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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No.: 2021-000471

Bull Point Plantation Property Owners Association, Inc. ..... Respondent,

vs

Bull Point SC, LLC, Bull Point, LLC, Bull Point Plantation Owners Association, Inc., William E. Gavigan, Michael Carey, Christopher J. Quick, James Riordan, Richard Riney,
..... Appellants,

RECORD ON APPEAL

VOLUME I

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC. Plaintiff, -vs- BULL POINT SC, LLC; BULL POINT, LLC; BULL POINT PLANTATION OWNERS ASSOCIATION, INC.; WILLIAM E. GAVIGAN; MICHAEL CAREY; CHRISTOPHER J. QUICK; JAMES RIORDAN; RICHARD RINEY, Defendants	Civil Action No. 2020-CP-07-00817 **ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court on the Motion for Summary Judgment of Plaintiff Bull Point Plantation Property Owners Association, Inc. (hereinafter the "Association"). Plaintiff seeks to have its common area properties (its roads, its parks, its ponds, its clubhouse and business office, its swimming pool, its tennis courts, its community dock, its community boat landing, etc.) returned to it. This is necessary because on October 4, 2019, Defendants Gavigan and Riney, as purported President and Secretary, respectively, of the Association signed two Quit Claims Deeds (recorded in the Beaufort County Register of Deeds at Book 3802, Pages 185-192 and Book 3802, Pages 195-197) (collectively the "October 4, 2019 Deeds") transferring these properties from the Association to Bull Point, LLC (an entity that Mr. Gavigan owns or controls). Then, on March 6, 2020, Mr. Gavigan signed another Quit Claim Deed (recorded in the Beaufort County Register of Deeds at Book 3844, Pages 2148-2151) (hereinafter the "March 6, 2020 Deed") transferring some of these properties to Bull Point Plantation Owners Association, Inc., an entity that he created in February 2020 and claims is the real property owners' association for Bull Point Plantation. A

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virtual hearing was held on March 1, 2021. Dawes Cooke and Jeff Bogdan appeared on behalf of the Association. Ryan Neville appeared on behalf of Defendants William Gavigan, Bull Point SC, LLC, Bull Point, LLC, and Bull Point Plantation Owners Association, Inc. Gene Matthews appeared on behalf of Defendants William Gavigan, Chris Quick, James Riordan, and Richard Riney. After considering the materials submitted by all parties and the arguments made during the hearing, I find that there is no genuine issue of material fact and GRANT Plaintiff's Motion for Summary Judgment.

1. *The October 4, 2019 Deeds and The March 6, 2020 Deed are Void Ab Initio Because Defendants Gavigan and Riney Did Not Have Authority to Sign Those Deeds*

In 2019, in a related lawsuit styled John Attridge et al. v. Bull Point SC, LLC, 2018-CP-07-2345, the plaintiffs therein moved for summary judgment for injunctive relief and a declaratory judgment that Bull Point SC, LLC was not the Declarant of Bull Point Plantation, that it did not have authority to appoint the Association's Board of Directors, and that the Board of Directors appointed by Bull Point SC, LLC (which included Mr. Gavigan and Mr. Riney) were not legally appointed and should be removed. Bull Point SC, LLC cross moved for summary judgment arguing that it was the Declarant and had authority to appoint the Association's Board of Directors (including Mr. Gavigan and Mr. Riney). Judge Mullen granted summary judgment in favor of the plaintiffs. In her November 18, 2019 Order, Judge Mullen found, among other things: (1) that Bull Point SC was never the Declarant of Bull Point Plantation; (2) that the Association's members have the exclusive right to elect its Board of Directors; (3) that Bull Point SC's purported appointment of the Board of Directors was a nullity; (4) that all actions of the illegally appointed Board of Directors were nullities; (5) that all actions Bull Point SC took as the purported Declarant (including appointing members of the Association's Board of Directors) are void; (6) that Gavigan and the other individual Defendants were not members of the Association's Board of Directors;

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and (7) that Gavigan and the other individual defendants were enjoined from serving on the Association's Board (unless elected by the membership) and from taking any action in further governance of the Association. This Order is on appeal, but it has not been stayed pending appeal..

Judge Mullen's Order, which was a final judgment, is binding unless and until it is overturned on appeal. Under Rule 241(b), SCRAP, provides several exceptions to the automatic stay of orders while on appeal. These include, among others, orders granting an injunction, judgments directing delivery of documents or personal property, and judgments directing the delivery of possession of real property. Judge Mullen's November 18 Order did all three of these. It granted an injunction ("The Injunction requested in the Plaintiffs' second cause of action is granted. . . . Defendants are enjoined from serving on the POA's Board of Directors (unless elected by the POA members)"). It ordered possession of real property (the Clubhouse and office), documents, and personal property to be delivered ("the Defendants shall turn over possession of: (a) the clubhouse offices and all property 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 card, debit cards, financial records (both physical and electronic)."). Accordingly, the Court finds that Judge Mullen's November 18, 2019 Order remains in full force and effect while the appeal in pending. Arnal v. Fraser, 371 S.C. 512, 519, 641 S.E.2d 419, 422-23 (2007), rehearing denied, certiorari denied 128 S.Ct. 136, 552 U.S. 821, 169 L.Ed.2d 29 (finding that an order that is subject to a Rule 241(b) exception and thus, not automatically stayed, is binding and enforceable in the circuit court while it is on appeal). Thus, the Court's judgment declaring that the Defendants Gavigan and Riney were not authorized to serve on the Board of the Association is final and binding.

It is hornbook law that a signed instrument is not valid if the signatures were not properly authorized. Stott v. White Oak Manor, Inc., 426 S.C. 568, 828 S.E.2d 82, 86 (Ct. App. 2019), reh'g

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denied (June 6, 2019), cert. denied (Sept. 25, 2019) (finding that a document signed by someone without authority to sign it is not effective). Because Judge Mullen's November 18, 2019 Order unequivocally found that Mr. Gavigan and Mr. Riney did not have authority to sign the October 4, 2019 deeds on behalf of the Association and also that all actions taken by Mr. Gavigan and Mr. Riney as purported members of the Association's Board of Directors are nullities and void, this Court finds that the October 4, 2019 Deeds are void *ab initio*. Consequently, this Court finds that the March 6, 2020 Deed is also void *ab initio* because the purported grantor therein, Bull Point, LLC, never obtained title to the property it purported to transfer. Accordingly, the Court finds that the October 4, 2019 Deeds and the March 6, 2020 Deeds are void *ab initio*, have no legal effect, are set aside, and that legal title to the properties purportedly transferred therein remains in Bull Point Plantation Property Owners Association, Inc.

2. *The October 4, 2019 Deeds and The March 6, 2020 Deed are Void Ab Initio Because the October 4, 2019 Deeds were Conflict of Interest Transactions*

Alternatively, even if Defendants Gavigan and Riney had authority to sign the October 4, 2019 Deeds, these were conflict of interest transaction and are voidable. The Association is a South Carolina nonprofit corporation and, thus, is governed by the South Carolina Nonprofit Corporation Act, S.C. Code §33-31-101 et seq (hereinafter the "Act"). Section 33-31-810 of the Act is entitled Director Conflict of Interest. It provides, in relevant part:

> a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair to the corporation at the time it was entered into or is approved as provided in subsections (b) or (c).

It follows then that a conflict of interest transaction is voidable and the basis for imposing liability on the director if it was unfair to the corporation at the time it was entered and was not approved

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as provided in subsections (b) or (c). Subsection (b) applies to public benefit or religious corporations while subsection (c) applies to mutual benefit corporations. The Association is a mutual benefit corporation, so subsection (c) applies. Under §33-31-810(c):

> A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:
>
> (1) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or
>
> (2) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

Here, the October 4, 2019 Deeds transferring the Association's common area properties from the Association to Bull Point, LLC was a conflict of interest transaction because Mr. Gavigan signed them as President of the Association but also purportedly owns the grantee, Bull Point, LLC. Accordingly, Mr. Gavigan had a direct or indirect interest in the transaction, outside of his purported role as President of the Association. The October 4, 2019 Deeds were patently unfair to the Association because they transferred its invaluable properties away from it and to another entity. Additionally, there are more than a million dollars in judgments of record against Bull Point, LLC, so the properties would be impressed with judgment liens if the conveyances were allowed to stand. Accordingly, the deeds are voidable unless they were properly approved under §33-31-810(c). They were not. The Defendants argued that on October 3, 2019, Defendants Gavigan, Quick, and Riney, acting as purported Directors of the Association, approved the transactions by way of an Action by Unanimous Written Consent. However, that consent does not satisfy §33-31-810(c). According to the document Defendants submitted, the reason given for the transfer was that there was a scrivener's error in the Association's name in two of the deeds by

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which the Association had received some of the properties. So the purported directors agreed to transfer those properties back to Bull Point, LLC to correct the title defect. The document does not mention Bull Point, LLC or Bull Point Plantation Owners Association, Inc. keeping title to those properties. Further, Mr. Gavigan, through his attorneys, represented to the Court and others that the properties would be transferred back to Bull Point Plantation Property Owners Association, Inc. Accordingly, this Court finds that the Association's putative Board of Directors did not knowingly approve the October 4, 2019 Deeds. As a result, the Court finds that the October 4, 2019 Deeds are void *ab initio* because they were conflict of interest transactions. Therefore, the Court also finds that the March 6, 2020 Deed is void *ab initio* since Bull Point, LLC did not have title to the property it attempted to transfer therein.

3. *Defendants are Estopped From Keeping the Properties at Issue*

Shortly after Defendants Gavigan and Riney signed the October 4, 2019 Deeds, their counsel represented to Judge Mullen in writing: "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." The Defendants have now changed course, refusing the transfer the properties back to the Association and instead insisting that they are rightfully owned by Bull Point, LLC and/or Bull Point Plantation Owners Association, Inc. Based on Defendants' counsel's representations to Judge Mullen, this Court finds that the Defendants are estopped from taking any action effecting the title to the properties that are subject of the October 4, 2019 Deeds and March 6, 2020 Deed. See Cothran v. Brown, 592 S.E.2d 629, 357 S.C. 210 (S.C. 2004) ("Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding.").

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4. *Bull Point Plantation Property Owners Association, Inc. is the Property Owners Association for Bull Point Plantation and the Rightful Owner of the Common Properties*

The Defendants argue that a genuine issue of material fact exists because the Plaintiff is not the true "Association" and, instead, the "Association" is Bull Point Plantation Owners Association, Inc., the entity that Mr. Gavigan created in February 2020 and the grantee of the March 6, 2020 Deed. The Court rejects this argument. As an initial matter, the Court recognizes that Judge Mullen analyzed this argument in the Attridge Litigation and found in a December 4, 2020 Order that Bull Point Plantation Property Owners Association, Inc. is and has always been the one and only property owners association for Bull Point Plantation. This Court agrees. In addition to the reasons set forth in Judge Mullen's December 4, 2020 Order, which are incorporated herein by reference, this Court finds that Defendants themselves have admitted that Bull Point Plantation Property Owners Association, Inc. is and was the property owners' association for Bull Point Plantation. In fact, each of the individual Defendants purported to serve on the Board of Directors of Bull Point Plantation Property Owners Association, Inc. The Action by Unanimous Written Consent document relied on by Defendants to argue that the conflict of interest transactions were approved plainly states that Mr. Gavigan, Mr. Quick, and Mr. Riney were "the duly appointed directors of BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC., a South Carolina nonprofit corporation . . . ." In that document, the Defendants even define Bull Point Plantation Property Owners Association, Inc. as the "Association," not a "developer's holding company" as they are now arguing. There is no issue of material fact that Bull Point Plantation Property Owners Association, Inc. is and always has been (albeit often by other names that preceded it) the one and only property owners' association serving Bull Point Plantation.

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Finally, even if a question of fact existed as to whether Bull Point Plantation Property Owners Association, Inc. is the rightful property owners' association, this would be immaterial for purposes of the instant motion because Bull Point Plantation Property Owners Association, Inc. was unquestionably the grantor in the two conveyances at issue here and the record title holder of the properties in question. Whether or not the Association should be the owner of Bull Point Plantation's common properties, it is the owner and the Defendants lacked authority to convey the properties to another entity.

RELIEF GRANTED

Based on these findings, the Court makes the following rulings and grants the following relief:

1. Plaintiffs' Motion for Summary Judgment is granted;
2. Plaintiffs' request for Declaratory Judgment in its first cause of action is granted. Defendants Gavigan and Riney did not have authority to sign the October 4, 2019 Deeds (recorded in the Beaufort County Register of Deeds at Book 3802, Pages 185-192 and Book 3802, Pages 195-197) and, therefore, the conveyances are void *ab initio*, of no legal effect, and are set aside. Similarly, the March 6, 2020 Deed recorded in the Beaufort County Register of Deeds at Book 3844, Pages 2148-2151) is void *ab initio*, of no legal effect, and is set aside because Bull Point, LLC did not acquire title to the properties it claimed to transfer therein. It is ordered that possession of all real property transferred by way of the October 4, 2019 Deeds and March 6, 2020 Deed be delivered to the Association within 30 days of the filing of this Order.
3. The Court finds for the Plaintiff as to its Second Cause of Action, that the October 4, 2019 Deeds were conflict of interest transactions and, therefore, are void *ab initio*, of

no legal effect, and are set aside. Similarly, the March 6, 2020 Deed is void *ab initio*, of no legal effect, and is set aside because Bull Point, LLC did not acquire title to the properties it claimed to transfer therein.

4. The Defendants are estopped and enjoined from taking any action affecting the title to any real property mentioned in the October 4, 2019 Deeds or the March 6, 2020 Deed.

AND IT IS SO ORDERED!

R. Lawton McIntosh
Presiding Judge, Fourteenth Judicial Circuit

April __, 2021

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Beaufort Common Pleas

Case Caption: Bull Point Plantation Property Owners Association, Inc. VS Bull Point Sc Llc , defendant, et al

Case Number: 2020CP0700817

Type: Order/Summary Judgment

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

FORM 4

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT** **IN THE COURT OF COMMON PLEAS**	**JUDGMENT IN A CIVIL CASE** **CASE NO. 2020 CP-07-00817**
BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION INC. PLAINTIFF(S)	BULL POINT SC LLC, ET AL DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

ORDER INFORMATION

BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC.'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. THE CONVEYANCES ARE NULL AND VOID AB INITIO AS THERE WAS NO AUTHORITY TO MAKE THE TRANSFERS. DEFENDANTS ARE ESTOPPED BASED ON COMMUNICATION WITH JUDGE MULLEN AND FOR SUCH OTHER REASONS AS PLAINTIFFS PLACED IN ORDER. MR. COOKE TO PREPARE A FORMAL ORDER. PLAINTIFF'S MOTION TO AMEND IS GRANTED. MR. COOKE TO PREPARE A FORMAL ORDER. DEFENDANT'S MOTION FOR PRELIMINARY INJUNCTION IS WITHDRAWN.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

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E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2155 Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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

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

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Beaufort Common Pleas

Case Caption: Bull Point Plantation Property Owners Association, Inc. VS Bull Point Sc Llc , defendant, et al

Case Number: 2020CP0700817

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

ELECTRONICALLY FILED - 2021 Feb 28 11:01 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC., Plaintiff, v. BULL POINT SC, LLC; BULL POINT, LLC; BULL POINT PLANTATION OWNERS ASSOCIATION, INC.; WILLIAM E. GAVIGAN; MICHAEL CAREY; CHRISTOPHER J. QUICK; JAMES RIORDAN; RICHARD RINEY, Defendants.	)	Case No. 2020-CP-07-00817 **DEFENDANTS BULL POINT PLANTATION OWNERS ASSOCIATION, INC. AND BULL POINT, LLC'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Defendants BULL POINT PLANTATION OWNERS ASSOCIATION, INC. (the "Association") and BULL POINT, LLC (collectively the "Defendants") herewith submit their Memorandum in Opposition to Motion for Summary Judgment.

I. INTRODUCTION

Defendants request this Court deny the Motion for Summary Judgment of Plaintiff Bull Point Plantation Property Owners Association, Inc. (the "Plaintiff") on the grounds that there are questions of material fact and, further, because the claims upon which the Motion is made are unfounded.

On a preliminary note, in the Motion, Plaintiff defines itself as the "Association." (Motion, p. 1.) As set forth herein below, restrictive covenants to that subdivision referred to as Bull Point Plantation define defendant Bull Point Plantation Owners Association, Inc. as the "Association." (Declaration, § 1.01(e).) The covenants do not define Plaintiff as the Association and do not

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reference Plaintiff. Therefore, in this motion, Defendant Bull Point Plantation Owners Association, Inc. refers to itself as the "Association" and Plaintiff Bull Point Plantation Property Owners Association, Inc. as "Plaintiff."

As to the Motion, it should be denied because Plaintiff lacks standing to assert claims to the subject property. The property at issue was initially transferred by the Developer, Bull Point, LLC, to an unincorporated association. That unincorporated association did not later transfer it to Plaintiff. Thus, Plaintiff lacks standing to assert any rights on its behalf and attempt to have the court be used to inequitably obtain title to it.

The Motion should be further denied because there are questions of material fact as to who qualifies as the owners' association, and who has the right to assert interests granted to it under the covenants, and who is the rightful board of directors of Bull Point Plantation Property Owners Association, Inc. It is undisputed that the covenants define the Association and not Plaintiff as the Association. (*See* Declaration, § 1.01(e).) It is further undisputed that Plaintiff is not referenced in the covenants. Thus, there exists questions of material fact that cannot be resolved by summary judgment. Moreover, this very issue is pending in other litigation.

The Motion should be further denied because it would expose Association assets to collection efforts by non-parties. Plaintiff argues that granting the motion would subject the Association to possible collection efforts by a collection company, but the reality is that on February 26, 2021,a collection company filed a supplemental proceeding to collect $1 million dollars against Plaintiff. Thus, if property were transferred to Plaintiff, it would soon become part of the *res* to satisfy the judgment against Plaintiff.

For the foregoing reasons, discussed more fully below, Defendants respectfully request this Court deny Plaintiffs' Motion for Summary Judgment.

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II. STANDARD FOR SUMMMARY JUDGMENT

Summary judgment is only appropriate when there is "no genuine issue as to any material fact and [...] the moving party is entitled to judgment as a matter of law." Rule 56, SCRCP. "The party moving for summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 729 (Ct.App. 2005). "In determining whether any triable issues of fact exist, the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in the light most favorable to the non-moving party." *Koester v. Carolina Rental Center, Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Additionally, "[e]ven when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Id.* Moreover, "[s]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Miller* at 200. Finally, "because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues." *Id.*

III. THE MOTION SHOULD BE DENIED

A. Plaintiff Seeks Title to Property to Which It Never Had an Ownership Interest and the Real Parties in Interest are Not Before the Court.

The Motion should be denied because Plaintiff asks this Court to convey to it real property to which it *never* had a property interest and, further, certain real parties in interest (property owners) are not before the Court.

Seventy-five (75%) percent of the property (nine parcels) at issue in this motion relates to property purportedly transferred in a 2011 Quit Claim Deed. There is an obvious reason why Plaintiff did NOT include this deed as part of its complaint and did not included it in its motion

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for summary judgment, and that reason is because Plaintiff is not a party to that deed. More specifically, on said deed, the Grantor and Grantee were:

Grantor "Bull Point, LLC"

Grantee "Bull Point Property Owners Association"

(Grant Aff., ¶ 20, Ex. L.)

Critically, the Grantee is not an entity registered with South Carolina Secretary of State. Rather, it is an unincorporated association which dates to at least 1997. (Id., ¶ 12.) As is self-evident, the Grantee is not Plaintiff and Grantee is not a party to this action. Therefore, Plaintiff lacks standing to assert any rights in connection with the 2011 Quit Claim Deed. Moreover, the failure to include the Grantee to this action creates a material question of fact. The court needs to look no further than Plaintiff's Co-Counsel and purported board president Joseph D'Ambrosio's own affidavit as an officer of the court in which he states under oath:

"My wife Mary and I are members of Bull Point Property Owners Association (sometimes referred to as Bull Point Plantation Property Owners Association). Neither entity is a party to this legal action. This is in direct conflict of the sole affidavit Plaintiff provides in support for this Motion for Summary Judgment."

B. Plaintiff Wrongly Attempts to Usurp the Identity of the Association Set Forth in the Declaration as Amended.

Plaintiff argues that it is the owners' association of Bull Point Plantation and defines itself as the "Association" in its motion to convey that point. Plaintiff's inequitable efforts at amalgamation cannot be rewarded because it is not the owners' association enumerated in the restrictive covenants. Rather, that status is reserved for the Association. Importantly, the Incorporator of both the Association and Plaintiff was Stancel Kirkland. Mr. Kirkland who testified that Plaintiff is not the Association. (Grant Aff., ¶ 7, Ex. D.)

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Equally important, the Association's status has been unchallenged for the 26-year history of Bull Point Plantation and to conflate that now exposes the Association, and owners, to a multimillion-dollar judgment. Further, it contradicts the understanding of most owners that have purchased property within Bull Point Plantation. (Grant Aff., ¶ 24, Ex. M.)

1. The Covenants to Bull Point Plantation Identify "Bull Point Plantation Owners Association, Inc." as the Association.

"Under South Carolina law restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *S.C. Dept of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). "Where 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." *Ellie, Inc. v. Miccichi*, 358 S.C. 785 93, 594 S.E.2d 485, 493 (Ct.App. 2004) (emphasis added). The first inquiry is to examine the language of the contract itself. See *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 579 S.E.2d 132 (2003). To do this a 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." *See Superior Auto. Ins. Co. v. Maners*, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973). The inquiry then becomes "a question of law for the court whether the language of a contract is ambiguous." *McClellanville*, 345 S.C. at 623. A contract is ambiguous only when the language of the contract is reasonably susceptible to more than one interpretation. See *Id.*; *Davis v. Davis*, 372 S.C. 64,76,641 S.E.2d 446,452 (Ct.App.2006); and *Hann v. Carolina Cas. Inc. Co.*, 252 S.C. 518, 524, 167 S.E.2d 420, 422 (1969). "Whether a contract is ambiguous must be determined from the entire

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contract and not from any isolated clause of the agreement." *Farr v. Duke Power Co.*, 265 S.C. 356, 362,218 S.E.2d 431, 433 (1975).

On January 23, 1995, Metropolitan Properties, Inc. transferred to Bull Point, LLC the first parcel (Phase I) that would become Bull Point Plantation. Subsequently, on September 22, 1995, Bull Point, LLC, with the consent and agreement of Metropolitan Properties, Inc., executed restrictive covenants to Bull Point entitled *Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation* (the "Original Declaration"). (Grant Aff., ¶ 3, Ex. A.)

The Original Declaration defined an owner's association as follows:

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

(Declaration, § 1.01(e).) (Emphasis added.)

The Original Declaration further went on to define other terms referencing the Association; specifically:

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

(Declaration, § 1.01(c), (g).) (Emphasis added.)

The covenants have been amended approximately 25 times, including two restatements, the Third Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation, recorded February 14, 1996 (the "Third Amendment"), and the Ninth Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation, recorded February 4, 2000. (Grant Aff., ¶ 4, Ex. B.)

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By its terms, the Third Amendment was recorded "[t]o capitalize the initial capital letter of each definition referred to in the Declaration, [and] to correct several scriveners errors contained in the Declaration and to make other changes to the Declaration." (Third Amendment, ¶ 2.) Importantly, the definition of the Association in the Third Amendment and the Ninth Amendment was unchanged and *identical* to that in the Original Declaration. Thus, contrary to Plaintiff's arguments in other state and federal litigation, the name of the Association is not a "misnomer" and Plaintiff cannot falsely claim this.

