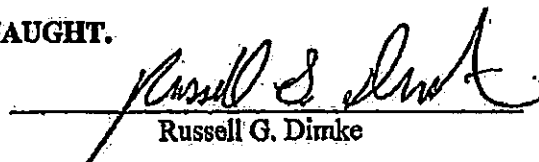
15. Developer/Declarant Bull Point SC, LLC has been managed by Defendant William E. Gavigan since August, 2017. As managing member of the developer/Declarant, Bull Point SC, LLC, Mr. Gavigan has control over the POA Board, including the power to appoint and remove any member or members of the Board of Directors and/or any other officers of the Association. However, based on the language of Amendment 15 and the intent behind its creation, neither the developer/Declarant nor the POA Board has the authority to appoint or terminate Contingency

Fund Committee members or take control over Contingency Fund accounts. Despite this, Mr. Gavigan has taken the position that Amendment 18 has terminated the duly elected Contingency Fund Committee members and dissolved the Contingency Fund Committee in its entirety.

16. On November 16, 2018, developer/Declarant Bull Point SC, LLC, William E. Gavigan and the Board of Directors of Bull Point Plantation, in a special meeting that the membership of Bull Point were not invited to and were not provided notice of, voted to eliminate Amendment 15, dissolving the Contingency Fund Committee and the Contingency Fund itself, and moving the monies in the Contingency Fund accounts under the direct control of the POA Board and Bull Point SC, LLC and Mr. Gavigan.

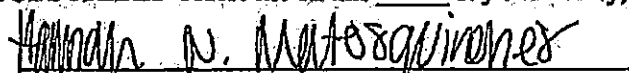
17. The Contingency Fund is a highly liquid and perishable asset. If Declarant has unfettered access to these funds it could prove disastrous to the Association because it will be almost impossible to recoup these funds.

FURTHER AFFIANT SAYETH NAUGHT.


Russell G. Dimke

BEFORE ME, the undersigned authority, personally appeared, **RUSSELL G. DIMKE**, who, being first duly sworn on oath, states that he signed the above Affidavit and that all statements are true and correct to the best of his knowledge and belief.

SWORN TO AND SUBSCRIBED before me on this 8th day of January, 2019


NOTARY PUBLIC, State of South Carolina at Large
My Commission Expires:



ELECTRONICALLY FILED - 2019 Sep 20 11:31 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345
ELECTRONICALLY FILED - 2019 Jan 14 10:14 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345



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EXHIBIT H
AFFIDAVIT OF GARY OKEY

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

)
)
)
AFFIDAVIT OF
GARY OKEY

NOW COMES BEFORE ME, the undersigned authority, personally appeared Gary Okey, Esq. who, after being duly sworn, deposes and states:

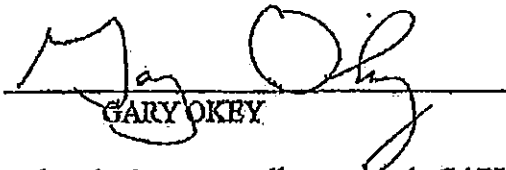
1. I am over the age of 18 and am otherwise legally competent.
2. All of the facts stated herein are within my personal knowledge.
3. I currently reside at 70 Bull Point Drive, Seabrook, SC 29940, also known as Lot 209 Bull Point. My wife, Nanoy Okey, and I have been full time residents of Bull Point since 2013.
4. At all times relevant to this Affidavit I have been a member in good standing of the Bull Point Plantation Property Owners Association.
5. I was elected/appointed to the Board of Directors and in 2016 and remained in this position until my resignation in August of 2017 shortly after William Gavigan and Bull Point SC LLC took over as Declarant.
6. I was also, concurrently, a member of the POA Contingency Fund Committee and held this position until my term expired in November of 2017.
7. My experiences on the Board and on the Contingency Fund Committee have showed me how important the Fund is to the association and that it is a critical pool of community assets that is to be used for limited purposes outside of the general operational needs of the community.

8. The Contingency Fund was funded by a portion of the annual assessment paid by Members of the Association. When I was a member of the Contingency Fund Committee, the fund had a balance of as a balance of approximately \$ 800-900,000.

9. On November 17, 2018, I received a letter that Declarant Bull Point SC, LLC William E. Gayigan and the Board of Directors of Bull Point Plantation voted to eliminate the (second) Fifteenth Amendment to the Declarations in a special meeting getting rid of the Contingency Fund Committee and the Contingency Fund itself. From my understanding this would move the monies in the Contingency Fund under the direct control of the Board and thus Declarant.

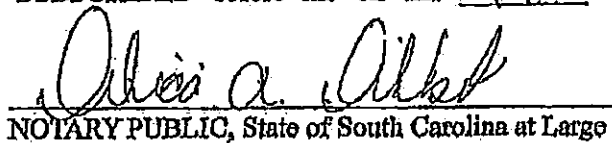
10. The Contingency Fund is a highly liquid and perishable asset and it will be extremely difficult to recoup these funds.

FURTHER AFFIANT SAYETH NAUGHT.


GARY OKEY

BEFORE ME, the undersigned authority, personally appeared, GARY OKEY, who, being first duly sworn on oath, states that he signed the above Affidavit and that all statements are true and correct to the best of his knowledge and belief.

SWORN TO AND SUBSCRIBED before me on this 17th day of December, 2018.


NOTARY PUBLIC, State of South Carolina at Large

My Commission Expires: 12-10-2025



EXHIBIT I
AFFIDAVIT OF PETER W. MARZLUFF

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

}
} AFFIDAVIT OF
PETER W. MARZLUFF

NOW COMES BEFORE ME, the undersigned authority, personally appeared PETER W. MARZLUFF who, after being duly sworn, deposes and states:

1. I am over the age of 18 and am otherwise legally competent.
2. All of the facts stated herein are within my personal knowledge.
3. I currently reside at 242 Bull Point Drive, Seabrook, SC 29940, also known as Lot 62 Bull Point. I have resided at this address for approximately 6 and ½ years.
4. At all times relevant to this Affidavit I have been a member in good standing of the Bull Point Plantation Property Owners Association ("POA").
5. I served as the Director of Operations, a paid position, for the POA. In this position I managed/supervised the employed personnel of the POA which included the office manager, maintenance supervisor and the 4 employees under his direct supervision, the head of security and the 3 or 4 personnel under his direct supervision. I was responsible to the Board of Directors for the drafting of the annual budget, the overall maintenance and care of the plantation's infrastructure and for the yearly expenditures of the operating account.
6. While I have no direct knowledge regarding the background of the Contingency Fund ("CF") as it relates to things that transpired before I moved to Bull Point, Amendment 15 to the Declarations was in place before I moved to Bull Point, I do know through numerous direct discussions with the drafter of the amendment, Russ Dimke, that the purpose of the amendment was to give oversight and final say of expenditures of the CF account to duly elected property owners of Bull Point Plantation. I also know that anytime as the Director, I needed to ask for funds from the account, I made a request to the Board of Directors and they made a request to the

Contingency Fund Committee ("Committee") for approval of any funds before they were dispersed.

7. The CF was funded by a portion of the annual assessment paid by Members of the Association and has been funded since 2011. The CF had a balance of over \$800,000 when I left my position as Director.

8. Declarant Bull Point LLC, SC is managed by Defendant William E. Gavigan. As managing member of the Declarant, Bull Point SC, LLC, Gavigan has the power to appoint and remove any member or members of the Board of Directors and/or any other officers of the Association.

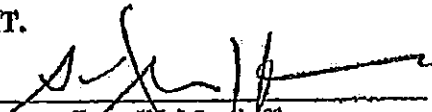
9. An example of Gavigan's intention for use of the CF monies was his request to the Committee, right before he disbanded it, for monies to pay for the running of electrical and data to numerous unimproved lots on the plantation. Not only is this a developer expense but many of the lots being provided these services are in fact owned by Gavigan or his company. Improving these lots is clearly in his best interest. These are not, nor have they ever been, legitimate POA expenses. I would expect that without oversight by members, other similar self-serving expenditures would occur.

10. On November 16, 2018, I received a letter stating that the Declarant Bull Point SC, LLC William E. Gavigan and the Board of Directors of Bull Point Plantation held a special meeting and voted to eliminate the (second) Fifteenth Amendment to the Declarations thus getting rid of the Contingency Fund Committee and the Contingency Fund moving the monies in the Contingency Fund under the direct control of the Board and thus Gavigan.

11. The Contingency Fund is a highly liquid and perishable asset. If Declarant has unfettered access to these funds it will prove disastrous to the Association as the POA would lose

all visibility in tracking these fund expenditures and it will be almost impossible to recoup these funds.

FURTHER AFFIANT SAYETH NAUGHT.



Peter W. Marzluff

BEFORE ME, the undersigned authority, personally appeared, **PETER W. MARZLUFF**, who, being first duly sworn on oath, states that he signed the above Affidavit and that all statements are true and correct to the best of his knowledge and belief.

SWORN TO AND SUBSCRIBED before me on this 17 day of December, 2018.



NOTARY PUBLIC, State of South Carolina at Large

My Commission Expires: **NOV. 28, 2022**

EXHIBIT J
EIGHTEENTH AMENDMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
BULL POINT PLANTATION

Bull
Prepared by:
S. Jahue Moore, Esq.
Moore Taylor Law Firm, PA
1700 Sunset Blvd.
West Columbia, SC 29169

11/16/2018 03:45:47 PM
REC'D BY sherrell RCPT
RECORDING FEES \$12.00

ELECTRONICALLY FILED - 2019 Sep 20 11:31 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345
ELECTRONICALLY FILED - 2018 Dec 03 9:14 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345

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

This Eighteenth Amendment to the Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation is made this 16th day of November 2018 by BULL POINT SC, LLC, a South Carolina limited liability company (hereafter the "Declarant").

WITNESSETH:

WHEREAS, in September 1995, BULL POINT LLC, a South Carolina limited liability company, and METROPOLITAN PROPERTIES, INC., a South Carolina corporation, executed that document entitled "*Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation*" (the "Declaration"), which Declaration was recorded with the Register of Deeds for Beaufort County, South Carolina on September 25, 1995, in Book 805, at Page 218;

WHEREAS, on December 28, 2012, Bull Point, LLC (the "Original Declarant") executed that document entitled "*Assignment of Rights Under Declaration*," recorded with the Register of Deeds on January 8, 2013, in Book 3205 at Page 2101, pursuant to which the Original Declarant transferred to DB Aster, LLC, a Pennsylvania limited liability company, all its rights as the Declarant;

WHEREAS, on August 18, 2017, DB Aster, LLC executed that document entitled "*Assignment of Rights Under Declaration*," recorded with the Register of Deeds on August 21, 2017, in Book 3600 at Pages 2579-2586, pursuant to which DB Aster, LLC transferred to GSI, LLC, a South Carolina limited liability company, all its rights as the Declarant;

WHEREAS, on August 21, 2017, GSI, LLC executed that document entitled "*Assignment of Rights Under Declaration*," recorded with the Register of Deeds on August 21, 2017, in Book 3600 at Pages 3641-3643, pursuant to which GSI, LLC transferred to Bull Point SC, LLC, a South Carolina limited liability company, all its rights as the Declarant; and

WHEREAS, prior to January 2000, the Original Declarant had executed eight numbered amendments and two amendments that were unnumbered, each of which were recorded in the Register of Deeds for Beaufort County, South Carolina;

WHEREAS, in January 2000, the Original Declarant adopted that document entitled "*Ninth Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation*,"

which document was recorded on February 4, 2000, in Book 1257, at Pages 1959-2020 (hereafter the "Ninth Amendment");

WHEREAS, the Ninth Amendment deleted in their entirety the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Amendments;

WHEREAS, the Ninth Amendment amended the Declaration in its entirety by attaching as Exhibit A and incorporating said exhibit as a restatement of the Declaration;

WHEREAS, from January 2000 to November 2009, the Original Declarant adopted five additional numbered amendments, each of which were recorded in the Register of Deeds for Beaufort County, South Carolina;

WHEREAS, in November 2009, the Original Declarant adopted the first of two documents entitled "Fifteenth Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation," which document was recorded on March 18, 2010, in Book 02941, at Pages 1746-1747 (hereafter the "(First) Fifteenth Amendment");

WHEREAS, in October 2011, the Original Declarant adopted the second of two documents entitled "Fifteenth Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation," which document was recorded on October 24, 2011, in Book 03092, at Pages 2121-2122 (hereafter the "(Second) Fifteenth Amendment");

WHEREAS, the (Second) Fifteenth Amendment amended Section 9.03 of the Declaration by, among other things, identifying the capital contribution or reserve account referenced in Section 9.03 as the "Contingency Fund";

WHEREAS, the (Second) Fifteenth Amendment further amended Section 9.03, among other things, by giving to certain Members elected by a majority of the Members the sole authority to approve disbursement of Contingency Fund funds and, further, by giving said elected Members sole signing authority over Contingency Fund bank accounts;

WHEREAS, the Declarant desires to adopt this Eighteenth Amendment to amend the Declaration, as previously amended, as provided for herein.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

1. The (Second) Fifteenth Amendment as defined herein above is deleted in its entirety, with the result that the language of Section 9.03 as set forth in the Ninth Amendment, set forth below, applies hereafter:

"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. From and after January 1, 2000, 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 is equal to the 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 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 sold to Owners being added to the Development shall thenceforth pay Assessments which are equal to those imposed upon Lots 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. 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 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 percent (15%) of the maximum authorized payment for the previous year, and such increased budget shall have been approved as provided above. If any budget at any time proves inadequate for any reasons, 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 maybe 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 from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.
- (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."

[Remainder of page intentionally blank.]

2. Except as previously amended, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has set its hand and seals this day and year first written above.

WITNESSES

DECLARANT

BULL POINT SC, LLC,
A South Carolina Limited Liability Company


 By: 
William E. Gavigan,
Manager

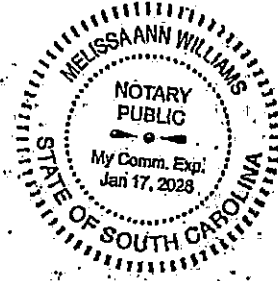
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT
under S.C. Code § 30-5-30 (C)

I, the undersigned notary public, do hereby certify that the within named BULL POINT SC, LLC, a South Carolina limited liability company, by its manager, WILLIAM E. GAVIGAN, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness to me before this 16th day
of November 2018.

Melissa Ann Williams
Notary Public for South Carolina
My Commission Expires: 1-17-2028



ELECTRONICALLY FILED - 2019 Sep 20 11:31 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345
ELECTRONICALLY FILED - 2018 Dec 03 9:14 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
ATTRIDGE, et al.,	)	CASE NO. 2018-CP-07-02345
	)	
Plaintiffs/	)	
Counterclaim Defendants,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	ORIGINAL
	)	
THE BOARD OF DIRECTORS OF	)	
BULL POINT PLANTATION PROPERTY	)	
OWNERS ASSOCIATION, INC.,	)	
et al.	)	
	)	
Defendants,	)	
and	)	
	)	
BULL POINT SC, LLC, GSI, LLC	)	
and WILLIAM E. GAVIGAN,	)	
	)	
Counterclaimants and	)	
Third-Party Plaintiffs,	)	
	)	

October 15, 2019

Charleston, South Carolina

B E F O R E:

The Honorable Carmen Mullen

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

M. Dawes Cooke, Jr., Esquire
Eugene H. Matthews, Esquire
Bryan C. Letteer, Esquire

Certified Transcript Provided For: Eugene H. Matthews

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

000546

I N D E XMOTIONS

-- 03

EXHIBITS - None ProfferedCERTIFICATION OF TRANSCRIPT

-- 76

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 THE COURT: Okay. Which motion am I going to hear?
2 Obviously these are cross-motions for partial summary
3 judgment. Is that where we start?

4 MR. COOKE: That is right. That is all we have today is
5 our cross-motions ---

6 THE COURT: Right. And I don't know who filed this first
7 or who would be -- Mr. Cooke would. Yes.

8 MR. COOKE: I am not used to representing the plaintiffs,
9 but I represent the plaintiffs here. And we did file first,
10 Your Honor. So thank you.

11 THE COURT: Happy to hear from you then first, sir.

12 MR. COOKE: And I am -- for the court reporter, I am
13 Dawes Cooke. I am from the law firm Barnwell Whaley Patterson
14 & Helms.

15 This is Diana Murray, legal assistant who is here with us
16 has been helping me with the exhibits and so forth.

17 First of all, thank you very much, Your Honor, for first
18 taking on these cases. I don't know how it happened, but ---

19 THE COURT: I don't know that I have taken them on. I am
20 going to go ahead and say that right now. I don't think I
21 have accepted jurisdiction or a special assignment. I just
22 know that Judge Buckner told me that I was going to do
23 them ---

24 MR. COOKE: Well, thank you for ---

25 THE COURT: --- and I said okay.

1 which requires said declarant's entire interest with respect
2 to the property and the additional property at the time of
3 such acquisition pursuant to foreclosure of a mortgage
4 encumbering said declarant's interest in the property and the
5 additional property.

6 And several of those are defined terms. Property is
7 defined. Additional property is defined. Even foreclosure is
8 defined in those. And it is important to point out here, and
9 I am sure Your Honor is aware because of our briefs, but this
10 Bull Point, LLC, that is referred to here has no relation
11 whatsoever to Bull Point SC, LLC. They just happened to pick
12 a similar name.

13 THE COURT: Okay.

14 MR. COOKE: The plaintiffs are entitled to summary
15 judgment because Bull Point SC, LLC, the putative declarant,
16 is not Bull Point, LLC; it did not acquire Bull Point, LLC's
17 entire interest with respect to the property and the
18 additional property; and it did not acquire any interest
19 pursuant to foreclosure of a mortgage encumbering Bull Point,
20 LLC's interest in the property and the additional property.
21 So it does not qualify as the declarant under the definitions
22 here.

23 Bull Point, LL- -- just a little bit of history. Bull
24 Point, LLC, filed its articles of incorporation on September
25 26, 1995. The declarations were also recorded. The original

1 declarations were also recorded in 1995.

2 They were amended to read, as Your Honor has in front of
3 you, in 2000. There have been numerous other amendments, but
4 they are not directly relevant to what we are talking about
5 today.

6 Bull Point, LLC, went bankrupt. And as part of the
7 bankruptcy -- I am not a bankruptcy expert, but because the
8 property was encumbered by a mortgage that foreclosure action
9 was allowed to proceed outside of the bankruptcy.

10 And so German American Capital Corporation was the
11 lending finance -- was the lender. And it foreclosed on the
12 property, and it used a \$5.4 million credit bid. In other
13 words, that was how much it was owed and so it was allowed
14 that much credit, and it was the winning bidder for the
15 property.

16 THE COURT: Okay.

17 MR. COOKE: That property was conveyed by a judicial deed
18 on January 23rd, 2012. So that was all of the interest that
19 Bull Point, LLC, had had at that time. And that consisted of
20 a number of lots and then some unapproved acreage as well.

21 GACC, German American, received a deed on July 9, 2012.
22 On December 28, 2012 -- and it immediately assigned it to DB
23 Aster which is the subsidiary. It is essentially a holding
24 company within German American.

25 On December 28, 2012 Bull Point, LLC, executed an

1 assignment of declarancy rights to DB Aster which is the
2 subsidiary. DB Aster then in September of 2012 conveyed
3 approximately 12 acres to the Property Owners Association.
4 And that is Exhibit I.

5 That seems irrelevant. But it is important because right
6 then as of that moment it would never again be possible to
7 convey all of the interest that Bull Point, LLC ---

8 THE COURT: The entire interest ---

9 MR. COOKE: --- they originally had.

10 THE COURT: --- that they originally had. I understand.

11 MR. COOKE: Because they had just conveyed 12 acres ---

12 THE COURT: Okay.

13 MR. COOKE: --- and then no longer can convey it to
14 anybody else.

15 THE COURT: Okay.

16 MR. COOKE: So that's -- that's point number one.

17 On February 23rd, 2016 GSI, LLC, which is the company
18 owned by Mr. Gavigan, entered into a contract to purchase the
19 remaining property from DB Aster for \$1.5 million.

20 THE COURT: So that was the 12 acres?

21 MR. COOKE: That was everything.

22 THE COURT: Oh, that was everything area. Okay.

23 MR. COOKE: Everything, yeah.

24 THE COURT: Okay.

25 MR. COOKE: That is the lots that they still had. The 12

1 acres went to be Property Owners Association.

2 THE COURT: I am sorry. I apologize. I understand.

3 MR. COOKE: So it is everything -- basically everything
4 except the 12 acres.

5 THE COURT: Okay. Okay.

6 MR. COOKE: And it is -- and that is literally hundreds
7 of acres of undeveloped plus these lots.

8 THE COURT: Okay.

9 MR. COOKE: On June 7, 2016 DB Aster declared GSI, LLC,
10 in default for not going through with the closing. And they
11 went into litigation, and it was in federal court. It lasted
12 like about a year.

13 I think the main issue was there was a dispute between
14 GSI as to whether lots were as represented as having been
15 improved with infrastructure or not.

16 Long story short, they wound up settling that dispute.
17 There was a reduction in the purchase price. And so they
18 entered into a new contract to purchase the property for \$1.2
19 million. And that was done on August 9, 2017.

20 But before that happened, DB Aster sold at least five
21 lots. Those were just the ones we found record of. And those
22 are Exhibits J, K, L, M and N.

23 So once again the original interest of the original
24 declarant have been diminished by the 12 acres that went to
25 the POA and also now by these five lots that were never

1 conveyed to GSI.

2 THE COURT: Okay.

3 MR. COOKE: The sale closed on August 21, 2017. That
4 same day, DB Aster executed a purported assignment of its
5 declarant's rights to GSI. Also the same day, GSI, LLC,
6 assigned most but not all of its interest to Bull Point SC,
7 LLC. No relation to Bull Point, LLC. And that is another Mr.
8 Gavigan company.

9 THE COURT: Okay.

10 MR. COOKE: So and when I say that they conveyed -- that
11 the GSI conveyed most if not all of its interest in Bull
12 Point. Even the decl-- even the assignment or purported
13 assignment of declarant's rights was not a complete assignment
14 because it excluded, quote: Specifically excludes any and all
15 claims, demands, responsibilities, liabilities and obligations
16 of or against the declarant whether in tort or contract, being
17 an express or implied warranty. And then there is some other
18 language.

19 In other words they convey -- they purported to convey
20 the benefits but not the burdens of the declarancy to Bull
21 Point, L- -- to Bull Point SC, LLC.

22 But not only that, GSI did not convey all of the property
23 that it had acquired from DB Aster. They sold a lot on
24 September 1, 2017. GSI, LLC, conveyed one lot to something
25 called Craig Alauche (ph), LLC. That is Exhibit "O". And

1 also GSI, LLC still owns a parcel which is Lot 170 located at
2 87 Barnaby Bluff. And that is Exhibit P to our motion.

3 So again, the original title of the interest that the
4 original declarant had previously owned has been diminished in
5 each -- at each one of these conveyances.

6 Exhibit Q is just a chronology that we put together that
7 cross-references each of the exhibits. Because I have just
8 said a mouth full.

9 THE COURT: Okay.

10 MR. COOKE: And so maybe that might help if you have any
11 question ---

12 THE COURT: Thank you.

13 MR. COOKE: --- about what happened and when and what was
14 conveyed.

15 THE COURT: Okay.

16 MR. COOKE: So not only did Bull Point SC, LLC not
17 acquire all the interests that the original declarant had, but
18 it didn't acquire any of the interests in the foreclosure. It
19 acquired it in an arm's length. In fact, indeed litigated
20 real estate transaction. And they had no connection
21 whatsoever with the original lenders, with the original
22 developers. So this was truly an arms-length transaction.

23 And, Your Honor, this is far from a technical defect.
24 This was the deliberate plan of this development. I had done
25 a lot of research and of course have written about assignment

1 of declarant's rights.

2 And, you know, those rights are generally considered to
3 be personal, personal rights. It is clear here that the
4 original developers, the original declarants, did not
5 anticipate -- did not want for declarant's rights to be a
6 commodity to be bought and sold. It was supposed to
7 facilitate the development of this community.

8 And eventually of course the rights -- and there are
9 various rights. There is the right to appoint the members of
10 the board. There is the right to amend declarations, with a
11 few exceptions. There is the right to not pay dues. There is
12 the right to veto other amendments and so forth. So those are
13 very important rights. But they can be devastating to the
14 community if they were misused and if they were into the --
15 falling in hands.

16 And we respectfully submit that what has happened now is
17 exactly what the original developers intended to preclude. We
18 don't know for sure, but it is likely that their lender
19 probably required this limited assignability to be there.
20 Because what is the point of foreclosing if you don't acquire
21 all of the rights.

22 And that is pretty typical that the lender is going to
23 require that. But beyond that it is very explicit in these
24 declarations that there is to be no more assignment.

25 The -- since assuming control of the declarancy in August

1 2007 here is what the declarant has done -- or the imputed
2 declarant has done. They -- and I may slip and just refer to
3 Mr. Gavigan because he is the owner of the Bull Point SC,
4 LLC. But it has appointed all members of the POA board and
5 appointed Mr. Gavigan president of the board.

6 It -- and the thing that actually brought us to court in
7 the first place was the POA board with the appointees of the
8 declarant voted in a private meeting to ask the declarant to
9 amend the declarations to eliminate the contingency fund
10 committee.

11 Years earlier the owners had negotiated with the previous
12 declarant and said, look, we are saving a lot of money for
13 contingencies, we don't want the developer putting his hands
14 in the there. So what they agreed was the contingency fund
15 would be handled by an independent committee, elected solely
16 by the homeowners, by the property owners, and it could not
17 include anybody who was related in any way to the developer.
18 And that worked well for years.

19 Well, once the new putative declarant came in with the
20 new board that they appointed they decided that we don't need
21 that oversight; so they passed the what they call the 18th
22 Amendment to the Declarations, which eliminated the 15th
23 Amendment which had created the contingency fund committee and
24 had prescribed that the fund itself would be kept in a
25 separate account. Only the contingency fund committee would

1 even have signatory authority. But all of that was wiped out
2 in this putative amendment in just last year.

3 In the years leading up to Mr. Gavigan taking over the
4 POA, that operated at a budget surplus, in 2016 it had over
5 \$100,000 surplus, in 2017 even -- even though he took over in
6 August it wound up with about a 30,000 -- thirty-some-
7 thousand-dollars surplus.

8 Since then in 2018 they ran such a deficit that before we
9 could file and move for an injunction Mr. Gavigan transferred
10 \$122,000 out of a contingency fund to fund the deficit in the
11 operating budget.

12 And the reason that is important is that one of the few
13 obligations that the declarant has is that they have to make
14 up any budget deficits. It is in the declarations that they
15 have to do that.

16 Well, he avoided that by taking 122,000. He also cut
17 corners like canceling the insurance on the community dock.
18 So if we were to have a hurricanes, who is paying for it?
19 Well, the contingency fund. But now the money is being taken
20 out of the contingency fund.

21 There was almost a million dollars. There was over
22 \$900,000. So far in this year the entire budget for the year
23 was exhausted by the end of July. And the POA board has now
24 voted to transfer \$150,000 for the contingency fund to make up
25 the budget deficit.

1 And we have objected, and that is before Judge Duke. And
2 he is deciding right now whether to allow that. And of course
3 he is facing a dilemma because we have payroll to make. You
4 have to pay the electric bill. And what are you going to do
5 with no money left in the bank.

6 Some \$90,000 of POA money has already been paid for Mr.
7 Gavigan's legal fees, without following any of the rules that
8 the Non-Profit Corporation Act requires before you can be
9 reimbursed let alone advanced attorney's fees as an officer or
10 director of a nonprofit corporation.

11 So this is the worst nightmare of the homeowners. It is
12 exactly what the original developer had intended to prevent
13 from happening by limiting the assignability.

14 The parties each cite one case, a different case, from
15 the Court of Appeals in support of our respective decisions.
16 I would like to take just a few moments and talk about both of
17 those cases, because we believe that they both support our
18 position.

19 The plaintiffs cite the case of Cullen versus McNeal.
20 And that is at 390 South Carolina -- I'm sorry, the defendants
21 cite Cullen versus McNeil, 390 S.C.378 702 S.E. 2d 378. That
22 is a 2010 Court of Appeals opinion by Judge Lockemy. And that
23 involved -- there it was called developer's rights. But I
24 believe it is the same thing as the declarant's rights.

25 The -- both of these opinions, the case that I am going

1 to cite next, the Highlands case in this case, both say that
2 the way you determine whether a declarant's rights are
3 assignable is to look at the declarations themselves. There
4 is nothing either inherently assignable or not assignable
5 about declarant's rights. It is what the covenants provide
6 for.

7 In both cases they look to the declaration for the
8 definition of declarations. And of course in this case it was
9 the definition of developer.

10 And here's what it said there. Section 1.12 of the
11 Declarations provides for a successor in title or a successor
12 in interest in the developer of rights plan.

13 It states: Developer shall mean and refer to "A",
14 Anthony R. Porter or two, (sic), any successor in title or any
15 successor in interest to Anthony R. Porter to all of the
16 property then subject to the declaration and provided an
17 instrument of conveyance to any successor in title etc., etc.

18 To make a long story short, what the court held there,
19 that the defendants -- that some of the dissident homeowners
20 were arguing that the putative assignee had not acquired all
21 of the interests of the original developer.

22 What the Court said was that under this definition that
23 is not fatal because you can acquire the interest either by
24 being successor in title or a successor in interest.

25 THE COURT: Okay.

1 MR. COOKE: And it says that. It says the developers
2 also contend Section 1.12 provides that a successor developer
3 may either be a successor in title or a successor in interest.
4 They note that while a successor in title would derive
5 authority through a deed, a successor in interest may derive
6 authority through another instrument of conveyance.

7 And the court agrees. It says: We find a preponderance
8 of the evidence demonstrates that McNeal is a successor
9 developer. The assignment of developer's rights was properly
10 executed and specifically identified McNeil as a successor
11 developer. As a successor in interest and not a successor in
12 title, there was no requirement that the deeds, the parcels,
13 be indeed designated McNeil as a successor developer.

14 Now a couple of years later the Court of Appeals
15 addressed a declaration that was almost identical to ours.
16 Because instead of providing two ways to acquire the
17 declarancy it provided one way. And that is Highlands
18 Property Owners Association, Inc., versus Shumaker Land, LLC,
19 397 S.C. 432, 724 S.E.2d 685, an opinion by Judge Williams.
20 The declaration in that case said that the declarant shall
21 means and refer to Highlands Development Limited Partnership
22 or any other person or entity who succeeds to the title of
23 declarant to any portion of the properties by sale or
24 assignment of all of the interest of the declarant in the
25 properties if the instrument of sale or assignment expressly

1 so provides.

2 Now what happened there was that the original declarant
3 conveyed all of this property to the putative successor, but
4 those deeds didn't say anything about assigning the
5 declarant's rights. Instead he waited a number of months and
6 then executed a separate document that purported to assign the
7 declarancy rights.

8 The Court of Appeals said that is not good enough. The
9 declarancy definition said that that -- it is either the
10 original declarant or somebody who acquires all of his
11 interest by a deed that provides for the assignment of the
12 declarant's rights.

13 The court said: When the language of the contract is
14 clear, explicit, and unambiguous, the language of the contract
15 alone determines the contract's force and effect. In
16 addition, where an agreement is clear and capable of legal
17 interpretation the Court's only function is to interpret its
18 lawful meaning, discover the intention of the parties as found
19 within the agreement, and give effect to it.

20 The deed conveying the seven lots from HDLP to Schumacher
21 did not expressly convey the declarant's rights to Schumacher
22 upon taking title. As a result Schumacher was never the
23 declarant for the Highlands. Therefore the conveyance from
24 Schumacher to Schumacher, LLC, could not constitute, quote, a
25 sale of all of declarant's interest in the properties as

1 contemplated by Article 4, Section 7 of the covenants.

2 And that is, Your Honor, exactly what we have here. The
3 conveyance, the purported assignment here fails not just in
4 one respect but in two. And that is that they never acquired
5 all of the interest of the original declarant and they did not
6 declare -- acquire any of the interest by foreclosure which
7 was -- which was required.