At no time during Bull Point Plantation's history have the Covenants referenced Bull Point Plantation Property Owners Association, Inc. In short, the Covenants do not refer to Plaintiff, the Covenants do not identify Plaintiff, the Covenants do not give any rights or powers to Plaintiff. Rather, the *sole* owner's association identified in the Covenants is the Association.

> **" 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"**

2. The Rights of the Association Cannot Be Assigned.

Plaintiff seeks by this motion to accomplish a transfer of the Association's powers, something which the Declaration does not provide.

The Declaration, as amended, provides that the Declarant Rights under the Declaration may be assigned, and the history of said rights is such that they were assigned.[1] Conversely, the

[1] The court in the Attridge Action did address this issue obliquely. The ruling touching upon this issue is on appeal.

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Declaration does not provide that the rights of the owner's association; to wit, the Association, may be transferred or assigned. (Declaration, *passim.*) Accordingly, only the Association is the owner's association with the right to enforce the rights of the owner's association under the Declaration.

> *Definitions*
>
> "Association" shall mean and refer to Bull Point Plantation Owners Association, Inc. a South Carolina nonprofit corporation."
> "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.*

" 2.02 The option reserved under this Section may be exercised by Declarant only by the execution of an amendment to this Declaration...*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."

3. Plaintiff Lacks Standing to Challenge the Status of the Association Under the Declaration.

Plaintiff intends to use this Motion to challenge the status of the Association as the rightful owner's association under the Declaration. Plaintiff lacks standing to make this challenge as it is untimely and lacked the requisite property interest to challenge the covenants.

"Restrictive covenants are contractual in nature and bind the parties thereto in the same manner as any other contract." *Seabrook Island Prop. Owners Ass'n v. Peizer*, 292 S.C. 343, 347,

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356 S.E.2d 411, 414 (Ct. App. 1987); *Cedar Cove Homeowners Ass 'n v. DiPietro*, 368 S.C. 254 (Ct. App. 2006) (noting that restrictive covenants are *voluntary* contracts between the parties).

To challenge the covenants, a party would need be an owner at the time the covenant or amendment was adopted. Plaintiff was a stranger to the community and was not involved in the amendment process at all. Specifically, Bull Point Plantation Property Owners Association, Inc. did NOT own any property in Bull Point Plantation in 1995 when the Original Declaration was recorded, in 1996, when the Third Amendment was recorded, or in 2000 when the Ninth Amendment was recorded. Therefore, Plaintiff cannot now challenge the validity of the covenants as it voluntary contracted to accept the Declaration, as amended, at the time it acquired a property interest. Accordingly, under the Declaration, as amended, Bull Point Plantation Owners Association, Inc. is the Association.

Plaintiff also lacks standing for its indirect challenge because such claim is time-barred. Under S.C. Code Ann. § 15-3-530(1), Plaintiff's claims are barred by the statute of limitations; should this section provides:

> Within three years:
>
> (1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520:"

(S.C. Code Ann. §15-3-530(1).)

Additionally, "[u]nder the doctrine of laches, if a party who knows his rights does not timely assert them, and by his delay, causes another party to incur expenses or otherwise detrimentally change his position, then equity steps in and refuses to enforce those rights." *Richey v. Dickinson*, 359 S.C. 609, 612, 598 S.E.2d 307, 309 (Ct. App. 2004). "The party asserting laches has the burden of showing negligence, the opportunity to act sooner, and material prejudice" *Id.*

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Here, Plaintiff first acquired a property interest in Bull Point Plantation in 2007. (Grant Aff., ¶ 14, Ex. G.) Accordingly, by its acceptance of title to its property interest, it ratified the Declaration as amended. Therefore, fourteen years after its acquisition, Plaintiff is estopped under the doctrine of laches to challenge the status of the Association as the owner's association defined in Section 1.01(e) of the Declaration.

4. The Rightful Status of the Association as the Owner's Association is at Issue in Other Litigation.

Plaintiff would have this Court believe that the status of the owners' association was already resolved in that action entitled *Jon Attridge, et al. v. Bull Point, LLC, at al*, Circuit Court Case No. 2018CP0702345 (the "Attridge Action"). This contention is false.

Importantly, the Complaint and Amended Complaint did not name the Association as a defendant and the Association did not intervene in said action. Consequently, the court therein never had *in personam* jurisdiction over the Association.

The Attridge Action involved nine causes of action, six of which were for declaratory judgment and three which were unrelated.[2] The declaratory judgment causes of action addressed important issues, but none addressed the status of the owners' association. More specifically, the *First* dealt with control of a Contingency Fund, the *Fifth* dealt with whether Bull Point SC, LLC was the Declarant, the *Sixth* dealt with the election of directors, the *Seventh* dealt with the amendment of governing documents, the *Eighth* dealt with the repeal of a previously recorded amendment, and the Ninth dealt with assessments.

[2] The Second cause of action therein was for accounting. The Third cause of action was for injunctive relief. The Fourth cause of action was for inspection of documents.

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The status of the Association as the owners' association is at issue in other litigation; that action entitled *William E. Gavigan v. Bull Point Plantation Owners Association, Inc., et al*, Circuit Court Case No. 2021CP07-0150 (the "Covenants Declaratory Judgment Action"). In the Covenants Declaratory Judgment Action, the plaintiff therein alleges six (6) causes of action for declaratory judgment, each of which speaks to a particular issue regarding the correct interpretation of the Covenants brought up but not resolved in other litigation.

Importantly, the Third cause of action therein seeks the court therein to deem that Bull Point Plantation Owners Association, Inc. is the owner's association defined in the Covenants and the sole entity with the rights of the Association. This issue has not been adjudicated in any other litigation.[3]

Declaration

> "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."

5. The Status of the Association as the Owner's Association Has Never Been Challenged In the 26-Year History of Bull Point Plantation.

Plaintiff argues that the Association is a new construct incorporated in 2020 not previously involved in the history of Bull Point Plantation. This is false. The development of Bull Point

[3] *Note*: The foregoing issue was raised in that action entitled *Gary D. Grant v. Bull Point Plantation Property Owners Association, Inc., et al.*, United State District Court Case No. Case No. 9:20-CV-01582-RMG-MGB. This federal action was ultimately dismissed, and the issue not adjudicated.

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Plantation and the various entities associated with it was, and is, by the design of the Developer; specifically:

- The Association is the owners' association defined in the Covenants.
- Bull Point Plantation Property Owners Association, Inc. (f/n/a Bull Point Property Owners Association, Inc. f/n/a Bull Point Homeowners Association, Inc.) is the Developer's Holding Company.
- Bull Point Plantation Property Owners Association was the Developer's Transfer Company.

With respect to the Association, its history is limited to the specific purpose for which the Declaration charge it. The Association was created as an unincorporated nonprofit association by the recording of the Declaration on September 25, 1995. The Association changed from an unincorporated nonprofit association to a South Carolina nonprofit corporation with the filing of the Articles of Incorporation on February 5, 2020, by direction of the Declarant. The change from an unincorporated nonprofit association to a nonprofit corporation does not change the fact that at all times in the history of Bull Point Plantation the Association has been and continues to be the sole owner's association active throughout the subdivision history. The facts are:

- On September 26, 1995, Bull Point, LLC (the Developer) recorded the *Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation*. This created Bull Point Plantation Owners Association, Inc., an unincorporated nonprofit association.
- On March 12, 2007, the Association engaged legal counsel (Smoot & Pitts) to assist it with the transition of the subdivision from the Developer to the owners. (Grant Aff., ¶ 16, Ex. H.)
- On June 16, 2011, the Association conveyed property through a deed although expressly reserved an easement for the maintenance of the drainage areas and at all times subsequent thereto has maintained that drainage easement. (*Id.*, ¶ 17, Ex. I.)
- On March 25, 2017, the Association engaged legal counsel (Nexsen Pruet) to assist it in connection with that federal action entitled *GSI, LLC v. DB Aster, LLC*. (*Id.*, ¶ 18, Ex. J.)

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- From 2007 to the present, the Association has maintained Directors & Officers insurance and General Liability insurance (including for the property the subject of the motion).[4] (*Id.*, ¶ 19, Ex. K.)

In summary, the Association is not a new entity formed to serve a single individual, but rather, it is the owner's association defined in the Declaration and which for 26 years has served the subdivision.

C. Granting the Motion Would Expose the Association to Multi-Million Judgments Already the Subject of a Collection Action.

Plaintiff argues that the 2019/2020 transfers jeopardized the property by subjecting it to a judgment. In fact, Plaintiff has this backward because Plaintiff's Motion exposes the Association and its owners to a multi-million-dollar judgment, and there is no rational basis to impose this liability on the Association or the owners.

In 2013, in that action entitled *Michael Woods et al v. Thomas Johnson et al.*, Circuit Court Case No. 2008-CP-07-4861, Michael Woods obtained a judgment against Plaintiff herein for $555,938.00 (the "Woods Judgment"). With interest, the Woods Judgment approaches more than $1 million. The family never brought an action against the homeowners' association (Grant Aff., ¶ 28.)

In 2020, the Woods assigned the Woods Judgment to a third-party, BDG Recovery, LLC, and in 2021, BDG Recovery, LLC commenced a supplemental proceeding to collect the judgment and a petition seeking appointment of a receiver and the judgment it is owed. (*Id.*, at ¶ 29.)

Plaintiff decries this assignment and contends in other litigation that the assignment was for "little or no consideration" but the cold, hard truth is that BDG Recovery, LLC will vigorously

[4] This is further evidenced by the fact that there have never been any insurance policies in the name of Plaintiff "Bull Point Plantation Property Owners Association, Inc." or its prior names, Bull Point Property Owners Association, Inc. and Bull Point Homeowners Association, Inc.

pursue the recovery of the full amount of the judgment and attorney's fees and costs. By granting the Motion, all real property transferred to Plaintiff would be subject to the judgment collection under way through the writ of execution and the petition that is now in front of the court.

IV. CONCLUSION

For the foregoing reasons, as well as argument of counsel at the hearing on the matter Defendants respectfully request this Court deny Plaintiff's Motion for Summary Judgment.

Respectfully submitted,

s/ Irish "Ryan" Neville
Irish "Ryan" Neville (SC Bar # 76513)
Stephen A. Spitz (SC Bar # 5287)
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ATTORNEYS FOR BULL POINT, LLC

Certificate of Service

The undersigned hereby certifies that on February 28, 2020 he served the foregoing pleading/discovery on all parties/counsel of record via SC E-File System.

s/ Irish "Ryan" Neville
Spitz & Neville, LLC

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	Civil Action No. 2020-CP-07-00817
	)	
	)	
Bull Point Plantation Property Owners Association, Inc.,	)	**RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BY INDIVIDUAL DEFENDANTS**
	)	
Plaintiffs,	)	
	)	
vs	)	
	)	
Bull Point SC, LLC, Bull Point, LLC, Bull Point Plantation Owners Association Inc., William E. Gavigan, Michael Carey, Christopher J. Quick, James Riordan, Richard Riney,	)	
	)	
Defendants,	)	
	)	

NOW COME Michael Carey, William E. Gavigan, Christopher J. Quick, James Riordan, and Richard Riney (hereinafter "Individual Defendants"), and respond to the "Memorandum in Support of Motion for Summary Judgment" filed at 4:26 p.m. on Thursday, February 25, 2021, in support of their Motion for Summary Judgment.

The Individual Defendants incorporate by reference the pleading in opposition contemporaneously filed by the other Defendants. For those reasons, and for the reasons set forth below, the Individual Defendants respectfully request that the Court DENY the Plaintiff's Motion for Summary Judgment.

STANDARD OF REVIEW

To obtain summary judgment, the moving party must show that no genuine issue exists as to any material fact and that the moving party is entitled to summary judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, all inferences from

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the facts in the record must be viewed in the light most favorable to the party opposing the summary judgment motion. *Manning, et al. v. Quinn,* 294 S.C. 383, 365 S.E.2d 24 (1988).

Even where there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should not be granted. *Jamison v. Howard,* 271 S.C. 385, 247 S.E.2d 450 (1978); *Hamilton v. Miller*, 301 S.C. 45, 47, 389 S.E.2d 652, 653 (1990).

Given this standard, and the fact that most if not all of Plaintiff's argument relies on an Order that is currently under appeal to the South Carolina Court Appeals, it would appear that the Court must dismiss Plaintiff's motion forthwith. Nevertheless, the Individual Defendants also wish to raise additional arguments as set forth below.

LEGAL ARGUMENT

While the Plaintiff has developed a 20-page memoranum in support of its Motion foe Summary Judgment, the motion must be denied because its fails to carry the burden applied to all movants under Rule 56, SCRCP.

In this case, there currently appears to be only one cause of action set forth against any Individual Defendant – the claim of fraud against William E. Gavigan.[1]

As an intial matter, fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. In order to prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless

[1]If Plaintiff intended to file a claim against any other Individual Defendant, it has failed to do so. It is, at very least, not clear that any other claim is stated against an Individual Defendant. For that reason alone, a Motion for Summary Judgment against any Individual Defendant on any other claim must be denied. Notably, any suggestion of a "Conflict of Interest" transaction must be rejected because of the nature of the transaction as counseled by Attorney Eversole and the disclosure of technical ownership interest in Bull Point LLC to the Board. (See Minutes of Board Meeting, October 3, 2019, attached as Exhibit "E").

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disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *King v. Oxford,* 282 S.C. 307, 318 S.E.2d 125 (S.C. App. 1984). A complaint is fatally defective if it fails to allege all nine elements of fraud. *Inman v. Ken Hyatt Chrysler Plymouth, Inc.,* 294 S.C. 240, 363 S.E.2d 691 (1988); *Ardis v. Cox,* 314 S.C. 512, 515, 431 S.E.2d 267, 269 (S.C. App. 1993).

In this case, not only should the Plaintiff's motion with regard to fraud by denied, the claim itself must be dismissed. As the law clearly sets forth, "[a] complaint is fatally defective if it fails to allege all nine elements of fraud." *Id.*

The claim of fraud is based primarily on the assertion that the representation by Gavigan that the temporary transfer of property at issue was a somehow a "representation" to Plaintiff, upon which the "Plaintiff relied." This is utter nonsense. Plaintiff has been fully aware that it was and remains the intention of Bull Point, LLC to title the property in question in the name of the entity that is the actual "Association."

As the Title Opinion from Alysoun Eversole, Esq., a well-known real estate lawyer in Beaufort County, clearly states, in May 2019, she began to assist and advise the Association – as it was then constituted – to clear title defects which appeared on the deeds of the properties in question. (See Exhibit "A"). As Bull Point, LLC was the original entity granting the titles, the property had to first be titled in its name, then granted back to the proper name of the "Association."

Regarding the entity that is the proper "Association," there is presently litigation pending in another action – *William E. Gavigan v. Bull Point Plantation Owners Association, Inc., et al.*, 2021-CP-07-0150 – that seeks a Declaratory Judgment as to whether the Bull Point Plantation

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Owners Association, Inc., rather than the Bull Point Plantation *Property* Owners Assocation, Inc., is the proper "Association."[2] The exhibits and affidavits filed in that action, incorporated here by reference, at very least establish beyond dispute that there is a scintilla of evidence that Plaintiff has failed to establish any claim against any Individual Defendant. Indeed, the affidavit filed by William E. Gavigan in the instant matter (attached as Exhibit "B"), notes clearly that it was "at all times my commitment and duty has been to the 'Association,' as defined in the Declaration as Bull Point Plantation Owners Association, Inc." (Exhibit "B," ¶ 31). Further, affidavits from teh earliest principals of the Bull Point development, Stancel E. Kirkland and Donald w. Barrett, clearly indicate that the entity created in 1995 (the "Bull Point Plantation Property Owners Association, Inc."), which is the Plaintiff in this action, was not the non-profit owners' association referenced in teh Declaration. (See Affidavits of Kirkland and Barrett attached as Exhibits "C" and "D"). In fact, because the claim against Gavigan must be established by "clear, convincing, and cogent evidence," the Court must deny Plaintiff's Motion for Summary Judgment, as suhc evidence is sorely lacking.

Given the current dispute over the proper identity of the "Association," there are simply no grounds for the Court to grant Plaintiff's Motion for Summary Judgment.

CONCLUSION

For these reasons, the Individual Defendants respectfully request that the Court DENY the Plaintiff's Motion for Summary Judgment.

This the 1st day of March, 2021.

[2] It appears especially pertinent to note that this case has been set for a hearing on Gavigan's own Motion for Summary Judgment for March 11, 2021 before the Honorable Judge Bentley Price.

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EXHIBIT A

Title Opinion

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EVERSOLE LAW FIRM, P.C.

1509 King Street
Beaufort, South Carolina 29902
Phone: (843) 379-3333
Facsimile: (843) 379-5558
aeversole@eversolelaw.com

May 15, 2020

Re: Title Opinion regarding Bull Point Plantation

Bull Point Plantation was established as a phased subdivision subject to covenants and restrictions recorded with the Office of the Register of Deeds for Beaufort County on September 25, 1995 in Book 805 at Page 218. These covenants, entitled Declaration of Covenants, Condition, and Restrictions for Bull Point Plantation (hereinafter the "Covenants"), were created by the Developer/Declarant, Bull Point, LLC. The name of the owner's association created in the Covenants was "Bull Point Plantation Owners Association, Inc." No amendment to the Covenants ever changed the name to any other name. The Covenants were restated in 1996 and again in 2000 by Bull Point, LLC for the benefit of "Bull Point Plantation Owners Association, Inc."

On September 26, 1995, a separate South Carolina nonprofit corporation was registered with the Secretary of State with the name of "Bull Point Homeowners Association, Inc." This nonprofit corporation is not the name given to the owner's association in the Covenants. The Incorporator of this entity was Stancel Kirkland.

On August 14, 2006, an amendment was filed with the Secretary of State change the name of "Bull Point Homeowners Association, Inc." to "Bull Point Property Owners Association, Inc."

On February 4, 2015, a second amendment was filed with the Secretary of State to change the name of Bull Point Property Owners Association, Inc. f/n/a Bull Point Homeowners Association, Inc. to "Bull Point Plantation Property Owners Association, Inc." Importantly, this was not the entity enumerated in the Covenants.

To complicate matters even further, on January 2, 2007, another South Carolina nonprofit corporation was registered with the Secretary of State, this one with the name of "Bull Point Plantation Property Owners Association." (Of note, this nonprofit corporation omitted "Inc." from its name.) This entity was dissolved March 21, 2013.

Beginning on or about December 28, 2006, Bull Point, LLC began to convey future common areas and roadways to "Bull Point Property Owners Association, Inc." or "Bull Point Property

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Owners Association." Neither of these grantees is the owner's association enumerated in the Covenants (that is, Bull Point Plantation Owners Association, Inc.) , nor was the second entity registered with the Secretary of State during that time.

Attached is a Timeline that outlines the filings with the Secretary of State for the entities mentioned above as well as documents recorded with the Register of Deeds for Beaufort County.

In early May 2019, Mr. Gavigan, acting as President of the owners association, enlisted my assistance in clearing up title defects which appeared to exist as a result of the various entities with the Secretary of State and the Grantees being wrong on certain deeds. For this reason, at my suggestion, the plan was to Quit Claim all property back to Bull Point, LLC, then register the proper entity referenced in the Covenants with the Secretary of State, "Bull Point Plantation Owners Association, Inc." (the "Association") and, subsequently, reconvey the property to the Association. I prepared two Quit Clam Deeds, which were recorded at the Office of the Register of Deeds for Beaufort County on October 10, 2019 vesting title back into Bull Point, LLC. The process to correct the title defects is not complete because (1) the Assessor requires revisions to the legal description in the deed involving the 694 acres, correspondence from the Assessor's Office attached; (2) non-payment of my fees by the POA; and (3) then the Order in 2018CP0702345 as it relates to Mr. Gavigan and his role in the POA.

Since title is vested in Bull Point, LLC, which was not a defendant in the Attridge Action, the roadways have been deeded to Bull Point Plantation Owners Association, Inc.

Sincerely,

Alysoun M. Eversole

Enclosures:

Alysoun M. Eversole, Esq
aeversole@eversolelaw.com

Cherese T. Handy, Esq.
chandy@eversolelaw.com

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TIMELINE
OF
BULL POINT PLANTATION

I. DEVELOPER ESTABLISHMENT OF CC&R'S AND OWNERS ASSOCIATION

A. The Development.

01/20/1995 Bull Point, LLC organized as a South Carolina limited liability company. Organizer is Stancel Kirkland.

09/22/1995 Bull Point, LLC, with the consent and agreement of Metropolitan Properties, Inc., executes the *Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation* (the "Declaration").

09/25/1995 Declaration recorded with Beaufort County Register of Deeds. "Bull Point Plantation Owners Association, Inc." is formed as an unincorporated nonprofit association.

II. ENTITIES

A. The Developer's Holding Company.

09/26/1995 Articles of Incorporation filed for "Bull Point Homeowners Association, Inc." Incorporator is Stancel Kirkland.

08/14/2006 Articles of Amendment filed to change name of Bull Point Homeowners Association, Inc. to "Bull Point Property Owners Association, Inc."

02/04/2015 Articles of Amendment filed to change name of Bull Point Property Owners Association, Inc. to "Bull Point Plantation Property Owners Association, Inc."

B. The Transfer Company.

01/2/2007 Articles of Incorporation to change name of Bull Point Property Owners Association, Inc. to "Bull Point Plantation Property Owners Association."

03/21/2013 Articles of Dissolution filed to dissolved Bull Point Plantation Property Owners Association.

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C. **The Owner's Association**

9/22/1995 "Bull Point Plantation Owners Association, Inc created by the recording of the Declaration

2/5/2020 Articles of Incorporation filed for "Bull Point Plantation Owners Association, Inc." Incorporated the Unincorporated Association

Note: This is the entity defined in Section 1.01(e) of the Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation. 1995, 1996, and 2000

III. PROPERTY TRANSFERS

12/28/2006 Bull Point, LLC executed and recorded a *Quit Claim Deed* conveying .61-acre common area for access to Magnolia Island, a boardwalk to Magnolia and Magnolia Island to "Bull Point Property Owners Association, Inc." (Prepared and signed by Stancel Kirkland.)

12/28/2006 Bull Point, LLC executed and recorded a *Quit Claim Deed* conveying 2.09 acres, William bull Park and Lot 87 "Bull Point Property Owners Association, Inc." (Prepared and signed by Stancel Kirkland.)

9/27/2007 Bull Point, LLC executed and recorded a *Quit Claim Deed* conveying 8.24 acres to "Bull Point Property Owners Association." (Prepared and signed by Stancel Kirkland.)

3/26/2008 Bull Point, LLC executed and recorded a *Quit Claim Deed* conveying 1.79 acres of Open Space to "Bull Point Property Owners Association." (Prepared and signed by Stancel Kirkland.)

11/20/2008 Bull Point, LLC executed and recorded a *Quit Claim Deed* conveying Sheldon Lane 50' R/W and other roads to "Bull Point Property Owners Association, Inc." (Prepared and signed by Stancel Kirkland.)

11/20/2008 Bull Point, LLC executed and recorded a *Quit Claim Deed* conveying Stephens Path and portion of Barnaby Bluff 50' R/W and other roads to "Bull Point Property Owners Association, Inc." (Prepared and signed by Stancel Kirkland.)