8 The defendants don't contend that they complied with
9 Section 1.01(J). What they contend instead is that it doesn't
10 matter because there are other provisions in the declarations
11 that refer to the declarant or its assignments and therefore
12 why would they be referring to the declarant or assigns if
13 they couldn't assign.

14 Well, Your Honor, there is no conflict there. There can
15 be an assign. DB Aster was an assign. German American was an
16 assign.

17 But -- but there is -- and so there is assignability, but
18 it is very narrowly constrained assignability. So there is no
19 conflict with these other provisions in the declarations that
20 say -- that put either rights or restrictions on the
21 declarant, the declarants, and their assigns because there
22 could be an assign.

23 The other thing that the plaintiffs contend is that
24 the -- some of the plaintiffs at least are estopped from
25 denying the Bull Point SC, LLC, is the declarant.

1 The first thing they refer to is that there are various
2 board minutes from 2012 through 2016 that recognized DB Aster
3 as the declarant. There is an affidavit from Mr. Gavigan
4 where he says that he relied on that in deciding to buy the
5 property from DB Aster.

6 But again, there is no inconsistency. We are not
7 contending that DB Aster couldn't have been the --or wasn't
8 the successor. Because it did inquire -- acquire the entire
9 interest of the original declarant pursuant to foreclosure.

10 We are just saying that after that, the properties
11 diminished and were dissipated and that the current putative
12 declarant doesn't qualify.

13 They also contend that several of the plaintiffs have
14 submitted affidavits that refer to Gavigan or Bull Point SC,
15 LLC, as the declarant and therefore they are estopped to deny
16 that.

17 Your Honor, first of all, I don't think you can be
18 estopped as to a matter of law anyway. But those affidavits
19 that were submitted in support of the motion for preliminary
20 injunction in this case have to be read in the context of our
21 original complaint.

22 The original complaint which we filed on December 3rd,
23 2018 also refers to Bull Point SC, LLC as the declarant. And
24 I am going to read Paragraph 3 of that original complaint
25 said: Defendant Bull Point SC, LLC, parentheses, quote,

1 declarant, closed quote, closed parentheses, is a separate
2 limited liability company incorporated under the laws of South
3 Carolina and is currently the purported declarant of the Bull
4 Point Plantation, parentheses, although it does not meet the
5 definition of declarant under the declarations, closed
6 parentheses, period. Declarant has its primary place of
7 business in Beaufort County South Carolina.

8 And then thereafter they are referred to as the
9 declarant. But that is pretty clear from the complaint that
10 the plaintiffs have never contended that he is in fact the
11 declarant.

12 THE COURT: Okay.

13 MR. COOKE: So, Your Honor, that is my argument on the
14 main point. We have a secondary argument that has to do with
15 the primacy of the articles of incorporation. If you would
16 like I can argue that now or I can just let Mr. Matthews
17 respond to the main argument.

18 THE COURT: Do you want to go ahead and start?

19 MR. MATTHEWS: Thank you, Your Honor.

20 THE COURT: You have been quiet long enough, right?

21 MR. MATTHEWS: Well, I always hate to disagree strongly
22 with my good friend Mr. Cooke; but sadly in this set of
23 litigation I find myself doing that again and again. And
24 while that is my sad duty, it is one frankly I have a wealth
25 of information to rebut his arguments.

1 In order for you to find for them, they bid you to commit
2 reversible error; because you have to ignore almost the entire
3 totality of the agreements of the governing documents of this
4 development in order to do what they do.

5 And I believe Your Honor was the trial judge in the
6 Cullen case. If that is true then we take heart, because the
7 Cullen agreement itself, the order itself, reminds us that the
8 party's intention must be gathered from the contents of the
9 entire agreement and not from any particular clause thereof,
10 as my good friend bids you to do.

11 Well, where to begin. The best place to begin, as my
12 friend Mr. Cook with the history of it. I don't begrudge Mr.
13 Cook from doing that because I am going to do so as well.

14 The curious nature of their motion was highlighted at
15 best probably by Exhibit A.

16 THE COURT: Okay.

17 MR. MATTHEWS: And our old friend Mr. Wilson makes yet
18 another appearance. The thing that is noticeable and relevant
19 here is that this was part in Exhibit B would be better
20 historical document. Exhibit B is a memorandum circulated by
21 most of the plaintiffs who were then organizing a group called
22 Husk for Properties, LLC. And as you can see from Exhibit A,
23 their stated purpose was to purchase the declarancy.

24 The parties agree that the principal purpose of the
25 company is to purchase the declarancy for the development

1 known as Bull Point Plantation located in Seabrook, South
2 Carolina.

3 It is true that politics make strange bedfellows. And
4 this is -- this is no exception. In this case the very people
5 who at one -- who now say, oh, no, this cannot be done, less
6 than two years ago, perhaps now more than two years ago,
7 plotted to do the same thing.

8 And although my good friend talks about their fidelity to
9 protecting the contingency fund, their plan was to use
10 contingency fund money from their neighbors to buy the
11 declarancy for their own private corporation. That is what
12 this gentleman found out when he did -- the same people when
13 you heard out in the earlier motion, the group who have
14 uncovered such problems in Jasper County were the same group
15 who -- problems with the crowd that ran the place before Mr.
16 Gavigan got there. The same people.

17 So if we begin with our history lesson we need not even
18 begin in 2017. We can go even back further to a relevant
19 cost. In this case let's go to 2012. We know that in 2000,
20 as my good friend has indicated, the declarations were
21 amended. And the plaintiffs rely on that for their motions,
22 and we accept them on their terms at least in terms of these
23 motions.

24 Here in 2000 the Articles of Incorporation which were
25 filed in 1995 set forth for us who is to -- what is to take

1 precedence. It states as follows, Section 8.2:

2 If there are conflicts or inconsistencies among the South
3 Carolina code this declaration and the bylaws or the articles,
4 the provisions of South Carolina code, this declaration, the
5 bylaws and the articles, in that order, shall prevail. The
6 declaration shall prevail.

7 Now that again focuses our attention, as you might
8 imagine, on the Declaration. And if you look at our brief, in
9 order for you to find as Mr. Cook bids you to do, you have to
10 ignore the work of Cullen. You have to jettison to the wind
11 everything else that is in the Declaration. And happily for
12 Bull Point SC, LLC, the Declaration is covered and references
13 in definitions of the declarant, not just 1.1 J.

14 Now there is a factual matter that I believe my good
15 friend misspoke upon. One is that Bull Point, LLC acquired
16 all of Bull Point, LLC's interests. That is just not true.
17 DB Aster did not acquire all of Bull Point, LLC. In fact, to
18 this date Bull Point, LLC still owns property interest in the
19 development.

20 So if my good friend is true, is correct, that you may
21 only look at 1.01(J), then as we read that provision and only
22 that provision in isolation of all others, Bull Point, LLC is
23 the declarant.

24 Do you know who owns Bull Point, LLC? William Gavigan.
25 So is this all Coles and Newcastle? No, I think it is

1 important for us to establish and determine what exactly, what
2 exactly, how a declarant can assign. The first thing to do is
3 we have is to say, well, your duty as the appellate court bids
4 us in Cullen, look at the entire document. You are not
5 allowed -- shrewdly, I must say, shrewdly as my friend
6 resourcefully wants you to do; because it is the only way he
7 can win. He wants to restrict your attention only to that,
8 only to 1.01(J).

9 However, sadly for them, happily for us, there are many
10 provisions, over a dozen that refer to assigns of who? The
11 declarant.

12 Over a dozen different representations, including, if I
13 understand correctly, and I believe I do. If you look on
14 Page 7 and 8 of our memorandum. In fact, if you look even
15 past that. Start out with Page 6 and go to Page 8.

16 In 2002 in February that is when DB Aster acquired
17 certain property from Bull Point, LLC. The assignment did not
18 occur until December 28, 2012 when the declarant rights were
19 transferred by assignment. That is in the record.

20 But following that sale they were assigned again between
21 DB Aster and GSI, and then again between GSI and Bull Point
22 SC, LLC. I don't think those are in dispute.

23 However, when we look back to the Declarations on Page 7
24 I can read you all of them, although I fear I would be
25 insulting your intelligence. Even the preamble, the

1 Declaration states that it shall touch and concern to run with
2 the title to the real property subjected to this Declaration
3 and be binding on all parties having any right by owner
4 interest in the above described properties or any portion
5 thereof and their respective heirs, successors, successors in
6 title, and assigns.

7 And then, as you can see again, I fear stating that what
8 has been made too obvious, for almost two pages we go through
9 time and again where the declaration and his assigns are
10 mentioned or referenced.

11 Any reasonable person in this business could read this
12 and understand, well, there's the 1.01(J) does say true enough
13 that Bull Point, LLC is the declarant. And it also says there
14 are certain other ways that you could get the declarant -- you
15 could get those declarant rights.

16 Also you need look no further than the provision just
17 below it that defines declaration. Declaration shall mean and
18 refer to this declaration of the covenant, conditions, and
19 restrictions for a portion of the Bull Point Plantation and
20 all amendments -- all amendments. I might be repeating again,
21 but all amendments.

22 Therefore -- they are on file for -- of record in the
23 records of the RNC Office of Beaufort County, South Carolina.
24 There are many declarations, there are many amendments, which
25 identify -- I should not say many. The amendments identify

1 Bull Point SC, LLC and GSI, LLC as the declarant.

2 So if you are looking to discharge your duty in statute
3 and contractual construction and as the appellate court bids,
4 you look at the entire document, not -- you don't cherry-pick
5 one, frankly, as my legal advisories ask you to do. That is
6 frankly they are asking you to do something that you may not
7 do.

8 Now there are also -- as he states, there is a history
9 here. And I was interested in reading in Cullen that
10 distinctions that were made and how the court may handle other
11 evidence. And I was assured by the Court of Appeals finding
12 that there is a difference between looking at the record and
13 you -- not saying, oh, I can't look at stuff because it might
14 taint me. No, you can't look at the record. In fact, that
15 decision gives you specific instructions about how to do
16 exactly that.

17 Well, what is the difference? A contract -- first of
18 all, the contract is ambiguous. Of course. You can look at
19 extrinsic evidence. That is rather common. And if it is true
20 that the best -- and frankly I believe it is true that the
21 best they can do is say, well, then it is true what Gene has
22 pointed out; it says assigns; it says assigns until it is blue
23 in the face.

24 There is also another provision "K". You read it. Who
25 is the current declarant? It is Bull Point SC, LLC. That is

1 the way you have to read that language.

2 So if you say, well, Gene, you know, let's give -- let's
3 give Mr. Cooke's, let's say it is ambiguous. Fine. Let's
4 look at how for over 20 years the place has been run. And
5 that is where the affidavit and the historical documents
6 stretching back not only to 2000 but in the worst of the very
7 plaintiffs themselves - and that is what is distressing to me
8 - if it fit their purposes you are the declarant. The minute
9 it doesn't, oh, no, no, no, no, no, forget what I said before
10 for years; new plan.

11 Well, that is not how construction of contracts or
12 certainly not how parole evidence or even laches works. There
13 is -- I rarely use laches. I have been looking forward to
14 using it. Now's my chance. If you let me do that I would
15 appreciate it.

16 THE COURT: Certainly.

17 MR. MATTHEWS: Now before I get to laches. My good
18 friend talks about, oh, you shouldn't really pay attention to
19 what my clients have said.

20 Let me argue that you should. These are not statements.
21 They are not transcripts of audio recordings. These are
22 affidavits, which means they are so sworn, which means whoever
23 writes them does so certainly hopefully to their good effect
24 but also at their peril. Because it means what you stated you
25 are swearing is true.

1 In three of the primary persons, Dimke, Okey, Marzluff,
2 they have all sworn -- and not in some distant past. In this
3 case. Without -- without any type of effort to gain say what
4 they say, they all say the developer and declarant are Bull
5 Point, POA, Bull Point SC, LLC.

6 Now they may say, oh, no, no, no, ancient times. January
7 14th, 2019; this year.

8 Now, oh, the story gets better. In 2012 -- and again I
9 apologize to the Court for this reason. Exhibit F is the
10 affidavit of William Gavigan.

11 THE COURT: Okay.

12 THE COURT REPORTER: I'm sorry, the affidavit of ...?

13 MR. MATTHEWS: William Gavigan. I will speak up.

14 I don't know -- my apologies are to your clerk more than
15 anybody. Because our exhibits are A through J. The exhibits
16 to the affidavit are A through ---

17 THE COURT: K?

18 MR. MATTHEWS: --- L.

19 THE COURT: Okay.

20 MR. MATTHEWS: I did clear with her and make my apologies
21 already that don't be confused with these exhibits versus
22 these exhibits. And we can change that as you see fit.

23 But when you take only this document, this Exhibit F, it
24 is an outstanding history of why anyone, including Mr.
25 Gavigan, looking at this history, as he did prior to purchase,

1 would conclude not only that DB Aster asserts with reason that
2 it is the declarant and can assigned rights, the plaintiffs
3 have as well.

4 On Page 3 of the affidavit it refers to two sets of
5 minutes in 2013, board of directors meeting in February 2013,
6 authored by none other than the plaintiff, Russ Dimke. What
7 does it say: The declarant rights as specified in the Bull
8 Point Plantation covenants have now been legally transferred
9 from Bull Point, LLC to DB Aster.

10 And that state again -- and again I feel like I am going
11 to tax the court's patience. But in March of 2013 Mr. Dimke,
12 Plaintiff Dimke, again states DB Aster has become the
13 declarant. DB Aster is the declarant.

14 November 2013 DB Aster was the Bull -- was the current
15 Bull Point declarant for our covenants. Per our covenants.

16 Reading again -- and again -- again, may I, Judge -- I
17 don't want to tax your patience. But look -- just if you will
18 indulge me. Look at Page 5 in the middle. The attendance
19 including Plaintiffs Lamb, Marzluff, Okey, and Lovett, again
20 where the declarant, DB Aster, is identified.

21 Now again following this due diligence, he looked at the
22 assignments. They were as stated. There was nothing
23 exceptional about them. And indeed for years if not decades
24 this is exactly how they ran it at Bull Point. There is
25 nothing in this record to now state, even after, even in an

1 amended complaint to bring this.

2 Frankly, I understand my friend represents clients as he
3 finds them. That being said, we believe that we -- and we
4 hope that you will find there is absolutely no place for this
5 argument in this case given the record you see before you.
6 And if you may, I did want to look again at this argument.
7 And again if you look at 1.01(K), in my view that resolves the
8 matter. All of the assignment writing that you do as the
9 Court of Appeals bids us to, that ends the discussion.

10 Now if you will look at ---

11 THE COURT: Just so I understand, Mr. Matthews, so how
12 long has Mr. Gavigan controlled the POA?

13 MR. MATTHEWS: I believe since 2018.

14 (WHEREUPON, defense counselors confer.)

15 MR. MATTHEWS: 2017.

16 THE COURT: Okay.

17 MR. MATTHEWS: And again in 2019, in the middle of 2019,
18 was the first we have heard of some question about whether or
19 not he is truly the declarant.

20 I do -- if you will allow me, my good friend did kind of
21 make short trip of my equitable estoppel argument. I think
22 that deserves closer attention.

23 First of all, the Court is already well aware -- I have
24 taken the liberty of giving you the cite at the bottom of
25 Page 17. They are estopped from creating issues of fact that

1 they -- that contradict their own affidavits, their own sworn
2 testimony. And the reason is clear. If you could do that,
3 then sworn testimony given earlier in the same case - I might
4 add, in this case - is worthless. Which is what they have
5 done here.

6 And at that, frankly at that moment, Your Honor, we think
7 the discussion comes to an end. Even if it hasn't come to an
8 end already, when you construe the document as indicated.

9 Now if you also look. We set out that the standards for
10 claiming estoppel on Page 17 and 18 to simply invite your
11 attention to that. We have laid out it is on Page 18 why we
12 believe the record establishes estoppel.

13 I am not going to jump ahead of my good friend. My --
14 one of my last arguments has to do with elections. And we
15 can -- I can wait until after my good friend has a chance to
16 say his peace.

17 I will say in terms of laches I have never had the
18 occasion to use that argument before, but I'm delighted to use
19 it now. Like my good friend I seldom can argue for the
20 plaintiffs. I -- this is the first time I think I have ever
21 argued laches. Bravo.

22 The -- if you look at the annual minute meetings in 2012,
23 2013, 2014, whatever else is clear, it is absolutely clear
24 that the plaintiff's knew way back when that somebody was
25 assigning declarant rights. Why? Because the documents said

1 so and they acknowledged it in writing. They talked about it
2 in their minutes.

3 So it is some purchaser, some investor who has plowed his
4 own money into the development would be able to say, okay,
5 yeah, one of the major values in putting my money into a
6 development and trying to make a go is that I have declarant
7 rights. And in fact for 2012 and continuing.

8 Just so you know, when did he read these? In the earlier
9 litigation that my good friend indicated, the POA actually
10 sent him all those four notes. And if you know Mr. Gavigan
11 you know he read every word.

12 The thing that laches forbids is the neglect or
13 unreasonable and unexplained length of time under
14 circumstances affording opportunity for diligence to do what
15 in law should have been done.

16 Now at past the 11th hour they wish to rob Mr. Gavigan of
17 one of the very things that developers value most and pay the
18 most money for. And that is just wrong.

19 THE COURT: Let me ask you. And again what did Mr.
20 Gavigan buy?

21 MR. MATTHEWS: Mr. Gavigan bought approximately 135 acres
22 of land and the declarant rights.

23 THE COURT: A hundred and thirty-five --

24 MR. MATTHEWS: If you don't have the declarant rights ---

25 THE COURT: Hold on a second. So 135 acres of land. So

1 how many undeveloped lots is that? I mean ---

2 MR. MATTHEWS: Actually, ma'am, I am going to get it
3 straight --

4 (WHEREUPON, Mr. Matthews confers with defense counselors.)

5 MR. MATTHEWS: Forty-five undeveloped lots. Twenty-seven
6 improved lots. And the declarant right.

7 THE COURT: Okay. You are going to have to say it a
8 little louder. I didn't get all of that. I heard 135 acres,
9 45 undeveloped lots. I heard another 27 developed lots?

10 MR. MATTHEWS: Yes, ma'am. The undeveloped lots are part
11 of the 130- -- 150- ---

12 THE COURT: I assumed that. One hundred thirty-five
13 acres, obviously.

14 MR. MATTHEWS: Yes, ma'am.

15 THE COURT: Okay. Just hold on a second. And you bought
16 that in 2017; is that correct, and that is what you bought for
17 \$1.5 million; is that correct?

18 MR. MATTHEWS: The 27 improved lots and declarant rights.

19 THE COURT: Right, for \$1.5 million?

20 (WHEREUPON, defense counselors confer)

21 THE COURT: One-point-two.

22 MR. MATTHEWS: One-point-two. How big -- I apologize.
23 Just really quickly. How big is Bull Point; how many lots are
24 there total?

25 MR. MATTHEWS: Two hundred fifty, Your Honor.

1 THE COURT: Two hundred fifty total?

2 MR. MATTHEWS: With the 45 -- 250. Plus 45.

3 THE COURT: So there is 250 total right now?

4 MR. MATTHEWS: Yes, ma'am.

5 THE COURT: Two hundred fifty total. And that includes
6 the 45 undeveloped?

7 MR. MATTHEWS: No, it is not.

8 THE COURT: Okay. Sorry.

9 And just so I am understanding, at what point originally
10 after the property was foreclosed on and it went through the
11 different holding companies did the property owners take over
12 the POA? Did they ever?

13 MR. MATTHEWS: No. No, Your Honor.

14 THE COURT: They never have?

15 MR. MATTHEWS: No. Never. Not once.

16 THE COURT: So prior to 2017 and Mr. Gavigan buying this
17 property who controlled the POA? I mean ---

18 MR. MATTHEWS: DB Aster.

19 THE COURT: DB Aster.

20 MR. MATTHEWS: From 2012 to 2017.

21 THE COURT: From 2012 to 2017. And then before that is
22 was GSI or no; GSI ---

23 MR. MATTHEWS: It was -- no, ma'am -- it runs from Bull
24 Point, LLC ---

25 THE COURT: Okay.

1 MR. MATTHEWS: --- to 2012.

2 THE COURT: What is important to me is is it developer
3 controlled or was it homeowner controlled, and at one point;
4 and that is why I am asking the question.

5 MR. MATTHEWS: Developer, Your Honor.

6 THE COURT: Okay. Okay.

7 MR. MATTHEWS: So, again -- again, stop me if you have
8 read this.

9 THE COURT: No, no, no. It is okay.

10 MR. MATTHEWS: Okay. Bull Point, LLC ---

11 THE COURT: Yes.

12 MR. MATTHEWS: --- from inception from 1995 to 2012.
13 2012 to 2017 DB Aster. '17 GSI, for a very brief time. And
14 then Bull Point SC, LLC.

15 THE COURT: And it has always been developer?

16 MR. MATTHEWS: Yes, ma'am.

17 THE COURT: I'm sorry. Okay.

18 MR. MATTHEWS: Your Honor, my good friend did mention
19 some things. I will be honest, the only thing I can think of
20 that I haven't addressed, the rendition of the afraid of
21 horrible is frankly not really in the record before you and
22 not really true. We can explore that to your -- as you
23 desire.

24 My friend talked about, you know, that there are worse
25 nightmares than that. That is just not true. However, to the

1 extent you wish to go through that or you wish to establish a
2 record of that ---

3 THE COURT: I guess my question is this: You have the
4 original homeowners that probably just own their own property
5 and lots obviously are their homes ---

6 MR. MATTHEWS: Yes, ma'am.

7 THE COURT: --- and any undeveloped lots. And then you
8 have Mr. Gavigan who has now 135 acres, 45 undeveloped lots,
9 27 developed lots. He wants to sell it. He wants to be able
10 to -- everyone has an interest in Bull Point doing well.

11 MR. MATTHEWS: Yes, ma'am.

12 THE COURT: I mean we all have the same interest. So
13 other than -- other than this dissolving of the contingency
14 fund is there other complaints that the plaintiffs have; and I
15 guess that is what I am trying to figure out is what happened
16 all of a sudden in 2017 when he took over other ---

17 MR. MATTHEWS: Your Honor ---

18 THE COURT: --- other than the contingency fund. And I
19 am -- Mr. -- standing up jumping ready to say something.

20 MR. MATTHEWS: Well, and I appreciate that. But if you
21 would, Your Honor, I think your answer relies in Exhibits A
22 and B. Four years, at least since 2017 the plaintiffs want to
23 be the declarant and they are willing to do anything to get
24 it. And that includes taking money from the contingency fund.

25 Exhibit B, I am sure over the protest of my good friend

1 actually sets out their plan. And I never resist a chance to
2 say it because it is so unique. I often deal -- I defend
3 against civil conspiracy claims. I have never seen a
4 conspiracy actually written down. But here it is.

5 Here they say it is their plan: Some of the homeowners
6 could enter into extended constant litigation to attempt to
7 enforce the current covenant rules and regulations. This
8 would involve legal costs which would never be recoverable.
9 There is a basis for such litigation when the outcome is
10 unknown. Ongoing lawsuits would drive away potential property
11 homeowners and depress property -- property values during the
12 period of litigations. It might be hard to get widespread
13 participation by homeowner and money for legal expenses.

14 When you look at -- this is a partial -- for partial
15 summary judgment. If you look at our other -- certainly our
16 counterclaims, this is the basis of it. And we didn't make it
17 up. They did.

18 If you want to know what the problem is, why we are here,
19 it is because they want to be the declarant and they will do
20 anything to get it, including raising every lawsuit they can
21 possibly raise.

22 This is not the only lawsuit that they have raised. This
23 is number -- by my count number four since Mr. Gavigan has
24 been president.

25 Mr. Walton is behind we believe a good bit of them. He

1 certainly is named in them.

2 (WHEREUPON, comments from audience)

3 MR. MATTHEWS: I'm sorry, did I -- did I say something
4 (addressing audience)?

5 AUDIENCE MEMBER: Yeah, you sure did.

6 (WHEREUPON, additional inaudible comments from audience)

7 THE COURT: Y'all stop.

8 Okay.

9 MR. MATTHEWS: So if you will -- if Your Honor will
10 please, if you want to know what the problem is, there it is,
11 Exhibits A and B.

12 If there are other issues, the budgets, the documents
13 have been available for Mr. Cooke and other litigants, other
14 parties, to look at for months. If they had issues about how
15 the budget is spent and what is being done, we understand. We
16 want to get answers too and we are working to provide them.

17 But our argument is don't be beguiled by claims that they
18 had good faith, that they were going to handle Mr. Gavigan
19 with appropriate respect for a declarant's rights. That was
20 never their intent. And we know that because they say so.

21 I am ready to answer any questions you may have.

22 THE COURT: I guess what is perplexing me about this --
23 and maybe someone can address it for me. Maybe I just don't
24 fully understand. When you are developing a piece of property
25 and developers have an interest in obviously being able to

1 control the POA, to make sure that they can improve the
2 property as is necessary so they can turn around and sell
3 everything. And then the goal is, is once they have sold
4 everything they turn it over to the homeowners association.

5 MR. MATTHEWS: Yes, ma'am.

6 THE COURT: That is the whole point of it.

7 MR. MATTHEWS: Yes, ma'am.

8 THE COURT: Okay. They don't want it after that. The
9 developer says once I have sold my -- everything and gotten
10 out I want to be gone ---

11 MR. MATTHEWS: That is our intent.

12 THE COURT: --- and they want to go on to their next
13 project. What I am having a hard time with is how Mr. Gavigan
14 comes in in 2017 after this began in 1995 and by buying some
15 of these lots he all of a sudden is a declarant under the
16 articles and he gets to continue to or arrest control of the
17 board.

18 I guess that is where -- and tell me is that something
19 that is typically done. Because that is not what I have ever
20 seen in my experience, and I'm trying to understand ---

21 MR. MATTHEWS: Yes, Your Honor.

22 THE COURT: With the benefit I think I heard you say that
23 originally the reason why it originally talked about in its
24 entirety was because the bank wants that as their original
25 language because that is what their interest is if the

1 developer folds.

2 I just don't know in my experience -- and help me out if
3 you have seen where it forever would be written in the
4 declarations like this. And I mean I tell you I have read a
5 few of these. But I wouldn't say I have read near as many as
6 you or you. But I would say I have probably read a good ten.
7 And I have just never seen that. And so that is why I am
8 asking you.

9 MR. MATTHEWS: Well, there is a sunset provision ---

10 THE COURT: Okay. Thank you.

11 MR. MATTHEWS: --- under -- under the -- under the 2000
12 reinstatement or restatement ---

13 THE COURT: Right.

14 MR. MATTHEWS: --- of the declarations. The declarant's
15 rights end in 2025.

16 THE COURT: Okay.

17 MULTIPLE AUDIENCE MEMBERS: No.

18 MR. MATTHEWS: Order.

19 AUDIENCE MEMBER: No.

20 THE COURT: Y'all stop responding. It is not polite.
21 Please.

22 MR. MATTHEWS: Our reading of it is that it ends in 2025.
23 We would be able to commit to that, would we not?

24 (WHEREUPON, confers with defense counselors)

25 MR. MATTHEWS: Yes, we would be able to ---

1 THE COURT: Well, if you are wanting to do a strict
2 reading of it the declarations have it ---

3 MR. MATTHEWS: Right, well ---

4 THE COURT: You don't have to commit to it; you are bound
5 by it, if that is your argument.

6 MR. MATTHEWS: Yes, although ---

7 THE COURT: So I don't think you need a commitment.

8 MR. MATTHEWS: Right. Well, our argument is the strict
9 reading of this is the declarant rights in 2025.

10 THE COURT: Okay. So just so I understand. Because I am
11 going to tell you I have never driven through Bull Point.
12 Although I live, you know, in that area. So what is going on
13 with Bull Point at this point? I mean are properties selling,
14 are they not selling, or values depressed? This is always
15 just I ask the practicality of it. Because I think there is
16 always so much motivation for somebody who came in and bought
17 all of these lots, and all of these people that this is
18 probably their home or one or two or three homes so.

19 MR. MATTHEWS: Since 2017 property values have increased
20 dramatically.

21 AUDIENCE COMMENTS: Ooh.

22 THE COURT: Stop, ya'll. I mean I can go look at the
23 real estate. I mean I can go look at ---

24 MR. MATTHEWS: My understanding is that since the middle
25 of the decade until now, certainly since Mr. Gavigan has

1 arrived, perhaps due to the improvements that he has made sale
2 prices have skyrocketed.

3 THE COURT: Okay. Well, like I said, that is easy for me
4 to look at.

5 MR. MATTHEWS: That is something ---

6 THE COURT: I mean I can go on the computer ---

7 MR. MATTHEWS: --- that could easily be ---

8 THE COURT: --- and find that out. So I can look at
9 sales so.

10 MR. COOKE: And then I didn't know whether you were
11 looking at me or whether you were just looking at ---

12 THE COURT: I am looking at everybody. So whoever wants
13 to jump in at this point.

14 MR. COOKE: Your Honor, of course the people that are
15 here are concerned about their homes and obviously about real
16 estate values and so forth.

17 Mr. Gavigan has worked very hard to sell his lots. He
18 has had a sales fair in the spring. Nobody begrudges that at
19 all.

20 And you asked the question earlier, a very good question,
21 of what is it that the homeowners are worried about.
22 Obviously when your developer goes bankrupt everybody is
23 really concerned because they have put their life savings into
24 this property, this is where they're going to live. It is a
25 beautiful -- it is, it is one of the most beautiful

1 developments I think in the Lowcountry if you -- if you go
2 there.

3 They were doing fine. As I mentioned, they were running
4 their POA. The board was controlled by DB Aster but they
5 allow the homeowners to name a member of the board.

6 THE COURT: Okay.

7 MR. COOKE: They set a budget every year that was voted
8 on by the members. And they had a budget surplus the last
9 couple of years. So the development itself is doing fine.

10 What they were worried about when the bankruptcy occurred
11 and then there was litigation they were worried that a real
12 estate speculator was going to come in and buy the undeveloped
13 property and the lots, that they could change the building
14 standards so that they might decide to put condos up or
15 anything that would be harmful.

16 They were worried that the POA and the contingency
17 fund might be seen as a cash cow for somebody who was
18 cash-strapped. To be very candid, they are very worried that
19 Mr. Gavigan is cash-strapped and that he is, you know, way
20 overextended, that he was -- that he borrowed all of the money
21 that he used to purchase the property from DB Aster.

22 So what they are concerned about is preserving their
23 community. The plaintiffs themselves, the people in this room
24 are not interested in being in control. They want control
25 turned over to the homeowners. What is supposed to happen --

1 and this gets to my next argument -- or my last argument that
2 I will go into in just a minute. What is supposed to happen
3 is that the homeowners are supposed to elect the members of
4 the board.

5 THE COURT: I read that.

6 MR. COOKE: They are supposed to elect the members of the
7 contingency fund committee. There is supposed to be some
8 separation of power there so that they take care of -- the
9 contingency fund is the -- is essential to the community.

10 You know, we have hurricanes in the Lowcountry. Things
11 happen. They have religiously every year put money aside into
12 this fund, and they are desperately afraid that Mr. Gavigan is
13 going to use that money and is using it to help develop his
14 lots so that he can sell them. And that is not what that
15 money is for.

16 THE COURT: Do you have any evidence of that though? Do
17 you ---

18 MR. COOKE: Well, the money ---

19 THE COURT: --- have any evidence that he is using it to
20 develop his land versus ---

21 MR. COOKE: The money has disappeared. I mean one of the
22 things that we asked ---

23 MR. MATTHEWS: That is not in the record and not true.

24 MR. COOKE: It is unaccounted for.

25 MR. MATTHEWS: That is not true. We ---

1 MR. COOKE: I mean the budget was exhausted -- the entire
2 year's budget was gone by the end of July.

3 MR. MATTHEWS: Your Honor, for the purpose of what is
4 before you, this is a motion for summary judgment. That is
5 not before you. That is not in the record. And it is not
6 true.