11/20/2008 Bull Point, LLC executed and recorded a *Quit Claim Deed* conveying Bull Point Drive, Phase I, 50' R/W and other roads/trails to "Bull Point Property Owners Association, Inc." (Prepared and signed by Stancel Kirkland.)

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11/20/2008 Bull Point, LLC executed and recorded a *Quit Claim Deed* conveying Island Way 50' R/W and other roads/trails to "Bull Point Property Owners Association, Inc." (Prepared and signed by Stancel Kirkland.)

11/20/2008 Bull Point, LLC executed and recorded a *Quit Claim Deed* conveying Bull Point Drive, Phase II, 50' R/W and other roads/trails to "Bull Point Property Owners Association, Inc." (Prepared and signed by Stancel Kirkland.)

*6/28/2011 "Bull Point Plantation Owners Association, Inc." executed and recorded a *Quit Claim Deed to* " Bull Point, LLC " a twenty foot strip of lands with an easement reserved for "Bull Point Plantation Owners Association, Inc." drainage easements by its President Stancel Kirkland

Note: The grantor above is owner's association referenced in the Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation. The grantee is the Declarant. The grantor is an unincorporated association.

10/21/2011 Bull Point, LLC executed and recorded a *Quit Claim Deed* conveying 694.1 acres and two out islands containing 18.5 acres and 5.0 acres, acres of Open Space (Saving and Excepting a substantial number of lot numbers and parcels) to "Bull Point Property Owners Association." (Prepared and signed by Stancel Kirkland.)

Note: The grantee above is not the owner's association referenced in the Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation. The grantee also is not the Developer's Holding Company or the Transfer Company. The grantee is an unincorporated association.

09/24/2012 DB Aster, LLC conveyed 9.42 acres and 2.551 acres to "Bull Point Property Owners Association, Inc."

2014 "Bull Point Property Owners Association, Inc." *Quit Claim Deed* conveying Phase VII to DB Aster, LLC (to correct previous deed and title issues

10/10/2019 Deed from Bull Point Property Owners Association /a/k/a Bull Point Property Owners Association, Inc. n/k/a Bull Point Plantation Property Owners Associating, Inc. to Bull Point, LLC. (Has been sent for re-recorded to correct scrivener's error in one of the parcels.)

10/10/2019 Deed from Bull Point Property Owners Association, Inc. k/n/a Bull Point Plantation Property Owners Association Inc. to Bull Point, LLC.

3/10/2020 Deed from Bull Point, LLC to Bull Point Plantation Owners Association, Inc. (Roads)

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EXHIBIT B
AFFIDAVIT OF WILLIAM GAVIGAN

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AFFIDAVIT OF WILLIAM E. GAVIGAN

I, WILLIAM E. GAVIGAN, hereby declare as follows:

1. I am over the age of 18 years. I am a resident of Beaufort, South Carolina. As set forth below, I am the owner of the companies mentioned herein below. In that capacity, I could and would competently testify thereto regarding the following:

Corporate Ownership

2. I am the owner, either directly or through other entities I own, of the below listed companies, each of which has some relationship with Bull Point Plantation. I am also the Manager, Managing Member or President, as applicable, of said below listed companies:

a. BDG RECOVERY, LLC, a South Carolina limited liability company.

b. BULL POINT, LLC, a South Carolina limited liability company.

c. BULL POINT SC, LLC, a South Carolina limited liability company.

d. GSI, LLC, a South Carolina limited liability company.

e. OLD SOUTH PROPERTIES, INC., a South Carolina corporation.

3. I am a developer and hold the title of declarant for several communities in Beaufort County, South Carolina.

4. I have been in the real estate development profession since 2006. Our companies have been involved with master planned communities in North Carolina, South Carolina, and Georgia. I have directly led the sale and development of over ten thousand acres of land to include the $61 million sale of 5,000 acre in Jasper County known as River Port.

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5. Since 2009 my primary focus has been acquiring troubled assets and communities, obtaining the required compliance with Federal and State agencies, and then increasing the value of these communities through enhancement, improvement, sales and development.

History of the Declarant at Bull Point Plantation

6. On January 23, 1995, Metropolitan Properties, Inc. conveyed to Bull Point, LLC the first of several parcels that consists of 694-acres commonly referred to as Bull Point Plantation, which was developed and continues to be developed as a phased subdivision.

7. On September 22, 1995, Bull Point, LLC executed restrictive covenants, entitled the "Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation" (the "Declaration"). (Recorded in Book 805, at Page 218.)

8. Under the Declaration, Bull Point, LLC is the "Declarant" and the "Association," defined in Section 1.01(e), is "Bull Point Plantation Owners Association, Inc." Significantly, since 1995, Bull Point, LLC has amended the Declaration approximately twenty-five (25) times. No amendment has modified the definition of "Declaration." No amendment has modified the definition of "Association."

9. In 2011, one of Bull Point, LLC's lenders, BB&T, commenced a foreclosure action, United States District Court Case No. 9:11-cv-00629-SB, against property secured by a mortgage (the "BB&T Foreclosure Action").

10. Defendants in this action included, *inter alia*, Bull Point, LLC, Bull Point Property Owners Association, Inc., and Bull Point Plantation Property Owners Association. Bull Point Property Owners Association, Inc. did not file a responsive pleading, whereas Bull Point Plantation Property Owners Association did file an answer. In its answer, Bull Point Plantation Property Owners Association admitted that it "was deferent and [was] not an active association."

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11. During the pendency of the BB&T Foreclosure Action, German American Capital Corporation (GACC) acquired the BB&T-Bull Point, LLC loan and stepped into the shoes of BB&T. GACC was successful in the action, and on July 5, 2012, the court in the foreclosure action issued its Deed by Judicial Order, and transferred to DB Aster, LLC most of Bull Point, LLC's real property. Subsequently, on December 28, 2012, Bull Point, LLC executed an Assignment of Rights Under Declaration, with the intent to convey the Declarant Rights to DB Aster, LLC, an assignee of GACC.

William Gavigan's Involvement and Relationship with Bull Point Plantation

12. I first became involved with Bull Point during the pendency of the BB&T Foreclosure Action, when Stan Kirkland and Donald Barrett sought me out to assist in the completion of the development. To that end, Bull Point, LLC and one of my companies executed an agreement to complete the development and I later testified in a federal court proceeding regarding the development and our plan to finish out and complete the development.

13. My agreement with Bull Point, LLC was suspended due to the successful foreclosure by GACC; however, I maintained contact with Bull Point, LLC's principles and GACC's representatives because of my interest in Bull Point.

14. When Bull Point came on the market, I was contacted by the owner's agent. After considerable negotiation, on August 18, 2017, one of my companies, GSI, LLC, purchased from DB Aster, LLC and German American Capital Corporation (GACC): (1) all right, title and interest in the real property at Bull Point, (2) the development and permit rights for future phases, (3) the Declarant Rights, and (4) a judgment by GACC against Bull Point, LLC for $2.4 million (inclusive of interest).

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15. On August 21, 2017, GSI, LLC, conveyed to Bull Point SC, LLC everything it acquired from DB Aster, LLC and GACC, exclusive of a handful of lots.

The Foreclosure of Lot 223

16. On May 5, 2014, Bull Point Plantation Property Owners Association, Inc. commenced that action entitled *Bull Point Plantation Property Owners Association, Inc. v. Bull Point, LLC, et al.*, Circuit Court Case No. 2014CP0701080 (the "Lot 223 Foreclosure Action"). On said date, no entity was registered with the South Carolina Secretary of State with the name Bull Point Plantation Property Owners Association, Inc.

17. On January 21, 2015, the court in the Lot 223 Foreclosure Action, issued its Master's Deed, which conveyed Lot 223 to Bull Point Plantation Property Owners Association, Inc. On said date, *no* such entity was registered with the South Carolina Secretary of State with the name Bull Point Plantation Property Owners Association, Inc.

The Fraudulent Name Change Following the Foreclosure of Lot 223

18. On February 5, 2015, the same date that the Master's Deed for Lot 223 was recorded, Russ Dimke, in the putative capacity as Secretary/Treasurer, submitted to the Secretary of State Articles of Amendment to change the name of Bull Point Property Owners Association, Inc. to Bull Point Plantation Property Owners Association, Inc. This name change was improper because:

a. The Articles of Incorporation require any amendment to have "the assent of seventy-five (75%) of the entire membership"; no such amendment was ever voted on by the members, let alone receiving approval of 75% of the membership.

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b. The Bylaws require that all written instruments be signed by the President; the President did not sign the Articles of Amendment.

c. Russ Dimke was not a member of the corporation and did not have the authority to do this.

The Attridge Action Ruling Regarding the Declarant Rights

19. On December 3, 2018, a handful of owners at Bull Point commenced that action entitled *Jon Attridge, et al v. The Board of Directors of Bull Point Plantation Property Owners Association, Inc., et al.*, Circuit Court Case No. 2018CP0702345 (the "Attridge Action"). Among other things, the action sought to have the court rule that Bull Point SC, LLC was not the Declarant.

20. On November 18, 2019, the court in the Attridge Action issued its Order. The Order held, among other things, that Bull Point SC, LLC was not the Declarant. (Order, ¶ 5.)

21. Although that part of the Order entitled "Relief Granted" did not state why it ruled Bull Point SC, LLC was not the Declarant, earlier in the Order the court stated that the definition of "Declarant" could only be interpreted such that the Declarant Rights transferred only upon the foreclosure of the Declarant's "entire interest." As set forth in the Facts section of the Order, Bull Point, LLC's entire interest was not foreclosed upon and, therefore, the Declarant Rights did not transfer to DB Aster, LLC and, subsequently, to GSI, LLC and, subsequently, to Bull Point SC, LLC.

Bull Point, LLC's Interest in Bull Point Plantation

22. At all times, from September 1995 to the present, Bull Point, LLC has continued to have an interest in Bull Point Plantation.

23. On July 5, 2012, on the date the court issued its Deed by Judicial Order in the BB&T Foreclosure Action:

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a. The deed did *not* convey Lot 223, Phase VI, Bull Point Plantation.

24. On January 21, 2015, on the date the court issued its Master's Deed in the Lot 223 Foreclosure Action:

a. There did not exist an entity with the name Bull Point Plantation Property Owners Association, Inc., the purported grantee of Lot 223.

25. Under the express terms of the Declaration, Bull Point, LLC owned and continues to own:

a. Approximately 25 acres consisting of (i) Lake Bellinger, (ii) Lake Izard, and (iii) Lake Pocotaligo;

b. Approximately 9 acres consisting of the maintenance area and storage area.

c. The gated and guarded monitored access.

d. The interest under that Easement Agreement, dated July 12, 2001, between Bull Point, LLC and the owner of Lot 35, Phase I. (Recorded 10/31/2001, Book 01490, at Page 0973.)

e. The interest under that Easement Agreement, dated January 12, 2005, between Bull Point, LLC and the owner of Lot 33, Phase I. (Recorded 01/14/2005, Book 02084, at Pages 1196-1200.)

f. The interest under that Easement Agreement, dated July 21, 2005, between Bull Point, LLC and the owner of Lot 35, Phase I. (Recorded 08/11/2005, Book 02207, at Pages 0896-0899.)

g. The interest under that Conservation Easement, dated December 22, 2003. (Recorded 12/24/2003, in Book 01889, at Pages 2334-2348.)

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Declarant Alone Can Add Property to Declaration

26. Under Article II, Sections 2.01 and 2.02, of the Declaration, only the Declarant may add property to the Development.

27. The following property has been made a part of the Development, as that term is defined in the Declaration:

a. Phase I

b. Phase II

c. Phase IV

d. Phase V-A

e. Phase VI

28. Attached hereto as Exhibit A is a true and correct copy of the *Nineteenth Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation* that added Phase V-A and which recounts the history of the phases being made a part of the Development.

29. The following property has *not* been made a part of the Development:

a. Phase III and lots therein

b. Phase V-B and lots therein

c. Future Phase VII and (45 lots) therein

d. Future Phase VIII, portions of which are intended for Common Area and the property at 114 Barnaby Bluff (resort pool, tennis, Club house).

e. The Clubhouse

f. Magnolia Island

g. The Boat launch and landing, docks, etc.

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h. The Bird Sanctuary

i. Lake Izard (association funds were used to dig the lake)

j. All other Additional Property.

The Developer's Vision the for Bull Point Plantation

30. My intent since acquiring Bull Point Plantation has been and remains to finish the development of the subdivision, and to make it a flagship community in the Lowcountry. To that end, I have, among other things, invested time and resources to perform a capital reserve study, conduct a road maintenance study, fix and repair items suffering from lack of maintenance (which in some respects appears to have been intentional), coordinate the installation of data and power, implement new and improved procedures, remedy defective titles, greatly increased property values, brought about a 50-fold increase in sales, *and* submitted portions of Additional Property to the Declaration by adding Phase V-A to the Development.

31. Certain persons have represented, falsely, that I committed to transferring property to the "POA." At no time have I ever committed to transferring any property to the POA, which was defined in the Court's Order as Bull Point Plantation Property Owners Association. Further, I have never committed to transferring property to Bull Point Plantation Property Owners Association, Inc., which certain persons contend is an owner's association. Rather, at all times my commitment and duty has been and is to the "Association," as defined in the Declaration as Bull Point Plantation Owners Association, Inc. There is, however, a caveat to this. Certain deadlines are set forth in the Declaration, including possibly September 2020. After this deadline, it is possible/probable that no further amendments may be made to the Declaration by the Declaration, including adding Common Areas.

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32. Unfortunately, my goal of completing the Development of Bull Point Plantation has been hindered by a handful of owners (i.e., those involved with Huspah Properties, LLC) that have sought to acquire for themselves the Declarant Rights and control of the Association. This obstruction has included these owners filing several legal actions, which have impeded my efforts to further proceed with development of Bull Point Plantation. But for their obstruction, I believe that Bull Point Plantation would be in a much better place, additional portions of the Additional Property would be part of the Development, and the property values at Bull Point would be significantly higher.

33. That in compliance with Chief Justice Beatty's April 22, 2020 Order Governing the Operation of the Trial Courts During the Coronavirus Emergency, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

FURTHER THE AFFIANT SAYETH NOT:

William E. Gavigan

EXHIBIT C
AFFIDAVIT OF STANCEL KIRKLAND

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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, et al,	)	
	)	
Plaintiff,	)	**AFFIDAVIT OF STANCEL E. KIRKLAND**
vs.	)	
	)	
The Board of Directors of Bull Point Plantation Property Owners Association, Inc., et al	)	
	)	
Defendants.	)	
	)	

1. My name is Stancel E. Kirkland. I am over the age of 18 and I am a resident of Lexington, South Carolina.

2. At all material times, I was an attorney licensed in the State of South Carolina. At present, I am a retired member of the South Carolina Bar.

3. As set forth below, I was both the President of Metropolitan Properties, Inc and the founder Managing Member of Bull Point, LLC.

4. At all material times, I was the owner and President of Metropolitan Properties, Inc., the entity that sold Bull Point Plantation to Bull Point, LLC.

5. I was the organizer of Bull Point, LLC and Managing Member of the company from its formation until I conveyed my Membership Interest to William E. Gavigan.

6. I was the incorporator of Bull Point Homeowners Association, Inc. In 2006, this entity changed its name to Bull Point Property Owners Association, Inc. This is not Bull Point Plantation Owners Association, Inc, the non-profit owners' association in the Declaration.

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7. I was the drafter of the *Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation* (the "Declaration"), as amended, and the individual that recorded the document on September 26, 1995. The Declaration was the restrictive covenants over Bull Point Plantation.

8. I was the drafter of the *Third Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation* (the "Third Amendment") and the individual that recorded the document.

9. I was the drafter of the *Ninth Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation* (the "Ninth Amendment") and the individual that recorded the document.

10. In drafting the 1995 Declaration, as well as the Third Amendment and Ninth Amendment, I intentionally did *not* include a provision which prohibited the Declaration from being assigned. Further, when drafting the Declaration, several times throughout the document I included the word "assigns." The absence of a prohibition against assignment and the inclusion of the word "assigns" in these documents was intentional because I always contemplated the possibility of a sale of Bull Point.

11. On December 28, 2012, on behalf of Bull Point, LLC, I executed an *Assignment of Rights Under Declaration* (hereafter "Assignment"), pursuant to which Bull Point, LLC transferred and assigned the Declarant Rights to DB Aster, LLC.

12. As the drafter of the Declaration, I intended and understood that the Declarant Rights were assignable pursuant to the Declaration and all subsequent amendments. It was, therefore, my understanding that Bull Point, LLC was entitled to assign the Declarant Rights.

FURTHER AFFIANT SAYETH NOT.

Stancel E. Kirkland SR.
Stancel E. Kirkland

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF LEXINGTON)

On this 28th day of December 2019, before me personally appeared Stancel E. Kirkland, who provided satisfactory evidence of his identification to be the person whose name is subscribed to this instrument and he acknowledged that he executed the foregoing instrument by his signature here.

Stancel E. Kirkland SR
Stancel E. Kirkland

Sworn to (or affirmed) and subscribed before me
this 28th day of December 2019.

(Notary Signature)

Eriha Sneath
Notary Public
Richland County, South Carolina
My commission expires: 6/7/2027

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EXHIBIT D
AFFIDAVIT OF DONALD BARRETT

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AFFIDAVIT OF DONALD W. BARRETT

I, DONALD W. BARRETT, hereby declare as follows:

1. I am over the age of 18 years. I am a resident of Hilton Head, South Carolina. As set forth below, I previously was a principal of BULL POINT, LLC. In that capacity, I could and would competently testify thereto regarding the following:

History of Bull Point Plantation and the Association

2. On September 22, 1995, Bull Point, LLC executed restrictive covenants, entitled the "Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation" (the "Declaration"). (Recorded 09/26/1995, in Book 805, at Page 218.) The restrictive covenants were recorded, among other things, (1) Establish and let all know the rights of the Bull Point, LLC developer/declarant in developing the 694 Acres we owned (2) The rights of the owners to their private property we sold to them (3) The obligations and duties of the owners for the access and use of the designated Common Areas we established in our declaration; (4) to facilitate the development of the 694-acres in phases; and (5) to provide for owners to become members in the owners' association, defined as "Bull Point Plantation Owners Association, Inc.," once title was transferred from the developer to a property owner.

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3. Maintenance of the Common Areas and recreational Amenities that we created would be managed by the Bull Point Plantation Owners Association, Inc, once they took title to it.

The Separate Non-Profit

4. On September 26, 1995, Stan Kirkland, executed and filed Articles of Incorporation to form "Bull Point Homeowners Association, Inc.," a South Carolina nonprofit corporation ("BPHOA"). BPHOA was formed as a separate nonprofit and is different than "Bull Point Plantation Owners Association, Inc.," the owners' association defined in the Declaration. At all material times, control of and membership in BPHOA was limited to the principals of Bull Point, LLC.

5. The purpose of forming BPHOA was to transfer certain property and other assets to a corporation other than the development company, but at the same to enable the development company to exercise control over the property while development of Bull Point Plantation continued and until such time as we transferred the assets (title) to the Association and when the Declarant would terminated its Declarant Rights, This has not occurred yet.

6. For example, due to zoning, permitting, and engineering, there were often times portions of the property needed to be changed, increased or decreased to comply with Zoning,

Historic Preservation Areas, and other local, state and federal requirements before final transfer to the Association by the Declarant.

7. At all material times, the owners, including, but not limited to, Russ Dimke, Dick Lovett, and Jay Coleman, were aware of BPHOA; in fact, they frequently referred to it as the "LLC's Non-Profit".

8. In July 2006, Kirkland executed and filed Articles of Amendment to change the name of BPHOA to "Bull Point Property Owners Association, Inc.," substituting "Bull Point Property Owners" for "Bull Point Homeowner." This was done to remove any confusion regarding the Additional Property held by Bull Point, LLC. At that time, Kirkland and I were Co-Managing Members and I was the CEO of Bull Point, LLC.

Role at Bull Point

9. As the CEO and a Managing Member, I was responsible for the business operations at Bull Point, including the planning and creation of the future residential amenities, common areas, and others had not been built yet.

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Creating Common Area and Recreational Amenities

10. One aspect of Bull Point Plantation's development plan, as set forth in the Declaration, is its Common Areas and Recreational Amenities. The process Bull Point LLC used to create and dedicate Common Areas included the below steps, albeit, not necessarily in any specific order.

a. Construction of improvements.

b. Conveyance of the property and improvements to BPPOA while the adjacent properties were permitted and developed.

c. Continued development of Bull Point Plantation.

d. Conveyance of the property and improvements back to Bull Point, LLC, the Declarant.

e. Finalization of all deed restrictions, specification of easements (e.g., conservation easements, federal artifact easements, etc.), and related title considerations.

f. Final conveyance from Bull Point, LLC, the Declarant, to Bull Point Plantation Owners Association, Inc.

11. An example of the process set forth above is the Eleventh Amendment. More specifically, on October 19, 2000, Bull Point LLC executed the Eleventh Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation. Attached hereto as Exhibit A is a true and correct copy of the Eleventh Amendment. This amendment dedicated William Bull Park as a "Common Area Passive Park." The amendment expressly stated in Paragraph 11 that the "property which is [the] subject of this amendment shall be deeded to the Owner's Association in the *future* as provided for by the terms of the Declaration." (Emphasis

added.) This dedication and intent to deed it to the Association in the future is indicative of the multi-step process used by Bull Point LLC throughout the development of Bull Point Plantation.

12. The process set forth above is one reason why membership in and control of BPHOA (later BPPOA) was limited to the principals of Bull Point, LLC, the Developer/Declarant, so that the developer alone could dictate how Bull Point Plantation was developed.

Transition of Assets and Responsibilities

from Bull Point, LLC to Association

13. One primary responsibility I had while CEO was the planning and coordination of the transition of assets and responsibilities from Bull Point, LLC to the owners. The Transition Plan that we developed addressed: (1) the removal of mobile homes that Bull Point, LLC had situated there during its development of Bull Point Plantation, (2) the transfer of property from Bull Point Property Owners Association, Inc., the asset holding company formed by Bull Point, LLC, to Bull Point Plantation Owners Association, Inc., the owner's association defined in the Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation, (3) further development of additional trails at Bull Point Plantation, which were then incomplete, and (4) finalization of the Waste Water requirements at Bull Point (which had been established by DHEC).

14. With respect to the transfer of assets and responsibilities, Bull Point, LLC anticipated transferring everything to the owners' association once the development of Bull Point Plantation was complete. As discussed in Paragraph 15, below, the timing of the transition changed due to the recession.

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15. In furtherance of the transition, in March 2007, certain owners retained Smoot & Pitts to assist "the Association in the transition of assets and responsibilities from Bull Point, LLC to the Association." Attached hereto as Exhibit B is a true and correct copy of the letter, dated March 12, 2007, from William Smoot, Esq., to Russ Dimke, Bull Point Plantation Owners Association, Inc. As the letter states, this was for transfer of assets and responsibilities to the Association; that is, the entity defined in the Declaration and ***not*** to BPHOA/BPPOA.

16. As is common knowledge, the United States experienced a recession beginning around 2008, and this affected the timing Bull Point, LLC's plan to transition assets and responsibilities to the owners, putting the transition on an indefinite hold.

17. In 2011, the owners again met with Bull Point LLC to discuss the transition. The owners' interest in discussing the transition was fueled in part because of an action by BB&T to foreclose on certain property that Bull Point LLC had financed.

18. Part of the owner-declarant discussions included asking Stan Kirkland to wind up and dissolve BPPOA; however, Kirkland did not dissolve BPPOA. Rather, BPPOA continued to be used by the developer/declarant to hold Bull Point assets while development continued.