7 MR. COOKE: Well, anyway, there right before Judge Dukes
8 right now is ---

9 THE COURT: Okay.

10 MR. COOKE: --- consideration of their request to take
11 \$150,000 from the contingency fund to make up the budget
12 deficit from the operating fund.

13 And you're -- Gene is right, we are not here to argue
14 about what the money ---

15 THE COURT: Right.

16 MR. COOKE: --- has -- being spent for. But I can just
17 tell you these people are here because they are really worried
18 about where that money has gone.

19 And I think you touched on something else that is
20 important. Mr. Gavigan I don't think is really -- should be
21 interested in running a property owners association. I think
22 he should be interested in selling his lots and everybody
23 doing well.

24 But again, it is not pertinent here, but you asked me
25 again what they are worried about. They are worried about

1 abusive behavior, about lawsuits that Mr. Gavigan has launched
2 against anybody who challenges his authority. And that is it.

3 I mean that is not germane to the summary judgment
4 motion, but that is why this is so important to everybody
5 here.

6 Can I address a couple of the points in reply and then go
7 to the ---

8 THE COURT: Certainly.

9 MR. COOKE: --- the other argument?

10 I think I already talked about -- anticipated their
11 argument about these minutes from 2012 to 2016. Well of
12 course that was DB Aster. DB Aster did acquire the interest
13 through foreclosure. So it is a completely different
14 situation. They ---

15 THE COURT: The entire interest?

16 MR. COOKE: Well, we thought that -- we thought so. Mr.
17 Matthews says maybe not. But I believe -- I believe they
18 foreclosed on all of the land. Maybe they reserved a right of
19 first refusal or some -- maybe he can answer that question.

20 THE COURT: Yes, sir.

21 MR. MATTHEWS: No, there was at least one lot that Bull
22 Point SC, LLC did not transfer.

23 (WHEREUPON, counselors confer)

24 MR. MATTEWS: Lot 223.

25 THE COURT REPORTER: I'm sorry?

1 MR. MATTHEWS: Lot 223.

2 MR. COOKE: So somehow that slipped through the
3 foreclosure or -- but obviously everybody treated DB Aster as
4 though they were the declarant. It was not until August of
5 2017 that Mr. Gavigan came on board.

6 And frankly the homeowners didn't see a need to bring
7 this lawsuit until it looked like he was raiding the
8 contingency fund. And so we filed this suit in the summer of
9 2018, after he disbanded -- after he pass- -- purported to
10 pass the 18th amendment which disbanded the contingency fund
11 and put the contingency fund back into the operating account.

12 And that brings me to the next point about these
13 affidavits. I stand by what I said earlier. In December of
14 2018 we filed the original complaint. And I read you the
15 relevant language from Paragraph 3 that specifically refers to
16 Bull Point SC, LLC as the declarant but specifically says it
17 is the putative -- or purported declarant and that he does not
18 meet the definition of declarant under the covenants.

19 THE COURT: Let me ask you just really quickly, not to
20 interrupt you, but I heard Mr. Matthews say that there were
21 four previous lawsuits brought by homeowners. Is that -- did
22 I mishear that or ---

23 MR. MATTHEWS: There are four current -- well, lawsuits.
24 One has been dismissed. That was filed under ---

25 THE COURT: Current lawsuits?

1 MR. MATTHEWS: Well, one has been dismissed. So it is no
2 longer current. That was filed ---

3 THE COURT: My question is do any of them predate 2018
4 when Mr. -- I am assuming you -- I don't have the summons and
5 complaint in front of me. Did you file that?

6 MR. COOKE: I brought this one, yes.

7 THE COURT: Right, so my question is were their lawsuits
8 prior to the one you filed?

9 MR. MATTHEWS: My under- -- none that involved the
10 declarant rights. Mr. D'Ambrosio has brought a lawsuit. And
11 then there's a lawsuit brought by the Association against
12 several members for ---

13 THE COURT: Not paying any ---

14 MR. MATTHEWS: --- taking money from the contingency
15 fund.

16 THE COURT: Oh, okay.

17 MR. MATTHEWS: And then there are counterclaims I think
18 in all of the lawsuits. So there's ---

19 THE COURT: Okay, of course. I think I understand.

20 MR. COOKE: This is the only suit that I am aware of that
21 the property owners have brought challenging the use of the
22 contingency fund or any of the management of the POA.

23 THE COURT: Okay.

24 MR. COOKE: Mr. Wilson has nothing whatsoever to do with
25 this lawsuit. I met them for the first time out in the

1 hallway this afternoon. And he has nothing whatsoever ---

2 THE COURT: Okay.

3 MR. COOKE: --- to do with this lawsuit other than maybe
4 he will be a witness at one of these points.

5 The conspiracy -- oh, 2020 versus 2025, the original
6 Declaration says that the declarant's rights expire in 2020.

7 THE COURT: Okay.

8 MR. COOKE: Their conten- -- because what it says is 25
9 years from the date of filing.

10 THE COURT: Okay.

11 MR. COOKE: But they used the same language in 2010 when
12 they ---

13 THE COURT: So it extended at five years?

14 MR. COOKE: --- amended it. So their argument is that it
15 extends -- that is not for today.

16 THE COURT: Okay.

17 MR. COOKE: We will argue that another -- another time.
18 The conspiracy -- I will make you the same offer that I made
19 to Judge Dukes last week. If you can read that document and
20 read it as these people were anxious to spend their own money
21 to bring litigation to harass Mr. Gavigan, I will eat that
22 document. That is the same offer I made -- that is the same
23 offer that I made last week, and it still -- I will only eat
24 it once.

25 But if either one of you reads it that way I will --

1 what -- this was a -- this was in the heat of the
2 litigation -- this was in the midst of the litigation that was
3 in early 2017, while the litigation was still going. The
4 homeowners had no idea of what was going to happen to their
5 Association.

6 DB Aster was claiming that Mr. Gavigan was in default.
7 He was suing DB Aster. So they didn't have any way of knowing
8 who was going to wind up with the property, was it going to be
9 DB Aster or was it going to ---

10 THE COURT: Gavigan.

11 MR. COOKE: --- Mr. Gavigan or was it going to be sold on
12 the open market to some third party. So they did what smart
13 homeowners would do and they started forming contingency
14 plans.

15 When you see their analysis, this option of engaging in
16 endless litigation, that was the one that they were trying to
17 avoid. They said here all of the things that could happen; we
18 can settle with DB Aster, we could settle with Mr. Gavigan, we
19 could sue if they don't do what we want but that would take a
20 long time and cost a lot of money that we would never get back
21 and it would depress our property values.

22 So I don't think any reasonable person can read that as
23 saying this is what we want to do, we want to engage in
24 endless litigation. What they wanted to do was put together a
25 group of people who would at least consider the financial

1 feasibility of acquiring the property from whoever wound up
2 with it after the litigation.

3 It turns out they couldn't afford it. There wasn't
4 enough of -- the contingency fund does -- the declarations do
5 allow that it can be used to acquire property for the common
6 good. So it would have been appropriate to use it for that
7 if there had been enough money. But they didn't have a
8 million-and-a-half dollars or whatever it was going to take to
9 buy it.

10 THE COURT: Okay.

11 MR. COOKE: So if you want to call it a conspiracy, it is
12 a conspiracy; but absolutely the property owners, most of whom
13 are not plaintiffs in this case but some of them were, were
14 very concerned about what their options might be. But that
15 again that is for another day.

16 So the next argument has to do with the interpretation of
17 the articles of incorporation. And I am just going to go
18 through it quickly because it is a little less convoluted.
19 But ---

20 THE COURT: Okay.

21 MR. COOKE: --- Section 33-31-206 ---

22 THE COURT: I have the articles. Hang on -- let me just
23 get to it. Okay.

24 MR. COOKE: Code of laws of ---

25 THE COURT: Okay.

1 MR. COOKE: --- South Carolina, Section 33-31-206. And
2 by the way, I saw in the order that Your Honor did last month
3 and you dealt with a similar issue of conflict between the
4 nonprofit corporation and the active provisions and the
5 declarations. So we are going to lead you into kind of the
6 same place there.

7 THE COURT: Okay.

8 MR. COOKE: This says that the incorporation --
9 incorporators or board of directors of a corporation shall
10 adopt bylaws for the corporation, the bylaws may contain any
11 provision for regulating and managing the affairs of the
12 corporation that is not inconsistent with law or the articles
13 of incorporation.

14 The bylaws are defined in Section 33-31-1044 as, quote:
15 Bylaws means the code or codes of rules other than the
16 articles, adopted pursuant to this chapter for the regulation
17 or management of the affairs of the corporation irrespective
18 of the name or names by which the rules are designated.

19 So by that definition the declarations are bylaws. The
20 bylaws are bylaws. The articles of incorporation are the
21 articles of incorporation.

22 So what the law says is that the declarations can't have
23 anything in them that conflict with the articles of
24 incorporation. That is -- because they can contain any
25 provision that is not inconsistent with the law or the

1 articles of incorporation.

2 On this case there is one glaring inconsistency. The
3 articles of incorporation that were implemented here - and it
4 is exhibit -- well, I will come back to it. I think it is --
5 it is one of the exhibits to our motion.

6 The articles of incorporation have the standard form that
7 the Secretary of State provides, but they have additional
8 provisions. And in this particular case the -- it
9 specifically provides that the directors of the board are to
10 be elected by the members of the association. That is in
11 direct conflict with the provision of the declarations that
12 says that as long as the declarant still has a declarant's
13 rights and still owns property for sale that it has the right
14 to name the directors. So it is a direct conflict.

15 Now counsel misread the provision of Section 8.02 of the
16 Declarations. And it is also misquoted on Page 6 of their
17 brief. What the Declarations actually says is that if there
18 are conflicts or inconsistencies among the South Carolina
19 code, this declaration, the bylaws or the articles, the
20 provisions of the South Carolina code -- what he quotes in his
21 brief says this Declaration, the bylaws, and the articles, in
22 that order, shall prevail.

23 It doesn't actually say that. What it really says is
24 that the provisions of the South Carolina code, the
25 Declaration, the bylaws, and the articles, in that order,

1 shall prevail.

2 So it as of course the law requires puts the requirements
3 of the South Carolina code first. And because the South
4 Carolina code says that you can't have any provision in the
5 declarations that conflicts with the articles of
6 incorporation, the articles of incorporation control. And,
7 therefore, this doesn't affect whether they are the declarant
8 or not, but it does affect whether the declarant has the right
9 to appoint the members of the board.

10 THE COURT: Okay.

11 MR. COOKE: And a lot of the concerns that the plaintiffs
12 have in this case would be resolved if the homeowners had the
13 right to elect the members of the board.

14 THE COURT: Okay.

15 MR. COOKE: Oh, can I say one other thing?

16 THE COURT: Sure.

17 MR. COOKE: This goes to the other point. The declarancy
18 is not just one thing. The declarancy is a bundle of
19 different rights, and they are expressed at different places
20 in the declarations. For example, the right to not pay dues,
21 the right to appoint the members of the board, the right to
22 veto amendments, the right to create amendments. But most of
23 those rights are contingent on the declarant still owning
24 property for resale.

25 So you asked about what happens, when do those rights go

1 away. Those rights start going away once the declarant no
2 longer owns property for resale. But at the latest they all
3 go away in we say 2020. They say 2025.

4 THE COURT: Okay.

5 MR. COOKE: And in the absence of declarant the
6 declarations are set out so that the community operates very
7 well without a declarant, because you have a board of
8 directors ---

9 THE COURT: Right.

10 MR. COOKE: --- that does everything.

11 THE COURT: So as of right now if he is the declarant and
12 if we are working under these declarations, does Mr. Gavigan
13 not have to pay dues on his lots?

14 MR. COOKE: Correct.

15 THE COURT: Okay.

16 MR. COOKE: He has not paid dues on his ---

17 THE COURT: Okay. Okay.

18 MR. COOKE: On any of his lots.

19 Yes?

20 MR. MATTHEWS: Thank you, Your Honor. Once again, I
21 always hate to disagree with my friend; but I do want to bring
22 your attention to a couple of matters.

23 In the Articles of Incorporation, he has handed them up.
24 They are Exhibit C to our exhibit ---

25 THE COURT: I have got them.

1 MR. MATTHEWS: Our motion. If you look at Section 3A you
2 will note that it incorporates by reference the entirety of
3 the Declaration, said Declaration being incorporated herein as
4 is set forth verbatim.

5 So as we read our Articles of Incorporation, we
6 incorporate every word of the Declaration as a part of the
7 Articles of Incorporation. So when we read Section 206 there
8 is absolutely no discrepancy between relying on the
9 declarations incorporated verbatim into the Articles of
10 Incorporation. And is in no -- that Declaration, as a part of
11 the Articles of Incorporation, that permits, as we say in our
12 brief, Sections 1802, 1808, 1301, that the declarant has a
13 right to appoint and remove any member or members of the board
14 of directors or any officer or officers of the Association.
15 That is incorporated directly into the Articles of
16 Incorporation. And it does so in the clearest possible terms.

17 The -- if you believe that you must rely on extrinsic
18 evidence to determine rights, not intentions, as we read in
19 Cullen, not to worry; you have decades of practice, over 20
20 years of practice where as with the plaintiff's full knowledge
21 and apparently with their consent. Because for some years
22 they were appointed -- or the declarant allowed them to be
23 voted onto the board of directors. No complaints.

24 So we are -- if it is true that Bull Point SC, LLC or for
25 that matter Bull Point, LLC is the declarant, then because

1 this language is actually incorporated in the Articles of
2 Incorporation itself, the declarant can do what all declarants
3 do or what most declarants give themselves the right to do.

4 Now as we may disagree respectfully over when that sun
5 sets, and that may be an argument for another day; but that
6 sunset has not yet arrived. So we would commend to you of
7 course the language in Cullen, the language of the Articles of
8 Incorporation, the very statutes that my friend quotes to you,
9 Articles of Incorporation which incorporate the Declarations.

10 Now we have also -- and again at the bottom of Page 19
11 and the bottom of Page 20 we would -- I get the treat of doing
12 it a second time, refer to laches. We have been doing this
13 for years. Bring that up now ---

14 THE COURT: That's okay. It is put in every answer that
15 I have ever seen ---

16 MR. MATTHEWS: Well ---

17 THE COURT: --- in this minor complaint for ---

18 MR. MATTHEWS: Then I -- it is my privilege to argue it
19 to you. And actually I have found cases that I know your
20 clerk is excited to see, the citations about what laches is.
21 I will remember this day for that.

22 THE COURT: Okay.

23 MR. MATTHEWS: And of course, Your Honor, we are ready to
24 answer any questions as I am sure ---

25 THE COURT: Just so I understand what the rights will

1 affect, maybe -- though it is not really my rule, but I always
2 like to know what the effects of my rulings are.

3 So if I were to rule with you, the homeowners association
4 is controlled by Mr. Gavigan and he can basically amend and
5 change everything any way he wants forever and he can take the
6 money from the contingency fund. So that part ---

7 MR. MATTHEWS: Well, the contingency fund matter is
8 actually being litigated with Judge Dukes. We are confident
9 that once the facts are known there will be some issue that,
10 you know, reports of its demise are greatly exaggerated.
11 There is still a very healthy contingency fund.

12 If anything the fact that as it happens Mr. Gavigan when
13 he first arrived did not dissolve the contingency committee.
14 It was only removed after they refused to fund some things
15 that he thought were essential.

16 The bottom line is your wisdom I think should guide all
17 of us in that the best outcome without a doubt -- I've never
18 met the plaintiffs personally. We haven't taken depositions.
19 I know they look forward to the day when Mr. Gavigan sells all
20 of his property, he is no longer the declarant, and he has
21 moved onto other things.

22 THE COURT: Okay. So ---

23 MR. MATTHEWS: We wish that too.

24 THE COURT: All right. So you are telling me that there
25 is still a healthy contingency fund. It is still I am

1 assuming being continually supplemented with HOA fees,
2 correct?

3 MR. MATTHEWS: Not this year. But in the past it has
4 been.

5 THE COURT: Okay.

6 MR. MATTHEWS: And the -- and ---

7 THE COURT: Okay.

8 MR. MATTHEWS: I'm sorry.

9 THE COURT: So it is being supplemented by HOA fees from
10 the homeowners that are paying dues. And if I find for the
11 plaintiffs in this case then, just so I understand, that means
12 that -- and correct me if I am wrong. Mr. Gavigan would have
13 to start paying all these dues for all of his lots? And,
14 well, it is actually -- and I don't know what the dues is
15 there. But I can imagine if you owned the kind of amounts of
16 lots you have, I mean that would ---

17 MR. MATTHEWS: That would be more than \$100,000 easy.

18 THE COURT: More than \$100,000 a year or a month?

19 MR. MATTHEWS: A year.

20 THE COURT: A year. Oh, okay.

21 MR. COOKE: But he has actually sold most of the lots ---

22 THE COURT: Okay.

23 MR. COOKE: --- that are actually planned and part of the
24 development. Title -- Phase 7 has not been ---

25 THE COURT: Okay. So it is not as bad as I thought. I

1 thought it would for sure put him in bankruptcy if it was that
2 excessive.

3 MR. MATTHEWS: Well, ma'am, if they -- if you rule for
4 the plaintiffs then he is not allowed to claim Phase 7 into
5 the development. He would develop that independently.

6 THE COURT: He would develop it independently?

7 MR. MATTHEWS: Yes.

8 THE COURT: Okay.

9 MR. MATTHEWS: He would not feel welcome nor would he
10 bring Phase 7 into the development. He would develop that
11 independently, as the zoning, as the then organized zoning
12 requires or permits.

13 But, ma'am, frankly, if you find that Bull Point, LLC is
14 the declarant, well, he owns Bull Point, LLC. But we don't
15 think that is -- frankly -- I would encourage the Court to
16 employ Occam's razor, the simplest answers are usually the
17 best. Here we hope you certainly are convinced by our
18 arguments and not Mr. Cooke.

19 THE COURT: So he was the original developer?

20 MR. MATTHEWS: No, Your Honor.

21 THE COURT: Why did he -- why did you say Bull Point, LLC
22 he is ---

23 MR. MATTHEWS: Oh, I'm sorry. Mr. Gavigan has purchased
24 Bull Point, LLC.

25 THE COURT: He has. Okay. And they -- and just so I

1 understand, they own what now?

2 MR. MATTHEWS: Now they own property. Own common
3 elements. Own property.

4 THE COURT: Okay.

5 MR. MATTHEWS: They are the owner, and the property ---

6 THE COURT: And they own lots, and they ---

7 MR. MATTHEWS: I am certain that that ---

8 THE COURT: --- own some common elements?

9 MR. MATTHEWS: I am certain that that would occasion yet
10 other litigation.

11 THE COURT: I assume as much. That is why I asked.

12 MR. MATTHEWS: But ---

13 THE COURT: Okay. I just wanted to make sure I
14 understood: Okay.

15 Yes?

16 MR. LETTEER: It is hard for me to sit and be quiet.
17 Judge, I represent ---

18 THE COURT: It is for most lawyers. So it is okay.

19 MR. LETTEER: Judge, I represent Bull Point SC, LLC and
20 the board of directors of the -- of the ---

21 THE COURT: Okay.

22 MR. LETTEER: --- Property Owners Association.

23 THE COURT: Okay.

24 MR. LETTEER: You asked some beautiful questions. If I
25 could just kick in on those. The reason why we are over

1 budget this year is because we did not anticipate all of this
2 litigation. All of this litigation basically cost an awful
3 lot of money and it caused us to basically go over budget. If
4 we had not had the cost of litigation we would be within
5 budget.

6 The Court also asked, well, if you rule on Mr. Gavigan's,
7 you know, he can do everything he wants to with the
8 contingency fund.

9 No, he can't. I mean when he is basically in charge of
10 the Property Owners Association, the POA which he directs
11 still has fiduciary obligations to spend money. He can't go
12 out and develop lots with it. You ---

13 THE COURT: My question is this. Why not just do an
14 accounting then? Why not just show the homeowners where the
15 money has been spent?

16 MR. LETTEER: If I can get there, that is where I am
17 trying to head.

18 THE COURT: Okay.

19 MR. LETTEER: We asked them -- we keep asking what do you
20 want. And we can't really get an answer to that question.
21 The only thing I can gather is they want two things, they want
22 an accounting of where the money is and where it has gone.

23 We have opened up the computers of this POA to them and
24 said come see it, it is here. Whatever has been spent,
25 whatever we have, it is on computer, you may come at an

1 appointed time anytime you want to and go through the
2 financial records of the POA.

3 If we had been stealing, it will be in there. But we
4 don't think we have been stealing. But if you want to see it,
5 it is here. It is open to you.

6 And if they don't believe it, I will say it in open court
7 today: As long as they make a legitimate arrangement when
8 they are coming, the financial records of the POA are open for
9 their inspection. They can see the checkbook. They can see
10 the computers. They can see the ledgers. They can see the
11 tax returns anytime they want to.

12 The only other thing that we have been asked, which I
13 think is a very legitimate question from them, is what are you
14 going to do with the undeveloped lots that are known as
15 Phase 7.

16 Well, if I lived there I would be concerned that it is
17 going to be mobile homes or something else. Certainly that is
18 not Mr. Gavigan's intention, and it is not where we are
19 headed.

20 But if they will just tell us what assurances do you want
21 that we are going to behave honorably in regard to Phase 7,
22 just tell us what you want. We can't get an answer to that.

23 If there is anything they want besides total transparency
24 in regard to the numbers and an acknowledgment that we can't
25 spend the money of the POA except for POA matters - and we

1 know that - and some assurances that Phase 7 will be as pretty
2 as the rest of that development, if there is anything else
3 please tell us and we'll make sure it happens.

4 Mr. Gavigan has no -- he has got over a million dollars
5 invested out here. And he has sold a number of lots recently
6 which has brought in and is bringing in significant amounts of
7 money to the POA. He has done a pretty good job with what
8 they are doing.

9 But we will account to them for every single nickel. If
10 anything has been misappropriated we will put it back. But we
11 don't think we have misappropriated anything. And we will
12 give them reasonable assurances as to Lot 7.

13 The Court asked, well, what are these developer rights
14 worth. Well, obviously for the next five years we don't have
15 to pay POA dues on the unsold lots. That is a big deal.

16 THE COURT: It is \$100,000 a year you told me.

17 MR. LETTEER: It is -- it could be more.

18 THE COURT: Okay.

19 MR. LETTEER: But it is a lot. But so what I am
20 basically trying to say is that, you know, the question of who
21 has the declarant rights is a big deal ---

22 THE COURT: I understand.

23 MR. LETTEER: --- and it is something that was bought and
24 paid for.

25 So where are we? One thing we know, the declarant rights

1 have not just vanished into thin air. Somebody owns the
2 declarant rights.

3 THE COURT: Okay.

4 MR. LETTEER: There are four candidates, as I look at it.
5 You have got Bull Point, LLC, the original developer. Well,
6 Mr. Cooke - and I respect him for this - has very honorably
7 said it is not them anymore. The declarant rights - and thank
8 you, Mr. Cooke, for telling us this - they were actually owned
9 by DB Aster. DB Aster sold them and assigned them, as the
10 documents talk about, to GSI, LLC which sold them and assigned
11 them to my client which is Bull Point of South Carolina, LLC.

12 So we believe that now Bull Point of SC, LLC is the
13 declarant because they bought and paid for the assignments.
14 But ---

15 THE COURT: Can we see -- I knew -- I am sorry, I don't
16 mean to interrupt you. But I know you gave me a copy of those
17 assignments as exhibits.

18 MR. MATTHEWS: Yes, ma'am.

19 THE COURT: And I am going to assume that each one of
20 them say that they are assigning the declarant rights; is that
21 correct, ---

22 MR. MATTHEWS: Yes, ma'am.

23 THE COURT: --- every one of them? I mean that is what
24 we went over in the one?

25 MR. MATTHEWS: Yes, ma'am.

1 THE COURT: Okay.

2 MR. LETTEER: But the long and short of this whole case
3 is the greatest question you asked. It is the same question
4 we would like to know, what within any semblance of reason
5 would you like for us to do. If you will tell us, we will try
6 to accommodate your interest. If you are concerned about the
7 development of Phase 7, don't be. We will come to an accord
8 on that. If you are concerned about watching the financial
9 records to make sure we don't steal the POA funds, don't be;
10 we are not going to.

11 Now we do have significant financial burdens right now
12 because we do have an unexpected expense which has arisen by
13 all of these lawsuits we have been involved in.

14 And, quite frankly, you know, I haven't been paid yet.
15 And there is a bunch of money still owed to us. But, you
16 know, the -- those were unanticipated legal expenses. But my
17 word, the amounts of time, energy and effort we have had just
18 researching all of this material and dealing with it has been
19 extraordinary. I have had two associates assigned this case
20 for quite some while.

21 I thank you for allowing me to speak. I was going to sit
22 here and let Mr. Matthews speak, but in my classic me I just
23 can't sit there and be quiet. So thank you.

24 THE COURT: Absolutely.

25 Yes sir.

1 MR. COOKE: As far as the open books, I beg to differ.
2 We are not here on the discovery motion. We have had
3 extensive conversations. We -- I have filed motions.

4 I will give you an example. This \$90,000 in legal fees,
5 well, why is the POA paying legal fees? They have not -- we
6 did not name the POA as a party in this lawsuit. They have
7 initiated litigation themselves.

8 So we said, well, we are going to subpoena the billing
9 records from the law office. And so we sent out subpoenas to
10 find out what they are and what they are for. They have
11 objected to it based on attorney-client privilege. So, no, we
12 haven't -- we have not had transparency. This \$90,000 is
13 completely unexplained.

14 But even with that, even with that, there is no
15 explanation for why all of a sudden this POA that has been
16 able to be self-sufficient in prior years and now since Mr.
17 Gavigan has come aboard they had to take \$122,000 last year
18 from the contingency fund to make ends meet, and this year
19 they have asked for \$150,000 to make ends meet.

20 I don't care whether it was trips to Buenos Aires or
21 whatever it was, but they have blown the budget which was not
22 happening before.

23 So to answer the question of what we would like, we would
24 like the homeowners to have control again over the finances.
25 We -- you may be wondering why this is in front of Judge

1 Dukes. We filed -- with the original lawsuit we filed ---

2 THE COURT: I am wondering why isn't all of it in front
3 of Judge Dukes, frankly. Okay. Keep going.

4 MR. COOKE: I am going to ask you about that in a minute.

5 We filed with this lawsuit we filed a motion for
6 preliminary injunction to stop the dissipation of the
7 contingency fund.

8 THE COURT: Okay.

9 MR. COOKE: So that was heard back in March before Judge
10 Dukes. He did what he always does and sends us back and gets
11 us to hammer out an agreement.

12 THE COURT: Right.

13 MR. COOKE: So we entered -- had a consent order issued
14 there that said for them to spend -- before they can spend
15 money out of the contingency fund they have to post a notice,
16 have a meeting, give us an opportunity to attend and to
17 provide information, and that if we object we get to go back
18 to Judge Dukes. And so that has happened.

19 When they -- when they issued this notice saying they
20 wanted to spend \$150,000, some of the people went to the
21 meeting, were not satisfied with what the money was going to
22 be used for to pay -- to reimburse for Mr. Gavigan's legal
23 fees, primarily.

24 And so we objected. And Judge Duke has heard us on that
25 and it is under advisement.

1 THE COURT: Okay.

2 MR. COOKE: We have since filed a motion for a
3 preliminary injunction on the operating fund because of the
4 fact that the budget was blown as of mid year and there was
5 great concern. And that is on record.

6 I could sit here and argue on things that seem really
7 strange. Expenditures, for example, health insurance that at
8 least the check register says that it was for Mr. Gavigan's
9 health insurance. I hope I am wrong about that, because it is
10 many thousands of dollars. And other expenditures.

11 We have been told now that the property manager that Mr.
12 Gavigan employed may have been spending some money on some
13 personal things which he may or may not have reimbursed. At
14 least they say that he did. But those are all questions that
15 we have that we have raised in this motion for a preliminary
16 injunction.

17 THE COURT: Okay.

18 MR. COOKE: Which takes me to the last point, and that
19 is -- do you want to hear that or do you want Judge Dukes to
20 hear that?

21 THE COURT: No, I want to know why he can't hear it all.
22 Except I can actually tell you why. Because now I remember.
23 He has to come borrow my courtroom because there were so many
24 of you. And he said, I need one of your courtrooms, Carmen,
25 because I have all these people coming from Bull Point. So

1 this all makes perfect sense now. So anyway ---

2 MR. MATTHEWS: Judge Mullen ---

3 THE COURT: It doesn't hurt my feelings if you all could
4 just agree to just have Marvin handle it all.

5 MR. MATTHEWS: Well, actually, Judge Mullen, I hate to be
6 the bearer of bad news; but we appeared on Monday in front of
7 Judge Buckner ---

8 THE COURT: Okay.

9 MR. MATTHEWS: --- on a matter related to another case
10 that involves Bull Point. At that point Judge Buckner
11 informed us that all matters involving in Bull Point ---

12 THE COURT: Okay.

13 MR. MATTHEWS: --- including Jasper are now assigned to
14 you.

15 THE COURT: No, he has to ask me first. I will say that
16 that is the one -- and I say that not really, except that that
17 has always been his rule of thumb is he always calls judges
18 and asks us before he assigns anything.

19 And to explain it for the rest of you, he right now is
20 the chief administrative judge for the 14th Circuit for civil
21 matters. And I am for general sessions. So he does have the
22 inherent power to do that.

23 But he would never do that without asking me if I will
24 take all of them permanently. Which I am confident he hasn't
25 asked me. I say all of that a little bit tongue-in-cheek,

1 ladies and gentlemen. I just want you to know I will
2 seriously consider it. Is there any reason why Marvin can't
3 handle everything, Mr. Cooke?

4 MR. COOKE: No, I had just never understood exactly what
5 the limits of the jurisdiction are. But, no ---

6 THE COURT: He actually sits as a special circuit court
7 judge. He can hear anything. So the Chief Justice gives him
8 an order every two years where he has the inherent power to do
9 anything for the most part other than have a jury. Other than
10 that he has -- there's a couple of masters in the state that
11 have that inherent power, and it is something that Jean Toal
12 started when she was Chief Justice. So he has a lot more
13 power than most. So I really think -- he takes guilty pleas,
14 so I mean he has got a lot of power.

15 MR. COOKE: Between the Beaufort Clerk of Court and
16 Heather MacLeod, they have been extremely gracious in trying
17 to find us times to get things heard when we need to be heard.

18 THE COURT: Good.

19 MR. COOKE: But that one, that particular motion has not
20 been scheduled yet. And we just didn't know whether we had to
21 come to you or ---

22 THE COURT: That one is for a preliminary injunction.

23 MR. COOKE: Preliminary injunction on the operation of
24 the ---

25 THE COURT: On the operating account. Okay. What I am

1 going to do -- and it is in this case specifically, correct?

2 MR. COOKE: Yes.

3 THE COURT: Okay. If you all don't mind, I think what I
4 will do is I am going to have to talk with Carl and I will
5 have it with Marvin Dukes and Judge Buckner and myself.

6 And I agree in certain matters I think it is easier if
7 you have one person handling everything. Because you have to
8 hold -- and we certainly don't, you know, any rulings --
9 obviously whatever I do in this case would cut off anything
10 that Marvin was going to rule on. I am assuming it was
11 already argued?

12 MR. COOKE: He did tell us to let him know if you ruled
13 from the bench.

14 THE COURT: So I was going to ask you to tell -- to tell
15 me if he rules before I rule so I know what he does. Okay.
16 Which is another reason why it is probably better for one
17 judge to handle it. So okay. All right.

18 MR. COOKE: By the way, ---

19 THE COURT: Yes.

20 MR. COOKE: --- I was handed -- you are asking about what
21 the dues would be.

22 THE COURT: What is the yearly dues?

23 MR. COOKE: It is 20 -- this year it was \$2,800 per lot.
24 And Mr. Gavigan has got seven lots left that are still subject
25 to ---

1 THE COURT: Okay.

2 MR. COOKE: --- assessment of dues.

3 THE COURT: Okay.

4 MR. MATTHEWS: Well, to the extent if the 45 are not

5 subject to dues that would change the math. I am not going to

6 do math in public, but ---

7 THE COURT: So the 45 aren't subject to -- and the other

8 lots are not subject to ---

9 MR. COOKE: I don't think they have been brought into the

10 HOA yet, right?

11 (WHEREUPON, counselors confer)

12 MR. COOKE: They are all saying no.

13 MR. MATTHEWS: My understanding is that they're -- and if

14 he is not the declarant, they cannot be.