The 2014 Litigation by The Non-Existent Entity

19. From the early 2000's to about 2012, I owned Lot 74.

20. In or about 2012/2013, Bank of America successfully foreclosed on Lot 74.

21. After the Lot 74 foreclosure, on or about October 9, 2014, "Bull Point Plantation Property Owners Association, Inc." commenced an action against me individually, ostensibly for unpaid assessment (the "Deficiency Action"). The Complaint was signed by Brian Pitts, Esq., of

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Smoot & Pitts, and was Certified by Russ Dimke, Secretary of "Bull Point Plantation Property Owners Association, Inc."

22. On the date that the Deficiency Action was commenced, there was NO entity registered with the South Carolina Secretary of State with the name "Bull Point Plantation Property Owners Association, Inc."

23. As I was later to learn, multiple actions were commenced using this false name, including this false entity's action to foreclose on Lot 223.

The Feb 2015 BPPOA, INC Name Change

24. *After* the court granted judgment and executed a *Deed By Judicial Order*, Russ Dimke executed and filed Articles of Amendment to change the name of "Bull Point Property Owners Association, Inc." to "Bull Point Plantation Property Owners Association, Inc."

25. I was unaware of this and never authorized the name change of the Non-Profit Corporation that was holding title to the properties we conveyed from Bull Point, LLC.

26. This has completely endangered the assets in the Non-Profit.

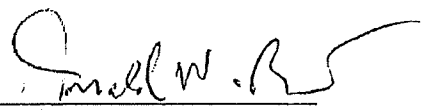
27. At no time did Mr. Kirkland and I hold a meeting or pass a resolution to authorize Mr. D'Ambrosio to file any legal actions on behalf of Bull Point Property Owners Association, Inc, or the Bull Point Plantation Property Owners Association, Inc. (name change).

28. At no time did I and Stan Kirkland authorize Dimke, or anyone, to file a name change. There are no Corporate Minutes approved by Kirkland or I to approve of the name change of Bull Point Property Owners Association, Inc. (holding Non-Profit).

29. Bull Point Property Owners Association, Inc was to be dissolved upon completion of the Transition.

Bull Point, LLC's Interest in Bull Point Plantation

30. At all times, from September 1995 to the present, Bull Point, LLC has continued to have an interest in Bull Point Plantation.



Donald W. Barrett

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

On this _1_ day of _May__ 2020, before me personally appeared DONALD W. BARRETT, who provided satisfactory evidence of his identification to be the person whose name is subscribed to this instrument and he acknowledged that he executed the foregoing instrument by his signature here.

Donald W. Barrett

Sworn to (or affirmed) and subscribed before me
this _1_ day of ___May__, 2020.

(Notary Signature)

Alexis Williams
Notary Public
Beaufort County, South Carolina
My commission expires: 06/28/2029

ALEXIS WILLIAMS
Notary Public
State of South Carolina
My Commission Expires Jun 28, 2029

(Official Seal)

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EXHIBIT E

ACTION BY THE BOARD OF DIRECTORS

OCTOBER 3, 2019

ELECTRONICALLY FILED - 2021 Mar 01 9:11 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

ACTION BY UNANIMOUS WRITTEN CONSENT
OF
THE BOARD OF DIRECTORS
OF
BULL POINT PLANTATION PROPETY
OWNERS ASSOCATION, INC.
A South Carolina Nonprofit Corporation

October 3, 2019

The undersigned, being all the duly appointed directors of BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC., a South Carolina nonprofit corporation (the "Association"), hereby consent to the adoption of the following recitals and resolutions, effective as of the date herein above.

1. REMEDIAL ACTION OF DEFECTIVE TITLE

WHEREAS, the Association was made aware (among other things, as the result of litigation involving the Association, the Declarant, and certain Owners) that the title to certain of the Association's Common Areas is defective; *e.g.*:

a. In a Quit Claim Deed, dated March 26, 2008, recorded April 9, 2008, in Book 02707, at Pages 0668-0671, the name of the Grantee was "Bull Point Property Owners Association," which was not the name of a legal entity, and not "Bull Point Property Owners Association, Inc."; and

b. In a Quit Claim Deed, dated October 21, 2011, recorded October 24, 2011, in Book 03092, at Pages 2123-2126, the name of the Grantee was "Bull Point Property Owners Association," which was not the name of a legal entity, and not "Bull Point Property Owners Association, Inc."

WHEREAS, the consequence of the scrivener's errors in the 2008 Quit Claim Deed and 2011 Quit Claim Deed is that certain property, including Common Areas, was never transferred from the Grantor, Bull Point, LLC, to the Association;

WHEREAS, the Association sought outside legal counsel to understand its rights and obligations regarding the effect of not being named the Grantee under the 2008 Quit Claim Deed and 2011 Quit Claim Deed;

WHEREAS, to avoid possible litigation involving title issues, the Board of Directors has determined it is in the best interest of the Association to work with the prior Declarant and the current Declarant to resolve all property and title issues;

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WHEREAS, the prior Declarant (Bull Point, LLC) and the current Declarant (Bull Point SC, LLC) have each disclosed to the Board of Directors that said entities are owned, either directly or indirectly, by William E. Gavigan.

NOW, THEREFORE, BE IT RESOLVED, (1) that the Association relinquishes any rights, title or interest, including inchoate interests, it has or may have had in the real property the subject of the aforementioned quitclaim deeds, (2) that the Association is to deed any such interests to the Grantee, and (3) the Association is to work with Bull Point, LLC and Bull Point SC, LLC regarding title issues.

2. **OMNIBUS RESOLUTION**

RESOLVED, that each of the officers of the Association is authorized and empowered to take all such actions and to execute and deliver all such documents as may be necessary or advisable to carry out the intent and accomplish the purposes of the foregoing resolution and to affect any transactions contemplated thereby and the performance of any such actions and the execution and delivery of any such documents shall be conclusive evidence of the approval of the Board thereof and all matters relating thereto.

RESOLVED FURTHER, that these resolutions adopted by the directors may be executed in two or more counterparts, and each such counterpart shall be deemed an original, and all of which, when taken together, shall constitute but one and the same instrument.

There being no further business, the Directors consent to the above action.

IN WITNESS WHEREOF, the undersigned have executed this Action by Unanimous Written Consent of the Board of Directors of Bull Point Plantation Property Owners Association, Inc., effective as of the date first written herein above.

William E. Gavigan, Director

Chris Quick, Director

Rich Riney, Director

Signature Certificate

Document Reference: N7DRLNI5EIYEU6WL6JKAFY

RightSignature
Easy Online Document Signing

Rich Riney
Party ID: VCXWJEIWSIWCNMLUJVSUCH
IP Address: 174.194.13.5
VERIFIED EMAIL: rich.riney@yahoo.com

R. S. Riney

Multi-Factor Digital Fingerprint Checksum: 69db5116d49e8e0ca12b17e0b99e141b8fa24f69

Chris Quick
Party ID: XSNEYKJDV3C8VPUZNHMBTS
IP Address: 107.200.80.79
VERIFIED EMAIL: cquick@quickgroupllc.com

Chris J. Quick

Multi-Factor Digital Fingerprint Checksum: d635dc1f984d816ba3f1df77e57540f9d1f460a2

Billy Gavigan
Party ID: F2GAMMJJTLFKP3ZUKN6GUE
IP Address: 64.253.25.237
VERIFIED EMAIL: billy@bullpointpoa.com

Multi-Factor Digital Fingerprint Checksum: fe877a1e95e5e3557a84aff631bedf0573c4b116

Timestamp	Audit
2019-10-04 09:50:45 -0700	All parties have signed document. Signed copies sent to: Gary Grant, Geri Price, Rich Riney, Chris Quick, and Billy Gavigan.
2019-10-04 09:50:44 -0700	Document signed by Rich Riney (rich.riney@yahoo.com) with drawn signature. - 67.20.141.162
2019-10-04 09:48:37 -0700	Document viewed by Rich Riney (rich.riney@yahoo.com). - 174.194.13.5
2019-10-04 07:01:30 -0700	Document signed by Chris Quick (cquick@quickgroupllc.com) with drawn signature. - 107.200.80.79
2019-10-04 06:49:57 -0700	Document viewed by Chris Quick (cquick@quickgroupllc.com). - 107.200.80.79
2019-10-03 18:17:45 -0700	Document signed by Billy Gavigan (billy@bullpointpoa.com) with drawn signature. - 64.253.25.237
2019-10-03 18:17:26 -0700	Document viewed by Billy Gavigan (billy@bullpointpoa.com). - 64.253.25.237
2019-10-03 18:11:41 -0700	Document created by Geri Price (andrew@gavigangroup.com). - 69.68.69.92

This signature page provides a record of the online activity executing this contract.

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ELECTRONICALLY FILED - 2021 Feb 28 11:01 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC., Plaintiff, v. BULL POINT SC, LLC; BULL POINT, LLC; BULL POINT PLANTATION OWNERS ASSOCIATION, INC.; WILLIAM E. GAVIGAN; MICHAEL CAREY; CHRISTOPHER J. QUICK; JAMES RIORDAN; RICHARD RINEY, Defendants.	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT Case No. 2020-CP-07-00817 **AFFIDAVIT OF GARY GRANT IN SUPPORT OF DEFENDANT BULL POINT PLANTATION OWNERS ASSOCIATION, INC.' SOPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

AFFIDAVIT OF GARY D. GRANT

I, GARY D. GRANT, hereby declare as follows:

1. I am over the age of 18 years. I am resident of Mission Viejo, California. As set forth below, I am the President of Bull Point Plantation Owners Association, Inc. In that capacity, I could and would competently testify thereto regarding the following:

History of Bull Point Plantation

2. On January 23, 1997, Metropolitan Properties, Inc. transferred to Bull Point, LLC that property commonly referred to as Phase I, Bull Point Plantation.

3. On September 22, 1995, Bull Point, LLC executed restrictive covenants entitled "*Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation*" (the "Original Declaration"). (Recorded 09/26/1995, in Book 805, at Page 218.) Attached hereto as Exhibit A and incorporated by reference herein is a true and correct copy of the Original Declaration.

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4. On February 12, 1996, Bull Point, LLC executed that document entitled "*Third Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation*" (the "Third Amendment"). (Recorded 09/26/1995, in Book 805, at Page 218.) Attached hereto as Exhibit B and incorporated by reference herein is a true and correct copy of the Third Amendment.

History of Entities in Bull Point Plantation

Corporate History of

Bull Point Plantation Owners Association, Inc.

5. Pursuant to the recording of the Original Declaration, Bull Point Plantation Owners Association, Inc. was formed as an unincorporated nonprofit association.

6. On February 5, 2020, Articles of Incorporation were filed to incorporate Bull Point Plantation Owners Association, Inc. as a South Carolina nonprofit corporation (the "Association"). Attached hereto as Exhibit C and incorporated by reference herein is a true and correct copy of these Articles of Incorporation.

7. In that action entitled *Jon Attridge, et al. v. Bull Point, LLC, at al*, Circuit Court Case No. 2018CP0702345 (the "Attridge Action"), Stancel Kirkland, the Incorporator of Bull Point Plantation Owners Association, Inc. (the "Association") and Bull Point Homeowners Association, Inc. n/k/a Bull Point Plantation Property Owners Association, Inc. (Plaintiff), testified the Association and Plaintiff are NOT the same entity. Attached hereto as Exhibit D and incorporated by reference herein is a true and correct copy of the Affidavit of Stancel Kirkland.

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Corporate History of

Bull Point Plantation Property Owners Association, Inc.

8. On September 26, 1995, Bull Point Homeowners Association, Inc. was formed as a South Carolina nonprofit corporation ("BPHOA").

9. On August 14, 2006, BPHOA changed its name to "Bull Point Property Owners Association, Inc."

10. On February 4, 2016, BPHOA changed its name to "Bull Point Plantation Property Owners Association, Inc."

Corporate History of

Bull Point Property Owners Association

11. From as early as 1997, certain owners within Bull Point Plantation carried on certain activity associated with Bull Point Plantation or thought of themselves as a member of an unincorporated association with the name "Bull Point Property Owners Association." In connection with that action entitled *Jon Attridge, et al. v. Bull Point, LLC, at al*, Circuit Court Case No. 2018CP0702345 (the "Attridge Action"), the counsel (and property owner) therein filed an affidavit wherein he stated in Paragraph 3 thereto that he and his wife were residents of Bull Point "and members of the Bull Point Property Owners Association sometimes referred to as the (Bull Point Plantation Property Owners Association) since 2008." Attached hereto as Exhibit E and incorporated by reference herein is a true and correct copy of Joseph D'Ambrosio.

12. I have reviewed the Secretary of State for the State of South Carolina (on numerous occasions). "Bull Point Property Owners Association" is not registered with the Secretary of State.

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13. On January 13, 2015, certain owners sign a bank signature card in the name of "Bull Point Property Owners Association." The card expressly states that the entity is an "unincorporated association." Attached hereto as Exhibit F and incorporated by reference herein is a true and correct copy of the signature card.

Plaintiff's Property Interest

in Bull Point Plantation

14. I have reviewed all property transactions to plaintiff Bull Point Plantation Property Owners Association, Inc. (f/n/a Bull Point Property Owners Association, Inc. f/n/a Bull Point Homeowners Association, Inc.). The earliest deed/title to real property for Plaintiff is December 28, 2006. Attached hereto as Exhibit G and incorporated by reference herein is a true and correct copy of said Deed.

Transactional History of

Bull Point Plantation Owners Association, Inc.

15. Since its creation as an unincorporated nonprofit association, Bull Point Plantation Owners Association, Inc. has carried on.

16. On March 12, 2007, the Association engaged legal counsel (Smoot & Pitts) to assist it with the transition of the subdivision from the Developer to the owners. Attached hereto as Exhibit H and incorporated by reference herein is a true and correct copy of the Association's retainer agreement with Smoot & Pitts.

17. On June 16, 2011, the Developer granted an easement to the Association and at all times subsequent thereto has maintained that drainage easement. (Recorded 06/28/2011, in Bk 3067, at Pages 3399-3401.) Attached hereto as Exhibit I and incorporated by reference herein is a true and correct copy of the easement *Quit Claim Deed*.

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18. On May 25, 2017, the Association engaged legal counsel (Nexsen Pruet) to assist it in connection with that action entitled *GSI, LLC v. DB Aster, LLC, et al.*, United States District Court Case No. 9:16-cv-2552-RMG. On June 20, 2017, Nexsen Pruett wrote to meet and confer regarding the scope of a subpoena. Attached hereto as Exhibit J and incorporated by reference herein is a true and correct copy of the Association's retainer agreement with Nexsen Pruet and its June 2017 letter.

19. From 2007 to the present, the Association has maintained Directors & Officers insurance and General Liability insurance. Attached hereto as Exhibit K and incorporated by reference herein is a true and correct copy of the policies.

20. On October 21, 2011, Bull Point, LLC executed a *Quit Claim Deed* in favor of "Bull Point Property Owners Association." (Recorded 10/24/2011, in Book 3092, at Pages 2123-2126.) Attached hereto as Exhibit L and incorporated by reference herein is a true and correct copy of said Quit Claim Deed.

21. The property the subject of the 2011 Quit Claim Deed comprises roughly 75% of the property at issue in the October 2019 and March 2020 deeds the subject of the motion for summary judgment.

22. The grantee on the 2011 Quit Claim Deed is NOT plaintiff Bull Point Plantation Property Owners Association, Inc., but rather is the unincorporated association referenced in Paragraph 11 above.

23. The unincorporated association NEVER transferred or assigned property to Bull Point Plantation Property Owners Association, Inc.

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Ownership of Property and

Property Transactions within Bull Point Plantation

24. Since 2019, there have been approximately 100 closed or pending property transactions within Bull Point Plantation. Several owners have testified in other litigation that they purchased their property with the understanding that they are members of Bull Point Plantation Owners Association, Inc., and not some third party, including plaintiff Bull Point Plantation Property Owners Association, Inc.

a. Matthew Asher owns several properties in Bull Point and testified that he is a member of Bull Point Plantation Owners Association, Inc. (See Asher Affidavit, ¶ 5.)

b. Tammey Westerman has been an owner of property since 2000, and a resident since 2007. Westerman testified that she is a member of Bull Point Plantation Owners Association, Inc. and attached her check made out to "Bull Point Plantation Owners Association, Inc." (See Westerman Affidavit, ¶ 2.)

c. Judy Estren is the former owner of Lot 123, Bull Point Plantation. Estren testified that she is a member of Bull Point Plantation Owners Association, Inc. (See Estren Affidavit, ¶ 1.)

Attached hereto as Exhibit M and incorporated by reference herein are true and correct copies of the above Affidavits.

Woods Judgment

25. On July 17, 2007, plaintiffs Michael and Cecilia Woods commenced that action entitled *Michael Woods, et al. v Thomas Johnson, individually and dba Cougar Corporation*, Circuit Court Case No. 2007-CP-07-1929 (the "Johnson Action").

26. On December 11, 2008, plaintiffs Michael Woods and Cecilia Woods commenced that action entitled *Michael Woods, et al v. Myron Knotts, et al.*, Circuit Court Case No. 2008-CP-01-04861 (the "Knotts Action").

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27. On February 27, 2009, the parties stipulated to the consolidation of the Knott Action and the Johnson Action (collectively the "Woods Action") and, subsequently, the Court issued its Consent Order of Consolidation.

28. On February 19, 2013, the court therein issued its plaintiffs Michael Woods and Cecilia Woods the court in said action issued its Order Granting Judgment Against Kevin Overbay D/B/A Custom Interior Trim, S&S Grading Unlimited, LLC, Coastal Pools and Fountains, Inc. General Carpentry, Inc., Bull Point Property Owners Association, Inc., and Malvich, Inc., dated February 19, 2018 (the "Judgment").

29. On November 27, 2020, the Woods assigned the Woods Judgment to BDG Recovery, LLC, a South Carolina limited liability company. On December 1, 2020, the Assignment of Order Granting Judgment was filed in the Woods Action.

30. On February 26, 2021, BDG Recovery, LLC filed its petition for supplemental proceeding in said action. The total amount Judgment Creditor appears to be seeking more than $909,000.00.

Executed this 26th day of February, 2021, in Mission Viejo, California.

In compliance with Chief Justice Beatty's April 22, 2020 Order Governing the Operation of the Trial Courts During the Coronavirus Emergency, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

Gary D. Grant

February 26, 2021
Mission Viejo, California

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EXHIBIT

A

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

BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.

v.

BULL POINT SC, LLC, et al.

Circuit Court Case No. 2020-CP-07-00817

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

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

W I T N E S E T H:

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

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

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

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

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

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

ARTICLE I
DEFINITIONS

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

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

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

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

(d) "Assessment" shall mean and refer to an Owner's share of the common expenses or other charges from time to time assessed against an owner by the Association in the manner herein provided.

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

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

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

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

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

(i) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

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

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

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

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

(n) "Foreclosure" shall mean and refer to, without limitation, the judicial foreclosure of a mortgage or the conveyance of secured property by a deed in lieu of a judicial foreclosure.

(o) "Institutional Mortgage" shall be deemed to mean a mortgage held by a bank, trust company, insurance company, or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II
PLAN OF DEVELOPMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III
PROPERTY RIGHTS

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

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

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

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

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

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

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

3.03 Recreational Amenities.

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

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

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

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

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

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

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

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

3.07 Easements for Utilities. There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement as well as the power to grant and accept easements to and from any public authority or agency, public service district, public or private utility, or other person, upon, over, under, and across (i) all of the common areas, (ii) all areas set forth by the Declarant for the purpose of installing, replacing, repairing, maintaining, and using master television antennas and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and drainage systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by Declarant, its successors or assigns, or by the Board of Directors, provided, however, that for so long as Declarant owns any lot or dwelling primarily for the purpose of the sale or has the unexpired option to add the additional property or any portion thereof to the Development, the Board of Directors must obtain the written consent of Declarant prior to granting and accepting any such easements. To the extent possible, all utility lines and facilities serving the Development and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, and use of such utilities and systems.

3.08 Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents, employees, including, but not limited to, any manager employed by the Association and any other employees of such manager, to enter upon any lot, dwelling, or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the owner or occupant of the area directly affected thereby.

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

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

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

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

3.11 Environmental Easement. There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all lots and all unimproved portions of dwellings for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

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

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

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

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

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

ARTICLE IV
MEMBERSHIP

4.01 Membership. Every owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot or dwelling, and ownership of a lot or dwelling shall be the sole qualification for such membership. In the event that fee title to a lot or dwelling is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto shall automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an owner's membership in the Association. Notwithstanding any of the foregoing to the contrary, no owner, whether one or more persons, shall have more than one membership per lot or dwelling. In the event of multiple owners of a lot or dwelling, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges and membership, including the right to vote and to hold an office in the Association, may be exercised by a member or a member's spouse, but in no event shall more than one vote be cast or more than one office held for each lot or dwelling, and further provided that a member casting a vote or holding an office with respect to his dwelling shall not be entitled to cast an additional vote or to hold an additional office for the lot upon which his residential unit is located. When more than one person holds an interest in any lot or dwelling, the vote for such lot or dwelling shall be exercised as those owners of such lot or dwelling themselves determine and advise the Secretary or an Assistant

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

ARTICLE V
MAINTENANCE

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

5.02 Association's Responsibility.

(a) Except as may be herein otherwise specifically

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provided, the Association shall maintain and keep in good repair all portions of the common areas, which responsibility shall include the operation, maintenance, repair, and replacement of the following, including but not limited to: (i) all roads, walks, trails, lagoons, ponds, parking lots, landscaped areas, and other improvements situated within the common areas or within easements encumbering lots or dwellings pursuant to Section 3.15 hereof, (ii) such security program and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of the common areas and which are not maintained by a public authority, public service district, public or private utility, or other person, and (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon the common areas. The Association shall not be liable for injury or damage to any person or property (a) caused by the elements or by any owner or any other person, (b) resulting from any rain or other surface water which may leak or flow from any portion of the common areas, or (c) caused by any pipe, plumbing, drain, conduit, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, breaking down or as a result of the repair of the same. Nor shall the Association be liable to any owner for loss or damage, by theft or otherwise, of any property of such owner which may be stored in or upon any portion of the areas or any other portion of the property. No diminution or abatement of assessments or recreational charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments and recreational charges being a separate and independent covenant on the part of each owner.

(b) In the event that Declaration or the Board of Directors determines that: (i) any owner has failed or refused to discharge properly his or its obligation with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, may give such owner written notice of Declarant's or the Association's intent to provide

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such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such owner and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such owner as the case may be, and said cost shall be added to and become a part of the assessment to which such owner and his dwelling or areas within a dwelling area not considered a common element or common area, are subject, and shall become a lien against such lot or dwelling, or another Association become a part of the assessments for all owners within such other Associations and shall become a lien against such owner's dwellings, or areas within a dwelling area not considered a common element or common area. In the event that Declarant undertakes such maintenance, cleaning, repair, or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses.

ARTICLE VI
INSURANCE AND CASUALTY LOSSES

6.01 Insurance.

(a) The Board of Directors or its duly authorized agents shall have the authority to and shall obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the common areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all the common areas and all damage or injury caused by the negligence of the Association,

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its members, its directors and officers, or any of its agents. Such public liability policy shall provide such coverages as are determined to be necessary by the Board of Directors.

(c) The Board or its duly authorized agents shall have the authority and may obtain (i) worker's compensation insurance to the extent necessary to comply with any applicable laws, (ii) errors and omission insurance, and (iii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

(d) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for each of the owners and costs of all such coverage shall be a common expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Development shall be vested in the Board of Directors; provided, however, that no mortgagee or other security holder of the common areas having an interest in such losses may be prohibited from participating in the settlement negotiation, if any, related thereto. Insofar as permitted by law, the Association shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth:

(i) All policies shall be written with a company licensed to do business in the State of South Carolina and holding a rating of A+ or better in such financial categories as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best rating possible.

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

(iii) All policies shall contain a waiver of the insurer's right to cancel without first giving thirty (30) days prior written notice of such cancellation to the Association and to any mortgagee to which a mortgagee endorsement has been issued.

(iv) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual owners or their mortgagees, and all policies shall contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual owners or their mortgagees.

(v) All polices shall contain a waiver of subrogation by

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the insurer as to any claims against the Association, the Association's directors and officers, the owners, and their respective families, servants, agents, tenants, guests, and invitees, including, without limitation, the Association's manager.

(vi) All policies shall contain a provision that no policy may be cancelled, invalidated, or suspended on account of the conduct of one or more of the individual owners or their respective families, servants, agents, employees, tenants, guess, and invitees, or other account of the acts of any director, officer, employee, or agent of the Association or of its manager, without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

(e) It shall be the individual responsibility of each owner at his own expense to provide, as he sees fit, public liability, property damage, title, and other insurance with respect to his own lot and dwelling. The Board of Directors may require all owners and/or other Associations to carry public liability and property damage insurance with respect to their respective lots and dwellings and to furnish copies or certificates thereof to the Association.

6.02 Damage or Destruction to Common Areas. Immediately after the damage or destruction by fire or other casualty to all or any part of the common areas covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article VI, means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to all or a part of the common areas, Declarant, for so long as Declarant owns dwelling areas within a dwelling area not considered a common element or common area, primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development, together with at least seventy-five (75%) percent of the total vote of the Association, shall otherwise agree, the Association shall restore or replace such damaged improvements. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special assessment against all owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to

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

6.03 Damage or Destruction to Lots or Dwellings. In the event of damage or destruction by fire or other casualty to any dwelling and in the further event that either the owner of such dwelling responsible for the repair and replacement of such dwelling elects not to repair or rebuild the damaged or destroyed dwelling, such owner making such election shall promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such dwelling in a clean, orderly, safe and sightly condition. Should such owner elect to repair or rebuild such lot, dwelling or other improvements, such owner shall repair or rebuild such dwelling, or other improvements to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provisions of this Declaration (including, without limitation, Article X hereof) and all applicable zoning, subdivision, building and other governmental regulations. All such work of repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion.

ARTICLE VII
CONDEMNATION

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

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and shall be disbursed or held as follows:

(a) If the taking or sale in lieu thereof involves a portion of the common areas on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant, for so long as Declarant owns a dwelling primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development, together with at least seventy-five (75%) percent of the total membership of the Association, shall otherwise agree, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the common areas which are available therefor, in accordance with the plans approved by the Board of Directors, the Architectural Review Board, and by Declarant, for so long as Declarant owns a lot or dwelling primarily for the purpose of sale or has the unexpired option to add the additional property or any portion thereof to the Development. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special assessment against all owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special assessment shall be levied against the owners equally in the same manner as annual assessments are levied, and additional special assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association.

(b) If the taking or sale in lieu thereof does not involve any improvements to the common areas, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award proceeds, or net funds shall be retained by and for the benefit of the Association.

(c) If the taking or sale in lieu thereof includes all or any part of a dwelling and also includes any part of the common areas, then a court of competent jurisdiction shall apportion such award or proceeds and such award or proceeds shall be disbursed to the Association and the owners so affected so as to give just compensation to the owners of any dwelling taken for their interest in such dwelling; provided, however, such apportionment may instead be resolved by the agreement of (i) the Board of Directors, (ii) the owners of all dwellings wholly or partially taken or sold, together with the mortgagees for each such dwelling, and (iii) Declarant,

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

7.02 Condemnation of Dwelling.

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

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

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ARTICLE VIII
ADMINISTRATION

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

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

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

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

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

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

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

ARTICLE IX
ASSESSMENTS

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

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

9.02 Creation of Lien and Personal Obligation of Assessments. Each owner of a lot or dwelling, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (a) annual assessments, such assessments to be established and collected as provided in Section 9.03 hereof, (b) special assessments, such assessments to be established and collected as provided in Section 9.04 hereof, (c) individual or specific assessments against any particular lot or dwelling which are established pursuant to the terms of this Declaration, including, but not limited to, fines as may be imposed against such lot or dwelling in accordance with Article XII hereof. Any such assessments or recreational charges, together with late charges, simple interest at the rate of eighteen (18%) percent per annum, or at such other maximum interest rate as established by South Carolina law, and court cost sand attorneys' fees incurred to enforce or collect such assessments or recreational charges, shall be an equitable charge and a continuing lien upon the lot or dwelling, the owner of which is responsible for payment. Each owner shall be personally liable for assessments or recreational charges coming due while he is the owner of a lot or dwelling, and his grantee shall take title to such lot or dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however, the lien for unpaid assessments or recreational charges shall not apply to the holder of any first priority institutional mortgage or to the holder of any mortgage securing a loan made by Declarant, its affiliates, successors, or assigns, and who takes title to a lot or dwelling through foreclosure or to any purchaser of such lot or dwelling at such foreclosure sale. In the event of co-ownership of any lot or dwelling, all of such co-owners shall be jointly and severally liable for the entire amount of such assessments and recreational charts. Assessments and recreational charges shall be paid in such manner and on such dates as may be fixed by the Board of Directors, provided that unless otherwise provided by the Board, the annual assessments shall be paid in equal monthly installments.

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

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

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EXHIBIT

B

THIRD AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BULL POINT PLANTATION,
dated February 12, 1996

BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.

v.

BULL POINT SC, LLC, et al.

Circuit Court Case No. 2020-CP-07-00817

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BULL POINT PLANTATION

This Third Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation is made this 12th day of February, 1996, by **BULL POINT, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY**, by and with the consent and agreement of **METROPOLITAN PROPERTIES, INC., A SOUTH CAROLINA CORPORATION**, (hereinafter referred to as "Declarant").

W I T N E S S E T H

WHEREAS, Declarant executed a Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation on September 22, 1995, which was recorded in Book of Deeds 805 at Page 218 on September 26, 1996 (the "Declaration"); and

WHEREAS, Declarant has executed a First and Second Amendment to the Declaration which have been recorded in the RMC Office for Beaufort County; and

WHEREAS, Declarant is desirous of entering into this Third Amendment amending the Declaration.

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

1. **ARTICLE I:** "Definitions" specifically provides and/or implies that all definitions listed in ARTICLE I shall begin with a capital letter when referred to in the Declaration.

2. The Declaration, as written, makes reference to some definitions contained in Article I which do not begin with a

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initial capital letter.

3. Declarant hereby amends the Declaration to capitalize the initial capital letter of each definition referred to in the Declaration, to correct several scriveners errors as contained in the Declaration and to make other changes to the Declaration.

4. The Declaration, as amended by this Third Amendment to the Declaration, is attached hereto and incorporated herein as Exhibit "A".

5. Except as amended herein and as amended by the First and Second Amendments to the Declaration, the Declaration shall remain in full force and effect.

Signed, sealed and delivered in the presence of:

Christa Deb
Diane McL Conley
As to all Signatures

Christa Deb
Diane McL Conley
As to all Signatures

DECLARANT

BULL POINT, LLC
A South Carolina Limited Liability Company

By: Abel E Kuhlke

Its: Managing Member

By: Robert J. Wolfe

Its: Managing Member

METROPOLITAN PROPERTIES, INC.

By: Abel E Kuhlke

Its: President

ATTEST:

By: Robert J. Wolfe

Its: Secretary

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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON PROBATE

PERSONALLY appeared before me the undersigned witness who, under oath, says that s/he saw the within-named Bull Point, LLC, a South Carolina Limited Liability Company, by its managing members, 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.

Witness

SWORN to before me this 12th day of February, 1996

Notary Public for South Carolina
My Commission Expires: 5-12-2003

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON PROBATE

PERSONALLY appeared before me the undersigned witness who, under oath, says that s/he saw the within-named Metropolitan Properties, Inc., a South Carolina Corporation, by its president, 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.

Witness

SWORN to before me this 12th day of February, 1996

Notary Public for South Carolina
My Commission Expires: 5-12-2003

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EXHIBIT "A"

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

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR **BULL POINT PLANTATION** is made this 27th day of February, 19 96, by **BULL POINT LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY** by and with the consent and agreement of **METROPOLITAN PROPERTIES, INC., A SOUTH CAROLINA CORPORATION.**

W I T N E S E T H:

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

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

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

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

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

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ARTICLE I
DEFINITIONS

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

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

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

(c) "Articles of Incorporation" shall mean and refer to the 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.

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(i) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

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

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

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

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

(n) "Foreclosure" shall mean and refer to, without limitation, the judicial Foreclosure of a Mortgage or the conveyance of secured Property by a deed in lieu of a judicial Foreclosure.

(o) "Institutional Mortgage" shall be deemed to mean a Mortgage held by a bank, trust company, insurance company, or other recognized lending institution, or by an institutional or governmental purchaser of Mortgage loans in the secondary market, such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

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

(q) "Limited Common Element" shall mean and refer to all real and personal property now or hereinafter owned by the Association for the use and enjoyment of designated Owners of Lots or Dwellings.

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

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

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

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

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

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

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

(y) "Owner" with an initial capital letter shall mean and refer to one or more Persons, including Declarant, who or which owns fee simple title to any Lot, Dwelling, or other Property in the Development, excluding, however, those Persons having such an interest under a Mortgage. In the event that there is recorded in the Records of the Clerk of Court for Beaufort County, South Carolina, any installment land sales contract covering any Lot or Dwelling, the Owner of such Lot or Dwelling shall be the purchaser under said contract and not

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the fee simple title holder. An installment land sales contract shall be an instrument whereby the purchaser is required to make payments for a Lot or Dwelling for a period extending beyond nine (9) months from the date of the contract, and where the purchaser does not receive title to such Lot or Dwelling until all such payments are made, although the purchaser is given use of such Lot or Dwelling.

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

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

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

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

ARTICLE II
PLAN OF DEVELOPMENT

2.01 Plan of Development of Property. The Property shall initially contain 53 Lots in Phase I and one Dwelling may be constructed on each Lot. The dimensions of the Lots are shown on the Site Plan. All Lots within Phase I of the Development shall be and are hereby restricted exclusively to single-family residential use. Declarant shall have the right, but not the obligation for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, to make improvements and changes to all Common Areas to all Lots or Dwellings owned by Declarant, including, without limitation, (i) installation and/or maintenance of any improvements in and to the Common Areas, including Recreational Amenities, (ii) changes in the location of the boundaries of any Lots or Dwellings owned by the

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Declarant or of the Common Areas, (iii) installation and maintenance of any water, sewer, and other utility systems and facilities, and (iv) installation of security, refuse and/or other Development support facilities. The Declarant retains the right to designate Limited Common Elements which shall be for the use and benefit of Owners as designated by the Declarant in its sole discretion.

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

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

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

(c) If the Additional Property or any portion thereof is added to the Development, the Lots and multi-family areas, if any, developed therein and the Dwellings constructed thereon will be restricted exclusively to the residential use and will be subject to standards and restrictions set forth in Article X hereof. In addition, all Dwellings and other improvements

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constructed thereon will be substantially consistent in terms of quality of designed construction to those Dwellings and improvements located elsewhere within the Development. This provision shall not prohibit the use of a portion o the Property for commercial purposes at the discretion of the Declarant.

(d) If the Additional Property or any portion thereof is added to the Development, Declarant reserves the right to designate the boundaries of the Lots and multi-family areas, as well as the Common Areas, if any, to be added to the Development in connection therewith.

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

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

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

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such option or options, the provisions of this Declaration shall then be construed as embracing the real Property or such portion or portions thereof so submitted to the terms hereof, together with all improvements located thereon. If the Additional Property or any portion or portions thereof is added to the Development, then from and after the addition to the Development of the Additional Property or such portion or portions by such amendment to this Declaration, the number of votes in the Association shall be increased by the number of Lots or Dwellings to be located on the Additional Property or such portion or portions thereof as are added so that there shall continue to be one vote in the Association per Lot or Dwelling in the Development.

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

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

2.05 Interest Subject to Plan of Development. Every purchaser of a Lot or Dwelling shall purchase such Lot or Dwelling and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of Declarant's plan of Development as herein set forth, and Declarant shall have and does hereby specifically reserve the right to amend the plan of Development and to add the Additional Property or any portion or portions thereof to the Development as hereinabove provided, and, with respect to each Lot or Dwelling located within the Additional Property, to convey to the purchaser thereof the title to the Lot or Dwelling and its appurtenant membership and voting rights in the Association. Any

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provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of Development set forth in this Article II may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

ARTICLE III
PROPERTY RIGHTS

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

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

(a) The right of the Association to borrow money (i) for the purpose of improving the Development or any portion thereof, (ii) for acquiring additional Common Areas, (iii) for

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constructing, repairing, maintaining or improving any facilities located or to be located within the Development, or (iv) for providing the services authorized herein, and subject to the provisions of Section 8.02 hereof, to give as security for the payment of any such loan a Mortgage or other security instrument conveying all or a portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interests, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

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

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

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

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

3.03 Recreational Amenities.

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

(b) In the event of any multiple Ownership of a Lot or Dwelling which is permitted hereunder by Section 10.26 hereof, no more than four (4) Owners of such Lot or Dwelling, as well as his/her spouse and children under the age of twenty-one (21), shall be entitled to the use of the Recreational

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Amenities, and such Owner shall be designated in writing to the Board of Directors by all such co-Owners.

(c) Declarant shall have the right, but not the obligation to construct a golf course and related facilities on the Property which shall not be for the exclusive use and/or benefit of Owners.

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

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

3.06 Changes in Boundaries; Additions to Common Areas. Declarant expressly reserves for itself and its successors and assigns, the right to change and realign the boundaries of the Common Areas and any Lots owned by Declarant, including the realignment of boundaries between adjacent Lots, Dwellings owned by Declarant, provided that any such change or realignment of boundaries shall not materially decrease the acreage of the Common Areas and shall be evidenced by a revision of or an addition to the Site Plan which shall be recorded in the plat records of the RMC

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office of Beaufort County, South Carolina. In addition, Declarant reserves the right, but shall not have the obligation, to convey to the Association at any time and from time to time any portion of the Additional Property, such real Property to be conveyed to the Association as an addition to the Common Areas and subject to the title exceptions set forth in section 2.02 hereof.

3.07 Easements for Utilities. There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement as well as the power to grant and accept easements to and from any public authority or agency, public service district, public or private utility, or other Person, upon, over, under, and across (i) all of the Common Areas, (ii) all areas set forth by the Declarant for the purpose of installing, replacing, repairing, maintaining, and using master television antennas and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and drainage systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by Declarant, its successors or assigns, or by the Board of Directors, provided, however, that for so long as Declarant owns any Lot or Dwelling primarily for the purpose of the sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, the Board of Directors must obtain the written consent of Declarant prior to granting and accepting any such easements. To the extent possible, all utility lines and facilities serving the Development and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, and use of such utilities and systems.

3.08 Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents, employees, including, but not limited to, any manager employed by the Association and any other employees of such manager, to enter upon any Lot, Dwelling, or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner or Occupant of the area directly affected thereby.

3.09 Sales Construction Offices and Temporary Residential and Maintenance Buildings. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for

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the benefit of Declarant and its successors and assigns the alienable and transferable right and easement in and to the Property for the maintenance of signs, sales offices, construction offices, business offices, and model Dwellings, together with such other facilities as in the sole opinion of the Declarant may be reasonably required, covenant, or incidental to the completion, improvement and/or sale of Lots, Dwellings, Common Areas, or the Additional Property, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

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

3.10 Maintenance Easement. Subject to the terms of Section 5.02(b) hereof, there is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Lot and upon unimproved portions of any Dwelling for the purpose of mowing, removing,

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

3.11 Environmental Easement. There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all Lots and all unimproved portions of Dwellings for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

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

3.13 Encroachments. There shall exist valid and perpetual easements, appurtenant to any Lot or Dwelling located adjacent to any lagoons, ponds, lakes and other bodies of water from time to time located within the Common Areas, for the encroachment of docks, bulkheads, boat slips, and for the maintenance, repair and replacement thereof for so long as such encroachment exists, provided that the location of such docks, bulkheads, boat slips, and boathouses shall be subject to the prior approval of the Architectural Review Board pursuant to Article X hereof.

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3.14 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.

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

ARTICLE IV
MEMBERSHIP

4.01 Membership. Every Owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot or Dwelling, and Ownership of a Lot or Dwelling shall be the sole qualification for such membership. In the event that fee title to a Lot or Dwelling is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto shall automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include Mortgagees or any other Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more Persons, shall have more than one membership per Lot or Dwelling. In the event of multiple Owners of a Lot or Dwelling, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges and membership, including the right to vote and to hold an office in the Association, may be exercised by a member or a member's spouse, but in no event shall more than one vote be cast or more than one office held for each Lot or Dwelling, and further provided that a member casting a vote or holding an office with respect to his Dwelling shall not be entitled to cast an additional vote or to hold an additional office for the Lot upon which his residential unit is located. When more than one Person holds an interest in any Lot or Dwelling, the vote for such Lot or Dwelling shall be exercised as those Owners of such Lot or Dwelling themselves determine and advise the Secretary or an Assistant Secretary of the Association prior to any meeting. In the absence of such advice, the vote appurtenant to such Lot or Dwelling shall be suspended in the event more than one Person seeks to exercise it. The voting weight appurtenant to each Lot or Dwelling is equal and each Lot and each Dwelling shall have one (1) vote. Such

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voting weight shall continue to be equal upon the addition of all or a portion of the Additional Property to the Development, and each Lot or Dwelling therein shall have one vote. Each Owner, by acceptance of a deed or other conveyance for a Lot or Dwelling, consents and agrees to the dilution of his voting interest in the Association by virtue of the submission from time to time of the Additional Property or any portion thereof to the terms of this Declaration as provided herein.

ARTICLE V
MAINTENANCE

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

5.02 Association's Responsibility.

(a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include the operation, maintenance, repair, and replacement of the following, including but not limited to: (i) all roads, walks, trails, lagoons, ponds, parking Lots,

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landscaped areas, and other improvements situated within the Common Areas or within easements encumbering Lots or Dwellings pursuant to Section 3.15 hereof, (ii) such security program and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility, or other Person, and (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon the Common Areas. The Association shall not be liable for injury or damage to any Person or Property (a) caused by the elements or by any Owner or any other Person, (b) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas, or (c) caused by any pipe, plumbing, drain, conduit, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, breaking down or as a result of the repair of the same. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any Property of such Owner which may be stored in or upon any portion of the areas or any other portion of the Property. No diminution or abatement of Assessments or recreational charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments and recreational charges being a separate and independent covenant on the part of each Owner.

(b) In the event that Declaration or the Board of Directors determines that: (i) any Owner has failed or refused to discharge properly his or its obligation with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15)

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days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner as the case may be, and said cost shall be added to and become a part of the Assessment to which such Owner and his Dwelling or areas within a Dwelling area not considered a common element or Common Area, are subject, and shall become a lien against such Lot or Dwelling, or another Association become a part of the Assessments for all Owners within such other Associations and shall become a lien against such Owner's Dwellings, or areas within a Dwelling area not considered a common element or Common Area. In the event that Declarant undertakes such maintenance, cleaning, repair, or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses.

ARTICLE VI
INSURANCE AND CASUALTY LOSSES

6.01 Insurance.

(a) The Board of Directors or its duly authorized agents shall have the authority to and shall obtain and continue in effect adequate Property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all the Common Areas and all damage or injury caused by the negligence of the Association, its members, its directors and officers, or any of its agents. Such public liability policy shall provide such coverages as are determined to be necessary by the Board of Directors.

(c) The Board or its duly authorized agents shall have

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the authority and may obtain (i) worker's compensation insurance to the extent necessary to comply with any applicable laws, (ii) errors and omission insurance, and (iii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

(d) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for each of the Owners and costs of all such coverage shall be a common expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Development shall be vested in the Board of Directors; provided, however, that no Mortgagee or other security holder of the Common Areas having an interest in such losses may be prohibited from participating in the settlement negotiation, if any, related thereto. Insofar as permitted by law, the Association shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth:

(i) All policies shall be written with a company licensed to do business in the State of South Carolina and holding a rating of A+ or better in such financial categories as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best rating possible.

(ii) All Property insurance policies shall be for the benefit of the Owners and their Mortgagees as their interests may appear.

(iii) All policies shall contain a waiver of the insurer's right to cancel without first giving thirty (30) days prior written notice of such cancellation to the Association and to any Mortgagee to which a Mortgagee endorsement has been issued.

(iv) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees, and all policies shall contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual Owners or their Mortgagees.

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

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(vi) All policies shall contain a provision that no policy may be cancelled, invalidated, or suspended on account of the conduct of one or more of the individual Owners or their respective families, servants, agents, employees, tenants, 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 which the defect may be cured.

(e) It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, public liability, Property damage, title, and other insurance with respect to his own Lot and Dwelling. The Board of Directors may require all Owners and/or other Associations to carry public liability and Property damage insurance with respect to their respective Lots and Dwellings and to furnish copies or certificates thereof to the Association.

6.02 Damage or Destruction to Common Areas. Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Property. Repair or reconstruction, as used in this Article VI, means repairing or restoring the damaged Property to substantially the same condition in which it existed prior to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to all or a part of the Common Areas, Declarant, for so long as Declarant owns Dwelling areas within a Dwelling area not considered a common element or Common Area, primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, together with at least seventy-five (75%) percent of the total vote of the Association, shall otherwise agree, the Association shall restore or replace such damaged improvements. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special Assessment against all Owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special Assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special Assessment shall be levied against the additional Assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under by virtue of such Assessments shall be held by and for the benefit of the Association together with the

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insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and Assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board of Directors. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association. If it is determined that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the ruins of the Common Areas damaged or destroyed by fire or other casualty shall be cleared and the Common Areas left in a clean, orderly, safe, and sightly condition.

6.03 Damage or Destruction to Lots or Dwellings. In the event of damage or destruction by fire or other casualty to any Dwelling and in the further event that either the Owner of such Dwelling responsible for the repair and replacement of such Dwelling elects not to repair or rebuild the damaged or destroyed Dwelling, such Owner making such election shall promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such Dwelling in a clean, orderly, safe and sightly condition. Should such Owner elect to repair or rebuild such Lot, Dwelling or other improvements, such Owner shall repair or rebuild such Dwelling, or other improvements to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provisions of this Declaration (including, without limitation, Article X hereof) and all applicable zoning, subdivision, building and other governmental regulations. All such work of repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion.

ARTICLE VII
CONDEMNATION

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

(a) If the taking or sale in lieu thereof involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant, for so long as Declarant owns a Dwelling

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primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, together with at least seventy-five (75%) percent of the total membership of the Association, shall otherwise agree, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available therefor, in accordance with the plans approved by the Board of Directors, the Architectural Review Board, and by Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special Assessment against all Owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special Assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special Assessment shall be levied against the Owners equally in the same manner as annual Assessments are levied, and additional special Assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association.