15 THE COURT: I understand that. But I am more concerned

16 about what it does to him. Okay. All right. Anything else I

17 need to know?

18 MR. COOKE: Thank you for your patience. And thank you

19 for hearing us, Your Honor.

20 THE COURT: Absolutely. What I will do gentlemen, just

21 give me a little time to chew on this for a bit.

22 MR. MATTHEWS: Well, actually, ma'am, with that in

23 mind -- do you want to approach just one minute?

24 THE COURT: Okay.

25 MR. COOKE: Sure.

1 (WHEREUPON, bench conference, 10/15/19, 3:45 p.m.)

2 THE COURT: All right, y'all. It was a pleasure. For
3 those of you driving back to you Jasper, Beaufort County, safe
4 travels everyone. And I'm sure your lawyers will be talking
5 to you. All right. Thank you.

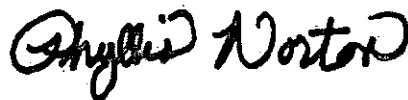
6 (WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on October 15, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

A handwritten signature in black ink that reads "Phyllis Norton". The signature is written in a cursive, flowing style.

PHYLLIS NORTON, CVR

Date: February 20, 2020

Certified Transcript Provided For: Eugene H. Matthews
Certification Reference #2020-0220 Original

EXHIBIT E

Jeff Bogdan

From: Mullen, Carmen T. Law Clerk (Laura Wilkes-D'Amato) <CMullenLC@sccourts.org>
Sent: Monday, October 28, 2019 1:59 PM
To: M. Dawes Cooke
Cc: ainsley.tillman@fordwallace.com; Gavigan Billy; Matthews Gene; Marvin Infinger; Angel J. Robinson-Jones; Diane Corley; Lauran N. Bradstream; E. Hood Dawson; Jake Moore; Blake Maryann; Chad B. Hess; Amanda K. Dudgeon; jgrantland@murphygrantland.com; jason@goingward.com; fstaiano@gwblawfirm.com; rocky.rogers@momarlaw.com; asolomons@solomonsandlawton.com; pcornduff@gwblawfirm.com; jmsullivan0929@gmail.com; chris@cslaw.com; Robert Moseley; jlinton@duffyandyoung.com; kkennedy@duffyandyoung.com; jjones@gwblawfirm.com; ngral@gwblawfirm.com; jdambrosio@dambrosiolaw.net; 'Cobb, David S.' (DCobb@TurnerPadget.com); Nelson Chandler; Jeff Bogdan; jcox@gwblawfirm.com; dparrish@nexsenpruet.com; Bryan C. Letteer; Roseneau, Jerri A.; Kristen B. Fehsenfeld; Johnson, Karen
Subject: RE: Attridge v Bull Point - 2018CP0702345 - Motions Hearing Scheduling

Dear Mr. Cooke,

Please prepared a proposed order granting your motion for partial summary judgment in the subject case. How long do you need to do so? The Court is flexible.

Sincerely,

Laura Wilkes-D'Amato
 Law Clerk
 To the Honorable Carmen T. Mullen
 14th Judicial Circuit
 (843) 255-5070
 cmullenlc@sccourts.org

-----Original Message-----

From: Mullen, Carmen T. Law Clerk (Laura Wilkes-D'Amato)
Sent: Wednesday, October 23, 2019 11:53 AM
To: Johnson, Karen <kjohnson3@bcgov.net>
Cc: ainsley.tillman@fordwallace.com; Gavigan Billy <billy@bullpointpoa.com>; Matthews Gene <GMatthews@richardsonplowden.com>; Marvin Infinger <minfinger@barnwell-whaley.com>; Angel J. Robinson-Jones <angel@mttlaw.com>; Diane Corley <diane@mttlaw.com>; Lauran N. Bradstream <lauran@mttlaw.com>; E. Hood Dawson <hood@mttlaw.com>; Jake Moore <jake@mttlaw.com>; Blake Maryann <miablake1@lowcountry.com>; Chad B. Hess <Chad.Hess@rtt-law.com>; Amanda K. Dudgeon <mandi@chandlerdudgeon.com>; jgrantland@murphygrantland.com; jason@goingward.com; fstaiano@gwblawfirm.com; rocky.rogers@momarlaw.com; asolomons@solomonsandlawton.com; pcornduff@gwblawfirm.com; jmsullivan0929@gmail.com; chris@cslaw.com; Robert Moseley <rob.moseley@momarlaw.com>; jlinton@duffyandyoung.com; kkennedy@duffyandyoung.com; jjones@gwblawfirm.com; ngral@gwblawfirm.com; jdambrosio@dambrosiolaw.net; 'Cobb, David S.' (DCobb@TurnerPadget.com) <DCobb@turnerpadget.com>; Nelson Chandler <nelson@chandlerdudgeon.com>; Jeff Bogdan <jbogdan@barnwell-whaley.com>; jcox@gwblawfirm.com; dparrish@nexsenpruet.com; Bryan C. Letteer <bryan@mttlaw.com>; Roseneau, Jerri A. <jroseneau@bcgov.net>; Kristen B. Fehsenfeld <kristen@chandlerdudgeon.com>; M. Dawes Cooke <mdc@barnwell-whaley.com>
Subject: RE: Attridge v Bull Point - 2018CP0702345 - Motions Hearing Scheduling

November 12, 2019

VIA E-MAIL (AND FIRST-CLASS MAIL TO JUDGE'S CHAMBERS)

The Honorable Judge Carmen T. Mullen
Ms. Laura Wilkes-D'Amato
P.O. Drawer 1128
Beaufort, South Carolina 29901

RE: *Attridge, et al. v. Board of Directors of Bull Point Plantation Property Owners Association, Inc., et al.*; C/A No.: 2018-CP-07-02345

Dear Judge Mullen:

Thank you for the opportunity to respond to the letter, Proposed Order, and numerous attachments sent to you by Plaintiffs in the above-referenced matter.

Respectfully, the submission by Plaintiffs, with breathtaking audacity, seeks (1) to have the Court rule on causes of action that were omitted from their Motion for Partial Summary Judgment, in essence seeking to transform the motion – with absolutely no proper notice to the Defendants – into a full Motion for Summary Judgment, (2) to ask the Court to rule on a pending motion for preliminary injunction not yet heard by this Court, and before the Defendants can respond to it, (3) to have the Court declare as fact several matters that are directly contrary to undisputed facts in the record, (4) to mispresent in material ways the history of the Bull Point development, and (5) to order remedies that are themselves unlawful, that trample the property rights of the Defendants, and that conflict with interim orders issued by, and under the consideration of, Judge Dukes.

While the following are hardly the only defects in the Proposed Order, they are among the most egregious:

1. **The Proposed Order seeks to have the Court rule on Causes of Action that were never argued before the Court and were not a part of Plaintiffs' Motion for Partial Summary Judgment.** Plaintiffs demand that this Court issue findings and order remedies on causes of action that have never been heard before the Court. Plaintiffs unabashedly include in the Proposed Order provisions that purport to (1) grant a Declaratory Judgment under the First Cause of Action, (2) grant a Declaratory Judgment under the Second Cause of Action, (3) grant a Declaratory Judgment under the Seventh Cause of Action, (4) grant a Declaratory Judgment under the Eighth Cause of Action, and (5) enact far-reaching equitable remedies not addressed at the hearing, which would involve a motion not yet heard by the Court, and which, as set forth below, would themselves be illegal. (*Proposed Order, pp. 18-20*).
2. **The Proposed Order seeks to have the Court rule on Plaintiffs' pending Motion for Preliminary Injunction without permitting the Defendants to respond or otherwise be heard at a proper hearing.** This is perhaps the most egregious of Plaintiffs' demands on the Court. By seeking to justify their request for draconian equitable measures nowhere found in their underlying Motion for Partial Summary Judgment, Plaintiffs seek to (1) have the Court rule on their Motion for Preliminary Injunction without so much as a cursory hearing to permit the Defendants to submit their own evidence to refute Plaintiffs' claims, and (2) have the Court fashion equitable remedies out of whole cloth that would rob the Defendants of their rights under Rule 241, SCACR, which provides the Defendants with the benefit of a stay until such time as an appellate court reviews the matters now before this Court, and even presumably before the Court rules on a Motion for Reconsideration.¹
3. **The Proposed Order misrepresents the undisputed history of the Bull Point development in ways that are material to the Court's decision and to any appellate review of that decision.** In several material ways, the Proposed Order misrepresents the history of the development that are particularly relevant to determining the identity of the Declarant. For instance:

¹ As such, Plaintiffs seek to relieve themselves of their duties under Rule 241(c), SCACR, which require them to file for – and convince the Court to grant – a *supersedeas* order regarding the automatic stay. Without any lawful basis for doing so, Plaintiffs appear to seek to relieve themselves of the duty to make an argument and/or create a record that would be subject to review by this Court and appellate courts.

- a. The Proposed Order incorrectly states that the Articles of Incorporation ("Articles") were amended in 2006 to change the name of the association to the "Bull Point Plantation Property Owners Association, Inc." (*Proposed Order, p. 4, fn. 1*). This is simply untrue. The name of the POA was not changed to the "Bull Point Plantation Property Owners Association, Inc." until February 4, 2015. This was only after, on January 2, 2007, some of the Plaintiffs created a new entity called the "Bull Point Plantation Property Owners Association" (the "Shadow POA"), which was used by them to foreclose on property and otherwise circumvent the POA. The "Shadow POA" was disbanded on March 6, 2013.² (*See Articles attached as Exhibits A1, A2, and A3*).
- b. The Proposed Order asserts that "DB Aster obtained Declarant Bull Point LLC's interest in the Bull Point Property from its affiliate, GACC, which acquired the interest through foreclosure in July 2012." (*Proposed Order, p. 6*). This is simply wrong. As Plaintiffs are well aware, neither DB Aster nor GACC acquired Bull Point LLC's entire³ interest through

² This history is especially relevant due to the claims made by Plaintiffs concerning the "Quit claim deeds" of October 31, 2019. These deeds were made necessary due to malfeasance of the Plaintiffs, acting through the "Shadow POA," who wrongly titled certain common areas. On the advice of attorney Alysoun M. Eversole, Esq., these quitclaim deeds were made to enable Bull Point, LLC to convey the properties lawfully to Bull Point Plantation Property Owners Association, Inc. Eversole delivered her advice prior to the hearing before your Honor. (*Eversole e-mail of September 25, 2019, attached as Exhibit B*).

³ Plaintiffs wish to focus the attention of the Court solely on Section 1.01(j) of the Declaration, which describes the "Declarant" as "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." (emphasis added). At no point has any party acquired Bull Point, LLC's entire interest through foreclosure or otherwise. As indicated by the attached "Title to Real Estate Limited Warranty Deed," at least 5 lots in the development did not transfer from Bull Point, LLC to DB Aster, LLC until December 28, 2012, and such transfer was most certainly not by "foreclosure" or deed in lieu of judicial foreclosure (*Warranty Deed, dated December 28, 2012, attached as Exhibit C*). For this reason, although not addressed in any way in the Proposed Order – especially in light of DB Aster's acquisition of Declarant Rights by assignment – application of the reasoning contained in the Proposed Order mandates that Bull Point, LLC is the current Declarant of the Bull Point development.

foreclosure or otherwise. This point is notably material due to Plaintiffs' assertion in their Proposed Order that "Plaintiffs do not contend in this case that DB Aster did not obtain Bull Point LLC's entire interest in the Property through foreclosure." (*Proposed Order, p. 14*). Indeed, Plaintiffs are fully aware that DB Aster did not do so, and have been for years. (*Dimke e-mail regarding Lot 223, dated February 8, 2012, attached as Exhibit D*). The attached e-mail alone exposes as false Plaintiffs' assertion that "[r]ecognizing DB Aster as the Declarant is not inconsistent with Plaintiffs' contention that Bull Point SC, LLC is not the Declarant." (*Proposed Order, p. 14*). In fact, it is wholly inconsistent with Plaintiffs' contention, as Plaintiffs are well aware.

- c. Further, as already established in exhibits submitted for the hearing on October 15, 2019, it is undisputed that DB Aster, LLC received Declarant Rights from Bull Point, LLC by assignment. (*Assignment dated December 28, 2012, attached as Exhibit E*).

4. The Proposed Order ignores or misquotes the relevant documents in material ways. In several material ways, the Proposed Order fails to represent the documents before the Court in an accurate manner. For instance:

- a. Section 1.01(j) of the Declaration does not "limit assignability" of Declarant Rights "to entities that obtain the original Declarant's interest in the Property through foreclosure." (*Proposed Order, p. 14*). Those words are not present in this section, or anywhere else in the Declaration.
- b. Plaintiffs also misquote Section 1.01(j) by omitting the phrase "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." (*Proposed Order, p. 14*) (emphasis added). Omitting this phrase is material as the "Additional Property" references that property not yet made a part of the development and not yet subject to the Declaration, such as that property of over 150 undeveloped acres referenced as Phase VII.
- c. Further, as set forth above, because DB Aster did not take the entire "Property" by foreclosure from Bull Point, LLC, if the Court issues the Proposed Order, it must also find that the current Declarant is Bull Point, LLC.

- d. When discussing the elections in the Proposed Order, Plaintiffs omit entirely the fact that the Articles of Incorporation incorporates the Declaration “as if set forth verbatim.” This is material as the Declaration clearly sets forth that its provisions take precedence over other provisions of the Articles of Incorporation, or the By-Laws.
- e. The Proposed Order also omits any discussion of a portion of S.C. Code Ann. § 33-31-804(a), which provides that “[i]f 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). The Proposed Order contains no discussion of how this section of the Non-Profit Corporations Act applies to the governing documents.

5. The Proposed Order asks the Court to rule on matters that conflict with interim Orders issued by Judge Dukes and would themselves be illegal.

- a. Plaintiffs demand that the Court issue an Order stripping the Defendants of their own ownership rights, such as “soliciting proxies for any purpose,” as well as stripping Bull Point LLC (owned by Billy Gavigan) of its existing property rights. These matters have not come before this Court, and the proposed measures would themselves violate the most basic property rights of Bull Point LLC and the Defendants. It is, in fact, a thinly-disguised attempt by Plaintiffs to re-write the Declaration.
- b. Plaintiffs seek a heretofore non-existent right to name an interim Board of Directors, which would violate the Declaration and require this Court to issue an Order over a matter not yet heard by any competent authority.
- c. The Proposed Order would also conflict with the interim Orders issued by Judge Dukes to permit the POA to meet basic payroll and operational expenses through the end of the calendar year. (*Interim Orders signed by Judge Dukes, attached as Exhibit F*).

These defects are not mere scribner’s errors. Rather, they are material and suggest an attempt by Plaintiffs to deprive the Defendants of an opportunity to be heard on important matters outside the Plaintiffs’ Motion for Partial Summary Judgment, to deprive the Defendants of legal

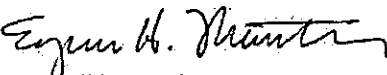
The Honorable Judge Carmen T. Mullen
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Page 6

protections set forth in the South Carolina Appellate Court Rules, and to mischaracterize facts that cannot otherwise be disputed, of which Plaintiffs are aware. Some requested measures are themselves unlawful.

For these reasons, the Defendants respectfully request that the Court reject Plaintiffs' Proposed Order, and otherwise reconsider its decision to grant Plaintiffs' Motion for Partial Summary Judgment.

We would be happy to address any matter as the Court wishes. Opposing counsel is copied on this response.

Respectfully,


Eugene H. Matthews

Enclosures

cc: All Counsel of Record (via e-mail)

000629

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-07-02345

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 PELLECCIA, 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-

ORDER

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 is 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,

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 mispending 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.

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.

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, LLC² 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

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

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

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

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 covenants⁴ 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.”

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."

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

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.

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.

(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).

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

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



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

Electronically signed on 2019-11-18 11:38:56 page 21 of 21

000650

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
) Civil Action No. 2018-CP-07-2345

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)
PELLECCIHA, JANICE S. PELLECHIA,)
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,)
INC.,)

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 PLANTATION PROPERTY)
OWNERS ASSOCIATION, INC., BULL)

**DEFENDANTS' MOTION TO
ALTER OR AMEND JUDGMENT
UNDER RULE 59(E), SCRPC**

POINT SC, LLC, GSI, LLC and WILLIAM	)
E. GAVIGAN,	)
	)
Third-Party Plaintiffs,	)
	)
vs	)
	)
STEVE ANDREWS, HARRIET	)
BOSIACK, JOSEPH P. D'AMBROSIO,	)
MARY D'AMBROSIO, JAMES HAYES,	)
RON LAMBE, MICHAEL POWERS,	)
DAVE PRZYBYS, ROBERT WOLFSON,	)
HUSPAH PROPERTIES, LLC, RIVERS	)
REACH AT POCOTALIGO, LLC,	)
RIVERS REACH REALTY, LLC AND	)
JOHN DOES 1-10,	)
	)
Third-Party Defendants.	)

NOW COME Defendants and Counterclaimants Bull Point SC, LLC, William E. Gavigan, Michael Carey, Christopher J. Quick, James Riordan, and Third-Party Plaintiffs Bull Point Plantation Property Owners Association, Inc., Bull Point SC, LLC, and GSI, LLC (collectively referenced as the "Defendants" or "Bull Point Plantation Defendants"), by and through its undersigned counsel, and move this Honorable Court, pursuant to Rule 59(e), South Carolina Rules of Civil Procedure, and respectfully move this Court to alter or amend its Order entered Monday, November 18, 2019.

A motion under Rule 59(e), SCRCP, is essentially viewed as "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004).

For the reasons stated herein, the Defendants respectfully request that the Court alter or amend its Order to DENY the relief requested by Plaintiff and GRANT Defendants' Motion for Partial Summary Judgment.

In support of this motion, the Defendants set forth their arguments as follows:

BACKGROUND & EXHIBITS

The background to this lawsuit is set forth in Defendants' Motion for Partial Summary Judgment, and is incorporated in its entirety by reference as if set forth fully herein. The exhibits included in that pleading are referenced in this motion as earlier filed. (*Exhibits "A" through "J"*). Additional exhibits attached to this motion will be referenced sequentially, beginning with Exhibit "K."

In this case, the Plaintiffs' argument fails from the very beginning, wrongly focusing entirely on one narrow provision and failing to interpret the Governing Documents as the law of South Carolina directs, namely, failing to gather the intention of the parties "from the contents of the entire document and not from any particular clause thereof."

As set forth below, the Defendants respectfully request that the Order be altered or amended, and that Defendants' Motion for Partial Summary Judgment should be granted.

FACTUAL ERRORS AND OMISSIONS IN THE ORDER

Respectfully, the Order contains a number of material errors and omissions of fact that the Court should reconsider, listed as follows:

1. On page 4, the Order incorrectly states that the Articles of Incorporation "make no provision for the Declarant to appoint or remove Directors." This is inaccurate. As set forth in earlier pleadings, the Articles of Incorporation expressly incorporates the "Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as the "Declaration"), **as if set forth verbatim...**" Also, as set forth in earlier pleadings, and below, the Declaration – which is unambiguously a part of the Articles of Incorporation – explicitly provides the Declarant with the right to appoint and remove any member or members of the Board of Directors of the Association.

2. Because of this, on page 4, the Order incorrectly states that the “Declarations [*sic*] conflict with the Articles of Incorporation in one important respect, by proving that the Declarant has the authority to appoint and remove members of the Board of Directors.” Because the Declaration is incorporated “as if set forth verbatim” into the Articles of Incorporation, this statement is internally illogical and factually incorrect.
3. On pages 5 and 6, the Order incorrectly states that, on “July 9, 2012, GACC acquired Bull Point, LLC’s real estate interests in Bull Point Plantation,” and that “DB Aster obtained Declarant Bull Point LLC’s interest in the Bull Point Property in 2012.” These statements are simply untrue. As the records before this Court make clear, neither DB Aster nor GACC acquired Bull Point LLC’s entire interest through foreclosure or otherwise. As discussed in greater detail below, this point is notably material due to Plaintiffs’ assertion in their Order that “Plaintiffs do not contend in this case that DB Aster did not obtain Bull Point LLC’s entire interest in the Property through foreclosure.” (*Order, p. 14*). Indeed, Plaintiffs are fully aware that DB Aster did not do so, and have been for years. (*Dimke e-mail regarding Lot 223, dated February 8, 2012, attached as Exhibit “K”*). This e-mail alone exposes as false Plaintiffs’ assertion that “[r]ecognizing DB Aster as the Declarant is not inconsistent with Plaintiffs’ contention that Bull Point SC, LLC is not the Declarant.” (*Order, p. 14*). In fact, it is wholly inconsistent with Plaintiffs’ contention.
4. Section 1.01(j) of the Declaration does not “limit assignability” of Declarant Rights “to entities that obtain the original Declarant’s entire interest in the Property through foreclosure.” (*Order, p. 14*). Those words are not present in this section, or anywhere else in the Declaration. Indeed, if it were so, this language would belie the statement made on the same page of the Order—that “[r]ecognizing DB Aster as the Declarant is not inconsistent with Plaintiffs’ contention that Bull Point SC, LLC is not the Declarant.”

LEGAL ARGUMENT

- I. BULL POINT SC, LLC IS CLEARLY THE “DECLARANT” AND MAY EXERCISE THE RIGHTS OF THE DECLARANT.
 - A. UNDER THE ARTICLES OF INCORPORATION, AND THE DECLARATION AND ITS AMENDMENTS THAT ARE INCORPORATED INTO THE ARTICLES OF INCORPORATION, AND THE BY-LAWS, IT IS CLEAR THAT BULL POINT SC, LLC IS THE DECLARANT OF BULL POINT PLANTATION.

To restate arguments raised at the hearing before this Court, in reviewing the language Governing Documents and the undisputed history of assignment of Declarant Rights, it is clear

that Bull Point SC, LLC is the Declarant of Bull Point Plantation. In their memorandum supporting their Partial Motion for Summary Judgment, Plaintiffs focus exclusively – and for them, fatally – on a single provision of the Declaration – Section 1.01(j) – rather than construing the entire document, which not only identifies the then-current Declarant by name, but also enshrines its right to have “assigns.” Plaintiffs also neglect to reference their own admissions that Bull Point SC, LLC is the Declarant.

In this case, the Order does not meaningfully address the provisions of the Governing Documents that clearly and unmistakably reference a Declarant’s “assigns.” As referenced above, the Governing Documents state over one dozen times that the Declarant may have “assigns.” Even the preamble states at length that the Declaration “shall touch and concern and run with the title to the real property subjected to this Declaration and shall be binding on all parties [including a Declarant] 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...”

Nor is there anything unusual about a Declarant assigning its rights as a Declarant to a third party. South Carolina jurisprudence has long recognized that a contract or property right can be validly assigned in either law or equity. *Moore v. Weinberg*, 373 S.C. 209, 220, 644 S.E.2d 740, 745 (S.C. App. 2007), *aff’d*, 383 S.C. 583, 681 S.E.2d 875 (2009). It is axiomatic that an “interest in the property assigned can be present, future, or contingent; it may represent contract rights to money, property, or performance, or rights to causes of action.” 5 S.C. Jur. *Assignments* § 2 (2006).

In fact, the Declaration and its amendments identify both GSI, LLC and Bull Point SC, LLC, in their respective turns, as Declarants. Section 1.01(k) notes that the “Declaration” shall

include “all amendments thereof filed for record in the records of the RMC Office of Beaufort County, South Carolina.” This includes the Seventeenth Amendment, filed with the RMC Office of Beaufort County on August 21, 2017 at 1:34 p.m., which identifies GSI, LLC as the Declarant. (*Seventeenth Amendment to the Declaration, attached in Exhibit “F”*). The Declaration also includes the Eighteenth Amendment, which memorializes the assignment of all Declarant Rights from GSI, LLC to Bull Point SC, LLC, and which was filed with the RMC Office of Beaufort County on November 16, 2018. (*Eighteenth Amendment to the Declaration, attached in Exhibit “J”*). For this reason alone, the Court must find that Bull Point SC, LLC is the Declarant.

In construing contracts, such as the Governing Documents, the Court’s “primary objective is to ascertain and give effect to the intention of the parties.” *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (S.C. App. 2007). “Contracts should be liberally construed so as to give them effect and carry out the intention of the parties.” *Id.* “The parties’ intention must, in the first instance, be derived from the language of the contract.” *Id.* “To discover the intention of a contract, the court must first look to its language—if the language is perfectly plain and capable of legal construction, it alone determines the document’s force and effect.” *Id.* at 498, 649 S.E.2d at 501. **“The parties’ intention must be gathered from the contents of the entire agreement and not from any particular clause thereof.”** *Id.* at 498, 649 S.E.2d at 502 (emphasis added); *Cullen v. McNeal*, 390 S.C. 470, 483, 702 S.E.2d 378, 385 (S.C. App. 2010).

This is the most fatal flaw in Plaintiffs’ argument. In order to focus the attention of the Court on Section 1.01(j) to the exclusion of all other provisions in the Declaration, they bid the Court to ignore the cardinal rule of contractual construction – the parties’ intention must be

gathered from the contents of the entire agreement, and not from any particular clause. This is exactly why their proposed construction is unlawful.

Plaintiffs not only neglect to refer to the entire Declaration, rather than an isolated provision of the Declaration, they also mistakenly rely on *Highlands Prop. Owners Ass'n, Inc. v. Shumaker Land, LLC*, 397 S.C. 432, 724 S.E.2d 685 (S.C. App. 2012), to support their argument that the Declarant's Rights cannot be assigned. The covenants at issue in *Shumaker* are quite different from the Declaration at issue in the instant case. In *Shumaker*, the covenants required that an assignment of Declarant right could be effective "if the instrument of sale or assignment expressly so provides." Because the deed to Shumaker Land, LLC did not reference the rights of the Declarant, it did not receive an assignment of these rights.

No such requirement exists in the instant case.¹ Instead, the applicable precedent in this case is *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). In *Cullen*, the Court found that it was entirely appropriate for a successor-in-interest to assume the authority as a "Developer," or declarant, through an "Assignment of Developer's Rights." 390 S.C. at 487, 702 S.E.2d at 387 ("McNeal did not become a successor developer through a deed, but rather through the Assignment of Developer's Rights. The Developers also note McNeal was specifically identified as the successor developer by the grantor.")

¹ Indeed, most if not all of the Plaintiffs were fully aware that the Declarant could – and did – transfer Declarant's Rights as of December 28, 2012. For that reason alone, they are estopped from challenging a transfer of Declarant Rights by the doctrine of laches, discussed below.

In the instant case, the “definition” of Declarant in Section 1.01(j) unsurprisingly names the entity that was the Declarant at the time of execution – Bull Point, LLC.² It also references other ways that Declarant Rights might be transferred, but in no way restricts the Declarant from transferring Declarant Rights by assignment to another party. In fact, the Declaration does not forbid transfer of Declarant Rights by assignment, and actually references a Declarant’s “assigns” on multiple occasions. Indeed, not only have Declarant Rights been assigned no fewer than three (3) times since December 2012, Plaintiffs themselves have conspired to purchase the Declarant Rights for their own purposes.

For these reasons alone, Plaintiffs’ argument on this point must be dismissed, and the Order should be altered or amended accordingly.

B. THE COURT MAY ALSO RELY ON EVIDENCE IN THE RECORD TO DETERMINE THE RIGHTS OF THE PARTIES PURSUANT TO THE DECLARATION, INCLUDING BULL POINT SC, LLC’S RIGHT TO ACT AS THE DECLARANT.

Furthermore, the record before the Court establishes clearly that Bull Point SC, LLC is the Declarant. *Cullen*, 390 S.C. at 482, 702 S.E.2d at 384 (“While the circuit court relied upon evidence presented at trial in its order, the evidence relied upon was used to determine the rights of both parties pursuant to the Declarations. The circuit court did not use extrinsic evidence to ascertain the intention of the parties.”).

In determining the rights of the parties pursuant to the Declaration, the Court should take note of the following:

- As referenced above, three of the Plaintiffs have, in this case, presented sworn affidavits to this Court identifying Bull Point SC, LLC as the Declarant. There is simply no way that these “references to Bull Point SC, LLC as the Declarant are consistent with the Plaintiffs’ contention in this case.” (*Order*, p. 14).

² For this reason alone, under the theory articulated in the Order, Bull Point, LLC is currently the Declarant.

- In Exhibit A, Plaintiffs reference on multiple occasions their plan to “purchase” the Declarancy, and to “pursue a possible sale of the Declarancy to the Property Owners after the investors buy the Declarancy and Property from DB Aster...” The Order does not address this material fact in any cognizable way.
- The minutes of the Board of Directors Meeting of the Bull Point Property Owners Association on February 1, 2013, which were prepared by Plaintiff Russell Dimke, affirmatively acknowledge that the “Declarant Rights as specified in the Bull Point Plantation Covenants have now been legally transferred from Bull Point LLC to DB Aster, LLC.” (*See Exhibit “F”*) (emphasis added). It defies logic – and wholly inconsistent with the factual record before the Court – to allow the Plaintiffs now to argue that this transfer was accomplished in any manner other than by an assignment of Declarant Rights from Bull Point, LLC to DB Aster, LLC.

For these reasons alone, the Court should alter or amend its Order and grant partial summary judgment as requested by the Bull Point Plantation Defendants.

C. PLAINTIFFS ARE EQUITABLY ESTOPPED FROM ARGUING THAT BULL POINT SC, LLC IS NOT THE DECLARANT.

The Order does not address in any cognizable fashion the argument that Plaintiffs are equitably estopped from arguing that Bull Point SC, LLC is not the Declarant.

The essential elements of equitable estoppel are divided between the estopped party (in this case, the Plaintiffs) and the party claiming estoppel (in this case, Bull Point SC, LLC). *Strickland v. Strickland*, 375 S.C. 76, 84–85, 650 S.E.2d 465, 470 (2007). The elements of equitable estoppel as related to the party being estopped are:

- conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert;
- the intention that such conduct shall be acted upon by the other party; and
- actual or constructive knowledge of the real facts.

The party asserting estoppel must show:

- lack of knowledge, and the means of knowledge, of the truth as to the facts in question;
- reliance upon the conduct of the party estopped; and
- a prejudicial change of position in reliance on the conduct of the party being estopped.

375 S.C. at 84–85, 650 S.E.2d at 470; *Boyd v. Bellsouth Tel. Tel. Co., Inc.*, 369 S.C. 410, 422, 633 S.E.2d 136, 142 (2006).

The record in this case clearly establishes that Plaintiffs are estopped from arguing that Bull Point SC, LLC is not the Declarant.

- Plaintiffs have specifically represented that Bull Point, LLC lawfully assigned its rights as Declarant to DB Aster, LLC, as in the approved Minutes of the February 1, 2013 Board of Directors Meeting, authored by Plaintiff Russ Dimke. (*See Exhibit "F"*).
- Plaintiffs have specifically represented on numerous occasions that DB Aster, LLC was the Declarant. (*See Exhibit "F"*).
- Plaintiffs submitted these representations to Gavigan, upon which Gavigan (through GSI, LLC) relied and acted in completing the purchase of the property and Declarant's Rights at the Bull Point development.

A straightforward application of these principals estops Plaintiffs from now arguing that GSI, LLC or its assignee, Bull Point SC, LLC, could not be the Declarant at the Bull Point development.

II. UNDER THE LOGIC DICTATED BY THE ORDER, DB ASTER, LLC COULD NEVER BE THE DECLARANT. INSTEAD, BULL POINT, LLC WOULD REMAIN THE DECLARANT.

Plaintiffs wish to focus the attention of the Court solely on Section 1.01(j) of the Declaration, which describes the "Declarant" as "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." (emphasis added). At no point has any party acquired Bull Point, LLC's entire interest through foreclosure or otherwise.

As indicated by the attached "Title to Real Estate Limited Warranty Deed," at least 5 lots in the development did not transfer from Bull Point, LLC to DB Aster, LLC until December 28, 2012, and such transfer was most certainly not by "foreclosure" or deed in lieu of judicial foreclosure (*Warranty Deed, dated December 28, 2012, attached as Exhibit "L"*). For this reason, although not addressed in any way in the Order – especially in light of DB Aster's acquisition of Declarant Rights by assignment – an application of the reasoning contained in the Order and advocated by Plaintiffs mandates that Bull Point, LLC is the current Declarant of the Bull Point development.

Indeed, if one focuses solely on Section 1.01(j), a plain reading of the single provision lists only one Declarant – Bull Point, LLC. Because no other conditions listed in Section 1.01(j) have been met, if one adopts Plaintiffs' own logic, Bull Point, LLC is the Declarant.

For these reasons alone, the Court should alter or amend its Order and grant partial summary judgment as requested by the Bull Point Plantation Defendants.

III. AS DECLARANT, BULL POINT SC, LLC CLEARLY HAS THE RIGHT TO APPOINT AND REMOVE MEMBERS OF THE BOARD OF DIRECTORS OF BPPPOA.

Regarding election, designation, and appointment of directors, South Carolina's Non-Profit Corporation Act provides as follows:

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.

S.C. Code Ann. § 33-31-804(a) (emphasis added).

In this case, as set forth above, the Articles of Incorporation specifically incorporate the Declaration. In turn, regarding the Declarant's right to appoint and remove the BPPPOA's Directors and Officers, the Declaration clearly provides as follows:

- General Provisions – 13.01 (Control by Declarant) – the Declaration provides that “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 by and for the term set forth in Section 8.01 hereof. Every grantee³ 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.**”
- Administration – 8.01 (Common Areas) – 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 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.

(Exhibit “D”) (emphasis added).

Furthermore, for over twenty years, the Declarant of the Bull Point Plantation development has appointed Board members of the BPPPOA, or have permitted the members to elect no more than one voting member of the Board. (*See Exhibit “F”*). Indeed, in their memorandum of April 27, 2017, Plaintiffs admit as follows:

³ Obviously, this includes all Plaintiffs in this action.

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 in the Covenants.

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

(Exhibit “B”) (emphasis in the original).

Given the language of the Governing Documents and the undisputed practice of over twenty years, Plaintiffs’ argument that the Declarant does not have the right to appoint and remove members of the Board of Directors of BPPPOA is especially baseless.

As indicated above, but as omitted entirely from the Order, the BPPPOA’s Articles of Incorporation not only wholly incorporate the Declaration “as if set forth verbatim,” the Declaration⁴ clearly sets forth that its provisions take precedence over other provisions of the Articles of Incorporation, or the By-Laws. Declaration, Section 8.02. In two separate sections of the Declaration, 8.01 and 13.01, and in the clearest possible terms, the Declarant has the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association.

Further, and contrary to the Order’s ruling, the South Carolina Non-Profit Corporation Act specifically permits such an arrangement where 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.” S.C. Code Ann. § 33-31-804(a) (emphasis added).

⁴ The Declaration is not the same as “By-Laws,” as argued by Plaintiffs. The Articles of Incorporation incorporate the Declaration verbatim. Nothing in South Carolina requires a contrary finding.

This result is the unremarkable and rather obvious result of looking to the language of the Governing Documents and giving effect to the “entire agreement and not from any particular clause thereof.” *Cullen*, 390 S.C. at 483, 702 S.E.2d at 385.

Furthermore, to the extent the Court wishes to review evidence regarding over twenty years of prior practice at Bull Point Plantation – all of which was well known and accepted by Plaintiffs – it is undisputed that Plaintiffs themselves have acknowledged that the Declaration specifically provides that “for 25 years the Declarant has the power ‘to appoint and remove all POA Board members.’” (*Exhibit “A”*); *Cullen*, 390 S.C. at 482, 702 S.E.2d at 384 (“While the circuit court relied upon evidence presented at trial in its order, the evidence relied upon was used to determine the rights of both parties pursuant to the Declarations. The circuit court did not use extrinsic evidence to ascertain the intention of the parties.”).

Indeed, even a cursory review of the minutes of Annual Meetings indicate, again and again, that Plaintiffs were fully aware of the process by which the Declarant appointed Board members and Officers of the BPPPOA and its predecessors, and actually participated in this process. (*See Exhibit “F”*). In this regard, Plaintiffs’ claims appear to be subject to dismissal under the doctrine of laches. “Laches” is defined as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” ” *Gordon v. Drews*, 358 S.C. 598, 612, 595 S.E.2d 864, 871 (S.C. App. 2004) (quoting *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 296, 519 S.E.2d 583, 598 (S.C. App. 1999)). “Delay alone is not enough to constitute laches; it must be unreasonable, and the party asserting laches must show prejudice.” *Gordon*, 358 S.C. at 612, 595 S.E.2d at 871 (quoting *Brown v. Butler*, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (S.C. App. 2001)); *Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 359, 628 S.E.2d 902,

912 (S.C. App. 2006). In the instant case, Plaintiffs have acknowledged the right of the Declarant to appoint Officers and Directors for over twenty years. Laches bars Plaintiffs from now seeking to injure the Declarant by now seeking belatedly to rob it of the right to appoint Officers and Directors.

For these reasons, the Order should be altered or amended as requested by the Defendants.

IV. THE ORDER MUST BE AMENDED OR ALTERED BECAUSE IT GRANTS REMEDIES NOT RAISED IN PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, AND RULES ON CAUSES OF ACTION THAT ARE NOT A PART OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT.

The Order grants Plaintiffs' demand that this Court issue findings and order remedies on causes of action that have never been heard before the Court, which (1) grant a Declaratory Judgment under the First Cause of Action, (2) grant a Declaratory Judgment under the Second Cause of Action, (3) grant a Declaratory Judgment under the Seventh Cause of Action, (4) grant a Declaratory Judgment under the Eighth Cause of Action, and (5) enact far-reaching equitable remedies not addressed at the hearing, which would involve a motion not yet heard by the Court, and which, as set forth below, would themselves be illegal. (*Order, pp. 17-20*). By seeking to justify their request for draconian equitable measures nowhere found in their underlying Motion for Partial Summary Judgment, the Order (1) rules on a Motion for Preliminary Injunction without so much as a cursory hearing to permit the Defendants to submit their own evidence to refute Plaintiffs' claims, and (2) fashions equitable remedies out of whole cloth that rob the Defendants of their rights under Rule 241, SCACR, which provides the Defendants with the benefit of a stay until such time as an appellate court reviews the matters now before this Court. To borrow from the maxims of administrative law, "[b]y silently reserving the right to not only

reject the Hearing Officer's factual findings and rulings but to make its own findings without notice, hearing, or any further opportunity for input, the Commissioner undermined its own ad hoc procedure. A party is not entitled to a hearing at each stage of agency review, but a meaningful hearing must occur at some stage." *McIntyre v. Sec. Comm'r of S.C.*, 425 S.C. 439, 445, 823 S.E.2d 193, 196 (S.C. App. 2018) (quoting *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 68–69, 492 S.E.2d 62, 71–72 (1997)) (emphasis added). By filing the provisions of the Order demanded by Plaintiffs, the Court failed to provide the Defendants with a meaningful opportunity to be heard on these matters.

For these reasons alone, the Court should alter or amend its Order as requested by the Bull Point Plantation Defendants.

CONCLUSION

With respect to the Court, for the reasons set forth above, the Bull Point Plantation Defendants respectfully request that the Court alter or amend its Order and GRANT the Defendants' Motion for Partial Summary Judgment, and DENY the motion of the Plaintiffs.

This the 21st day of November, 2019.

RICHARDSON PLOWDEN & ROBINSON, P.A.

s/Eugene H. Matthews

Eugene H. Matthews, S.C. Bar No. 10193

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OWNERS ASSOCIATION, INC., BULL POINT SC, LLC, GSI,
LLC, AND WILLIAM E. GAVIGAN

EXHIBIT K

EMAIL OF RUSS DIMKE DATED
FEBRUARY 8, 2012

Dick Lovett

From: Dimke. <dimke@hargray.com>
Sent: Wednesday, February 08, 2012 12:24 PM
To: Dick Lovett; Jay - Work
Subject: Response from POA lawyer regarding Declarant rights

Jay, Dick:

I just had a long conversation with Bill Smoot after he reviewed our Covenants per our position that Stan(LLC) would still be the Declarant after the German American foreclosure because LLC would still own one lot (223).

Bill's opinion is that we would have a reasonably strong legal position to claim that. He further notes that when we (the POA) takes possession of lot 223 (so long as if we do so after the German American foreclosure is final), that would effectively be LLC's last remaining piece of property in Bull Point and per the Covenants the POA would at that point become the Declarant. We do not have to have Stan's (LLC) approval at all.

Bill noted although he feels we would have good legal grounds, there are a number of counter legal arguments which could be taken by the new owners. His best guess is we would have a 55% to 60% to prevail if it went to litigation/court. Of course, the cost to litigate this would be significant so we really do not want to go this route if possible. There are also other potential issues if the POA becomes the Declarant including opening the possibility of Phase VII being developed separately not subject to all our Covenants.

Bill recommends we take possession of lot 223 in March and then send the new owners notice that the POA is now the Declarant. We would then seek a meeting to begin discussions/negotiations with the new owners. Things we could put on the table include trading assignment of part of the Declarant rights to the new owners in exchange for payment of dues, completion of the Clubhouse, etc.

Clearly this is just a brief summary of what Bill went over. The three of us need to get together (maybe this Friday) so I can fill you in with more detail. I also suggest that sometime next week we may want to get the same residents together who attended our meeting with the Lawyers last year in HHI (Gary, Bill W. and the Koroms) and have them participate in a conference call with Bill Smoot to go over this issue.

Russ

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[Click Here!](#)

EXHIBIT L

WARRANTY DEED, DATED DECEMBER 28, 2012

550
11 16947
Nelson
Pruitt

RECORDED
2013 Jan -23 10:25 AM
Sham O. Benie
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 03204 PGS 2481-2485
FILE NUM 2013000636
01/03/2013 04:27:59 PM
REC'D BY S WASHINGTON RCPT# 698795
RECORDING FEES 11.00

ADD DMP Record 1/15/2013 10:31:12 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0250	0000	00

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
TITLE TO REAL ESTATE
LIMITED WARRANTY DEED

KNOW ALL BY THESE PRESENTS that BULL POINT LLC (A/K/A BULL POINT, LLC), a South Carolina limited liability company (hereinafter referred to as "Grantor"), for and in consideration of the sum of \$10.00 and no other valuable consideration to Grantor paid by DB ASTER, LLC, a Delaware limited liability company (hereinafter referred to as "Grantee"), in the State aforesaid, the receipt and legal sufficiency of which are hereby acknowledged, has granted, bargained, sold, released, aliened, conveyed, and confirmed, and by these presents does grant, bargain, sell, release, alien, convey, and confirm unto Grantee, its successors, and assigns, all those certain tracts or parcels of land with improvements thereon lying (the "Premises") described as follows:

DESCRIPTION OF THE PREMISES CONVEYED:

See Exhibit "A" attached hereto and incorporated herein by reference;

GRANTEE'S MAILING ADDRESS: For the purposes of this Title to Real Estate Limited Warranty Deed Grantee's mailing address is:

250 Gibraltar Road
Horsham, PA 19044;

ADD DMP Record 1/15/2013 10:30:59 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0190	0000	00

TOGETHER WITH ALL AND SINGULAR the rights, members, easements, any and all crops and timber growing on the Premises, any and all surface or subsurface sand, gravel, oil, gas, or mineral rights on the Premises, any and all surface and subsurface water appurtenant to the Premises, all well, spring, reservoir, and water rights of any type, riparian rights, littoral rights, intangible property, permits, licenses, variances, waivers, authorizations, and hereditaments and appurtenances to the Premises belonging or in anywise incident or appertaining; and

ADD DMP Record 1/15/2013 10:30:19 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0187	0000	00

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BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0188	0000	00

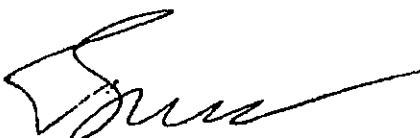
ADD DMP Record 1/15/2013 10:30:47 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0189	0000	00

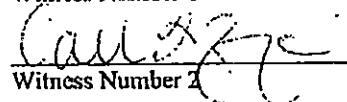
SIGNATURE PAGE OF TITLE TO REAL ESTATE LIMITED WARRANTY DEED

WITNESS Grantor's hand and seal this 28th day of Dec, 2012

SIGNED, SEALED, AND
DELIVERED IN THE PRESENCE OF:



Witness Number 1



Witness Number 2

BULL POINT LLC (A/K/A BULL POINT, LLC), a
South Carolina limited liability company

By: Stancel E. Kirkland (SEAL)

Name: STANCEL E. KIRKLAND

Title: MANAGING MEMBER

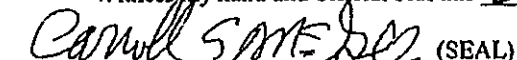
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

)
) ACKNOWLEDGMENT
)

I, CARROLLS McHEE, a notary public for SOUTH CAROLINA, do
hereby certify that Bull Point LLC (a/k/a Bull Point, LLC), a South Carolina limited liability company, by
STANCEL E. KIRKLAND, its MANAGING MEMBER, personally
appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 28th day of Dec, 2012.


(SEAL)
Signature of Notary Public

My Commission Expires: Nov 20 2022

[AFFIX NOTARY SEAL HERE]

EXHIBIT "A"Description of the Premises**LEGAL DESCRIPTION**

ALL those certain lots of land, situate, lying and being in Sheldon Township, Beaufort County, South Carolina and being shown and designated as Lot 253-S, Lot 259-S, Lot 260-S, Lot 261-S and Lot 262-S on that certain Subdivision Plat of Phase V-B, Bull Point Plantation, a Portion of Tomotley Plantation prepared for Bull Point, LLC, Gardens Corner, prepared by Gasque & Associates, Inc. dated November 9, 1998, last revised March 17, 2003 and recorded March 18, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 92, at page 34; and further shown on Boundary Survey for Bull Point, LLC, Bull Point Phase VII, prepared by K. Merchant, and Michael L. Ray, Andrews & Burgess, Inc. dated September 20, 2007, last revised December 4, 2007 and recorded December 14, 2007 in said Office in Plat Book 123, at page 37; the boundary surveys are specifically incorporated herein by reference and reference to said boundary surveys are craved for the particulars as to metes, courses, distances, size, shape, dimensions, measurements, bounds and boundaries.

TMS NOS.: R700-020-000-0187-0000 – Lot 261-S
 R700-020-000-0188-0000 – Lot 260-S
 R700-020-000-0189-0000 – Lot 259-S
 R700-020-000-0190-0000 – Lot 253-S
 R700-020-000-0250-0000 – Lot 262-S

DERIVATION: Deed to Bull Point, LLC from Metropolitan Properties, Inc. dated January 23, 1997 and recorded February 26, 1997 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 918, at page 2559.

*Prepared by: Amy Clayton, Esq.
 Nexsen Pruet, LLC
 1230 Main Street, Suite 700
 Columbia, SC 29201*

STATE OF SC
COUNTY OF Lexington

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in Beaufort County, bearing Beaufort County Tax Map Numbers R700-020-000-0187-0000 - Lot 261-S, R700-020-000-0188-0000 - Lot 260-S, R700-020-000-0189-0000 - Lot 259-S, R700-020-000-0190-0000 - Lot 253-S, R700-020-000-0250-0000 - Lot 262-S and was transferred by Bull Point LLC (a/k/a Bull Point, LLC) to DB Asler, LLC on 28 DEC 2017
3. (Check one of the following: The deed is:
 - (a) XXXX subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because:
 (If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) XXXX The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 10.00 AND NO OTHER CONSIDERATION
 - (b) _____ The fee is computed on the fair market value of the realty which is _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes ___ or No XXXX to the following: A lien or encumbrance on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.
6. The deed recording fee is computed as follows:
 - (a) XXXX Place the amount listed in item 4 above here: \$ 10.00
 - (b) XXXX Place the amount listed in item 5 above here: \$0.00
(If no amount is listed, place zero here.)
 - (c) XXXX Subtract Line 6(b) from Line 6(a) and place result here: \$ 10.00
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ 1.85
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantor.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 28th
day of DEC, 2017
EMERY S. ALLEN
Notary Public for South Carolina

My Commission Expires: NOV 20 2022

BULL POINT LLC (A/K/A BULL POINT, LLC), a South Carolina limited liability company

By: STANLEY E. KIRKLAND
Name: STANLEY E. KIRKLAND
Title: MANAGING MEMBER

[AFFIX NOTARY SEAL HERE]

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
PELLECCIHA, JANICE S. PELLECHIA,
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,

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,

and

BULL POINT SC, LLC, GSI, LLC and
WILLIAM E. GAVIGAN,

Counterclaimants and
Third-Party Plaintiffs,

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Civil Action No. 2018-CP-07-2345

**AMENDED ANSWER OF
DEFENDANTS TO THE
AMENDED COMPLAINT
AND
AMENDED COUNTERCLAIMS AND
THIRD-PARTY COMPLAINTS
OF WILLIAM E. GAVIGAN,
BULL POINT SC, LLC,
AND GSI, LLC**

(Jury Trial Requested)

vs

STEVE ANDREWS, HARRIET BOSIACK,
 JOSEPH P. D'AMBROSIO, MARY
 D'AMBROSIO, RON LAMBE, MICHAEL
 POWERS, ROBERT WOLFSON, HUSPAH
 PROPERTIES, LLC, AND RIVERS REACH
 AT POCOTALIGO, LLC,

 Third-Party Defendants.

NOW COME Defendants MICHAEL CAREY, WILLIAM E. GAVIGAN, CHRISTOPHER J. QUICK, and JAMES RIORDAN (the "Individual Defendants"), and BULL POINT SC, LLC ("Bull Point SC") and GSI, LLC (collectively "Defendants" and "Answering Parties") and answer the Amended Complaint of Plaintiffs, denying all allegations not specifically admitted, and stating as follows:

INTRODUCTION

Bull Point Plantation is a 700-acre waterfront residential community located in Beaufort County, South Carolina. Since 1995, the community has been governed by certain covenants, conditions and restrictions ("CCRs" or "Declaration"), which give to the developer/declarant certain enumerated powers under the CCRs (hereafter the "Declarant Rights"), and all owners belong to a non-profit corporation that is the property owners association, or "POA".

The gravamen of the Complaint is the identity of the Declarant and the powers exercised by said Declarant. In 2012, the original Declarant, Bull Point, LLC, lost most of their interest – but not their entire interest – in Bull Point through foreclosure. Several months later, Bull Point, LLC transferred five of its remaining lots though a limited warranty deed to DB Aster, LLC, a third-party, and transferred its Declarant Rights by assignment to DB Aster, LLC.

In 2017, DB Aster, LLC assigned its property rights and the Declarant Rights to GSI, LLC, which in turn assigned said interests to Bull Point SC, LLC.

While Plaintiffs contend that the Declarant Rights did not – and cannot – transfer through assignment to GSI, LLC or Bull Point SC, LLC, it is has admitted that “Plaintiffs do not contend in this case that DB Aster did not obtain Bull Point LLC’s entire interest in the Property through foreclosure.” This contention is the picture of illogic, and is contrary to the record before the Court.

Plaintiffs also contend that, under the South Carolina Nonprofit Corporation Act, the Declaration is synonymous with “Bylaws,” and that certain provisions of the Articles of Incorporation necessarily confer upon the Owners the right to elect their Board of Directors rather than for the Declarant to appoint the Board. The conclusion of Plaintiffs is wholly unsupported because the Articles of Incorporation wholly incorporate the Declaration “as if set forth verbatim,” the Declaration¹ clearly sets forth that its provisions take precedence over other provisions of the Articles of Incorporation, or the By-Laws. (Declaration, Section 8.02.) In two separate sections of the Declaration, 8.01 and 13.01, and in the clearest possible terms, the Declarant has the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association.

ANSWER TO VERIFIED AMENDED COMPLAINT

1. In Paragraph 1 of Plaintiffs’ Amended Complaint, Plaintiffs attempt to identify themselves. It is denied that each of said Plaintiffs has proper standing as a “member” of the POA. Further, Defendants deny that Plaintiffs are acting in a derivative fashion, because (1) they have

¹ The Declaration is not the same as “By-Laws,” as argued by Plaintiffs. The Articles of Incorporation incorporate the Declaration verbatim. Nothing in South Carolina law requires a contrary finding.

failed to satisfy the elements of Rule 23(b)(1), SCRCF, including, but not limited to, the failure to satisfy the demand requirements, (2) Plaintiffs do not fairly and adequately represent the interests of the members similarly situated in enforcing the right of the POA because of the selfish motives underlying their pursuit of this litigation, and (3) Plaintiffs do not meet the requirements of contemporaneous and continuing membership. Therefore, this action may not be brought derivatively. Unless otherwise admitted, the remaining allegations in Paragraph 1 of Plaintiffs' Amended Complaint are denied.

2. Defendants admit that "Bull Point Plantation Property Owners Association, Inc." is a South Carolina non-profit corporation (although the 2015 Amendment to the Articles of Incorporation to change the Association's name was fraudulent) and located in Beaufort County, South Carolina. Unless otherwise admitted, the remaining allegations in Paragraph 2 of Plaintiffs' Amended Complaint are denied.

3. Defendants admit that Bull Point SC, LLC is a South Carolina limited liability company and is the Declarant of Bull Point Plantation. Unless otherwise admitted, the remaining allegations in Paragraph 3 of Plaintiffs' Amended Complaint are denied.

4. Defendants admit Paragraph 4.

5. Defendants admit the allegations of Paragraph 5 that the Individual Defendants were or are members of the POA's Board of Directors, although not all of them were officers of the POA at all relevant times. Unless otherwise admitted, the remaining allegations in Paragraph 5 of Plaintiffs' Amended Complaint are denied.

PLAINTIFFS' BACKGROUND ALLEGATIONS

6. With regard to Paragraphs 6 and 7 of the Amended Complaint, this Court has ruled that GSI, LLC and DB Aster, LLC, are necessary parties given the nature of Plaintiffs' allegations and causes of action.

7. With regard to Paragraphs 8 through 11 of the Amended Complaint, the Bull Point Plantation is a 700-acre waterfront residential community located in Beaufort County, South Carolina. Since 1995, the community has been governed by "CCRs" or the "Declaration," which give to the developer/declarant certain enumerated powers under the "Declarant Rights," and all owners belong to a non-profit corporation that is the property owners association, or POA. Bull Point SC, LLC is bound by the Declaration, although "the current Declaration" to Bull Point Plantation include the Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation adopted and recorded September 26, 1995, and *all* amendments recorded subsequent thereto. Defendants deny and demand strict proof of the remaining allegations in Paragraphs 8 through 11 of the Amended Complaint.

8. Defendants deny the allegations of Paragraph 12 of the Amended Complaint. Specifically, Defendants deny that "the Members of the Association have contributed to the Contingency Fund." There is no mechanism in the Declaration for members to contribute to a fund. Rather, at all times relevant hereto, the POA has maintained a capital contribution or reserve account, which account was defined as the "Contingency Fund" with the adoption of the Fifteenth Amendment.² At all times, all funds deposited into the capital contribution or reserve account and/or Contingency Fund were by way of the POA's annual assessment process.

² There are *two* amendments entitled "FIFTEENTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BULL POINT PLANTATION." The first document entitled Fifteenth Amendment is dated November 12, 2009 and was recorded on March 18, 2010. The second document entitled

9. Defendants admit in part and deny in part the allegations of Paragraph 13 of the Amended Complaint. It is admitted that there was a meeting of the Board of Directors on September 29, 2018 and, further, that the Board approved certain funding. It is denied that any actions were done on behalf of Gavigan and/or Declarant.

10. Defendants admit in part and deny in part the allegations of Paragraph 14 of the Amended Complaint. It is admitted that there was a meeting of the Board of Directors on September 29, 2018 and, further, that the Board approved certain funding.

11. Defendants admit that there was a meeting of the Board of Directors on or about November 16, 2018. Unless otherwise admitted, the remaining allegations in Paragraph 15 of Plaintiffs' Amended Complaint are denied.

12. Defendants admit that the Eighteenth Amendment to the Declaration deleted the Fifteenth Amendment. Unless otherwise admitted, the remaining allegations in Paragraph 16 of Plaintiffs' Amended Complaint are denied.

A. Amendment of the Declaration.

13. With regard to Paragraphs 17 through 20 of the Amended Complaint, the documents referenced by Plaintiffs speak for themselves. Bull Point SC, LLC is the Declarant of the Bull Point development. Unless otherwise admitted, the remaining allegations in Paragraphs 17 through 20 of the Amended Complaint are denied.

B. Amendment of the Declaration.

14. With regard to Paragraphs 21 through 26 of the Amended Complaint, the documents and statutes referenced by Plaintiffs speak for themselves. Otherwise, Plaintiffs vainly

Fifteenth Amendment is dated October 10, 2011 and was recorded on October 24, 2011. The document referred to in this pleading is the *second* Fifteenth Amendment.

attempt to allege that Defendants breached their obligations as members of the Board of Directors through a series of self-serving but otherwise baseless allegations. Unless otherwise admitted, the remaining allegations in Paragraphs 21 through 26 of the Amended Complaint are denied.

C. Inspection of Association Records.

15. With regard to Paragraphs 27 through 33 of the Amended Complaint, the documents and statutes referenced by Plaintiffs speak for themselves. Otherwise, Plaintiffs curiously and disingenuously omit from their allegations that the documents they purportedly seek have been made available through the discovery process as governed by the South Carolina Rules of Civil Procedure. Also, Joe D'Ambrosio, and several others, are not a member of the Association under the Declaration. Unless otherwise admitted, the remaining allegations in Paragraphs 27 through 33 of the Amended Complaint are denied.

D. Bull Point POA Derivative Action Allegations.

16. With regard to Paragraphs 34 through 43 of the Amended Complaint, the documents and statutes referenced by Plaintiffs speak for themselves. Otherwise, Defendants deny that Plaintiffs are acting in a derivative fashion because (1) they have failed to satisfy the elements of Rule 23(b)(1), SCRCF, including, but not limited to, the failure to satisfy the demand requirements, (2) Plaintiffs do not fairly and adequately represent the interests of the members similarly situated in enforcing the right of the POA because of the selfish motives underlying their pursuit of this litigation, and (3) Plaintiffs do not meet the requirements of contemporaneous and continuing membership. Unless otherwise admitted, the remaining allegations in Paragraphs 34 through 43 of the Amended Complaint are denied.

JURISDICTION AND VENUE

17. With regard to Paragraphs 44 through 45 of the Amended Complaint, to the extent Plaintiffs have raised justiciable claims, the Defendants do not object to jurisdiction and venue in this Court. Unless otherwise admitted, the remaining allegations in Paragraphs 44 through 45 of the Amended Complaint are denied.

FIRST CAUSE OF ACTION
(Declaratory Judgment as to the Contingency Fund)

18. Defendants incorporate their responses to Plaintiffs' previous allegations as if fully set forth herein.

19. Defendants deny the allegations set forth in Paragraphs 46 through 49 of the Amended Complaint.

SECOND CAUSE OF ACTION
(Injunction as to the Contingency Fund)

20. Defendants incorporate their responses to Plaintiffs' previous allegations as if fully set forth herein.

21. Defendants deny the allegations set forth in Paragraphs 50 through 53 of the Amended Complaint.

THIRD CAUSE OF ACTION
(Accounting)

22. Defendants incorporate their responses to Plaintiffs' previous allegations as if fully set forth herein.

23. Defendants deny the allegations set forth in Paragraphs 54 through 56 of the Amended Complaint.

FOURTH CAUSE OF ACTION
(Alleged Failure to Allow Inspection and Copying)

24. Defendants incorporate their responses to Plaintiffs' previous allegations as if fully set forth herein.

25. Defendants deny the allegations set forth in Paragraphs 57 through 61 of the Amended Complaint.

FIFTH CAUSE OF ACTION
(Declaratory Judgment as to the Declarant)

26. Defendants incorporate their responses to Plaintiffs' previous allegations as if fully set forth herein.

27. Defendants state that Declarant rights were properly assigned among the sequential Declarants, including Bull Point SC, LLC. Unless otherwise admitted, the remaining allegations in Paragraphs 62 through 70 of the Amended Complaint are denied.

28. The Declaratory Judgment sought would not end the legal controversy between the parties and, therefore, any ruling would be by virtue only advisory in nature.

SIXTH CAUSE OF ACTION
(Declaratory Judgment as to the Election of Directors)

29. Defendants incorporate their responses to Plaintiffs' previous allegations as if fully set forth herein.

30. Defendants deny the allegations set forth in Paragraphs 71 through 75 of the Amended Complaint.

SEVENTH CAUSE OF ACTION
(Declaratory Judgment as to the Amendment of the Declaration)

31. Defendants incorporate their responses to Plaintiffs' previous allegations as if fully set forth herein.

32. Defendants deny the allegations set forth in Paragraphs 76 through 79 of the Amended Complaint.

EIGHTH CAUSE OF ACTION
(Declaratory Judgment as to the Amendment of the Declaration)

33. Defendants incorporate their responses to Plaintiffs' previous allegations as if fully set forth herein.

34. Defendants deny the allegations set forth in Paragraphs 80 through 82 of the Amended Complaint.

NINTH CAUSE OF ACTION
(Declaratory Judgment as to the Assessments)

35. Defendants incorporate their responses to Plaintiffs' previous allegations as if fully set forth herein.

36. Defendants deny the allegations set forth in Paragraphs 83 through 87 of the Amended Complaint.

NOW THEREFORE, having fully answered the allegations in Plaintiffs' Complaint, the Defendants now set forth their **DEFENSES AND AFFIRMATIVE DEFENSES**:

FIRST DEFENSE
(Rule 12(b)(6), SCRPC)

1. Defendants aver that Plaintiffs' Complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action pursuant to South Carolina Rules of Civil Procedure, Rule 12(b)(6).

SECOND DEFENSE
(Waiver, Estoppel, Laches, and the Statute of Limitations)

2. Defendants aver that Plaintiffs' Complaint, and each cause of action therein, are barred by the doctrines of waiver, estoppel, laches, and the applicable Statute of Limitations.

THIRD DEFENSE
(Ratification and Acquiescence)

3. Defendants aver that Plaintiffs' Complaint, and each cause of action therein, are barred by the doctrines of ratification and acquiescence.

FOURTH DEFENSE
(Unclean Hands)

4. Defendants aver that Plaintiffs' Complaint, and each cause of action therein, are barred by the unclean hands of Plaintiffs.

FIFTH DEFENSE
(Business Judgement Rule)

5. Defendants aver that Plaintiffs are barred from relief or recovery, in any capacity, pursuant to the Business Judgment Rule.

SIXTH DEFENSE
(Reasonable Business Purpose)

6. Defendants aver that Plaintiffs' claims are barred on the ground that all actions taken by Defendants was for a legitimate and reasonable business purpose.

SEVENTH DEFENSE
(Lack of Standing)

7. Bull Point Plantation Property Owners Association is not the 1995 S.C Non-Profit Corporation of which defendants are members.

8. Defendants aver that one or more Plaintiffs may lack standing to maintain this action and, therefore, it must be dismissed.

EIGHTH DEFENSE
(Immunity)

9. S.C. Code Ann. § 33-31-834(a) states that "[a]ll directors, trustees, or members of the governing bodies or not for-profit cooperatives, corporations, associations, and organizations

... are immune from suit arising from the conduct of the affairs of these cooperatives, corporations, associations, or organizations.” Defendants who acted as directors, trustees, or members of the POA are immune from suit for these actions.