(b) If the taking or sale in lieu thereof does not involve any improvements to the Common Areas, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award proceeds, or net funds shall be retained by and for the benefit of the Association.

(c) If the taking or sale in lieu thereof includes all or any part of a Dwelling and also includes any part of the Common Areas, then a court of competent jurisdiction shall apportion such award or proceeds and such award or proceeds shall be disbursed to the Association and the Owners so affected so as to give just compensation to the Owners of any Dwelling taken for their interest in such Dwelling; provided, however, such apportionment may instead be resolved by the agreement of (i) the Board of Directors, (ii) the Owners of all Dwellings wholly or partially taken or sold, together with the Mortgagees for each such Dwelling, and (iii) Declarant, for so long as Declarant owns a Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

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7.02 Condemnation of Dwelling.

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

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

ARTICLE VIII
ADMINISTRATION

8.01 Common Areas. The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration and the By-Laws of the Association, shall be responsible for the exclusive management and control of the

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

8.02 Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the South Carolina Code relating to non-profit corporations, this Declaration, the By-Laws, and the Articles, 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 therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Association shall include, but shall not be limited to, the power to purchase one or more Lots and/or Dwellings and to hold, Lease, Mortgage, sell, and convey the same. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others , as a common expense or by billing directly to Lots or Dwellings to furnish trash collections, water, sewer, and/or security service for the Common Areas and/or the Lots and Dwellings. Notwithstanding the foregoing provisions of this Section 8.02 or any other provision of this Declaration to the

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contrary, for so long as Declarant shall own any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, the Association shall not, without the consent of Declarant, borrow money or pledge, Mortgage, or hypothecate all or any portion of the Common Areas.

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

8.04 Management Agreement. Bull Point Plantation, 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

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appointment and removal right. Every grantee of any interest in the Development by acceptance of a deed or other conveyance of such interest, shall be deemed to ratify such management agreement.

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

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

ARTICLE IX
ASSESSMENTS

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

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EXHIBIT C

ARTICLES OF INCORPORATION
(Bull Point Plantation Owners Association, Inc.)
dated February 5, 2020

BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.

v.

BULL POINT SC, LLC, et al.

Circuit Court Case No. 2020-CP-07-00817

CERTIFIED TO BE A TRUE AND CORRECT COPY
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Feb 05 2020
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Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Filing ID: 200205-110500

Filing Date: 02/05/2020

ELECTRONICALLY FILED - 2021 Feb 28 11:01 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF INCORPORATION
Nonprofit Corporation – Domestic
Filing Fee $25.00

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

1. The name of the nonprofit corporation is

BULL POINT PLANTATION OWNERS ASSOCIATION, INC

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

(Street Address)

Beaufot, South Carolina 29902

(City, State, Zip Code)

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

WILLIAM E. GAVIGAN

(Name)

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

(Agent's Signature)

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

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

b. ☐ The nonprofit corporation is a religious corporation.

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

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

a. ☒ This corporation will have members.

b. ☐ This corporation will not have members.

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

(Street Address)

Beaufot, South Carolina 29902

(City, State, Zip Code)

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

SC Secretary of State
Mark Hammond

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

Feb 05 2020
REFERENCE ID: 467903

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

BULL POINT PLANTATION OWNERS ASSOCIATION, INC

Name of Corporation

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

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

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

OR

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

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

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

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

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

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

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

ELECTRONICALLY FILED - 2021 Feb 28 11:01 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

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REFERENCE ID: 467903

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

BULL POINT PLANTATION OWNERS ASSOCIATION, INC

Name of Corporation

ELECTRONICALLY FILED - 2021 Feb 28 11:01 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

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

William E. Gavigan
(Name)
2216 Moss Street
(Business Address)
Beaufot, South Carolina 29902
(City, State, Zip Code)

(Name)

(Business Address)

(City, State, Zip Code)

(Name)

(Business Address)

(City, State, Zip Code)

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

William E Gavigan
(Name – only if names in articles)
William E. Gavigan
(Signature of Director)

(Name – only if names in articles)

(Signature of Director)

(Name – only if names in articles)

(Signature of Director)

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

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

Feb 05 2020
REFERENCE ID: 467903

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

BULL POINT PLANTATION OWNERS ASSOCIATION, INC

Name of Corporation

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

William E. Gavigan
(Signature of Incorporator)

(Signature of Incorporator)

(Signature of Incorporator)

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

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EXHIBIT D

AFFIDAVIT OF STANCEL KIRKLAND

BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.

v.

BULL POINT SC, LLC, et al.

Circuit Court Case No. 2020-CP-07-00817

ELECTRONICALLY FILED - 2020 Oct 26 7:10:31 PM - BEAUFORT - COMMON PLEAS - CASE# 2018CP0702345

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, et al,	)	
	)	
Plaintiff,	)	**AFFIDAVIT OF STANCEL E.**
vs.	)	**KIRKLAND**
	)	
The Board of Directors of Bull Point Plantation Property Owners Association, Inc., et al	)	
	)	
Defendants.	)	

1. My name is Stancel E. Kirkland. I am over the age of 18 and I am a resident of Lexington, South Carolina.

2. At all material times, I was an attorney licensed in the State of South Carolina. At present, I am a retired member of the South Carolina Bar.

3. As set forth below, I was both the President of Metropolitan Properties, Inc and the founder Managing Member of Bull Point, LLC.

4. At all material times, I was the owner and President of Metropolitan Properties, Inc., the entity that sold Bull Point Plantation to Bull Point, LLC.

5. I was the organizer of Bull Point, LLC and Managing Member of the company from its formation until I conveyed my Membership Interest to William E. Gavigan.

6. I was the incorporator of Bull Point Homeowners Association, Inc. In 2006, this entity changed its name to Bull Point Property Owners Association, Inc. This is not Bull Point Plantation Owners Association, Inc, the non-profit owners' association in the Declaration.

ELECTRONICALLY FILED - 2020-Sept-28 7:13:01 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0700847

7. I was the drafter of the *Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation* (the "Declaration"), as amended, and the individual that recorded the document on September 26, 1995. The Declaration was the restrictive covenants over Bull Point Plantation.

8. I was the drafter of the *Third Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation* (the "Third Amendment") and the individual that recorded the document.

9. I was the drafter of the *Ninth Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation* (the "Ninth Amendment") and the individual that recorded the document.

10. In drafting the 1995 Declaration, as well as the Third Amendment and Ninth Amendment, I intentionally did *not* include a provision which prohibited the Declaration from being assigned. Further, when drafting the Declaration, several times throughout the document I included the word "assigns." The absence of a prohibition against assignment and the inclusion of the word "assigns" in these documents was intentional because I always contemplated the possibility of a sale of Bull Point.

11. On December 28, 2012, on behalf of Bull Point, LLC, I executed an *Assignment of Rights Under Declaration* (hereafter "Assignment"), pursuant to which Bull Point, LLC transferred and assigned the Declarant Rights to DB Aster, LLC.

12. As the drafter of the Declaration, I intended and understood that the Declarant Rights were assignable pursuant to the Declaration and all subsequent amendments. It was, therefore, my understanding that Bull Point, LLC was entitled to assign the Declarant Rights.

FURTHER AFFIANT SAYETH NOT.

Stancel E. Kirkland SR.
Stancel E. Kirkland

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

ACKNOWLEDGEMENT

On this 28th day of December 2019, before me personally appeared Stancel E. Kirkland, who provided satisfactory evidence of his identification to be the person whose name is subscribed to this instrument and he acknowledged that he executed the foregoing instrument by his signature here.

Stancel E. Kirkland SR
Stancel E. Kirkland

Sworn to (or affirmed) and subscribed before me
this 28th day of December 2019.

(Notary Signature)

Erika Sneath
Notary Public
Richland County, South Carolina
My commission expires: 6/7/2027

ELECTRONICALLY FILED - 2020-01-06 7:10:31 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0708867

ELECTRONICALLY FILED - 2021 Feb 28 11:01 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

EXHIBIT E

AFFIDAVIT OF JOSEPH D'AMBROSIO

BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.

v.

BULL POINT SC, LLC, et al.

Circuit Court Case No. 2020-CP-07-00817

ELECTRONICALLY FILED - 2019 Feb 28 11:51 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JON H. ATTRIDGE and JANET L ATTRIDGE, ROBERT W. BANKOV, VIRGINIA J. BANKOV, TOM BOLTON, GUY I. COLLIER, NANCY L. COLLIER, RICHARD JAY COLEMAN, MARLENE COLEMAN, RUSSELL G. DIMKE, SANDRA A. DIMKE, JAMES G. GOODWIN JR., CAROL A. GOODWIN, GEORGE J. LOVETT, WILNA W. LOVETT, PETER MARZLUFF, DEBORAH C. MARZLUFF, GARY OKEY, NANCY OKEY, MICHAEL PELLECCHIA, JANICE S. PELLECHIA, FRANK H. ROBERTS SR., RICHARD SWILPA, MICHELE GALLANT, PHYLLIS 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 POINT SC, LLC, GSI, LLC and WILLIAM E. GAVIGAN,

Third-Party Plaintiffs,

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Civil Action No. 2018-CP-07-02345

AFFIDAVIT OF JOSEPH P. D'AMBOSIO

ELECTRONICALLY FILED - 2021 Feb 28 11:51 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0702317

-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.

PERSONALLY APPEARED before me, Joseph P. D'Ambrosio, who first being duly sworn, deposes and says as follows:

1. I am over 21 years of age and am competent to attest to the facts stated herein.

2. I am a member in good standing of the South Carolina Bar since 2011. I am a member in good standing of the Florida Bar since May of 1988. I am also a member in good standing of the Federal Bars for South Carolina, the Southern District of Florida and the Middle District of Florida.

3. My wife, Mary D'Ambrosio and are residents of the Bull Point community and members of the Bull Point Property Owners Association (sometimes referred to as the Bull Point Plantation Property Owners Association) since 2008. We are third-party defendants in the above action. I am co-counsel for the Plaintiffs in the above action

4. On October 28, this Court's Judicial Assistant notified our counsel that the Plaintiff's Motion For Summary Judgment was being granted. That motion took the position that Defendant, William Gavigan's company is not the legal declarant of Bull Point and/or that the POA board has been illegally constituted for several years. Shortly after we

ELECTRONICALLY FILED - 2021 Feb 24 11:51 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702847

received this information, on or about October 30, 2019, Mr. Gavigan deeded numerous parcels of Bull Point community property to a company he owns. Copies of the deeds showing the property transfer have been previously provided to this Court. Despite the advice that the summary judgment was being granted, Mr. Gavigan continues to act as if he is the legal declarant of Bull Point including recently taking the following actions:

A) Deeding community-owned property to his personally-owned company;

B) Taking steps to hold Bull Point POA's Annual Meeting, including, unilaterally preparing a proposed budget to be voted on at the Annual Meeting, advising of a "Special Meeting" to be held (no date has been provided);

C) Advising that he is working with real estate attorneys to possibly effect other real estate transfers in the community; and

D) Sending an email to POA members claiming that, after all the years that Bull Point has been in existence, suddenly and right before the Annual Meeting vote, Phase III of the development has not been properly submitted to the Bull Point Declaration and governing documents . See, attached **EXHIBIT 1.** The implication from the email notice is that Phase III owners may not be members of the POA and therefore, may not be entitled to use of the amenities or to vote in elections.

5. Counsel for the Plaintiffs believes that the claim regarding Phase III is without merit and is greatly concerned that it is in an attempt to disenfranchise members in Phase III from being able to vote or vote proxies. Phase III is comprised of approximately 47 lots, some of whom have been vocal about the POA's management practices and who have received proxies from other POA members, many of whom do not reside in Bull Point. There is a very real concern that there will be a claim by the POA at the

ELECTRONICALLY FILED - 2021 Feb 24 11:01 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702347

scheduled Annual Meeting that members who reside in Phase III cannot vote or vote proxies of other members.

6. Along these lines, the undersigned has obtained numerous proxies for the upcoming Annual Meeting vote. Pursuant to a directive from the POA, all proxies had to be sent to the POA office. Therefore, the POA office, and presumably Mr. Gavigan, would be aware of the numerous proxies given to the undersigned.

7. Shortly after the office's receipt of these proxies, William Gavigan, still claiming to be in charge of the POA, sent a letter to the undersigned which is attached as **EXHIBIT 2**. The letter states that the POA has no record of the two lots owned by Mary and Joseph D'Ambrosio. It is believed by the undersigned that this is an overt attempt to prevent me from voting proxies given to me for the upcoming Annual Meeting and more importantly, for any election of directors to the board pursuant to the Court's ruling on Plaintiff's Motion For Summary Judgment.

8. As further evidence of this intent, a photograph of handwriting I have been advised was on the desk of Mr. Gavigan's assistant has been provided to the undersigned and is attached as **EXHIBIT 3**. The assistant's desk in in an open area open to members of the POA and the handwriting was in plain view on the top of her desk. The handwriting has words to the effect of: "Keep track of Phases proxies are coming from"

9. Numerous members have contacted me expressing frustration and with questions and concerns regarding what will happen at the Annual Meeting. As such, it appears to the undersigned that Mr. Gavigan and/or the POA board's recent actions have created an enormous amount of turmoil with POA members and great concern over whether there will be a fair election at the upcoming Annual Meeting.

ELECTRONICALLY FILED - 2019 Nov 26 4:53 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702845

10. Mr. Gavigan and/the board's recent actions have also endangered the Bull Point community by indicating that members in Phase III, due to the claim that it was not properly submitted to the governing documents, may not have to pay dues. This would cause immense harm to the community resulting in a loss of an enormous amount of revenue Bull Point depends on. Further, it would consequently cause a significant increase in other members' dues. Bull Point is largely a community of senior citizens and the undersigned is concerned that many of these members may have difficulty paying this increase.

11. Further, the POA email notice has created the danger that Phase III owners may request a refund of past dues paid. This has this has the potential of amounting to more than $1,000,000 and could place the POA in danger of bankruptcy.

12. Additionally, there is a concern that the POA board's claim regarding Phase III may engender a massive amount of title insurance litigation. Homeowners in Phase III who purchased relying on their ability to use various amenities and be part of the Bull Point community are now being told that they may not have this right. These homeowners may have legitimate title policy claims.

13. Based on the above, counsel for the Plaintiffs has filed an Emergency Motion requesting that the Annual Meeting scheduled for November 19, 2019 be postponed. No prejudice will be suffered by the Defendants should the meeting be postponed. On the other hand, great prejudice may be suffered by the Plaintiffs and, all members of Phase III and all members of the community that have given a proxy to anybody residing in Phase III, should the meeting take place. Due to time constraints, the undersigned was unable to obtain individual affidavits, however, numerous members

have expressed to me that they wish to have the meeting postponed to allow time to rectify concerns they have in connection with the above issues and this Court's ruling on Plaintiff's Motion for Summary Judgment.

FURTHER AFFIANT SAYETH NAUGHT.

JOSEPH P. D'AMBROSIO

SWORN to before me this
14 day of November, 2019

Notary Public for South Carolina
My Commission Expires: July 6, 2027

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

ELECTRONICALLY FILED - 2019 Nov 26 14:59 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702847

ELECTRONICALLY FILED - 2021 Feb 28 11:01 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

EXHIBIT F

BANK SIGNATURE CARD

BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.

v.

BULL POINT SC, LLC, et al.

Circuit Court Case No. 2020-CP-07-00817

BB&T SIGNATURE CARD (SOUTH CAROLINA)

NAME AND ADDRESS OF DEPOSITOR(S)

BULL POINT PROPERTY OWNERS ASSOCIATION

114 BARNABY BLF
SEABROOK SC 29940-2315

ACCOUNT NUMBER	ACCOUNT OPENING DATE	REVISED CARD DATE
0005121835144	11/04/1997	

OWNERSHIP DESIGNATION: CHECK ONLY ONE BLOCK

Personal Accounts
- [ ] Individual
- [ ] Joint With Right of Survivorship
- [ ] Payable on Death (POD)
- [ ] Uniform Gifts to Minors
- [ ] Other_____

Business Accounts
- [ ] Sole Proprietorship/DBA
- [ ] Partnership
- [ ] Corporation
- [ ] Non-Profit Corporation
- [ ] Public Funds
- [ ] LLC (including LLP)

Other Accounts
- [ ] Estate
- [ ] Trust
- [ ] Bankruptcy
- [ ] Court Appointed Fiduciary (Guardian/Custodian/Conservator, etc.)
- [ ] Lawyer's Trust Account or IOLTA
- [ ] Escrow
- [X] Other Unincorporated Association

IDENTIFICATION (Primary Account Holder)

Type of ID CGDS Issued By SC ID Number 571034129 Expiration Date _____ Date of Birth _____

Second Type of ID_____ Issued By_____ ID Number _____ Expiration Date _____

Employer _____ Cell Phone Number (____) _____ Home Phone Number (____) _____

Address as listed on ID _____ Work Phone Number (843) 378-9940

IDENTIFICATION (Secondary Account Holder)

Type of ID _____ Issued By_____ ID Number _____ Expiration Date _____ Date of Birth _____

Second Type of ID_____ Issued By_____ ID Number _____ Expiration Date _____

Employer _____ Cell Phone Number (____) _____ Home Phone Number (____) _____

Address as listed on ID _____ Work Phone Number (____) _____

TIN CERTIFICATION

Under penalties of perjury, I certify by my signature below that: (1) The number shown on this form is the correct Social Security or Tax Identification Number, or I am waiting for a number to be issued to me, and (2) I am NOT subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding. (Depositor must cross out (2) above if the IRS has notified the depositor that the depositor is currently subject to backup withholding because of underreporting of interest or dividends.), (3) I am a U.S. person (including U.S. resident alien), and (4) I am exempt from Foreign Account Tax Compliance Act (FATCA) reporting.

The Internal Revenue Service does not require your consent to any provision of this document other than the certification required to avoid backup withholding.

Check one only if applicable:

- [ ] Depositor is an exempt recipient of interest under the Internal Revenue Code.
- [ ] Depositor is exempt as a non-resident alien and has completed a Form W-8 (required for interest bearing accounts only). Each non-resident alien depositor must complete a separate W-8.

I understand that if a taxpayer identification number is not provided to the bank within 60 days, the account may be closed.

BY MY SIGNATURE, I HEREBY CERTIFY THAT: (1) the type of ownership designated is correct; (2)(a) if I have opened a personal account, I have received the "Bank Services Agreement", the "BB&T Interest Rate Schedule" or Client Summary with interest rates, and the "BB&T Personal Services Pricing Guide" and agree to accept the terms of each document; or (2)(b) if I have opened a commercial account, I have received the "Commercial Bank Services Agreement" or "Institutional Bank Services Agreement" and the "BB&T Business Services Pricing Guide" and agree to accept the terms of each document; (3) I give permission to BB&T to verify any bank or credit references; and (4) I have read and understand this signature card, confirm that it is completed correctly and agree to its terms and disclosures.

INDIVIDUAL ACCOUNT
Only one signer

SSN: _____ Signature of Depositor _____ Date: _____

Centralized Document Scanning Operations
100-99-15-11

DDASIGXXX2020005121835144

8005SC (1412)

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JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP
All account owners must sign

We understand that BB&T may pay any or all of the funds in the account on the order of any one person named on the account. Upon the death of a party to the account, the deceased party's ownership in the account passes to the surviving party or parties to the account. BB&T may pay the entire account balance to a creditor or other legal claimant pursuant to legal process despite notice to BB&T by a depositor not to permit such payment.

SSN: _____ Signature of Depositor _____ Date: _____

SSN: _____ Signature of Depositor _____ Date: _____

PAYABLE ON DEATH ACCOUNT
POD

It is understood that by establishing a POD account that: (i) any one account owner may withdraw or transfer any or all of the funds in the account; (ii) any account owner may change or remove any beneficiary by written notice to the Bank; (iii) upon the death of any account owner, the funds shall belong to the remaining account owner(s); and (iv) upon the death of the last account owner, the funds shall be payable to the beneficiaries then living and, if none, to the estate of the last surviving account owner.

SSN: _____ Signature of Depositor _____ Date: _____

SSN: _____ Signature of Depositor _____ Date: _____

Name of Beneficiary: _____ Relationship: _____ SSN: _____

Address of Beneficiary: _____

Date of Birth of Beneficiary: _____ Phone Number of Beneficiary: _____

Name of Beneficiary: _____ Relationship: _____ SSN: _____

Address of Beneficiary: _____

Date of Birth of Beneficiary: _____ Phone Number of Beneficiary: _____

Name of Beneficiary: _____ Relationship: _____ SSN: _____

Address of Beneficiary: _____

Date of Birth of Beneficiary: _____ Phone Number of Beneficiary: _____

UNIFORM GIFTS TO MINORS ACT ACCOUNT
Only one custodian and one minor permitted

I understand that the funds transferred into this account are being credited to this account in my name as custodian for the minor named below under the South Carolina Uniform Gifts to Minors Act. The gift of money to the minor named below is irrevocable and is made in accordance with and to include all provisions of said Act

SSN: _____ Name of Minor: _____ Relationship: _____

Address of Minor: _____ DOB: _____

SSN: _____ Signature of Custodian _____ Date: _____

Business, Trust, Bankruptcy, Guardian, Custodian, Conservator, IOLTA, Escrow and "Other" Accounts
The undersigned expressly authorize BB&T to obtain any consumer report and/or any other Personal or Business credit reports

[redacted]
EIN/Tax ID Number

BULL POINT PROPERTY OWNERS A Printed Name	Signature for Entity - Your Title	(Seal)	01/13/2015 Date
Peter W. Magloff Printed Name	Signature and Title	(Seal)	Date
WAYNE COUSAR Printed Name	Signature and Title	(Seal)	Date
RON LAMBE Printed Name	Signature and Title	(Seal)	Date

Opened/Updated By CONSTANCE E GLASS 01463 Approved By _____ Branch Location A0483501

ELECTRONICALLY FILED - 2021 Feb 28 11:01 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

ELECTRONICALLY FILED - 2021 Feb 28 11:01 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

EXHIBIT G

DEED
dated December 28, 2006

BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.

v.

BULL POINT SC, LLC, et al.

Circuit Court Case No. 2020-CP-07-00817

$ to RB Kirkland 1360

ADD DMP Record 2/12/2007 12:26:53 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	027	000	0203	0000	00

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

DEED

KNOW ALL MEN BY THESE PRESENTS, that **BULL POINT LLC** (hereinafter referred to as "Grantor"), for and in consideration of the sum of FIVE and 00/100 DOLLARS ($5.00) and no other valuable consideration to the Grantors in hand paid at and before the sealing of these presents, by **BULL POINT PROPERTY OWNERS ASSOCIATION, INC.** (hereinafter referred to as "Grantee") in the State aforesaid, (the receipt of which is hereby acknowledged) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the Grantee, its successors and assigns forever, the following described property, to wit:

SEE ATTACHED EXHIBIT "A" AND "A1" FOR DESCRIPTION

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

BEAUFORT COUNTY SC- ROD
BK 02497 PGS 1060-1063
DATE: 12/28/2006 11:14:38 AM
INST # 2006102993 RCPT# 462875

Said Property is conveyed subject to all obligations, restrictions, limitations, covenants and benefits as contained in the Declaration of Covenants, Conditions, and Restrictions for Bull Point Plantation dated the 22nd day of September, 1995, and recorded in the RMC Office for Beaufort County on September 26, 1995 in Book 805 at Page 218, as amended and all other easements, covenants and restrictions of record.

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

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto **BULL POINT PROPERTY OWNERS ASSOCIATION, INC.**, its successors and assigns forever.