10. Defendants reserve any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the applicable Rules of Civil Procedure.

COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

NOW, THEREFORE, having fully answered the Verified Amended Complaint, Defendants pray that the Verified Amended Complaint be dismissed with costs, and for such other and further relief as the Court deems appropriate, Defendants GAVIGAN, GSI, LLC, and BULL POINT SC, LLC set forth their **COUNTERCLAIMS** and **THIRD-PARTY COMPLAINT** as follows:

GENERAL ALLEGATIONS

Parties

1. BULL POINT SC, LLC (“Bull Point SC”) is, and at all relevant times herein mentioned was, a limited liability company duly organized and existing under the laws of the State of South Carolina, with its registered agent located at 270 W. Coleman Boulevard, Mount Pleasant, South Carolina 29464.

2. GSI, LLC (“GSI”) is, and at all relevant times herein mentioned was, a limited liability company duly organized and existing under the laws of the State of South Carolina, with its registered agent located at 270 W. Coleman Boulevard, Mount Pleasant, South Carolina 29464.

3. WILLIAM E. GAVIGAN (“Gavigan”) is, and at all relevant times herein mentioned was, a resident of South Carolina, with a mailing address of 2216 Moss Street, Beaufort, South Carolina 29902.

4. HUSPAH PROPERTIES, LLC (“Huspah Properties”) is, and at all relevant times herein mentioned was, a South Carolina limited liability company—currently dissolved—with its principal place of business located at 101 Bull Point Drive, Seabrook, SC 29940.

5. RIVERS REACH AT POCOTALIGO, LLC (“Rivers Reach at Pocotaligo”) is, and at all relevant times herein mentioned was, a South Carolina limited liability company, with its principal place of business located at 166 Bull Point Drive, Seabrook, SC 29940, and a former member of the POA (previously owned Lot 74).

6. STEVEN ANDREWS is a licensed engineer and ANDREWS ENGINEERING, INC. is a South Carolina corporation with a registered place of business at 2712 Bull Street, Beaufort, South Carolina 29902, and a member of Bull Point Plantation Property Owners Association (2007 Corp).

7. JON H. ATTRIDGE and JANET L. ATTRIDGE (collectively the “Attridges”) are husband and wife and at all relevant times herein mentioned were residents of South Carolina, with a mailing address of 78 Tomotley Baroney Drive, Seabrook, South Carolina 29940, and members of Huspah Properties LLC.

8. ROBERT WILLIAM BANKOV and VIRGINIA JEANNETTE BANKOV (collectively the “Bankovs”) are husband and wife at all relevant times herein mentioned were the owners of Lot 190, Bull Point Plantation, and members of Huspah Properties, LLC.

9. TOM BOLTON ("Bolton") is, and at all relevant times herein mentioned was, a resident of South Carolina, with a mailing address of 170 Bull Point Drive Seabrook, SC 29940, and a member of Huspah Properties, LLC.

10. HARRIET BOSIACK ("Bosiack") is, and at all relevant times herein mentioned was, a resident of South Carolina, with a mailing address of 218 Bull Point Drive, Seabrook, SC 29940.

11. ROBERT BRENDZA and ROBIN E. BRENDZA (collectively the "Brendzas") are husband and wife and at all relevant times herein mentioned were residents of South Carolina, with a mailing address of 158 Bull Point Drive, Seabrook, South Carolina 29940, members of Huspah Properties, LLC, and members of Bull Point Plantation Property Owners Association (2007 Corp).

12. RICHARD JAY COLEMAN and MARLENE COLEMAN (collectively the "Colemans") are husband and wife and at all relevant times herein mentioned were residents of South Carolina, with a mailing address of 121 Bull Point Drive, Seabrook, SC 29940, members of Huspah Properties, LLC., and members of Bull Point Plantation Property Owners Association (2007 Corp).

13. GUY I. COLLIER and NANCY L. COLLIER (collectively the "Colliers") are husband and wife and at all relevant times herein mentioned were residents of South Carolina, with a mailing address of 90 Tomotley Baroney Drive, Seabrook, South Carolina 29940, members of Huspah Properties LLC, and members of Bull Point Plantation Property Owners Association (2007 Corp).

14. JOSEPH P. D'AMBROSIO and MARY D'AMBROSIO (collectively the "D'Ambrosios") are husband and wife and at all relevant times herein mentioned were residents of South Carolina with a mailing address of 83 Barnaby Bluff Road, Seabrook, South Carolina 29940.

15. RUSSELL G. DIMKE and SANDRA A. DIMKE (collectively the "Dimkes") are husband and wife and at all relevant times herein mentioned were residents of South Carolina, with a mailing address of 80 Tomotley Baroney Drive, Seabrook, South Carolina 29940, members of Huspah Properties LLC, and members of Bull Point Plantation Property Owners Association (2007 Corp).

16. JAMES G. GOODWIN JR. and CAROL A. GOODWIN (collectively the "Goodwins") are husband and wife and at all relevant times herein mentioned were residents of South Carolina, with a mailing address of 164 Bull Point Drive, Seabrook, South Carolina 29940, members of Huspah Properties LLC, and members of Bull Point Plantation Property Owners Association (2007 Corp).

17. RON LAMBE ("Lambe") is, and at all relevant times herein mentioned was, a resident of South Carolina, with a mailing address of 115 Bull Point Drive, Seabrook, South Carolina 29940, a member of Huspah Properties LLC, and a member of Bull Point Plantation Property Owners Association (2007 Corp).

18. GEORGE J. LOVETT and WILNA W. LOVETT (collectively the "Lovetts") are husband and wife and at all relevant times herein mentioned were residents of South Carolina, with a mailing address of 191 Bull Point Drive, Seabrook, South Carolina 29940, members of Huspah Properties LLC, and members of Bull Point Plantation Property Owners Association (2007 Corp).

19. PETER MARZLUFF and DEBORAH C. MARZLUFF (collectively the "Marzluffs") are husband and wife and at all relevant times herein mentioned were residents of South Carolina, with a mailing address of 242 Bull Point Drive, Seabrook, South Carolina 29940, members of Huspah Properties LLC, and members of Bull Point Plantation Property Owners Association (2007 Corp).

20. GARY OKEY and NANCY OKEY (collectively the "Okeys") are husband and wife and at all relevant times herein mentioned were residents of South Carolina, with a mailing address of 70 Bull Point Drive, Seabrook, South Carolina 29940, members of Huspah Properties LLC, and members of Bull Point Plantation Property Owners Association (2007 Corp).

21. MICHAEL PELLECCIA and JANICE S. PELLECHIA (collectively the "Pellacchias") are husband and wife and at all relevant times herein mentioned were residents of South Carolina, with a mailing address of 171 Bull Point Drive, Seabrook, South Carolina 29940, and members of Huspah Properties LLC.

22. MICHAEL POWERS ("Powers") is, and at all relevant times herein mentioned was, a resident of South Carolina, with a mailing address of 101 Bull Point Drive, Seabrook, South Carolina 29940, and a member and the register agent of Huspah Properties LLC.

23. FRANK H. ROBERTS SR. ("Roberts") is, and at all relevant times herein mentioned was, a resident of South Carolina, with a mailing address of 148 Bull Point Drive, Seabrook, South Carolina 29940, and a member of Bull Point Plantation Property Owners Association (2007 Corp).

24. RICHARD SWILPA ("Swilpa") is, and at all relevant times herein mentioned was, a resident of South Carolina, with a mailing address of 168 Bull Point Drive, Seabrook, SC 29940., and a member of Huspah Properties, LLC.

25. MICHELE GALLANT is, and at all relevant times herein mentioned was, a resident of South Carolina, with a mailing address of 168 Bull Point Drive, Seabrook, SC 29940, and a member of Huspah Properties, LLC.

26. ROBERT WOLFSON ("Wolfson") is, and at all relevant times herein mentioned was, a resident of South Carolina, with a mailing address of 166 Bull Point Drive, and was at certain relevant times a principal and member of, among others, Huspah Properties, LLC, Rivers Reach Realty, LLC, Rivers Reach at Pocatigo, LLC, and Bull Point Plantation Property Owners Association (2007 Corp).

History of the Declarancy of Bull Point Plantation

27. On January 20, 1995, Bull Point LLC was formed as a South Carolina limited liability company. This company was owned by various parties during the early development of Bull Point Plantation but is now a Gavigan-affiliated company.

28. On January 20, 1995, Metropolitan Properties, Inc. acquired a 690-acre tract of land that is now referred to as Bull Point Plantation. On January 23, 1995, Metropolitan Properties, Inc. deeded to Bull Point, LLC 160 acres, which tract is Phase I of Bull Point Plantation.

29. On September 22, 1995, Bull Point LLC and Metropolitan Properties, Inc., recorded the Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation (the "Declaration").

30. Between December 14, 1995 and July 24, 1997, Bull Point LLC and Metropolitan Properties, Inc. recorded six numbered amendments. On January 23, 1997, Metropolitan Properties, Inc. sold its remaining interests to Bull Point, LLC and thereafter Bull Point LLC alone was the Declarant to Bull Point Plantation.

31. Prior to 2012, Bull Point LLC encumbered most, but not all, of its interests, in the Property and Additional Property (as these terms are defined in the Declaration) in the Bull Point Development with one or more financial institutions, including BB&T, which debt ultimately was assigned to German American Capital Corporation ("GACC"), a Maryland Corporation.

32. In 2011, GACC commenced an action to foreclose on the BB&T encumbered property. Both Bull Point Property Owners Association, Inc. and Bull Point Plantation Property Owners Association (*i.e.*, the unauthorized 2007 Corp.) were named in the foreclosure action.

33. On January 23, 2012, the BB&T encumbered property was sold at public auction to GACC. Thereafter, GACC assigned its bid to DB Aster, LLC by virtue of an Assignment of Bid.

34. On July 5, 2012, the United States Marshall executed that *Deed by Judicial Order*, in favor of DB Aster, LLC, pursuant to which the BB&T encumbered property was deeded to DB Aster, LLC. (Recorded July 9, 2012, in Book 03156, at Pages 0955-0967.)

35. On January 8, 2013, in Book 03205, at Pages 2101-2104, the *Assignment of Rights Under Declaration* was recorded.

36. On February 23, 2016, defendant DB Aster ("Seller") and defendant and Third-Party Plaintiff GSI, LLC ("Buyer") entered into that written agreement entitled Purchase and Sale Agreement (the "Purchase Agreement") pursuant to which GSI contracted to purchase, among other things, twenty-seven (27) improved, single-family, residential lots, one hundred fifty-three (153) undeveloped acres, and certain intangible personal property, and the Declarant Rights.

37. The purchase of DB Aster's interest in Bull Point did not occur as contracted and GSI, LLC commenced an action, among other things, for specific performance.

38. On or about August 10, 2017, GSI and DB Aster entered into an amended written agreement, pursuant to which agreement GSI agreed to pay to DB Aster, LLC the sum of \$1.2 million for the real, personal and intangible property, and the Declarant Rights, referenced above.

39. Effective August 18, 2017, DB Aster, LLC executed that *Title to Real Estate*, pursuant to which it transferred to GSI, LLC all its rights, title and interest in and to that real property referenced in the Purchase Agreement. (Recorded August 21, 2017, in Book 3600, at Pages 2571-2578.)

40. On August 18, 2017, DB Aster, LLC also executed that *Assignment of Rights Under Declaration*, pursuant to which DB Aster, LLC transferred to GSI, LLC the Declarant Rights to Bull Point. (Recorded on August 21, 2017, in Book 3600, at Pages 2579-2586.)

41. On August 21, 2017, GSI, LLC executed that *Title to Real Estate*, pursuant to which it transferred to Bull Point SC, LLC all of its rights, title and interest in and to that real property referenced in the Purchase Agreement, excepting residential Lot 170 and Lot 260. (Recorded on August 21, 2017, in Book 3600, at Pgs. 2594-2600.)

42. On August 21, 2017, GSI, LLC also executed that *Assignment of Rights Under Declaration*, pursuant to which GSI, LLC transferred to Bull Point SC, LLC the Declarant Rights to Bull Point Plantation. (Recorded August 21, 2017, in Book 3600, at Pgs. 2641-2643.)

**ALLEGATIONS AS TO "BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION"**

43. A small minority of owners have engaged in a conspiracy to enrich themselves, seize control of the Association, improperly acquire and convey property, and seize the Declarant Rights.

44. In May 2014, Plaintiffs and Third-Party Defendants caused a complaint to be filed to "foreclose" on Lot 223. This complaint was fraudulent in multiple respects. First, the

“plaintiff” therein was “Bull Point Plantation Property Owners Association, Inc.,” but in 2014, there was no entity with that name registered with the Secretary of State. Second, the mortgage encumbering Lot 223 was not the same as the purported plaintiff. Third, the Association’s Board of Directors did not authorize said foreclosure action.

45. In late December 2014, the plaintiffs in the Lot 223 action moved for judgment in the foreclosure action. With this in mind, on December 31, 2014, third-party defendant Russ Dimke, then the acting Secretary/Treasurer, executed Nonprofit Corporation Articles of Amendment to change the POA’s name from “Bull Point Property Owners Association, Inc.” to “Bull Point Plantation Property Owners Association, Inc.” These Articles of Amendment were fraudulent as the Articles of Incorporation require any amendment to be done with the assent of 75% of the members, the Bylaws require that all written instruments be signed by the President, and the Board of Directors did not know of and did not approve said action.

46. On January 21, 2015, the court in the Lot 223 foreclosure action issued a Master’s Deed to “Bull Point Plantation Property Owners Association, Inc.,” which, again, was a non-existent entity. Plaintiffs and Third-Party Defendants, however, did not immediately record this deed. Rather, the Dimke-executed Articles of Amendment were file-stamped by the Secretary of State on February 4, 2016. The very next day, February 5, 2015, Third-Party Defendant Dimke recorded the Deed.

47. The unauthorized name change was done to take title to the fraudulently foreclosed lot (*i.e.*, the result of a legal action instituted in a name other than the legal name of the POA) and to conceal the nearly 100 fraudulently commenced legal actions.

48. The unauthorized actions of Plaintiffs and Third-Party Defendants was discovered by the POA and the Declarant only after a forensic review was conducted, which review was completed only a few months before the litigation was commenced.

Unauthorized Transfer of \$500,000.00 Association Funds

49. As alleged herein above, on February 23, 2016, DB Aster, LLC contracted with GSI, LLC to sell its Bull Point-related assets, including real property, personal property, and intangibles, to GSI, LLC.

50. Soon after entering into the purchase and sale agreement, defendant Gavigan visited Bull Point and met with several persons, including Russ Dimke, Ron Lambe, Gary Okey, Peter Marzluff and a few others in a private greeting before a community event was hosted to announce GSI, LLC and Gavigan as the soon Declarant and Purchaser of DB Aster, LLC's Interest.

51. Unbeknownst to defendants and third-party plaintiffs, after Gavigan met with Lambe, Marzluff and Okey, these individuals took unauthorized steps to transfer \$500,000.00 of Association's funds without the consent or knowledge of the Board of Directors. The funds were transferred to accounts opened with the 2007 Unauthorized POA corporate records.

The Unauthorized Transfer of Funds to First Federal Bank

52. On or about April 21, 2011, the POA opened an account with CBC National Bank, Account No. 90203828 (hereafter the "FFB Account").³

53. From 2011 through 2016, the FFB Account was little used, with only one transaction being recorded on March 2, 2011.

54. On February 29, 2016, Lambe caused \$125,000 to be transferred from the Bull Point Contingency Fund Account to the FFB Account.

³ On or about August 2018, CBC National Bank merged with First Federal Bank, and is hereafter referred to as "FFB".

55. The transfer of funds was not disclosed to the Board of Directors prior to the transfer. The Board of Directors did not approve the transfer of funds to FFB.

*The Fraudulent Opening of the First Internet Bank of Indiana Account
and Unauthorized Transfer of POA Funds*

56. On or about March 10, 2016, Ron Lambe, Peter Marzluff, and Gary Okey completed an application to open a new bank account with First Internet Bank of Indiana. This resulted in the opening of First Internet Bank Account No. 301007721 (hereafter the "First Internet Bank Account").

57. On March 10, 2016, Ron Lambe signed Bull Point POA Contingency Acct Check No. 1050, in the amount of \$250,000.00, and caused said funds to be deposited with First Internet Bank.

58. The opening of the First Internet Bank Account was fraudulent in multiple respects, specifically:

- a. The application listed the date the entity was established as "1/2/2007." This is the date the Unauthorized POA Corporation was established, not the Association. Rather, the Association was formed on 09/26/1995.
- b. The application included a Certificate of Authority.
 - (1) On said certificate, Lambe, Marzluff and Okey certified that the Board of Directors had adopted a resolution authorizing the POA to open the bank account. In fact, the Board of Directors did *not* authorize an account to be opened.
 - (2) On said certificate, Lambe, Marzluff and Okey certified that Lambe and Okey were Officers. On said date, Okey was *not* an officer of the POA.

*The Fraudulent Opening of the Ameris Bank Account
and Unauthorized Transfer of POA Funds*

59. On or about March 16, 2016, Ron Lambe, Peter Marzluff, and Gary Okey completed an application to open a new bank account, ostensibly, for the Association.

60. This resulted in the opening of Ameris Bank Account No. 2048676460.

61. Subsequently, in March 2016, Lambe, Marzluff and Okey caused to be transferred to Ameris Bank the sum of \$250,000.00.

62. The opening of the Ameris Bank Account was fraudulent in multiple respects; specifically:

- a. The application listed the entity name as "Bull Point Plantation Property Owners." On said date, there was no entity with this name registered with the South Carolina Secretary of State.
- b. The application listed the date the entity was established as "01/02/2007." This is not the date that the POA was established (which was 09/26/1995); rather, as alleged herein, this is the date that Bull Point Plantation Property Owners Association (*i.e.*, the Unauthorized 2007 Corp.) was established.
- c. The application stated that a resolution was adopted as of "03/16/2016." The Board of Directors did *not* adopt a resolution on said date.
- d. The application listed Ron Lambe, Gary Okey, and Peter Marzluff as "Authorized Signers." These individuals were not authorized signers because, among other things, (1) the POA's Bylaws expressly provide in Article VIII, Section 8(a), that the President shall sign all written instruments, and (2) the Board of Directors did not approve these persons to be authorized signers.

DEFAMATION BY COUNTER-DEFENDANTS
AND/OR THIRD-PARTY DEFENDANTS

63. To scare and coerce other homeowners within Bull Point to join their conspiracy, one or more members of the plaintiffs and third-party defendants spread false and malicious rumors about Mr. Gavigan and his companies, including GSI, LLC, Bull Point SC, LLC, and Gavigan Construction, LLC.

64. On April 10, 2017, in an e-mail to various members of Bull Point (specifically, to those persons a part of Huspah Properties, as defined herein), Harriett Bosiack, a licensed real estate professional, stated that: "Billy Gavigan (Gavigan Homes) ... is presently working on duplexes for Bull Point."

65. The Bosiack publication was false in that Beaufort County's Zoning department did not authorize said construction, the Declaration does not provide for multi-family housing, and Gavigan has never had plans to build duplexes at Bull Point. Bosiack knew this is not allowed and made the publication to create fear among other Association Members to join Wolfson in Huspah Properties, LLC, and invest.

66. On multiple occasions Robin Brendza made a false and defamatory statement against defendant William E. Gavigan as follows:

- a. On September 20, 2017 Brendza e-mailed the POA's Director of Operation, wherein she "Rumor has it that the equipment was utilized by Billy Gavigan's team to clean up lots damaged by Matthew". The statements were false in that Gavigan did not have a "team" but rather the POA contracted to have laborers and equipment to do general storm cleanup in the aftermath of Hurricane Matthew. Further, the contracted labor did not do any

maintenance on any lot owned by Gavigan that was not done for any other resident.

67. On multiple occasions Joseph D'Ambrosio, Mary D'Ambrosio, Robert Brendza and Gary Okey published false and defamatory statements regarding William E. Gavigan, GSI, LLC, Bull Point SC, LLC and/or Gavigan Construction, LLC. For example:

- a. On April 5, 2019, the above publishers wrote in an email to POA Members that: "Prior to the lawsuit, Mr. Gavigan had given himself total authority to spend our CF money." This statement was *false* because at no time did Gavigan have total authority over the POA's Contingency Fund. Rather, all POA and Contingency Fund expenditures were approved by the Board of Directors.
- b. On May 23, 2019, D'Ambrosio published an email to numerous persons within Bull Point, in which he stated that a Sheriff's report stated, "Billy Gavigan brought a loaded handgun on to grade-school property grounds." This publication was *false* because the Gavigan did not bring a loaded handgun on to school property and, further, because the Sheriff's report did not so report.
- c. On September 9, 2019, the above publishers wrote in an email to POA Members that: "Mr. Gavigan incurred these legal fees by bringing lawsuits on behalf of himself and presumably the POA." This statement was *false* because Gavigan never brought a lawsuit against any Member or entity involving the POA, but rather was named as a defendant in legal actions brought by Members.

- d. On September 9, 2019, the above publishers also wrote that: "Mr. Gavigan and his appointed BOD have either or obtained or requested more money from the Contingency Fund (\$273,000) in two years than all other declarants and BOD since Bull Point came into existence." This statement was *false*, first, because Gavigan does not have any control of the Contingency Fund but rather all control is exercised solely through the Board of Directors, and second because since the Contingency Fund was first defined in the Fifteenth Amendment, more than \$700,000 was spent.
- e. On September 9, 2019, the above publishers also wrote that: "Mr. Gavigan overspending the budgeted amount for attorney fees by 1,181%." This statement was *false* because Gavigan did not spend any budgeted monies. Rather, the expenditure of POA funds is exercised solely through the Board of Directors.
- f. On September 9, 2019, the above publishers also wrote that: "Please remember that Section 9.11 of our CCR requires the declarant to make up the difference when a shortfall occurs. Despite this, the purported declarant is now double dipping into our emergency funds and asking us to pay twice for the Board's mismanagement of our operating funds." This statement was *false* because the CC&R's require the Declarant solely to make up a shortage between the budgeted assessment amount and the amount of funds collected, whereas in 2019 the POA received revenues in excess of the budgeted assessment amount.

68. On multiple occasions Robin Brendza made a false and defamatory statement against defendant William E. Gavigan as follows:

- a. On September 20, 2017 Brendza emailed the POA's Director of Operation, wherein she "Rumor has it that the equipment was utilized by Billy Gavigan's team to clean up lots damaged by Matthew". The statements were false in that Gavigan did not have a "team" but rather the POA contracted to have laborers and equipment to do general storm cleanup in the aftermath of Hurricane Matthew. Further, the contracted labor did not do any maintenance on any lot owned by Gavigan that was not done for any other resident.

69. On November 11, 2019, Brendza wrote in an email to POA Members that: "The interim Board took control of the POA office just this morning, with Sheriff's Deputies on the scene to escort Mr. Gavigan out of the POA office." This statement was *false* because (1) the Order did not state that Gavigan was not allowed on POA Property, and (2) the Deputies did not "escort" Gavigan from the premises.

70. On multiple occasions Robert Brendza and Gary Okey published false and defamatory statements regarding William E. Gavigan, GSI, LLC, Bull Point SC, LLC and/or Gavigan Construction, LLC. For example:

- a. In January 2019, Brendza wrote in an email to POA Members that: Gavigan "has drained the Contingency Fund account at BB&T to the tune of over \$122,000." This statement was *false* because Gavigan did not "drain" any funds from the POA's accounts, let alone an account at BB&T. Rather, the

expenditure of POA funds, including the Contingency Fund, is exercised solely through the Board of Directors.

71. On one or more occasions Ron Lambe and Gary Okey published false and defamatory statements regarding William E. Gavigan, GSI, LLC, Bull Point SC, LLC and/or Gavigan Construction, LLC. For example:

- a. On March 29, 2017, the above publishers wrote an email to POA Members that: "We have been closely following the Billy Gavigan v. DB Aster lawsuit." This statement was *false* because Mr. Gavigan was not a plaintiff in an action involving DB Aster. Rather, the lawsuit in question was GSI, LLC v. DB Aster, LLC.

72. On one or more occasions Ron Lambe published false and defamatory statements regarding William E. Gavigan, GSI, LLC, Bull Point SC, LLC and/or Gavigan Construction, LLC. For example:

- a. In December 2016, in an email to various members of Bull Point (specifically, to persons a part of Huspah Properties as defined herein), Ronald Lambe stated: "Billy Gavigan will hurt the values in this neighborhood and I have found not one soul who wants him in here in any capacity." The Lambe publication was *false* in that there were and are individuals (*i.e.*, Owners) at Bull Point Plantation who wanted and continue to want Gavigan involved with Bull Point.
- b. On December 31, 2017, Lambe wrote an email to POA Members that: "It is obvious that Gavigan rules by intimidation, bullying, demands, and veiled

statements regarding William E. Gavigan, Bull Point SC, LLC and/or Gavigan Construction, LLC.

For example:

- a. On June 25, 2017, in an email to Richard McWhorter, Rivers Reach Realty, LLC (*i.e.*, Robert Wolfson) stated that GSI did not close on the DB Aster Purchase Agreement because Gavigan “did not have the money at that time.” This publication was *false* because GSI, LLC had the funding necessary to acquire Bull Point. The reality is that GSI did not close because the original purchase agreement stated that GSI would be purchasing “improved” lots when in fact certain lots were unimproved (*i.e.*, without the required power and data). Wolfson knew this because he was the original developer who did not complete the work.

76. Each of the above false and defamatory statement was an unprivileged publication to a third party, all as alleged herein above.

77. Each of the above false and defamatory statement was the fault of the person or entity that made the statement, all as alleged herein above.

78. Defendants and Third-Party Plaintiffs William E. Gavigan, Gavigan Construction LLC, GSI, LLC, and Bull Point SC, LLC were harmed, *inter alia*, in the damage to their reputation, good will, ability to manage the POA, the Board of Directors, the ARB, and/or the Declarant. Further, said parties have suffered financially thereby.

79. The false and defamatory statements are actionable irrespective of harm because they maliciously presented Gavigan as unfit in his business as a real estate developer and/or were disparaging of entities in which he has an interest. Gavigan and the entities in which he has an

interest were harmed by said statements and have suffered damages to reputation as evidenced by tangible losses to business.

80. In making the defamatory statements alleged herein above, the publishers acted with malice, oppression, or fraud, and each are thus responsible for punitive damages in an amount to be proven at trial according to proof.

**Additional Acts of Conspiracy against
Counterclaimants and Third-Party Plaintiffs**

81. Separate and apart from defamation, several parties named herein conspired to interfere with and obstruct GSI's purchase of Bull Point, and the operations of the Association by GSI, LLC, Bull Point, SC, LLC and Gavigan. The group's business plan and strategies included, among other things, using Association funds, and hiring Wolfson's attorney, Barry Johnson, to evaluate and oversee the group's ability to use the POA for their for-profit venture.

82. The group's strategies also included raising capital to purchase the 27 Lots and 156 acres and acquire the Declarant Rights directly from DB Aster, LLC. A major irony here is that one scenario Wolfson and the others conjured up was taking nearly \$500,000.00 of the Contingency Funds monies to acquire the Declarant Rights; that is, using the Contingency Fund monies for for-profit purposes.

83. The group was sufficiently assured of its ability to raise capital and to acquire the Property and Declarant Rights under Barry Johnson's advisement being funded by POA funds from January 2017 through September 2017.

84. On April 27, 2017, Wolfson and others formed Huspah Properties, LLC with counter-defendant Michael Powers as its registered agent. Subsequently, the group proceeded to raise monies from counter-defendants, with each share in the new entity selling for \$10,000.00.

85. By way of example, on May 25, 2017, third-party defendant Rivers Reach at Pocotaligo paid \$20,000.00 to Robert Wolfson and with these proceeds, Wolfson paid \$20,000.00 to Huspah Properties, LLC to purchase two shares in the Huspah Properties, LLC the same day.

86. In December of 2017 Rivers Reach at Pocotaligo, using Public funds from Jasper County, also paid a \$10,000.00 directly to Fred Kuhn, Esq., of Moss & Kuhn, P.A., to start one of the first legal against Gavigan, GSI, LLC, Bull Point SC, LLC, and the Association in furtherance of the above-mentioned scheme.

87. These payments by Rivers Reach at Pocotaligo, LLC were egregious because the money from the principles of Rivers Reach at Pocotaligo, LLC were from the nearly seven-million-dollar sole source contract awarded Jasper County. The funds are bond funds which were pursuant to a Special Service Contract between the county and the company. The funds were restricted to development of the infrastructure of the development commonly referred to Rivers Reach at Pocotaligo aka the Setting at Mackay Point.

88. Numerous checks and funds from Rivers Reach at Pocotaligo, LLC were paid to Barry Johnson, Fred Kuhn, and others for legal work in furtherance of legal actions adverse to Gavigan, GSI, LLC, and Bull Point SC, LLC.

89. As alleged above, on August 18, 2017, GSI, LLC acquired all of DB Aster, LLC's interests in Bull Point, including the Declarant Rights, and on August 21, 2017, GSI, LLC assigned everything to Bull Point SC, LLC. Shortly thereafter, on August 24, 2017, Huspah Properties, LLC filed Articles of Termination.

90. Steve Andrews of Andrews engineering obtained a false development permit for Phase VII (i.e., the 156 acres tract) that GSI, LLC and Bull Point SC, LLC acquired.

91. Andrews represented and obtained the Development Permit from Beaufort County with an expired 1996 wetland permit. The permit was expired over twenty years ago.

92. Andrews knew the permit was expired, obtained it, and represented to GSI, LLC and Bull Point SC, LLC and William Gavigan that it was a valid Development Permit.

93. Steve Andrews, Robert Wolfson, Peter Marzluff, Ron Lambe, and others misrepresented to Bull Point SC, LLC and William Gavigan that three federally protected Indian Artifact sites were no longer active. The MOU sites were and are active which has caused GSI, LLC, Bull Point SC, LLC, and the Owners of the Lots sold thousands of dollars to research and work with OCRM and SHPO to properly mitigate the sites for the third-party owners. Bull Point, SC LLC is the successor to the Original Developer and maintains a responsibility to monitor and maintain the sites although they were sold before 2017.

94. The legal work paid for with Association funds in 2017 was done in the furtherance and for the benefit of the members of Huspah Properties, LLC (who are primarily the Plaintiffs and Third-Party Defendants). The legal work performed was to acquire the property and declarant rights of Bull Point for a for-profit operation.

95. Notwithstanding the formal termination of Huspah Properties, LLC, the Plaintiffs and Third-Party Defendants remained steadfast in their objective. To that end, the individual members took further steps to interfere, and continue to interfere, with and obstruct the defendants.

- a. contacting Gavigan's lenders to disparage him and his companies;
- b. stating to prospective clients that Gavigan did not have a building license;
and
- c. filing multiple false criminal allegations with Beaufort County legal actions to tie-up Gavigan's resources, discussed in detail below.

- d. Misrepresented and provided a false Development permit for phase VII.

96. Early on in their association, they determined that one approach to weaken Gavigan, would be to embroil him in multiple legal actions as a way of tying up his time, money and resources.

97. The plaintiffs and some third-party defendants implemented the strategy. To that end, over the last two years, various plaintiffs and third-party defendants commenced several actions, including:

- a. *Old South Properties, Inc. v. William E. Gavigan, et al.*, Case No. 2018CP0700144; and
- b. *D'Ambrosio v. William E. Gavigan*, Case No. 2018CP0701859 (and cases consolidated therewith); and
- c. *Attridge et al v. The Board of Directors of Bull Point Plantation Property Owners Association, Inc., et al.*, Case No. 2018CP0702345; and
- d. *Third Party claims in the POA vs Brenda Etal.*

98. From the time that it became known that GSI, LLC was contracted to purchase Bull Point, counter-defendants/third-party defendants, met and communicated on multiple occasions to interfere with Gavigan and to further their efforts to acquire Bull Point and the Declarant Rights. These efforts included retaining Barry Johnson, Esq., of Johnson & Davis, P.A, paid for partly with Association funds, inter alia, to communicate with DB Aster, to present their alternative interests in acquiring Bull Point and/or the Declarant Rights, and to impede Gavigan after ownership was transferred.

99. Wolfson formed the idea of taking the Declarant Rights and/or Bull Point Plantation from GSI, LLC and or Bull Point SC, LLC. Wolfson then arranged multiple meetings with several owners, including Goodwin, Brendza, Pellacchia, Okey and Lambe, and the others listed above to take steps to effectuate this goal, including in forming Huspah Properties, LLC. Each individual named herein worked toward and communicated with each other in furtherance of this goal.