And the Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the premises unto the Grantee, its successors and assigns,

RECORDED
2007 Feb -12 02:03 PM
Sharon G. Burnie
BEAUFORT COUNTY AUDITOR

ELECTRONICALLY FILED - 2021 Feb 28 11:01 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

against itself defend all and singular the premises unto the Grantee, its successors and assigns, against itself and its successors and assigns and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal this 28th day of December 2006.

Signed, Sealed and Delivered in the Presence of:

WITNESS:

GRANTOR
BULL POINT LLC

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

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

Witness

SWORN to before this 28th day
of December 2006

Notary Public for South Carolina
My Commission Expires: April 26,

ROBERTHA H. BING
NOTARY PUBLIC
SOUTH CAROLINA
My Comm. Exp. April 26, 2014

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EXHIBIT "A"

ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and being shown and Designated as.61 acre of common area with improvements thereon for access to Magnolia Island located between Lot 51 and Lot 52, on a Plat Showing Lot Line Revision between Common Area, Lot 51 and Lot 52, Bull Point, Phase 1, prepared for Stan Kirkland, Gardens Corner, Beaufort County, South Carolina, by Gasque and Associates, Inc. dated November 21, 2003 and recorded November 24, 2003 in Book 96 on Page 116.

Also, ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and being shown as the Boardwalk to Magnolia Island 851.51 feet in length as shown on the above referenced Plat recorded in Book 96 at page 116.

Also, ALL that certain piece parcel and tract of land designated as Magnolia Island containing 2.61 acres as shown on Exhibit A1 attached thereto and incorporated herein. It is the intent of Grantor to deed the Magnolia access easement common area, the 851.58 boardwalk from the mainland to Magnolia Island and the 2.62 acres, with improvements thereon, known as Magnolia Island.

The Grantorgrants by Quit-Claim Deed any and all its right, title and interest to any and all property located below the OCRM Critical Line or Mean High Water Line.

Derivation: This being a portion of the property conveyed to Bull Point LLC by Deed from the Metropolitan Properties, Inc. dated January 23, 1995 and recorded in the office of the Register of Deeds for Beaufort County of January 23, 1995 in Book 756 at Page 196.

TMS: R700 27-0101 and 0102 and 0203

This Deed prepared by: Stancel E. Kirkland, Attorney-at-Law
97 Bull Point Drive
Seabrook, South Carolina 29940

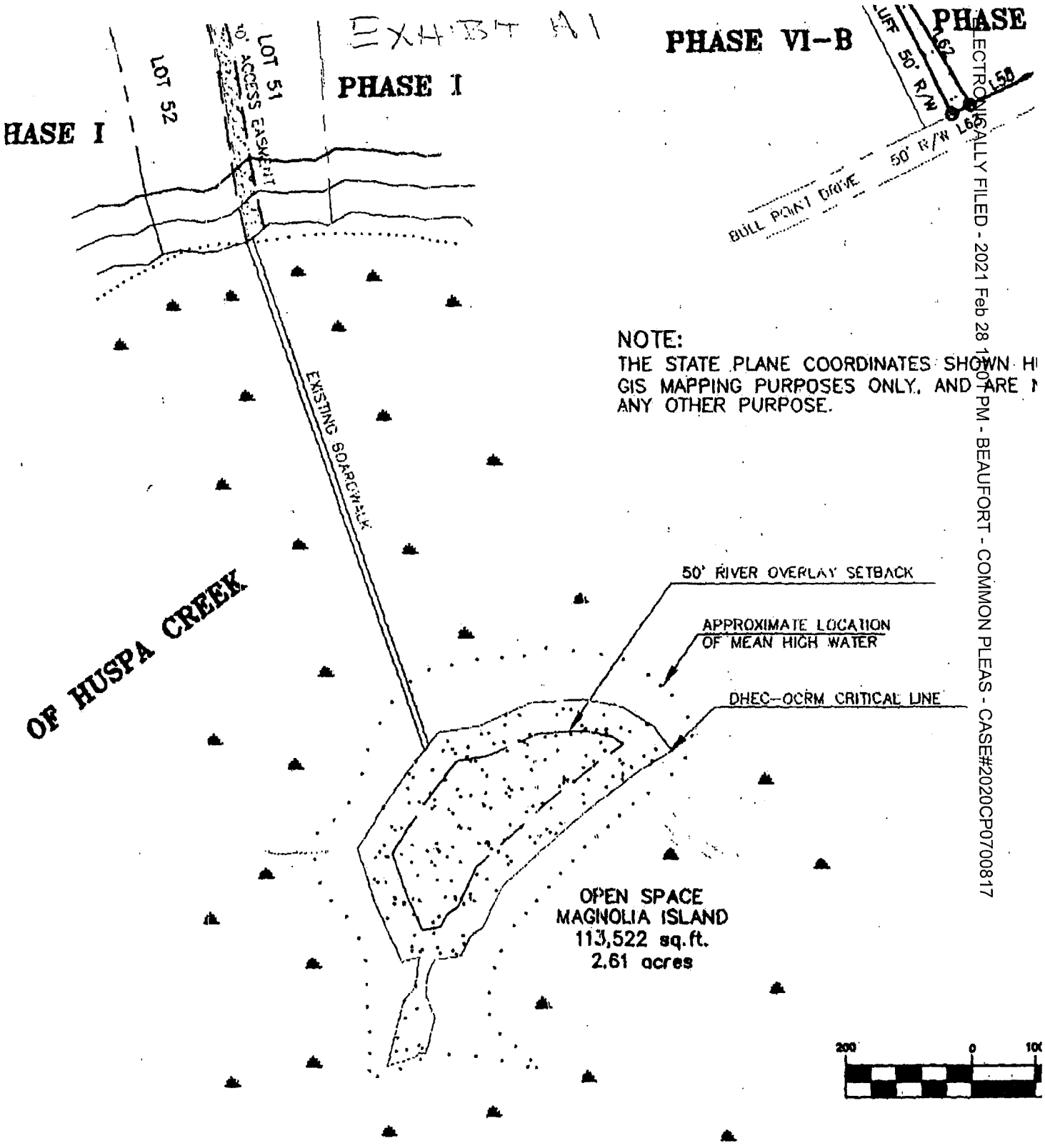

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EXHIBIT H

RETAINER AGREEMENT
(SMOOT & PITTS)
dated March 12, 2007

BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.

v.

BULL POINT SC, LLC, et al.

Circuit Court Case No. 2020-CP-07-00817

ELECTRONICALLY FILED - 2021 Feb 28 11:01 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

SMOOT, PITTS, ELLIOTT & BIEL
A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS
ATTORNEYS AT LAW
POST OFFICE DRAWER 23439
HILTON HEAD ISLAND, SOUTH CAROLINA 29925-3439
TELEPHONE: (843) 681-3200
FACSIMILE: (843) 681-3204
E-MAIL: smootpitts@mindspring.com

WILLIAM M. SMOOT* +
BRIAN C. PITTS*
JAYE JONES ELLIOTT*
JACK H. BIEL* + +

* A Professional Association
+ Also Admitted in Virginia
+ + Also Admitted in Tennessee

16C LAFAYETTE PLACE
HILTON HEAD ISLAND, SC 29926

March 12, 2007

Mr. Russ Dimke
Bull Point Plantation Owners Association, Inc.
114 Barnaby Bluff
Seabrook, SC 29940

Re: Transition, Bull Point Plantation Owners Association, Inc. (the "Association")

Dear Russ:

We appreciate your contacting our firm in connection with assisting the Association in the transition of assets and responsibilities from Bull Point, LLC to the Association (the "Work"). It is our practice to secure an engagement letter from a client prior to commencement of representation. In that connection I submit the following for your information and consideration.

In practicing law for many years, our experience has been that it is very useful and appropriate for the client and the lawyer to have a clear understanding as to the cost of legal services. This allows the client to plan for the expected costs of legal services and prevents unfortunate disagreement or misunderstandings at the conclusion of a particular matter. The charges stated herein are based upon a number of factors, including the time and labor involved, the novelty and difficulty of the types of legal issues normally presented, and the skill, education and experience required to competently perform the requested legal services. The hourly rates set forth below reflect the minimum fee to be charged. Under appropriate circumstances and with your prior approval, we may adjust our fees to reflect unusual circumstances or results.

Absent unusual circumstances, you will receive statements from the firm monthly. Such statements will reflect all services and disbursements made on your behalf during the preceding month. Statements are due and payable when received. Attorneys' hourly rates are William M. Smoot $200.00 per hour, Brian C. Pitts $175.00 per hour and Jaye Jones Elliott $150 .00 per hour. Paralegal time is billed at $45.00 an hour. Unless otherwise instructed by you, and in order to reduce the overall costs of legal services, we will direct the Work so that it is done at the most economic level, while still maintaining the quality of the service. I will primarily be responsible for the Work and will be the contact attorney with our firm unless you otherwise direct.

All out of pocket expenses will appear as separate items on our statements. Your approval of expenses will be required before they are incurred except for those which are considered routine such as charges for long distance calls, couriers, service, copying, fax and postage. In instances where significant disbursements will be required for expenses such as multiple copies, we may require pre-payment.

It is our custom to charge a non-refundable retainer in the amount set forth below. This will be allocated against your final bill. If you wish to engage our services on the basis above, please sign the copy of this letter enclosed and return it with a check for the retainer. The retainer required in this matter is $1,000.00 to be used to cover the Work and other initial expenses.

I enclose a list of items to be considered during the transition. While the list is not complete, it serves as a supplement to your Transition Plan - Exit Strategy. If you need clarification of the list, please let me know.

If you wish to engage our services on the basis above, please sign the copy of this letter enclosed and return it to me. In the interim, I remain

Sincerely,

William M. Smoot

I AGREE TO THE ABOVE TERMS
BULL POINT PROPERTY OWNERS ASSOCIATION

By:_____

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EXHIBIT

I

QUIT CLAIM DEED
dated June 16, 2011

BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.

v.

BULL POINT SC, LLC, et al.

Circuit Court Case No. 2020-CP-07-00817

3 10 mcc Smook 2730

BEAUFORT COUNTY SC - ROD
BK 03067 PGS 3399-3401
FILE NUM 2011032399
06/28/2011 12:54:01 PM
REC'D BY C ECKLES RCPT# 650606
RECORDING FEES 10.00

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Beaufort County Tax Map Reference
R700-027-000-0137 (a portion thereof)

STATE OF SOUTH CAROLINA)
) **QUIT CLAIM DEED**
COUNTY OF BEAUFORT)

KNOW ALL MEN BY THESE PRESENTS, THAT

IT, BULL POINT PLANTATION OWNERS ASSOCIATION, INC.,

(Grantor) in the state aforesaid, in consideration of the sum of Ten Dollars and to clear the records to us in hand paid by

BULL POINT, LLC
80 Tomotley Barony Place
Seabrook, SC 29940

(Grantee) the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by the presents does grant, bargain, sell and release unto Grantee, Grantee's Successors, Heirs and Assigns, forever, the following property (Property), to wit:

ALL that certain piece, parcel, or tract of land situate, lying and being in Beaufort County, South Carolina consisting of 0.216 acres and being shown and described as "PROPERTY GAP AREA" on a survey entitled "Boundary Survey Prepared for Thomas R. & Polly E. Fenig, Lot 85, Bull Point Phase II - (Sheet 1 of 2), Beaufort County, South Carolina", prepared by Gary B. Burgess, PLS No. 15229 of Andrews & Burgess, Inc., Engineering and Surveying, dated June 9, 2010, last revised June 16, 2010 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 132 at Page 158.

The Grantor reserves a perpetual, non-exclusive easement on, under, over and across the Property for the purpose of draining surface and storm water runoff from adjacent property owned by the Grantor through said Property; subject to the following:

(a) This easement is conveyed subject to all other easements, licenses, and conveyances of record and is subject to the rights herein reserved by the Grantor, its successors and assigns, to utilize the Grantor's properties any time, in any manner, and for any purpose, provided, however, that such use by the Grantor shall not be inconsistent with nor prevent the full utilization by the Grantee of the rights and privileges granted herein.

(b) The easement rights granted herein may be assigned by Grantee to another utility company providing similar services to the Grantee.

(c) Grantee, its successors and assigns, shall maintain at its expense the easement property so as to prohibit any obstruction on, under, or within the easement property which would hinder or delay the drainage across the Property.

Subject, however, to all applicable covenants, restrictions, and easements of record.

The Property conveyed is all or a portion of the property heretofore conveyed to the Grantor by Deed dated January 23, 1997 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 918 at Page 2559.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the Property belonging, or in any wise incident or appertaining.

TO HAVE AND TO HOLD all and singular Property unto Grantee and Grantee's Successors, Heirs and Assigns, forever, so that neither Grantor nor its heirs, nor any other person or persons claiming under Grantor or any of them shall at anytime hereafter, by any way or means, have, claim or demand any right or title to the Property or any part or parcel thereof forever.

Whenever the context so requires, references herein to the neuter gender shall include the masculine and/or feminine gender, and the singular number shall include the plural.

Witness its Hand and Seal this 16th day of June in the year of our Lord Two Thousand Eleven.

Signed, Sealed and Delivered
in Presence of

(Signature of First Witness)

(Signature of Second Witness/Notary)

BULL POINT PLANTATION OWNERS ASSOCIATION, INC.

BY: Steve E Rickland
Its President

ATTEST: XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Its Secretary

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STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

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

I, the undersigned notary public, do hereby certify that the within named Grantor, PRESIDENT OF THE GRANTOR personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness its hand and official seal this 16th day of June 2011.

_____ (L.S.) Robin W. Bowers
Notary Public for South Carolina
My Commission Expires: 9/7/16

(SEAL)

This deed was prepared by the law offices of Smoot & Pitts
P. O. Drawer 23439, Hilton Head Island, SC 29925
without benefit of title examination

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EXHIBIT J

RETAINER AGREEMENT
(NEXSEN PRUET)
dated March 25, 2017

BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.

v.

BULL POINT SC, LLC, et al.

Circuit Court Case No. 2020-CP-07-00817

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NEXSEN|PRUET

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

May 25, 2017

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

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

Dear Mr. Steinheiser:

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

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach

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

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

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

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

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

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

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

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

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

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

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

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

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

With best regards, I am

Very Truly Yours,

NEXSEN PRUET, LLC

Jeffrey S. Tibbals

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

BULL POINT PLANTATION OWNERS ASSOCIATION INC.

Date: 5-25-17

By: Joseph Steinheiser

Its: President

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NEXSEN|PRUET

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

June 30, 2017

Hal E. Cobb, Esq.
Cobb, Dill & Hammett, LLC
300 Coleman Blvd., Suite 600
Mt. Pleasant, SC 29406

Dear Mr. Cobb:

Bull Point Plantation Owners Association, Inc. ("Bull Point POA") is in receipt of a subpoena issued by your office on June 12, 2017[1] in the case captioned *GSI, LLC et al v. DB Aster, LLC, et al 9:16-CV-2552-RMG* (the "Subpoena"). Pursuant to Fed. R. Civ. Pro. 45(d)(2)(B), this correspondence constitutes Bull Point POA's written objections to the production of the documents set forth in "Attachment A" of the Subpoena.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

While the Subpoena cured certain deficiencies of the previous subpoena served on May 8, 2017, Attachment A of the Subpoena is identical to the previous subpoena. As such, the Subpoena is overbroad. Read literally, the Subpoena seeks the production of every document concerning Bull Point Plantation for a period of approximately twenty-three (23) years. The Subpoena seeks information that is irrelevant to the above-referenced litigation and imposes an undue burden upon Bull Point POA. *See In re Subpoena Duces Tecum to AOL, LLC*, 550 F. Supp.2d 606, 612 (E.D. Va. 2008) ("A subpoena imposes an undue burden on a party when [it] is overbroad.") Additionally, given the overbroad and irrelevant nature of the documents sought, it appears the intent of the Subpoena is to annoy, oppress and inflict undue expense on Bull Point POA.

For the foregoing reasons, *inter alia*, Bull Point POA will not respond to the Subpoena. Should you have any questions, please feel free to contact me.

Sincerely,

for Jeffrey S. Tibbals

w/ permission

[1] Bull Point POA was personally served, through its counsel, on June 20, 2017.

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

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

Spitz & Neville
ATTORNEYS AT LAW

151 Meeting Street, Suite 350
Charleston, South Carolina 29401
843-414-5080
www.spitzandneville.com

Stephen A. Spitz
843-414-5085
sas@spitzandneville.com

Irish "Ryan" Neville
843-414-8864
irn@spitzandneville.com

ELECTRONICALLY FILED - 2021 Mar 01 9:52 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

March 1, 2021

VIA E-FILE
The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort, SC 29901-1128

RE: Case No. 2020-CP-07-00817

Dear Honorable Jerri Ann Roseneau:

I write in response to an e-file issue regarding the above-referenced matter. Specifically, in the notes of the rejection notice I received from Andy in your office, I was directed to write a cover letter explaining what I would like to try and file and then attach those filings as an exhibit to this letter.

Last night, I filed a Memo in Opposition, an Affidavit, and Exhibit A-J for that affidavit. I could not upload Exhibits K, L, and M due to the total file size of the submission. To that end, I now write to request that Exhibits K, L, and M being filed herewith are appended to the Affidavit I filed last night. If you have any questions or concerns, please do not hesitate to call my cell phone 843-518-1492.

Thank you for your assistance,

SPITZ & NEVILLE, LLC

Irish "Ryan" Neville
and Stephen A. Spitz

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EXHIBIT

K

INSURANCE POLICIES

BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.

v.

BULL POINT SC, LLC, et al.

Circuit Court Case No. 2020-CP-07-00817

IAN H. GRAHAM INSURANCE
We've Got Community Associations Covered

P.O. Box 7022 North Hollywood CA 91615-9324 Phone 800-621-2324 Fax 866-229-3754 www.ihginsurance.com License #0795465

11/05/2009

JENS ZANDER
COASTAL PLAINS INSURANCE
P.O. Box 6869
Hilton Head, SC 29938

RE: BULL POINT PLANTATION OWNERS ASSOCIATION
CNA Non Profit Community Association Directors' & Officers' Liability Policy
Policy No.: 0251062197
Policy Period: 1/23/2010 to 1/23/2011

Dear JENS ZANDER:

AUTOMATIC RENEWAL: The enclosed policy is an automatic renewal of a policy scheduled to expire in approximately 60 days. The expiring policy is eligible for our automatic renewal program. The policy qualifies for an automatic renewal, because (1) there have been no losses during the expiring policy period, and (2) there have been no material changes to this risk. **This automatic renewal is void, if there have been any material changes during the past year. In the event of any material changes, you MUST contact our office for renewal terms**

PREMIUM INCREASE: To comply with state regulations on renewal procedures, we are notifying you that the renewal policy transmitted with this letter contains an increase in premium. The increased premium is set forth on the renewal policy declarations page. This will serve as the only notice of this change.

CHANGES: If the property manager or any relevant addresses need to be changed or updated, please advise us and we will endorse the policy.

PREMIUM PAYMENT: Renewal of the enclosed policy is subject to payment of the premium in full. If payment is not received on or 30 days after the policy effective date, the policy will be void as of the renewal inception date. The renewal policy and invoice are enclosed.

If you do not want this renewal, please return the policy with instructions to non renew. If you have any questions, please feel free to contact your Aon/IHG Underwriter.

Very truly yours,
Aon/Ian H. Graham Insurance

Bonnie Keller

Bonnie Keller
Underwriter

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Community Association Policy — Declarations

WITH RESPECT TO ASSOCIATION LIABILITY COVERAGE PART, THIS IS A CLAIMS MADE POLICY AND, SUBJECT TO ITS PROVISIONS, APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE NAMED ENTITY INSUREDS DURING THE POLICY PERIOD. NO COVERAGE EXISTS FOR CLAIMS FIRST MADE AFTER THE END OF THE POLICY PERIOD UNLESS, AND TO THE EXTENT THAT, THE EXTENDED REPORTING PERIOD APPLIES.
THE CRIME COVERAGE PART APPLIES TO A COVERED LOSS SUSTAINED RESULTING FROM ACTS OR EVENTS OCCURRING DURING THE POLICY PERIOD UNLESS CERTAIN CONDITIONS CONCERNING PRIOR INSURANCE ARE MET.
DEFENSE COSTS INCURRED UNDER COVERAGE PARTS A REDUCE THE LIMIT OF LIABILITY AND ARE SUBJECT TO THE RETENTION. PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

NAMED ENTITY AND MAILING ADDRESS	NAMED ENTITY NUMBER AND PHYSICAL ADDRESS
Item1. BULL POINT PLANTATION OWNERS ASSOCIATION 114 BARNES BLUFF Seabrook, SC 29940	BULL POINT PLANTATION OWNERS ASSOCIATION 114 BARNES BLUFF Seabrook, SC 29940
POLICY NUMBER	**INSURER**
0251062197	Continental Casualty Company CNA Plaza, Chicago, IL 60685

Item 2. **Policy Period:** 1/23/2010 to 1/23/2011
12:01 a.m. local time at the address stated in Item 1.

Item 3. **Policy Premium:** $1,583.00

Item 4. Notices to Insurer:

Claims: Claim Manager
CNA Global Specialty Lines
40 Wall Street, 8th Floor
New York, New York 10005

All other notices:
Ian H. Graham, a division of
Affinity Insurance Services, Inc.
Managing General Underwriter
5161 Lankershim Blvd.
North Hollywood, CA *91601*

Item 5. Coverage:

This Policy is issued with the Limits of Liability and Retentions set forth, subject to the Prior or Pending Date, if applicable all as set forth in the schedule below.

Defense Costs are included within the applicable limit of liability for **Association Liability Coverage Part.** Defense costs are neither covered nor included within the applicable limits(s) of liability for the **Crime Coverage Part.**

This Policy includes *only* those coverages designated with a "Yes" as "Included" in column 1 of the Coverage Schedule set forth below. *If neither "Yes" or "No" is designated for a Coverage Part or a specific Crime Coverage Part Insuring Agreement, such Coverage Part or specific Crime Coverage Part Insuring Agreement is not included.*

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Community Association Policy — Declarations

WITH RESPECT TO ASSOCIATION LIABILITY COVERAGE PART, THIS IS A CLAIMS MADE POLICY AND, SUBJECT TO ITS PROVISIONS, APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE NAMED ENTITY INSUREDS DURING THE POLICY PERIOD. NO COVERAGE EXISTS FOR CLAIMS FIRST MADE AFTER THE END OF THE POLICY PERIOD UNLESS, AND TO THE EXTENT THAT, THE EXTENDED REPORTING PERIOD APPLIES.
THE CRIME COVERAGE PART APPLIES TO A COVERED LOSS SUSTAINED RESULTING FROM ACTS OR EVENTS OCCURRING DURING THE POLICY PERIOD UNLESS CERTAIN CONDITIONS CONCERNING PRIOR INSURANCE ARE MET.
DEFENSE COSTS INCURRED UNDER COVERAGE PARTS A REDUCE THE LIMIT OF LIABILITY AND ARE SUBJECT TO THE RETENTION. PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

NAMED ENTITY AND MAILING ADDRESS	NAMED ENTITY NUMBER AND PHYSICAL ADDRESS
Item1. BULL POINT PLANTATION OWNERS ASSOCIATION 114 BARNES BLUFF Seabrook, SC 29940	BULL POINT PLANTATION OWNERS ASSOCIATION 114 BARNES BLUFF Seabrook, SC 29940

POLICY NUMBER	INSURER
0251062197	Continental Casualty Company CNA Plaza, Chicago, IL 60685

Item 2. **Policy Period:** 1/23/2010 to 1/23/2011
12:01 a.m. local time at the address stated in Item 1.