100. During 2018, Joseph and Mary D'Ambrosio filed numerous allegations against Gavigan with Beaufort County alleging among other things, damaging wetlands. All of the allegations were determined to be unfounded.

101. Overt action in furtherance of the goals and conspiracy referenced above, include, but are not limited to:

- a. Misappropriating Contingency Fund monies to pay for legal services to evaluate their for-profit plan.
- b. Publishing a plan to acquire the Declarant Rights and circulating said plan among a limited number of owners.
- c. Commencing legal actions against Gavigan without a legal basis to do so.
- d. Filing false claims with the South Carolina LLR, the Town of Port Royal and Beaufort County.
- e. Using public bond money, including money from Rivers Reach at Pocatigo, LLC, to pay attorney's fees and costs for legal actions adverse to Gavigan and Bull Point SC, LLC when such funds were prohibited from such use under a Special Services Agreement with Jasper County.

102. All the actions outlined above have harmed Gavigan and Gavigan's related entities in that it has caused them to incur extensive legal fees and, more broadly, damaged the reputation of Gavigan individually, as well as his companies. By way of example, there recently was a wildly successful promotional event at Bull Point that resulted in over 60 properties being sold in one day. Ordinarily, such a sale would have resulted in some construction contracts being awarded Gavigan but has not resulted in any construction contracts at Bull Point since the dissident minority owners commenced their efforts to acquire Bull Point and to harm Gavigan and his entities.

FIRST CAUSE OF ACTION

(Defamation Claim of William E. Gavigan, GSI, LLC, and Bull Point SC, LLC against Harriet Bosiack, Joe D'Ambrosio, Mary D'Ambrosio, Robert Brendza, Robin Brendza, Ron Lambe, Peter Marzluff, Gary Okey, Michael Pellechia, and Robert Wolfson)

103. Counterclaimants and Third-Party Plaintiffs repeat and reallege Paragraphs 1 through 102, inclusive, above and incorporate the same herein by reference.

104. Bosiack, the D'Ambrosios, the Brendzas, Lambe, Marzluff, Okey, and Wolfson each made a false and defamatory statement concerning William E. Gavigan, GSI, LLC, and/or Bull Point SC, LLC, all as alleged herein above.

105. The false and defamatory statements were an unprivileged publication to a third party, all as alleged herein above.

106. Each false and defamatory statement was the fault of the person or entity that made the statement, all as alleged herein above.

107. Defendants and Third-Party Plaintiffs William E. Gavigan, Gavigan Construction LLC, GSI, LLC, and Bull Point SC, LLC were harmed, all as alleged herein above.

108. The false and defamatory statements are actionable irrespective of harm because they maliciously presented Gavigan as unfit in his business as a real estate developer and/or were disparaging of entities in which he has an interest. Gavigan and the entities in which he has an

interest were harmed by said statements and have suffered damages to reputation as evidenced by tangible losses to business.

109. In making the defamatory statements alleged herein above, the publishers acted with malice, oppression, or fraud, and each are thus responsible for punitive damages in an amount to be proven at trial according to proof.

SECOND CAUSE OF ACTION

(Civil Conspiracy against Plaintiffs Jon and Janet Attridge, Robert and Virginia Bankov, Tom Bolton, Richard and Marlene Coleman, Russell and Sandra Dimke, James and Carol Goodwin, George and Wilna Lovett, Peter and Deborah Marzluff, Gary and Nancy Okey, Michael and Janice Pellechia, Richard Swilpa, Michele Gallant, Robert and Robin Brendza, Steve Andrews, Ron Lambe, Michael Powers, Robert Wolfson, and Rivers Reach at Pocotaligo, LLC)

110. Counterclaimants and Third-Party Plaintiffs repeat and reallege Paragraphs 1 through 109 inclusive, above and incorporate the same herein by reference.

111. Counterclaim-defendants and Third-Party Defendants combined, starting in 2016 and continuing through the present, to damage Gavigan and Gavigan-related entities, all as alleged herein above.

112. Counterclaim-defendants' and Third-Party Defendants' purpose for combining was to injure Gavigan and his related businesses, including Bull Point SC, LLC. The "additional acts" in furtherance of the conspiracy include, but are not limited to, the willful act of formation of a separate group to purchase Bull Point, the formulation of a plan to injure Gavigan by the filing of [o]n-going lawsuits [that] would drive away potential property/home buyers and depress property values during the period of litigation [sic]," and the implementation of the scheme by the conspirators.

113. "Special damages" suffered as a result of the conspiracy include personal mental and emotion stress suffered by Gavigan, individually, costs of the recovery and analysis of data and evidence related to the conspiracy, attorney's fees related to fighting the litigation that formed part of the conspiracy, and loss of profits suffered by Gavigan and his business are actual damages resulting from the conspired acts of the Counterclaim-defendants and Third-Party Defendants to gain unfettered control of Bull Point unrelated to the First and Second Counterclaims and Third-Party Claims.

THIRD CAUSE OF ACTION
***(Declaratory Judgment that Bull Point SC, LLC
is the Declarant to Bull Point Plantation)***

114. Counterclaimants and Third-Party Plaintiffs repeat and reallege Paragraphs 1 through 118, inclusive, above and incorporate the same herein by reference.

115. Bull Point SC, LLC seeks a declaratory judgment that it is the Declarant and, therefore, the only party with right, title and interest to the Declarant Rights, as set forth in the pleadings already presented before this Court, which incorporated by reference herein, based on:

- a. In 2013, Bull Point, LLC assigned to DB Aster, LLC the Declarant Rights to Bull Point Plantation, all as alleged herein above.
- b. On August 18, 2017, DB Aster, LLC assigned to GSI, LLC the Declarant Rights to Bull Point Plantation, all as alleged herein above.
- c. On August 21, 2017, GSI, LLC assigned to Bull Point SC, LLC the Declarant Rights to Bull Point Plantation, all as alleged herein above.

PRAYER

WHEREFORE, William E. Gavigan, Bull Point SC, LLC, and GSI, LLC pray for judgment against Counter-Defendants and Third-Party Defendants, and each of them, as follows:

A. FIRST CAUSE OF ACTION (Defamation)

1. For general, incidental, and consequential damages in an amount presently unknown but in excess of the jurisdictional requirement for this Court and in an amount to be determined at the time of trial;
2. For exemplary and punitive damages, according to proof at trial;
3. Pre-judgment and post-judgment interest;
4. For costs of suit incurred herein; and
5. For such other and further relief as the Court may deem just and proper.

B. SECOND CAUSE OF ACTION (Civil Conspiracy)

1. For “special” damages unrelated to other causes of action and in an amount presently unknown but in excess of the jurisdictional requirement for this Court and in an amount to be determined at the time of trial;
2. For punitive damages, according to proof at trial;
3. For costs of suit incurred, unrelated to other claims; and
4. For such other and further relief as the Court may deem just and proper.

C. THIRD CAUSE OF ACTION (Declaratory Judgment that Bull Point SC, LLC is the Declarant)

1. For a declaration that Bull Point SC, LLC is the Declarant to Bull Point Plantation;
2. For reasonable attorneys’ fees according to proof;
3. For costs of suit incurred herein; and
4. For such other and further relief as the Court may deem just and proper.

Furthermore, the Defendants in this action pray that the claims against them be dismissed with prejudice, and for such other and further relief as the Court may deem just and proper

This the 2nd day of December, 2019.

RICHARDSON PLOWDEN & ROBINSON, P.A.

s/Eugene H. Matthews

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COUNSEL FOR WILLIAM E. GAVIGAN AND BULL POINT
SC, LLC, GSI, LLC, AND WILLIAM GAVIGAN

-VS-

STEVE ANDREWS; HARRIET BOSIACK;
JOSEPH P. D'AMBROSIO; MARY
D'AMBROSIO; TODD BAKER; JAMES
HAYES; RON LAMBE; MICHAEL
POWERS; DAVE PRZYBYS; ROBERT
WOLFSON; HUSPAH PROPERTIES, LLC;
RIVERS REACH AT POCOTALIGO, LLC;
RIVERS REACH REALTY, LLC AND
JOHN DOES 1-10,

Third-Party Defendants.

Defendants' Motion to Alter or Amend Judgment should be denied because it raises no issues that this Court has not thoroughly considered and correctly decided. Most of Defendants' motion is copied and pasted from their Motion for Partial Summary Judgment and Response to Plaintiffs' Motion for Partial Summary Judgment. Accordingly, Plaintiffs incorporate by reference their responses to Defendants' arguments as set forth in Plaintiffs' Memorandum in Support of Motion for Partial Summary Judgment.

For ease of reference, Plaintiffs will address Defendants' arguments in the order in which they appear in Defendants' Motion.

ALLEGED FACTUAL ERRORS AND OMISSIONS IN THE ORDER

1 & 2. *"On page 4, the Order incorrectly states that the Articles of Incorporation 'make no provision for the Declarant to appoint or remove Directors.'"* Defendants continue to make the circular argument that the Articles of Incorporation provide for the Directors to be appointed by the Declarant because the Articles incorporate the Declaration by reference and the Declaration permits the Declarant to appoint and remove Directors. However, the same Articles of Incorporation specifically provide (at paragraph 6) that the members shall elect the Directors. This

constitutes a direct conflict between the Articles of Incorporation and the Declaration. The Court's Order accurately quotes section 8.02 of the Declarations: "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...." (emphasis added). In other words, the Declaration itself provides that in the event of conflict the South Carolina Code prevails. South Carolina Code Section 33-31-206 in turn provides that the Articles of Incorporation prevail over other conflicting governing documents. The Court correctly resolved the conflict by determining that the Articles of Incorporation's explicit provision that the members shall elect the Directors must prevail over the conflicting provision of the Declaration.

In addition to giving effect to the order of precedence prescribed by the Nonprofit Corporation Act, the Court's conclusion is consistent with the principal that when a conflict exists between an incorporated document and a specific provision in the incorporating document, the specific provision in the incorporating document generally prevails. *See, e.g., Centex/Worthgroup, LLC v. Worthgroup Architects, L.P.*, 365 P.3d 37 (N.M. App. 2015); *Perry v. United States*, 146 F.2d 398 (5th Cir. 1945) ("We reaffirm here what we there decided, that while a reference in a subcontract to the provisions, plans and specifications of a general contract imports them into the subcontract where not inconsistent with its terms, it is quite well settled that such a reference is not effective beyond this, and that if the subcontract contains words of definite limitation, they will be given effect and the reference limited accordingly.").

3. "On pages 5 and 6, the Order incorrectly states that, on 'July 9, 2012, GACC acquired Bull Point, LLC's real estate interests in Bull Point Plantation,' and that 'DB Aster obtained Declarant Bull Point LLC's interest in the Bull Point Property in 2012.' These statements are

simply untrue.” Defendants argued, for the first time in response to the Plaintiffs’ submission of the proposed Order, that the original Declarant, Bull Point, LLC retained some property when it assigned the rest of its property to DB Aster, so DB Aster did not become the Declarant. Defendants go on to argue that this strengthens their estoppel argument, because some of the Plaintiffs have previously recognized DB Aster as the Declarant so they should be estopped from denying that Defendant Bull Point SC, LLC is the Declarant. When Defendants raised this issue with respect to the proposed Order that Plaintiffs submitted to the Court, Plaintiffs submitted a revised proposed Order removing the statement that DB Aster obtained Bull Point LLC’s *entire* interest, since the details of DB Aster’s acquisition do not affect the analysis in this case. In fact, if Defendants are correct in their contention, this only strengthens the conclusion that the Defendant Bull Point SC, LLC did not acquire Bull Point, LLC’s entire interest and therefore cannot be the Declarant. The record demonstrates that the Defendant Bull Point SC, LLC did not even acquire *GSI, LLC*’s entire interest, let alone Bull Point, LLC’s entire interest. Further, Defendants’ new Exhibit K, the February 8, 2012 email from Russ Dimke, demonstrates that even Plaintiff Dimke is not taking inconsistent positions. His email reflects that in 2012 the POA was considering whether it could claim to be the declarant rather than German American (the parent of DB Aster, LLC) because the POA, rather than German American, would be acquiring Bull Point, LLC’s entire remaining interest through foreclosure.¹ His email states that the POA’s attorney thought that this argument was meritorious but there would be counter arguments to it and that the cost to litigate would be significant. It was an intriguing argument, but not one that the Plaintiffs

¹ At that time German American was in the process of foreclosing on Bull Point, LLC’s property. However, the POA was already moving to foreclose on one lot (223) for nonpayment of assessments, so arguably German American would not be acquiring Bull Point, LLC’s *entire* interest in Bull Point Plantation property since it would not acquire that lot. If the POA waited to take title to Lot 223 until after German American completed its foreclosure, then arguably the POA would be acquiring Bull Point, LLC’s entire remaining interest when it took title to Lot 223.

have actually made, in this litigation or otherwise. It thus remains true – as the Court’s Order says – that “the Plaintiffs do not contend in this case that DB Aster did not obtain Bull Point LLC’s entire interest in the Property through foreclosure.”

4. “*Section 1.01(j) of the Declaration does not ‘limit assignability’ of Declarant Rights ‘to entities that obtain the original Declarant’s entire interest in the Property through foreclosure.’ (Order, p. 14).*” The Court has thoroughly analyzed the text of the Declaration and reviewed the law governing assignment of declarant’s rights. While Section 1.01(j) does not use the phrase “limit assignability”, the Court properly concluded that it nevertheless limits assignability by defining “Declarant” in a limited way. The Court properly observed that both *Highlands Prop. Owners Ass’n, Inc. v. Shumaker Land, LLC*, 397 S.C. 432, 437, 724 S.E.2d 685, 687 (Ct. App. 2012) (cited by Plaintiffs) and *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) (cited by Defendants) looked to the definition of Declarant (in *Highlands*) and Developer (in *Cullen*) to determine assignability of declarant’s rights. Section 1.01(j) unambiguously defines Declarant as Bull Point, LLC and anyone else who acquires its entire interest with respect to Bull Point Plantation property through foreclosure of a mortgage. Defendants do not, and cannot, argue that the Defendant Bull Point SC, LLC even remotely meets this definition.

LEGAL ARGUMENTS

I. “BULL POINT SC, LLC IS CLEARLY THE ‘DECLARANT’ AND MAY EXERCISE THE RIGHTS OF THE DECLARANT.”

A. “UNDER THE ARTICLES OF INCORPORATION, AND THE DECLARATION AND ITS AMENDMENTS THAT ARE INCORPORATED INTO THE ARTICLES OF INCORPORATION, AND THE BY-LAWS, IT IS CLEAR THAT BULL POINT SC, LLC IS THE DECLARANT OF BULL POINT PLANTATION.”

Defendants again argue that the Court erred by applying the plain language of Section 1.01(j) rather than inferring a different meaning, because the “Governing Documents state over one dozen times that the Declarant may have assigns.” (Motion at p.5). This, Defendants argue, is “the most fatal flaw in Plaintiff’s argument.” (Motion at p.6). However, Defendants do not address – let alone refute – the Court’s analysis of their argument: “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.” (Order, p. 14). Contract law decries “a perversion of language or the exercise of inventive powers for the purpose of creating an ambiguity where none exists. *S.S. Newell & Co.[v. Am. Mutual Liability Ins. Co.]*, 199 S.C. 325, 19 S.E.2d 463 (1942)]. When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used. *B.L.G. Enterprises [v. First Financial Ins. Co.]*, 334 S.C. 529, 514 S.E.2d 327].” *Stewart v. State Farm Mut. Auto Ins. Co.*, 341 S.C. 143, 533 S.E.2d 597 (S.C. App. 2000). The provisions of Section 1.01(j) are clear, and the drafter’s intent is unmistakable. There is no reason for the Court to scour the rest of the Declaration to create an ambiguity where none exists.

Even if the Declaration was ambiguous – which it isn’t – the Court would have been right to construe it in favor of the homeowners, since the Declaration comprises restrictive covenants burdening the POA members’ properties. “A restriction on the use of property must be created in express terms or by plain and unmistakable implication, *Edwards v. Surratt*, 228 S.C. 512, 90 S.E.2d 906 (1956), and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of the property. *Davey v. Artistic Builders, Inc.*, 263 S.C. 431, 211 S.E.2d 235 (1975)). “ *Hamilton v. CCM Inc.* 263 S.E.2d 378, 274 S.C. 152(1980).

B. “THE COURT MAY ALSO RELY ON EVIDENCE IN THE RECORD TO DETERMINE THE RIGHTS OF THE PARTIES PURSUANT TO THE DECLARATION, INCLUDING BULL POINT SC, LLC’S RIGHT TO ACT AS THE DECLARANT.”

and

C. “PLAINTIFFS ARE EQUITABLY ESTOPPED FROM ARGUING THAT BULL POINT SC, LLC IS NOT THE DECLARANT.”

Here Defendants repeat their argument that the Plaintiffs should be estopped from contending that Defendant Bull Point SC, LLC is not the Declarant because they have taken inconsistent positions previously. Specifically, Plaintiffs’ contention is allegedly inconsistent with previous instances when some of the Plaintiffs submitted affidavits referring to Bull Point SC, LLC as the “Declarant”; also when, after the original Declarant went bankrupt, Plaintiffs considered the possibility of having investors purchase the Declarant’s rights and then sell them to the Property Owners; and -- as discussed above -- when the homeowners, including some of the Plaintiffs, previously recognized DB Aster as the Declarant. Defendants fail to address the Court’s previous analysis of these arguments, let alone demonstrate any error in the analysis. The Court properly read the Plaintiffs’ affidavits in light of their original Complaint in this matter, wherein they alleged (at paragraph 3), “Defendant Bull Point SC, LLC (‘Declarant’) is ... currently the

purported declarant of the Bull Point Plantation (although it does not meet the definition of Declarant under the Declarations).” (See Order, pp. 13-14). Plaintiffs have never, since this litigation began, acknowledged Defendant Bull Point SC, LLC as the Declarant.

It is true that in the wake of Bull Point LLC’s bankruptcy, a number of Bull Point Plantation homeowners, including some of the Plaintiffs herein, investigated options for protecting the development from any developer who might not have their best interests in mind. One of the options they considered was to attempt to purchase the Declarant’s rights. However, they never actually attempted to do so, and they do not allege in this litigation that they could have done so.

Defendants’ argument about the homeowners’ prior recognition of DB Aster LLC as the Declarant is fully addressed above.

Common to *all* of the Defendants’ estoppel arguments, they do not even address the legal standard for establishing judicial estoppel. In *Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004), the Court set out the requirements for applying judicial estoppel:

(1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

The purportedly inconsistent positions taken by any of the Plaintiffs do not meet any of these requirements. Defendants do not argue otherwise, nor could they in good faith. This Court correctly rejected Defendants’ estoppel arguments.

II. **“UNDER THE LOGIC DICTATED BY THE ORDER, DB ASTER, LLC COULD NEVER BE THE DECLARANT. INSTEAD, BULL POINT, LLC WOULD REMAIN THE DECLARANT.”**

Here Defendants again argue that DB Aster did not acquire Bull Point, LLC’s entire interest relating to its Bull Point Plantation property. In this argument they point to new Exhibit L, a deed in which Bull Point, LLC conveyed five lots to DB Aster, LLC in December 2012, not in July of that year when it conveyed most of its property. Defendants contend that this conveyance was not pursuant to foreclosure or a deed in lieu of foreclosure. The record contains no indication of why Bull Point, LLC conveyed those lots to DB Aster. The deed itself recites the consideration as “the sum of \$10.00 and no other valuable consideration....” This conveyance most likely was part of the settlement of the foreclosure, as it coincided with Bull Point, LLC’s purported assignment of its Declarant’s rights to DB Aster. But this is entirely beside the point, as the issue before the Court was whether Defendant Bull Point SC, LLC is the Declarant, not whether DB Aster was ever the Declarant. Defendants belatedly argue that, if anyone is the Declarant, Bull Point, LLC (a shell company that Defendant Gavigan has acquired) should still be, by default. Yet, no pleading in this case alleges that Bull Point, LLC is the Declarant. Bull Point, LLC is not a party to this action. The record is devoid of evidence from which the Court could possibly determine that Bull Point, LLC is still the Declarant, even if this question were properly before the Court. The Court correctly decided the issue before it, which is whether Defendant Bull Point SC, LLC is the Declarant.

III. **“AS DECLARANT, BULL POINT SC, LLC CLEARLY HAS THE RIGHT TO APPOINT AND REMOVE MEMBERS OF THE BOARD OF DIRECTORS OF BPPPOA.”**

This, again, is Defendants’ circular argument that the Articles of Incorporation actually allow the Declarant to appoint the Directors of the POA because the Articles incorporate the

Declaration, which allows the Declarant to appoint the Directors. This argument is dealt with above, as the Court dealt with it in its Order. The Declaration says that in the case of conflict among governing documents, the provisions of the Nonprofit Corporation Act control. The Nonprofit Corporation Act says that in the event of conflict among governing documents the Articles of Incorporation control. And the Articles of Incorporation specifically say that the members elect the Directors.

IV. “THE ORDER MUST BE AMENDED OR ALTERED BECAUSE IT GRANTS REMEDIES NOT RAISED IN PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT, AND RULES ON CAUSES OF ACTION THAT ARE NOT A PART OF PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT.”

Defendants here complain, as they did in response to Plaintiffs’ submission of the proposed Order, that the Court should have granted only Declaratory relief, and not “far-reaching” injunctive relief as well. The injunctive relief that the Court ordered is no more far-reaching than the Declaratory relief that the Court granted. Further, the Court granted no relief that is not prayed for in the Amended Complaint. Plaintiffs’ Motion for Partial Summary Judgment did not specify the relief requested, but rather simply moved for partial summary judgment. Plaintiffs’ Memorandum in Support of their Motion specifically asked for the Court to find that “Bull Point SC, LLC is not the Declarant and therefore cannot exercise the Declarant’s rights and the actions taken by the Defendant as putative Declarant are invalid.” In the alternative, it asked the Court to find 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.” (Memorandum, p. 3). The motion thus specifically asked for the Court’s determinations that Defendant Bull Point SC, LLC

is not the Declarant, that its actions taken as putative Declarant are invalid, that the members of the Association are entitled to elect the Board, and that an immediate election should be held. The Court's findings that indeed Defendant Bull Point SC, LLC was and is not the Declarant, that its actions taken as putative Declarant are invalid, that the members of the Association are entitled to elect the Board, and that an election should be held, *required* a consonant order that Defendant Bull Point SC, LLC cease exercising the rights of the Declarant and that the other Defendants cease acting as the Declarant-appointed Board.

Defendants' strident insistence that they not be required to heed the Court's declarations is ominous, to say the least. Why would the Defendants even want to continue to control the POA and have access to its funds in light of the Court's clear declarations that they are not entitled to do so? The liability that they would incur in doing that would be staggering.

It would have been a gross disservice to the parties, to all the residents of Bull Point Plantation, and to those doing business with the POA to leave any doubt about who is in charge. They are all entitled to a measure of stability in their lives, and the Court's Order provides that. Defendants should not be allowed to flout the Court's declaration that they are not in charge. The inclusion of injunctive relief in the Court's order does no more than give effect to its declaration of the rights of the parties.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Alter or Amend the Judgment of the Court should be denied.

Respectfully submitted,

BARNWELL WHALEY
PATTERSON & HELMS, LLC

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Counsel for Plaintiffs

December 4, 2019

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Beaufort

3

4 Case No.: 2019CP0702345

5 John H. Attridge, et al,

6 Plaintiff(s),

7 vs.

Transcript of Record

8 Bull Point, SC, LLC, et al,

9 Defendant(s).

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15 December 5, 2019

16 Beaufort, South Carolina

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21 BEFORE: The Honorable carmen T. Mullen

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APPEARANCES

REPRESENTING PLAINTIFF(S) :

Dawes Cook, Esquire

REPRESENTING DEFENDANT(S) :

Gene Matthews, Esquire

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PROCEEDINGS

THE COURT: All right. Well, it's good to see everyone and I appreciate. I know, Mr. Matthews, you had to kind of work this into your schedule. I have a term of Criminal Court in Jasper right now, but I had a free morning. So --

MR. MATTHEWS: Thank you, Your Honor.

THE COURT: -- we were able to get this done, and I wanted to get it done, your motion to reconsider before the holidays, so we can move on. So, anyway.

MR. MATTHEWS: Thank you, ma'am.

THE COURT: With that said, Mr. Matthews, this is your motion --

MR. MATTHEWS: It is.

THE COURT: -- whenever you're ready, sir.

MR. MATTHEWS: Thank you so much, Your Honor.

Your Honor, in the interest of as much speed as possible, our primary argument, again, relies on what we would regard as standard rules of statutory construction and contractual construction. If -- to, to borrow the term from some of my friends, to boil it down to gravy, if the contract, in this case, the document in this case, is, we would argue, unambiguous because it does permit assignment of the clearance

1 rights we, we regard in so many ways. We would
2 first -- our first argument is, of course, to urge you
3 to adopt the view that the contract is unambiguous, and
4 does permit declarant rights to be transferred by
5 assignment. And, of course, we would argue, in that
6 regard, that to focus on 1.01J is a mistake, and
7 contrary to South Carolina law, which bids the Court to
8 consider the en -- document as a whole.

9 Our second argument -- and, again, Your Honor,
10 you're well familiar with that argument. I don't want
11 to belabor that point or your patience in going further
12 unless you so desire.

13 THE COURT: I'm fine.

14 MR. MATTHEWS: Okay. The second is this. If you
15 find the contract to be ambiguous, which we think is
16 the, the minimum standard that the, the evidence before
17 you would indicate because of the .01 -- 1.01J says
18 what it says as does the rest of the contract. If you
19 then find that it's ambiguous, then the great
20 preponderance of the evidence, and the history before
21 you that is in the record would clearly indicate, not
22 only have declarant rights been assigned a number of
23 times and over the years, they've been assigned with
24 the full knowledge of the Plaintiffs, and, again, with
25 their acknowledgment. Again, since 2012, we, we

1 believe there's little else that's clear in the record
2 than that. And we've, or course, presented evidence
3 that, again, I can, at the risk trying your patience,
4 go through that painstakingly. I get the sense from
5 the Court that you're familiar with that, and don't
6 want that repeated.

7 Is that fair?

8 THE COURT: And that's absolutely fair, and I will
9 tell you also your Motion to Reconsider, and response
10 from Plaintiffs was probably the easiest and most well
11 written Motion to Reconsider to understand exactly what
12 your points are, and I think part of this as well is we
13 need to make them parts of the record. But they were
14 so well laid out. And so it made it very simple. So,
15 I appreciate that.

16 MR. MATTHEW: Thank you, Your Honor. We do have
17 some other points to make as you might imagine.

18 THE COURT: Yes.

19 MR. MATTHEWS: And I, I did not discuss at length,
20 although I did discuss latches at our previous hearing,
21 I hope it didn't come across as a novelty, although
22 I've never before had the occasion to argue latches.
23 In review---

24 THE COURT: Just to lay it out, I will tell you I
25 was on another Business Court case last week in Horry,

1 and that was one of the arguments. And, of course, it
2 was an EOA issue about a golf course, and latches was
3 argued. So --.

4 MR. MATTHEWS: Well, well, in this case, it, it
5 does strike my attention, Your Honor, that latches
6 applies when delay is unreasonable, and when the
7 asserting party shows prejudice, and, here, both are
8 obvious. The, the, the persons who are, are, are, are
9 trying to argue that declarant rights cannot be
10 transferred by assignment have waited years too late.
11 Literally years. And, again they were present,
12 supportive of, and acknowledged transfer by assignment
13 of these seven years ago.

14 The second is the record is also clear that this
15 investor relied on it. And, again, during the -- what
16 he reviewed, and indeed with the peel-away produced to
17 him in discovery in an earlier case indicated clearly
18 that all parties, if they were -- agreed on nothing
19 else, they at least agreed that DB Aster was the
20 declarant, that they had received it by assignment, and
21 that he would not face a, a financial hazard by
22 investing money in the development, and getting
23 declarant rights.

24 Declarant rights, as you're aware, I, I hardly
25 need tell you, are an important part of any investor's

1 decision, and at -- beyond the eleventh hour to find
2 that he is, in fact, not the declarant is, is quite a
3 blow, and financial as well as otherwise.

4 THE COURT: I'll tell you, Mr. Matthews, that I
5 don't think any of us would be here if there wasn't any
6 issue of the contingency kind committee being
7 dissolved, money being taken out and going from a
8 surplus of six or seven hundred thousand dollars to now
9 a much diminished amount, plus not being able to make
10 budget where they have been able to make budget for a
11 number of years, I truly believe that we probably
12 wouldn't be here if that hadn't occurred.

13 MR. MATTHEWS: Ma'am?

14 THE COURT: So --.

15 MR. MATTHEWS: I know I disagree with, with Your
16 Honor at my peril, and I really don't like disagreeing
17 with, with any judge, especially you, especially since
18 I'm now in front of you, that being said, I do disagree
19 with, with, respectfully, with, with this issue.

20 The, the seeds of the lawsuit were planted long
21 before that case, before that issue arose. The
22 evidence before Judge Dukes indicates not what you
23 indicated. The amount in the contingency fund is
24 pretty much what it was when the year began, and the---

25 THE COURT: When this year began?

1 MR. MATTHEWS: Yes, ma'am. 2019. Those are what
2 the records---

3 THE COURT: Okay. Well, let me ask you. Why did
4 the Court feel a need then to be able to restrict and
5 only allow money to be paid to make payroll because my
6 understanding is, is that where, previously y'all have
7 been able to make budget every year, and with the
8 normal budget, and now we are way over it.

9 MR. MATTHEWS: Well---

10 THE COURT: And I, I don't know of any, you know,
11 problem that's occurred that would have changed that.

12 MR. MATTHEWS: Well---

13 THE COURT: And so---

14 MR. MATTHEW: If, if, if I may, Your Honor, those
15 documents have been submitted at length to Judge Dukes,
16 and we're happy, happy, happy to submit them to you.
17 The primary difference is \$90,000 that were used to
18 defend these cases. That's the difference. That is
19 the entire difference, and, again, we are only too
20 happy to submit to you what was submitted to Judge
21 Dukes only weeks ago, which is here are the entire
22 records of the year and before. Here are the entire
23 records of what's going to occur with the Court's
24 permission, and the Court did, of course, give its
25 permission to do that. The difference---

1 THE COURT: See we're on payroll then. That's
2 what we talked about originally. People need to get
3 paid for working there. I mean there's no question.

4 MR. MATTHEWS: Well, Your Honor, if we're gonna
5 talk about -- if we're gonna talk about protecting
6 employees, only this bad -- only the minute that your
7 Order came into effect, two were assaulted. They have
8 filed worker's comp claims because of it.

9 THE COURT: Who were they assaulted by?

10 MR. MATTHEWS: By the Plaintiffs.

11 THE COURT: When you say by the Plaintiffs---

12 MR. MATTHEWS: I do, yes, ma'am.

13 THE COURT: Well, for someone to assault someone,
14 we need to have people. So, my question is, is are
15 there specific people that have criminal charges been
16 filed---

17 MR. MATTHEWS: Yes.

18 THE COURT: ---cause there should be.

19 MR. MATTHEWS: Yes, Your Honor.

20 THE COURT: There had to have been actual people
21 that did it. So, when you say the Plaintiffs, give me
22 names.

23 MR. MATTHEWS: Forgive me, Your Honor.

24 THE COURT: Give me names---

25 MR. MATTHEWS: I'm---

1 THE COURT: ---and---

2 MR. MATTHEWS: I am more than happy to submit two
3 things to you. First of all, we can get their worker's
4 comp filings, and we can get the police reports that
5 were filed, I believe, by -- I don't know her last
6 name. Her first name's Jeri.

7 THE COURT: Her first name is Jeri?

8 MR. MATTHEWS: Yes, ma'am.

9 THE COURT: Okay.

10 MR. MATTHEWS: The point that I would make there,
11 Your Honor, is, while I understand your -- the line --
12 I believe I understand your line of questioning. I
13 don't want to presume that I do, but I believe I do.
14 The thing that I want to bring to your attention is
15 it's, it's, it's put -- we would argue, it puts the
16 cart before the horse to say this would not have
17 occurred if there'd not been a disagreement over that
18 amendment.

19 THE COURT: Mr. Matthews, I think what I'm saying
20 is there's no questions that there has been litigious
21 nature between the two parties for years. I don't
22 think there's any question. But I think, as you said,
23 there was a lawsuit in the works, but I -- what I guess
24 what I should maybe more appropriately say is I believe
25 that's the straw that broke the camel's back. And it

1 may be that no money was improperly spent in any way.
2 I'm not making that assumption. I'm assuming everyone
3 acted aboveboard.

4 The question is, is that people are now suspicious
5 and are questioning things, and you telling me that two
6 employees get assaulted by someone on behalf of the
7 Plaintiffs is very upsetting.

8 MR. MATTHEWS: I understand that.

9 THE COURT: That tells me that this is -- this has
10 gone way beyond what it ever should be.

11 MR. MATTHEWS: Your Honor, I, I agree, and, with
12 your permission or at your direction --

13 THE COURT: Yes.

14 MR. MATTHEWS: -- I am happy to submit to you or
15 to get the documents. I'm, I'm -- I would be very
16 cautious, and not make that, that assertion to you if I
17 were not aware that two worker's comp files -- two have
18 been filed. My understanding is that the employee,
19 forgive me for her last name, her first name is Jeri,
20 has filed her complaint with the, the local police, and
21 I believe with the magistrate. Those documents could
22 be made available to you as you wish.

23 THE COURT: You don't know if any charges have
24 been filed, cause if someone was assaulted, charges
25 should be filed. So, that question---

1 MR. MATTHEWS: My understanding---

2 THE COURT: I want to know that.

3 MR. MATTHEWS: My understanding is that they --
4 not only have the worker's comp claims been filed, at
5 least one person has gone to the magistrate in an
6 attempt to swear out a warrant.

7 THE COURT: Okay.

8 MR. MATTHEWS: That, that -- that's my
9 understanding from the persons involved.

10 The point I would want to make there, Your Honor,
11 and, again, I, I -- we can go down that road as you
12 direct. We can submit the financial records, which
13 were submitted to Judge Dukes, to your chambers as you
14 direct.

15 THE COURT: I, I don't need that. I trust that
16 Judge Dukes is taking care of the financial portion of
17 it. That's what I understand he is handling. So --.

18 MR. MATTHEWS: Very, very well. Then, then, what,
19 what, what we're most anxious, and, and what we -- the,
20 the urgency of our motion to you is we believe that the
21 Court should, in, in applying South Carolina law, first
22 determine that the contract is at, at, we would argue,
23 unambiguous, that it does permit assignment of
24 declarant rights as was done multiple times.

25 Our backup argument is okay. We're -- presume

1 it's unambiguous. At that point, you have the, the, we
2 believe, the right and the duty to at the record that's
3 before you, and draw the conclusion we hope that we
4 draw, which is there was -- there -- there's a multiple
5 year history of assignment, of, of declarant rights
6 being transferred by assignment through multiple
7 parties. And only now -- and it's something that the
8 Plaintiffs were aware long ago, and without it --
9 without, without complaint.

10 Now, ma'am, I, I can, you know, the -- in some
11 ways, as the motion kind of speaks for itself, I'm
12 happy to go through any point that you would like to.
13 I did want to, again, not to tax your patience, but I
14 did want to address a couple of other issues.

15 One is my, my, my learned counsel, in discussing,
16 I believe, the, the issue of elections, raises this
17 issue. The conclusion, they argue, is consistent with
18 the principal that when a conflict exists between an
19 incorporated document and a specific provision in the
20 incorporating document, the specific provision of the
21 incorporating document generally prevails, and he cites
22 law from New Mexico, and from the Fifth Circuit.

23 With respect, we would argue that South Carolina
24 law is what binds us today, and South Carolina law, in
25 our view, is quite clear. We would cite, not only your

1 good work in Cullen, which was approved by the
2 Appellate Court and the Supreme Court, while initially
3 granting cert, denied it as improvidently granted.
4 We'd also call your attention to any number of cases.
5 The one that I pulled easily, most easily off Westlaw
6 was ESA Services, LLC versus South Carolina Department
7 of Revenue, a client of mine, the Department of Revenue
8 argued, unsuccessfully, although I was not the attorney
9 for record then, that, again, a question -- it's a
10 question of law for the Court. So the issue was
11 clearly you -- interviewable by the Court of Appeals as
12 such.

13 The question of law for to the Court to the
14 determine whether language of the contract is
15 ambiguous. Once the Court decides the language is
16 ambiguous, evidence may be admitted to show the intent
17 of the parties. That's the standard South Carolina
18 law.

19 We would argue it is -- the Order, frankly, the,
20 the one -- again, there are few lawyers in our State I
21 respect more than Mr. Cooke. However, we do take issue
22 with the Order that was drafted for your consideration,
23 and one of the reasons is, is we make -- we think, or
24 at least we mention in our, in our motion, one of the
25 reasons is that it speaks to -- it doesn't really

1 acknowledge that the declaration is incorporated wholly
2 by reference verbatim into the Articles of
3 Incorporation. If that is so, and as they point out,
4 well, there, there are other provisions in the document
5 that seem to cabin the declarant's right to appoint and
6 remove board members. Very well.

7 South Carolina law provides the answer to you and
8 to us, which is fine. If it's ambiguous, look at the
9 record. Look at how -- look at your course of dealing.
10 The course of dealing here is, in our view,
11 unambiguous. There is a 20 plus year train of
12 experience where the declarant did nothing but remove
13 and appoint directors or they were elected at, at their
14 pleasure. So, we would argue to you, if that is so, if
15 you look at South Carolina law, which is the -- what
16 binds us today, we think that your answer,
17 respectfully, is clear that fine -- it's clear that,
18 number one, they've argued that the declarant -- the
19 declarations are bylaws. We think that's clearly not
20 the case because of the incorporation into the
21 Articles.

22 The second would be, okay, if there's a problem or
23 if there's a conflict within that document, South
24 Carolina law, again, provide the answer. What do we
25 do? Look at how the parties have dealt with this

1 before. That answer is an uninterrupted in favor of
2 us. That history, uninterrupted, is in favor of us.

3 You asked a question recently at the earlier
4 hearing. Has there been a day, prior to this hearing,
5 that the declarant did not have the right to appoint or
6 remove directors. That answer was no. Never a in 20
7 plus years.

8 So, again, we would -- understanding there's
9 always a, a counter argument, our argument is this.

10 First of all, in terms of can you sign declarant
11 rights, we believe yes -- the answer's yes. The
12 contract, in our view, unambiguously states that right.

13 Second. If you believe it's ambiguous, looking at
14 the course and scope of dealing, the evidence before
15 the Court in the record, clearly that answer is yes, it
16 had been done before, and with the acquiescence and
17 knowledge of the Plaintiffs.

18 In terms elections, again, with respect to, to my
19 good friend, it simply cannot be so or it requires you
20 to ignore the Articles of Incorporation themselves as
21 they are written to find that the declarations are
22 bylaws.

23 THE COURT: Who wrote the declaration and bylaws?
24 Do you know? Do you know what lawyer?

25 MR. MATTHEWS: My, my understanding, and, again,

1 I'm gonna invite correction from those behind me on
2 this side.

3 THE COURT: Okay.'

4 MR. MATTHEWS: My belief is, is that Stan Kirkland
5 did so.

6 THE COURT: Okay.

7 MR. MATTHEWS: I don't know if Mr. Wolfson had a
8 hand in that. I know he was kind of president about.
9 I've seen his name on a number of very old documents.
10 Mr. Wolfson's, of course, the Plaintiff in this, in
11 this work -- I'm sorry. I think they're part of
12 Defendant's case.

13 The, the bottom line though is, Your Honor, what
14 we're urging you to do is, as stated in our motion,
15 apply South Carolina law. We, we -- and, and, ma'am,
16 we are sensible of the fact that not every motion
17 for -- to alter or amend merits a hearing. We are --
18 we thank you for allowing us to be heard on this. We
19 understand -- I've been at this for a long time. I
20 can't recall having a hearing on a motion to
21 reconsider. Much appreciate an opportunity to be heard
22 on this again, and that's sincere.

23 We want to make clear, as I think we have in our,
24 in our brief, kind of the argument we would first make
25 to you, understanding, as I believe you have said

1 earlier, however you rule, an appeal may follow. We
2 understand that as well. But we think that, that the
3 better argument, as you might imagine, relies, relies
4 on South Carolina law in terms of what is unambiguous,
5 what is ambiguous, and what to do in each case. And
6 when you look at the document itself, we think you'll
7 find -- and the history before you. That is, again,
8 almost uninterrupted and with the clear knowledge of
9 the Plaintiffs, we think it -- you draw -- you must
10 draw the conclusions. So, we argue, respectfully, that
11 we've urged upon you, and, of course, we're happy to
12 answer any questions you may have.

13 THE COURT: All right.

14 MR. MATTHEWS: Thank you.

15 THE COURT: I appreciate it, Mr. Matthews.

16 Mr. Cooke.

17 MR. COOKE: Thank you, Your Honor.

18 Very briefly, I defer to the, the, the filings
19 that we've made. We, we, for simplicity sake, we tried
20 to just follow the same order of Gene's filings so
21 that---

22 THE COURT: I appreciate that because it's very
23 helpful.

24 MR. COOKE: Okay.

25 THE COURT: And I wish -- I'm gonna get you both

1 to come give a lecture at the next CLE for both of you
2 for how to do a Motion for Reconsideration. It was
3 excellent.

4 MR. MATTHEWS: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. COOKE: I would like to address a couple of
7 the questions that the Court had that may are -- may
8 not even be germane to the motion --

9 THE COURT: Right.

10 MR. COOKE: -- but the, the, the, the question of
11 the interpretation of the document, the, the, the, the
12 Defendant has never claimed that it acquired the entire
13 interests of the original declarant through
14 foreclosure, and all the question of whether DB Aster
15 was really the declarant or not, it doesn't make any
16 difference. Whether DB Aster was or was not ever the
17 declarant, it's clear that the current Defendant, the
18 Bull Point, South Carolina SLLC or SCLLC, never
19 required the entire interest, and, therefore, is not
20 the declarant.

21 Now, Gene made a number of arguments. He said but
22 they're 12 different places in the, in the declarant,
23 in the declarant that says -- declaration that says --
24 refers to assignments, and if you go back and look --
25 and, first of all, there can be an assigned. German

1 American could of been an assigned because it acquired
2 through foreclosure. But there, there are different
3 rights that are given to the declarant. Some of which
4 probably are assigned.

5 For example, they're easements that are granted
6 over the properties that belong to the declarants, and
7 the -- certainly the declarant is gonna have a
8 signed -- assignees of those right because basically
9 they're gonna sell their property.

10 THE COURT: Right.

11 MR. COOKE: So, that's perfectly consistent, Your
12 Honor. There's no ambiguity whatsoever in the, in the
13 contract.

14 As far as latches, Your Honor put your, your, your
15 finger on it. The current alleged declarant took over
16 in August of 2017. Prior to that, the homeowners had,
17 had been working with the, with the -- earlier, with DB
18 Aster. DB Aster had indeed appointed directors, and
19 allowed the, the members to elect a director.

20 So, they lived in relative harmony. They had
21 reached agreement on, on the, the preservation of the
22 contingency fund. But it was in -- I believe it was
23 September or October of 2018 that the, that the
24 Defendant, Bull Point, SCLLC, dissolved the -- pass a
25 purported amendment to the declaration that dissolved

1 the contingency fund oversight committee, and
2 removed -- essentially made the -- removed the
3 contingency fund as a separate fund.

4 It was within two months of that that this lawsuit
5 was filed, and, in that very first Complaint, we
6 alleged that the -- that they were the alleged
7 declarant, but they that did not meet the definition of
8 declarant in the, in the declaration. Later, when we
9 did some further investigation, and found that, the
10 fact, they probably -- they really were not the
11 declarant, we moved to amend the Complaint. The
12 Defendants insisted that we name DB Aster as a party in
13 interest, which we objected to, but Court ordered that
14 that be done. And so we did. And so the Complaint was
15 dually amended to specifically pray for a declaration
16 and injunctive relief that the Defendant is, is not the
17 declarant, and Your Honor ruled in, in our favor on
18 that.

19 So, there's no, there's no latches on that.
20 You're exactly right. They, they took 120 -- by the
21 time we were able to move for an injunction to protect
22 the contingency fund, they'd already taken \$122,000 out
23 of the contingency fund.

24 THE COURT: And I hear him Mr. Matthews telling me
25 today that 90,000 of that---

1 MR. MATTHEWS: It was for the attorneys.

2 THE COURT: ---was to pay for lawyers.

3 MR. COOKE: This was before the attorney's fees.

4 This was---

5 THE COURT: Oh, okay. I'm sorry.

6 MR. COOKE: ---another issue.

7 THE COURT: Okay.

8 MR. COOKE: This was in February of this year. We
9 had a hearing before Judge Dukes, and, by then, already
10 \$122,000 was taken out, and part of our agreement that
11 we entered into, with Judge Dukes encouragement that
12 day, was we didn't require that they pay the \$122,000
13 back. But with regard to any other money that they
14 were gonna take out, they would have to go through a
15 process where they would give notice, and give us an
16 opportunity to object. And that finally did happen,
17 and we wound up -- they asked to take another \$150,000
18 out. We wound up before Judge Dukes, and that resulted
19 in the Order that they could only take enough to cover
20 operating expenses.

21 But you remember the, the whole annual budget had
22 already been blown by the end of July I believe.

23 THE COURT: Right.

24 MR. COOKE: And those -- the, the, the \$90,000 in
25 attorney's fees were paid out of operating funds from

1 the, from the POA, and those were illegal. Under the
2 Nonprofit Corporation Act, they were not legal fees for
3 the POA. The POA was not named as party in this
4 litigation.

5 THE COURT: Uh-huh. (Affirmative).

6 MR. COOKE: The suit was brought in a derivative
7 capacity of the Plaintiffs individually, and on behalf
8 of the POA.

9 MR. MATTHEWS: Your---

10 MR. COOKE: So, these were legal fees incurred by
11 the Defendants in this case to -- and, and, and the
12 Nonprofit Corporation Act provides a specific process
13 by which an officer or director of a nonprofit can ask
14 to be indemnified, and none, none of that was done.
15 They just wrote a check out of the operating fund.

16 MR. MATTHEWS: Your Honor, with respect, that's,
17 that's factually inaccurate, and if we want to argue
18 that point, we can schedule another hearing. We can
19 bring in all the evidence. We could bring in all the
20 records, submit it to you for your candid review. But
21 that's simply not an accurate rendition of why money
22 was spent, how it was spent, with whose authority it
23 was spent. That's simply not accurate.

24 MR. COOKE: Well, \$90,000 was spent out of the
25 operating funds, and that's why there was no money

1 left, and that's why they had to come and ask to go
2 into the contingency fund.

3 MR. MATTHEWS: And part of that went---

4 MR. COOKE: That---

5 MR. MATTHEWS: ---not to me. To the POA counsel.
6 The POA has a right to its own counsel. That counsel's
7 not here today, but to -- in fact, he it still owed
8 money.

9 THE COURT: Who is the POA's counsel?

10 MR. MATTHEWS: Jake Moore --

11 THE COURT: Okay.

12 MR. MATTHEWS: -- and firm.

13 THE COURT: OKAY.

14 MR. COOKE: And, and Ian Ford.

15 MR. MATTHEWS: Ian Ford, at the time, he
16 received---

17 THE COURT: Okay.

18 MR. MATTHEWS: -- God bless him, a lot of money.

19 THE COURT: Okay.

20 MR. MATTHEWS: But the point, the point is, to the
21 extent that you want the parties to be heard on those
22 matters, we are happy to do so at your pleasure.

23 THE COURT: Again, I don't think that is before
24 me. All I did was make the comment of how this all
25 began because I think everyone was trying to work with

1 each, and what I worry about, and, again, it's just
2 from my original comment is, is that, if we are now at
3 the point where we have people assaulting other people,
4 this has gone so far off of what it should be. I mean
5 this is lovely, lovely community -- .

6 MR. COOKE: It is.

7 THE COURT: -- made up of good people on both
8 sides of this case, and, I, I just---

9 MR. COOKE: Can I, can I address that too?

10 THE COURT: ---can't imagine that something like
11 that has occurred, and whether or not someone who was
12 employed by -- it, it just, to me did -- go ahead.

13 MR. COOKE: Let, let, let me address that briefly,
14 and Your Honor's---

15 THE COURT: Okay.

16 MR. COOKE: ---exactly right. You know, we made a
17 conscious decision not to file yet a Rule to Show Cause
18 because there's been a lot of back and forth, and
19 disobedience in order, but we wanted to keep this
20 civil, and we want your day today to be simple, to
21 consider the Motion to Reconsider.

22 Gene called me about this alleged assault, and
23 what supposedly happened was that an individual and his
24 wife, who are homeowners', happened to Plaintiffs, named
25 Plaintiffs in the case, went up and, and, and

1 confronted Jeri and the other office worker, and,
2 allegedly, according to her, grabbed her by the elbow.
3 And so, at somebody's instance, she called the
4 Sheriff's Department. The sheriff shows up. We've got
5 the report.

6 THE COURT: Okay.

7 MR. COOKE: The report says that she didn't say
8 she was hurt, but at -- this was a civil dispute, and
9 the sheriff, essentially, convinced them to not press
10 charges. Now she may have reconsidered. Maybe she's
11 gone and filed something.

12 But, when Gene called me about that, I said if, if
13 there's a crime, crime has taken place, file a
14 complaint. I mean nobody on my team is authorized to
15 assault anybody, and we have worked very hard to keep
16 this civil.

17 I mean there are a lot of things -- the power
18 cords were taken off the computers when they left. We
19 called Gene. We were able to get them back. Passwords
20 were missing. We are able to find most of the
21 passwords. So, we are really trying hard not to keep
22 you involved in the day-to-day operation, but they've
23 got an interim board. They're all volunteers. They're
24 working very hard. We have an, an interim volunteer
25 manager as well. They're going to schedule an election

1 to get an elected board in place.

2 So, we really do want to stay out of your hair
3 about this. So --.

4 THE COURT: Okay.

5 MR. COOKE: That's not to say we won't have to
6 come back with some -- with, with issues.

7 THE COURT: Okay.

8 MR. COOKE: But if there, if there was an assault,
9 there's a processes to take care of that, and certainly
10 nobody in this room is expected to assault anybody.

11 THE COURT: Okay. All right. So, is there
12 anything else you need to address?

13 One of the concerns that I had, and I will be very
14 candid, you filed your motion for an injunction, and I
15 knew that there was an issue where the Defendant said I
16 overstepped some of my bounds in issuing my Order. My
17 problem is, is that I don't know how to effectuate what
18 I did without putting some parameters in place.

19 MR. COOKE: Right.

20 THE COURT: So, I just want to make sure that,
21 that, for the time being, we just need things to go
22 smoothly.

23 MR. COOKE: Right.

24 THE COURT: And I am very hopeful that any appeal
25 from this will be done as quick as they can. Let's

1 just leave it at that because certainly none of us have
2 any power to dictate what the Appellate Court does and
3 how quickly they hear it. But I recognize that, for a
4 POA and for this type of matter, faster is better. So
5 --.

6 MR. COOKE: So, I, I, I will address that.

7 THE COURT: Okay.

8 MR. COOKE: And, obviously, one of the points they
9 made was that the, the motion was for declaratory
10 relief. But if you read the, the motion itself and the
11 brief in support of it, the declaration is to declare
12 that they don't have the right to act as the declarant,
13 that they don't -- and that their acts were invalid.
14 And so it, it -- it's, it's, it's a bit ominous that
15 somehow the Defendants would object to the Court
16 ordering them to obey the Order. I mean that's what
17 your, that's what your Order essentially does.

18 The injunctive relief was very modest. It was no
19 broader than the declarations that the Court properly
20 made, which is that they did not have the right to act
21 as the declarant, and that their acts are not valid.
22 And so it would be almost illogical not to order that
23 you not act as the declarant, and that's essentially,
24 what you did.

25 THE COURT: May I address one question?

1 My understanding from you-all in that motion was
2 the -- at that time, the Board was taking a position
3 that certain people were not members of the POP.

4 Am I correct on that?

5 MR. COOKE: There -- that's, that's an issue.
6 They're resolving that now. The, the -- Mr. Gavigan
7 sent an email out to the community saying that they
8 think that there's a defect in the deeds, and that,
9 that Phases 3 and Phases 5 may not have been part
10 of the, of the -- may not have ever been formally
11 incorporated, although all those people have been
12 paying their dues.

13 THE COURT: I was gonna say---

14 MR. COOKE: Yeah.

15 THE COURT: ---how in the world, if, if they've
16 been paying dues all that time, if you are now taking
17 that position, they would have to be refunded all their
18 money---

19 MR. COOKE: Right.

20 THE COURT: ---for---

21 MR. COOKE: Right.

22 THE COURT: ---the last however many years Phase 3
23 and 4 were developed or 3 and 5, I'm sorry, were
24 developed.

25 MR. COOKE: Right. So, they're, they're having a

1 titled opinion done. If, if, if they somehow -- if
2 there was not a formal amendment of the declaration,
3 there's a recorded plat that shows Phase 3. There's a
4 reference in the Tenth Amendment to the declarations
5 to, to Phase 3. The, the deeds all reference the, the,
6 the declarations and covenants.

7 So, we think that, if anything, it was, you know,
8 a, a scribner's error in, in not having actually filed
9 a formal amendment. You've noticed some of their
10 amendments, like they've, they've got to Fifteenth
11 Amendments, and so they -- there, there were some
12 mistakes along the way. But all those people in Phase
13 3, Phase 5, all the phases have been sent bills every
14 year. They've paid their dues. They voted in the
15 elections, and we would expect that to continue.

16 MR. MATTHEWS: Well, Your Honor has put her finger
17 on it sadly. Hopefully, you, you would rule in our
18 favor, but however you rule, one party or the other
19 will, I'm sure will alacrity, file their motion to, to
20 appeal, their Notice of Appeal. That being said, the
21 issues -- this case will still be before this Court,
22 whether you're the lucky winner to be sitting in that
23 chair or not before it, but the litigation will
24 continue.

25 This -- I'm, I'm sad to say that, that your Order

1 would, as it now stands, would inspire as much as end
2 litigation. Some of the issues are the ones that, that
3 we have already discussed. The others are ones that
4 the parties have referenced, although, in fairness to
5 you, they're really not before you. You know,
6 whether -- who is -- if, if this order stands, who is
7 the declarant, is, in fairness to you, a record that
8 has not been developed. It's a little unfair to ask
9 you to rule on this at that point. I think both sides
10 would acknowledge that.

11 So -- but, we do, of course, and, and Dawes has
12 personally been a great help in trying to navigate some
13 of the, the issues that have arisen since the Order was
14 entered. I will say this, I think I've been as prompt
15 as Dawes, Dawes has been in responding to, to questions
16 and concerns.

17 There is still, we believe, we know there's
18 property of Mr. Gavigan we have not been able to
19 retrieve yet with Dawes help. After this hearing, we,
20 we are going to decide who is what's, what is what,
21 and, and I want to compliment my, my colleague for
22 being a, a source of help on those issues.

23 That being said, we believe, and, finally, would
24 want to, to draw your attention back to, to why I
25 believe we're here this morning. The issues, we think

1 before you are, again, with compliments to my
2 colleague, are, are quite clear, and are questions of
3 law. And, as a consequence, whether you're the, the
4 last work or the Trial Court's word in, in, in an
5 appellate stream, we do encourage you strongly, as, as
6 you might imagine we do, to, to revisit your thoughts
7 on does the contract -- do we restrict it only to that
8 101J or do we read it as a whole as we believe the
9 State would require it, something that certainly my
10 client did, and draw the conclusions that are
11 reasonable. Especially in, in view of the history of
12 the development, and those who acted as declarants, and
13 those who, again, the Plaintiffs themselves
14 acknowledged.

15 With that being said, you know, our commitment to
16 you, and, of course, to my colleague is we want things
17 to be as civil as possible, even where civility is
18 difficult, and we make that commitment to you.

19 THE COURT: Okay.

20 MR. MATTHEWS: And again---

21 THE COURT: Anything else that you need to add,
22 Mr. Cooke?

23 MR. COOKE: No, I, I think we've said everything
24 in our brief.

25 THE COURT: Gentlemen, I appreciate it, and I will

1 just say in -- I, I will rule eventually, but in the
2 interest of how your lawyers are being so good to each
3 other, and given the holidays, I would just encourage
4 everyone to be good neighbors and try very hard. As I
5 have said, this is lovely. This is a wonderful -- I, I
6 say it all the time. I feel grateful. People say
7 they're lucky enough to be born in South Carolina, I
8 always like to say I am smart enough to have chose to
9 move here some now 30 years ago. And it's beautiful,
10 and it's such a lovely area. And I just want everyone
11 to work together.

12 I know that all these homeowners have chosen to be
13 here. Mr. Gavigan has worked hard as a developer to
14 develop the properties, you know, here in South
15 Carolina, and I just really hope that everyone takes
16 the spirit of the holidays, and, hopefully, work
17 together, and be good neighbors.

18 So, with that said, unless there's anything else I
19 need from either one of you, if there's anything---

20 MR. MATTHEWS: No, ma'am, Your Honor.

21 THE COURT: ---I will try to let y'all know
22 something quickly. Again, I certainly appreciate and
23 understand that there will be an appeal, and I just
24 want to get this process going for you-all as soon as
25 possible.

1 MR. MATTHEWS: Thank you, ma'am.

2 THE COURT: Thank you very much.

3 MR. COOKE: Thank you for hearing us this week. I
4 know you're busy.

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 22nd day of February, 2020

Mona L. Manley /s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
(850) 893-6662
mmanley@sccourts.org

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-07-02345

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 PELLECCIA, 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-

ORDER

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 Defendants' Motion to Alter or Amend Judgment Under Rule 59(e), filed on November 21, 2019. A hearing was held on December 5th, 2019 in Beaufort, South Carolina. Eugene Matthews argued on behalf of Defendants at the hearing and Dawes Cooke argued on behalf of Plaintiffs. After considering all materials submitted by Plaintiffs and Defendants and hearing oral arguments, Defendants' Motion to Alter or Amend Judgment is respectfully DENIED.

IT IS SO ORDERED!

Carmen T. Mullen
Presiding Judge

_____, 2019
Beaufort, South Carolina



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

Electronically signed on 2019-12-05 12:26:25 page 3 of 3

ELECTRONICALLY FILED - 2019 Dec 05 12:42 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345

000764

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

C.A. No.: 2018-CP-07-02345

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 Pellechia, Janice S. Pellechia, 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 SC, LLC, William E. Gavigan, Michael Carey, Christopher J. Quick, James Riordan, DB Aster, LC, and GSI, LLC..... Defendants/Counterclaimants,

And

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

..... Third-Party Plaintiffs,

Of whom,

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

..... Appellants,

vs

Steve Andrews, Harriet Bosiack, Joseph P. D'Ambrosio, Mary D'Ambrosio, Ron Lambe, Michael Powers, Robert Wolfson, Huspah Properties, LLC, and Rivers Reach at Pocotaligo, LLC,..... Third-Party Defendants.

NOTICE OF APPEAL

NOW COME William E. Gavigan, Michael Carey, Christopher J. Quick, James Riordan, Bull Point, SC, LLC, and GSI, LLC (collectively referenced as the “Appellants” or “Bull Point Plantation Appellants”), by and through their undersigned counsel and appeal the Order of the Honorable Carmen T. Mullen of the Beaufort County Court of Common Pleas, dated November 18, 2019. Appellants received written notice of this Order on November 18, 2019. Appellants filed a Motion to Alter or Amend on November 21, 2019, and received notice of denial of the Motion to Alter or Amend on December 5, 2019.

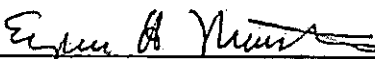
Appellants file this notice pursuant to S.C. Code Ann. § 14-3-330, under which an order granting partial summary judgment is immediately appealable where it “involves the merits” of the underlying action or “affects a substantial right” of a party. *Link v. Sch. Dist. of Pickens County*, 302 S.C. 1, 6, 393 S.E.2d 176, 178-79 (1990) (holding an order granting partial summary judgment may be appealable under either category); *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 306, 705 S.E.2d 475, 480 (S.C. App. 2011).

In its order, the trial court granted summary on nearly every cause of action brought by the Respondents – including causes of action that were not a part of their Motion for Partial Summary Judgment – and also fashioned injunctive remedies that deprived some of the Appellants’ of their basic procedural and property rights. Most importantly, the order purports to strip Bull Point SC, LLC of its rights as the developer and “Declarant” of the Bull Point development (which were purchased from the previous Declarant), remove duly appointed board members, and install an unelected “interim board.”

As a result, this appeal is proper under both S.C. Code Ann. § 14-3-330(1) and § 14-3-330(2), as the trial court's decision is an order "involving the merits" of the case and an order "affecting a substantial right" of Appellants.

December 10, 2019.

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COUNSEL FOR APPELLANTS

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No.: 2019-002038
C.A. No.: 2018-CP-07-02345

RECEIVED

DEC 16 2019

SC Court of Appeals

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 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 SC, LLC, William E. Gavigan, Michael Carey, Christopher J. Quick, James Riordan, DB Aster, LC, and GSI, LLC..... Defendants/Counterclaimants

Of whom:

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

And

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

..... Third-Party Plaintiffs

vs

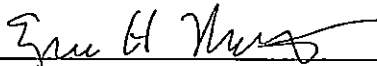
Joseph P. D'Ambrosio, Mary D'Ambrosio, Michael Powers, Harriet Bosiack, Robert Wolfson, James Hayes, Steve Andrews, Ron Lambe, Dave Prezvy, Rivers Reach at Pocotaligo, LLC, Rivers Reach Realty, LLC, and John Does 1-10 Third-Party Defendants.

AMENDED NOTICE OF APPEAL

NOW COME Bull Point, SC, LLC, William E. Gavigan, Michael Carey, Christopher J. Quick, James Riordan, and GSI, LLC, by and through their undersigned counsel and appeal the Orders of the Honorable Carmen T. Mullen of the Beaufort County Court of Common Pleas, dated November 18, 2019 and December 5, 2019. Appellants received written notice of the first Order on November 18, 2019. Appellants filed a Motion to Alter or Amend on November 21, 2019, and received notice of denial of the Motion to Alter or Amend on December 5, 2019.

December 16, 2019.

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No.: 2019-002038
C.A. No.: 2018-CP-07-02345

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DEC 16 2019

SC Court of Appeals

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 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 SC, LLC, William E. Gavigan, Michael Carey, Christopher J. Quick, James Riordan, DB Aster, LC, and GSI, LLC..... Defendants/Counterclaimants,

Of whom:

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

And

Bull Point, SC, LLC, GSI, 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 Prezvy, Rivers Reach at Pocotaligo, LLC, Rivers Reach Realty, LLC, and John Does 1-10 Third-Party Defendants.

000771

PROOF OF SERVICE

I, the undersigned employee of Richardson Plowden & Robinson, P.A., counsel for the Appellants do hereby swear that I have served a filed copy of the **Amended Notice of Appeal** by causing a copy of the same to be personally deposited in the United States mail, first class postage prepaid, addressed as indicated below on this the 16th day of December, 2019:

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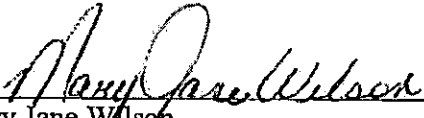
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Co-Counsel for Respondents Marlene Coleman and Richard Jay Coleman


Mary Jane Wilson
Legal Assistant

000773

THE STATE OF SOUTH CAROLINA
IN THE 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.

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AUG 13 2020

SC Court of Appeals

RECEIVED
AUG 13 2020
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies, in accordance with Rule 210(g), SCACR that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Dated this 10th day of August, 2020.

Respectfully submitted,

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