Item 3. **Policy Premium:** $1,583.00

Item 4. Notices to Insurer:

Claims: Claim Manager
CNA Global Specialty Lines
40 Wall Street, 8th Floor
New York, New York 10005

All other notices:
Ian H. Graham, a division of
Affinity Insurance Services, Inc.
Managing General Underwriter
5161 Lankershim Blvd.
North Hollywood, CA *91601*

Item 5. Coverage:

This Policy is issued with the Limits of Liability and Retentions set forth, subject to the Prior or Pending Date, if applicable all as set forth in the schedule below.

Defense Costs are included within the applicable limit of liability for **Association Liability Coverage Part.** Defense costs are neither covered nor included within the applicable limits(s) of liability for the **Crime Coverage Part.**

This Policy includes *only* those coverages designated with a "Yes" as "Included" in column 1 of the Coverage Schedule set forth below. *If neither "Yes" or "No" is designated for a Coverage Part or a specific Crime Coverage Part Insuring Agreement, such Coverage Part or specific Crime Coverage Part Insuring Agreement is not included.*

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EXHIBIT
L

QUIT CLAIM DEED
dated October 21, 2011

BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.

v.

BULL POINT SC, LLC, et al.

Circuit Court Case No. 2020-CP-07-00817

RECORDED
2011 Nov -04 10:10 AM
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 03092 PGS 2123-2126
FILE NUM 2011053696
10/24/2011 11:20:38 AM
REC'D BY B BING RCPT# 659395
RECORDING FEES 10.00

Beaufort County Tax Map Reference
R700-020-000-0054-0000
R700-026-000-0148-0000

STATE OF SOUTH CAROLINA)
) **QUIT CLAIM DEED**
COUNTY OF BEAUFORT)

KNOW ALL MEN BY THESE PRESENTS, THAT

BULL POINT, LLC

(Grantor) in the state aforesaid, in consideration of the sum of Ten Dollars to us in hand paid by

BULL POINT PROPERTY OWNERS ASSOCIATION
114 Barnaby Bluff
Seabrook, SC 29940

(Grantee) the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by the presents does grant, bargain, sell and release unto Grantee, Grantee's Successors, Heirs and Assigns, forever, the following property (Property), to wit:

All that certain piece, parcel or tract of land, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and 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 the Seller's rights, 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 to 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.

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EXHIBIT M

MEMBER AFFIDAVITS

BULL POINT PLANTATION
PROPERTY OWNERS ASSOCIATION, INC.

v.

BULL POINT SC, LLC, et al.

Circuit Court Case No. 2020-CP-07-00817

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2018-CP-07-2345
Jon H. Attridge, et al, Plaintiff, vs. The Board of Directors of Bull Point Plantation Property Owners Association, Inc., et al., Defendants.	)	**AFFIDAVIT OF MATTHEW T. ASHER**

I, MATTHEW ASHER, hereby declare as follows:

1. I am over the age of 18 years. I am a resident of Greenville, South Carolina. As set forth below, I could and would competently testify thereto regarding the following:

Properties at Bull Point

2. My family and I are in the real estate development business. I have been part of over 3000 projects developed and built one thousand projects, such as high-end custom homes at the Cliffs Communities, a portfolio of seven communities in the Carolina mountains.

3. I am the owner of Lots 157, 249, 250 & 251, Bull Point Plantation, which I purchased at an event sale with over sixty new families in the spring of 2019. My father and brother also purchased a portfolio of lots in Bull Point Plantation and, collectively, we are the largest owners of property in Bull Point.

4. Our home building development company, we intend build high end custom homes in Bull Point and believe Bull Point is a great opportunity both to live in and develop.

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Improper Assessment of Properties Not Subject to Assessments

5. I am a member of Bull Point Plantation Owners Association, Inc. The is no other Association that maintains common area in Bull Point.

6. I have reviewed the declaration and all amendments, and the Association had never changed.

7. A review of the records at Beaufort county show dissolved corporation, corporations that didn't exist, and now a corporation that is not the Association have clouded the title of our properties. This prevents any lender from loaning money or the ability for me to develop the property I own.

8. There is no other corporation has a right to collect assessments from me although last week a different nonprofit corporation placed liens on my properties.

9. Bull Point is subject to certain restrictive covenants. Under these covenants, some property within the community is defined as "Property" and other property is defined as "Additional Property." Importantly, under these covenants, Additional Property is not considered part of the Development, as that term is defined in the restrictive covenants and, therefore, exempt from payment of annual assessments. Several of my properties are in phases that are Additional Property and, therefore, not obligated to pay assessments.

10. The court appointed board has assessed and now the same individuals have placed liens on, properties that are not part of the Association,

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11. The only phases in the original declaration and the 9th amendments the court appointed board have refenced in wrongly assessing my properties and slandering my title is the I and II Phase. This is maliciously being done by Joe D'Ambrosio and his wife who are not even members of the Association. I do not want to be a party to any lawsuit, waist my money on lawyers, or have my private property rights removed by a board the court appointed.

12. The liens recorded against the exempt phases is not authorized under the restrictive covenants.

The Need for a Declarant and the Danger of Eliminating the Declarant

13. I am familiar with the ongoing litigation involving Bull Point Plantation, both this action as well as the other lawsuits that have been filed by the plaintiffs and a small group of owners that appear to have formed a corporation inside of the Association for their own benefit and no others.

14. It is my understanding that, among other things, certain plaintiffs want the court to rule that there is no Declarant. This would be the worst thing possible for Bull Point Plantation and demonstrates a lack of understanding of the restrictive covenants and how they apply to Bull Point. More specifically, under Bull Point's restrictive covenants, only the Declarant can add Additional Property to the Development. If the Declarant is eliminated, then certain of my properties would forever be excluded from the community (in the same way that Plaintiff D'Ambrosio Lots 168 and 169, Phase III, would be excluded). Further, only the Declarant can add Common Areas. If the Declarant has terminated its right to add additional property or the court

changes the declaration to not have a declarant, Bull Point would never have any (additional) Common Areas.

Management of the Association

15. I am familiar with the restrictive covenants over Bull Point Plantation. These covenants define the owner's association as "Bull Point Plantation Owners Association, Inc." (the "Association").

16. I have reviewed all amendments to the restrictive covenants. I am not familiar with any amendment which amends the covenants to provide a different corporation as the Association.

17. As mentioned above, liens have been recorded against my property by a corporation "Bull Point Plantation Property Owners Association, Inc." There is no covenant, amendment, or deed which provides that this is the owner's association to which I or my properties owe a duty or obligation, including payment of assessments.

18. The court appointed nonmembers to the court appointed board of directors that wrongly approved an annual budget knowing it assessed properties that are not in phases that have been added to the declaration.

19. The court appointed board did not give the notice required under the declaration to members or nonmembers to vote and or give comment and many members were not aware of the violations of the declaration that we are being held to. I am one of sixty property owners who

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purchased in 2018 and 2019 that relied on the declaration to purchase although are victims of the actions of wrongly appointed and serving nonmembers who created polices that are completely adverse to the declaration and now have placed liens on our properties from a corporation not in the declaration and I believe the court should correct and remove the liens immediately. This has made it impossible for me or others who want to build our home or homes for others.

Actions Contrary to Declaration

20. The plaintiffs are acting beyond any authority granted to an owner's association in the restrictive covenants. By way of example, the covenants (Article X) expressly govern the imposition of fees our Architectural Review Board (ARB) may charge. Specifically, it provides that the ARB may charge no more than $5,000.00. Recently, however, the putative Board sent out an email where it said it had changed the amount of fees, requiring two $4,000 fees. Although this fees purport to be refundable, it is an out-of-pocket expense not provided for in Article X. This is just one of many instances where that Board and ARB are acting beyond the scope of the restrictive covenants.

21. In summary, the actions of this new group are unprofessional and interfering with our business and in violation of the deceleration, they are preventing building and development in Bull Point.

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Plaintiffs Not Representative of the Community

22. The ongoing litigation and related actions by these Plaintiffs is not to the betterment of our community and the allegations and statements made by the Plaintiffs are contrary to how most owners in Bull Point feel.

23. The litigation seems focused on preventing Billy Gavigan from participating in the development of Bull Point. In fact, Mr. Gavigan is viewed positively by most owners and one of the reasons I and my family purchased the portfolio of properties we did. Mr. Gavigan's experience in real estate development in the low country is well known in the Carolinas, and I believe that his vison for Bull Point Plantation is what is needed to complete the development of the community.

FURTHER AFFIANT SAYETH NAUGHT

_____
Matthew T. Asher

SWORN to before me this
__6th_ day of May, 2020

_____
Notary Public for South Carolina
My Commission Expires: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	Civil Action No. 2018-CP-07-2345
JON H. ATTRIDGE.. 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, Etal Defendants/Counterclaimants, and BULL POINT SC, LLC, GSI, LLC and WILLIAM E. GAVIGAN, Third-Party Plaintiffs, vs STEVE ANDREWS, HARRIET BOSIACK, JOSEPH P. D'AMBROSIO, MARY D'AMBROSIO, RON LAMBE, MICHAEL POWERS, ROBERT WOLFSON, HUSPAH PROPERTIES, LLC, RIVERS REACH AT POCOTALIGO, LLC, RIVERS REACH REALTY, LLC AND JOHN DOES 1-10, Third-Party Defendants.	)	**AFFIDAVIT OF JUDY L. ESTREN** (PREVIOUS OWNER OF LOT 123)

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AFFIDAVIT OF JUDY L. ESTREN

I, JUDY L. ESTREN, hereby declare as follows:

1. I am over the age of 18 years. I am a resident of Jacksonville, Florida. I am the previous owner of *Lot 123, Phase II*, Bull Point Plantation and was a member of the Association, Bull Point Planation Owners Association, Inc a South Carolina Non-Profit Corporation as set forth in the Declarations.

2. I am a Licensed attorney, in good standing, in the State of Florida since 1993.

3. In this capacity I could and would competently testify thereto regarding the following:

Bull Point and The Declarant

4. On or about February 2018, my former significant other, Michael A. Ingram, met with a Bull Point representative to view lots in the Bull Point Plantation for the purpose of the future building of a home.

5. On March 28, 2017, the property, known as Lot 123, was purchased in the name of Michael A. Ingram.

6. Later, via email threads, I learned that the then Declarant, had transferred lots, leadership and the corporation to Billy Gavigan.

7. On August 15th, 2018, I took title to Lot 123, from Michael A. Ingram, located in Phase II of Bull Point Plantation. I was a member of the Bull Point Plantation Owners Association, Inc "Association", the only nonprofit, to my knowledge, identified and defined in the declaration and all amendments. No other corporation is the Association, to my knowledge.

8. Upon my acquisition of Lot 123, I relied on the fact that Bull Point Plantation had a Declarant and it was Mr. Gavigan's company. During the time within, I dealt with Mr. Gavigan, and The Bull Point Plantation Owners Association, Inc., I became aware of new sales occurring, repairs and improvements being made, and an effort to stimulate growth and development of the community.

9. To the best of my knowledge and memory, and pursuant to the original association documentation which I reviewed, the ARB members were/are to be appointed by the Declarant.

10. To the best of my knowledge, Bull Point, LLC is the Developer and Declarant of Bull Point Plantation. The community still has multiple phases that have not been completed and were in the process of being developed. As informed by the previous Association newsletters, many lots were added by the declarant and a large portion of the additional property has yet to be developed. Per the Association documentation, at the time of my acquisition of lot 123, and per my discussion with the previous owner, prior to my consideration of acquisition of any property in the Bull Point development, many portions of the development is to be designated as Common Area or Recreational Amenities as defined in the Declaration, and the Declarant had/has the sole power to designate these properties. Only the Declarant has this authority.

11. During my very short time of ownership, I received numerous email threads from what appeared to be several different factions within the community regarding the Bull Point development, the alleged illegal activities of Mr. Gavigan, and what appeared to be attempts to join together to oust Mr. Gavigan.

12. In August 2019, I removed myself from the good State of South Carolina and returned to Florida. As a result of the "in-fighting" within the Bull Point community I decided I

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no longer want to build there; I put my lot on the market with Coldwell Bankers' Realty, and continue to lower the price to no avail. The property was listed until the end of March, 2020.

13. In late, January 2020, I was contacted by my former neighbor in Chapin, South Carolina who had been given a letter to send to me from the new owner of my former Chapin proper. The letter advised that my dues were late, and the letter would serve as my invoice and signed by the "voluntary secretary", using a different Association name not listed in the Bull Point Declaration. Which raised concerns and conflict.

14. At that time, I was unclear whether there was an actual Board of Directors, or where any monies would be going, and I never received a formal invoice as I had the previous year. I was concerned if I sent in monies they may go to the wrong recipient. Additionally, I was getting ready to have cancer removed from my face on February 19, 2020 (which I did). I then immediately contacted various people's names I found from email threads, advised I received a letter, and whether or not anyone knew if it was a valid letter. I was immediately told by those I emailed that I was past due and needed to pay my dues immediately. I respectfully requested an extension, due to my impending surgery. I was given two weeks within which to pay. I again requested a longer period because I was not prepared to pay over $2800 in dues. It should be noted, that on prior occasions over the prior year, I requested that the board consider allowing the dues to be reduced for those who only owned land, did not live there an did not use any amenities to no avail.

15. After my surgery on February 19, 2020, I began chemo for squamous cells on my chest. On April 20, 2020, I was hospitalized with renal failure. Prior to my hospitalization for renal failure, I reached out to Bull Point individuals to ascertain how I could get access onto the owner's portal. I was given access, hoping to pay my dues on the portal. There was no payment

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portal, and I reached out again to the individual who set me up with the portal, to inquire as to how I could pay my dues, and that I wanted to pay immediately via credit card.

16. I received a follow-up email that I could not pay via credit card and that I must pay my dues and late fees immediately or they would put a lien on my property. They emailed me a second letter that was sent to the Chapin, S.C. address, in which I never received. They could have emailed me the letter, or mailed to my Jacksonville, Florida address. Instead, they chose to mail to my former Chapin address although they had email notification that I did not live there.

17. They refused to take my credit card, they refused to give me another two-week extension until I received my next pay check, they refused to take PayPal, Zelle or Venmo (all common electronic forms of payment).

18. They insisted that I mail a check via overnight from Fed Ex, which would mean me having to go to Fed Ex, during the COVID stay at home orders, although in a newsletter I received yesterday, they were encouraging the community to stay home and if paperwork needed to be notarized there would be someone in the office to do so, so the community did not have to leave the area. They additionally, put in the newsletter that they had placed a number of liens they have placed on homes for failure of payment of late dues.

19. In an attempt to rid myself of the property, and the threatening of liens, in light of the "Association" refusing to take any form of payment other than an overnight check, I decided on or about May 1st, 2020, while having previously tried to sell my property, to have Bull Point, LLC exercise its Declarant right of repurchase, and I executed a deed to convey the title to Bull Point, LLC. I sold my lake front lot back to the Declarant for just the cost of the assessment,

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$3100.00. The value and progress that Bull Point experienced in 2018 and even through 2019 is being destroyed due to the actions of the small group of plaintiffs in this action.

Rule to Show Cause

20. I was unaware that I was being used in any legal action or a rule to show cause.

21. I strongly disagree with the allegations made and would like the court to delete my statements from the Rule to Show Cause. The parties used my "sarcastic" response to an email, which was a sole result of the numbers of emails flowing from many people, to their advantage in litigation. I request this Honorable Court to add this, my, affidavit to the record. There has been no meeting of the members to discuss this" derivative" injunction to my knowledge. These allegations are unfounded, and I was not aware that I was being included as a party to these claims or legal actions, or that my email statement was being used and used out of context.

22. Any issues or confusion in Bull Point is solely due to the misinformation provided by the parties, the "in-fighting" of residents, and the discord of the community.

23. To my knowledge, and reading of the materials, Mr. Gavigan, has been completely mischaracterized by these misstatements. In fact, he is the only person who has willing to assist me when I had/have a serious medical condition, to which the stress of these matters is exacerbating. Being threatened to have a lien placed on one's property, when then Court has not ruled the true and real authority of Bull Point, is an extortive action which put owners at risk of paying the wrong entity or leery of paying the wrong entity.

24. The Declarant, Bull Point, LLC, has not added phase III to the plan of development, to my knowledge. There appears to be a self-installed board, self-installed

officers, and misinformation communicated to the community about the rightful state of affairs of the Bull Point community. The declaration should be enforced, and all actions taken by the improperly elected or self-appointed board should not be deemed valid.

Dated: May 4, 2020

Judy Estren

On this 4th th day of May 2020, before me personally appeared Judy L. Estren, who provided satisfactory evidence of his identification to be the person whose name is subscribed to this instrument and he acknowledged that he executed the foregoing instrument by his signature here.

Judy L. Estren

Sworn to (or affirmed) and subscribed before me
this 4th day of May 2020.

(Notary Signature)

Hermel Rosa

Notary Public Florida HGP
~~Beaufort County, South Carolina~~
My commission expires: Jun 4, 2023

HERMEL G. ROSA
MY COMMISSION #GG341673
EXPIRES: JUN 04, 2023
Bonded through 1st State Insurance

(Official Seal)

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT JON H. Attridge,...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,	)))

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community utilities & insurance. "Special Projects" were paid each year from the contingency fund. On average the operating budget was being exceeded each year by approximately $70,000 being taken from the contingency fund. These expenses included capital expenses as well as legal fees and a wide range of expenses not included in the annual budget. These expenses were not voted on by the members and there was no long term plan for these projects.

- The current board's assertion that 2019 was the first year the POA exceeded the budget approved at the annual meeting is false if you look at the total expenditures for the POA during the year. Our historical spreadsheet including both operating expenses and contingency funds show that in fact every year except 2014 the POA board exceeded the member approved operating budget. In 2014 DB Aster paid dues on the developer lots.
- 2019 End of Year Financials include all common area repairs AND capital projects. Only operating expenses are included in the 2020 Budget.
- The current board has stated they are within budget after the first quarter of 2020. Their budget document prepared shows they have spent $17,712 less than the 2020 budgeted expenses. However, this does not include the $62,833.50 from the contingency fund and $33,845.38 from the special assessment collected to pay 2019 expenses (for a total of unbudgeted expenses of $96,678.88). As of March 31, 2020 they have spent $213,617 versus their budget of $134,650.40 total expenses.
- 2020 Dues Collected as of March 31 are $499,585 (represents 204 lots paying dues). Dues in the budget are $595,693. This is a difference of $95,817 in budgeted dues not collected. Even when you subtract the $49,028 in bad debt budgeted, this suggests we are not on budget and will not be able to meet our budgeted operating expenses for 2020 which is $595,402.
- I believe there is a court order that required a meeting of association members for any contingency funds voted on by the board of directors while this legal action is still pending. There was no meeting of the members for the $96,678.88 spent from the contingency fund and special assessments in first quarter 2020. The 2020 Budget only has $2000 budgeted for common area maintenance and repair. At the end of the first quarter they were over this number by more than $60,000 even if you exclude the amount spent to pay 2019 bills.
- I attended the February 15, 2020 board elections with 3 proxys and 2 were denied. They also hired an armed off-duty Beaufort County Sherriff. This is just one of many illustrations of their bullying tactics that have pitted neighbor against neighbor.
- The vote count from the February meeting was 200 for this new board and 5 against. We have never seen certification of these election results. Dues as of the end of March reflect 204 lots paying dues. How can we have a vote count of 205?
- We are not better off with this new board. We no longer have access to the 75 ft. Maintenance easements at the freshwater lakes (where many of the plaintiff's live). These areas were used for fishing, a golf cart path around the lake and wildlife viewing. For 20 years we've enjoyed these common areas and homes on the lakes were designed and landscaped to separate private property from the maintenance easements. We received notice these areas are now private property and the areas where we taught our grandchildren to fish are no longer common areas even though the cost to maintain and mow this private property continue to be paid with our POA dues. This was done without any meeting of members to discuss the issues or vote on it. When I challenged it in writing I simply received a response that I was wrong and should read the CC&R's.
- More transparency as to the legal and professional fees is called for. I want to be sure legal fees paid by the small group of property owners to initiate this lawsuit, is not reimbursed out of POA funds. This reimbursement out of POA funds promise was made by many of these same

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC. Plaintiff, -vs- BULL POINT SC, LLC; BULL POINT, LLC; BULL POINT PLANTATION OWNERS ASSOCIATION, INC.; WILLIAM E. GAVIGAN; MICHAEL CAREY; CHRISTOPHER J. QUICK; JAMES RIORDAN; RICHARD RINEY, Defendants	Civil Action No. 2020-CP-07-00817 **MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Plaintiff the Bull Point Plantation Property Owners Association, Inc. (hereinafter the "Association"), by and through its undersigned counsel, submits this Memorandum in Support of its Motion for Summary Judgment.

INTRODUCTION

By this motion the Plaintiff Association, the property owners' association for Bull Point Plantation, seeks the return of its common properties, including its roads, its parks, its ponds, its clubhouse and business office, its swimming pool, its tennis courts, its community dock, and its community boat landing. The Association's former Board president, Defendant William Gavigan, conveyed these properties to himself shortly before this Court (through Judge Carmen Mullen) ruled that he was not actually the president of the Board and did not have the authority to appoint the Board directors or to act on behalf the Association. Mr. Gavigan told Judge Mullen at that time that he was simply trying to correct a title defect and would re-convey the properties to the Association. He has since changed his mind and is determined to keep the properties.

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This has become a matter of some urgency to the residents of Bull Point Plantation. The Bull Point community is built around, and is dependent upon, its common properties. Since October 2019, when the Defendants took the properties, Defendants have not paid the property taxes, so the Association has done so. However, the Defendants did not apply for the properties to be assessed as property owners' association property, so the property taxes are higher than they should be. The Defendants have not paid insurance premiums for the insured properties such as the clubhouse. The Association has paid the premiums, but if there is a fire or a hurricane the insurance carrier might well contend that the Association does not have an insurable interest in the property. To further complicate matters, the entity to which Mr. Gavigan conveyed the properties has almost two million dollars in judgments against it – the largest of which is owned by another of Mr. Gavigan's companies -- so if the unauthorized conveyances are allowed to stand, the common properties will be subject to these judgment liens.

Mr. Gavigan has offered no explanation for his refusal to return the properties. In defiance of Judge Mullen's order, he simply refuses to acknowledge the Association as the property owners' association, as if this somehow justifies his keeping its property.

The grounds for this motion are two-fold. First, this Court has entered a final judgment finding that Mr. Gavigan and the other individual Defendants were not authorized to serve as president and directors of the Association's Board and that their actions taken in those capacities are null and void. The Court's judgment is on appeal, but it has not been stayed pending appeal and it is binding. Second, should this Court's order be reversed on appeal and the Defendants be found to have been the rightful directors of the Association's Board, Mr. Gavigan's conveyance of the Association's property to himself would be as clear a breach of fiduciary duty as one could possibly imagine. It would, to say the least, be a "conflict of interest" transaction and an improper

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distribution. As such it is voidable under the South Carolina Nonprofit Corporation Act if it was not fair to the corporation, which it manifestly was not.

FACTS/PROCEDURAL HISTORY

1. Bull Point Plantation; Bull Point, LLC; the Association, and Bull Point Plantation Owners Association, Inc.

On January 20, 1995, Stancel Kirkland and Robert Wolfson created Bull Point, LLC by filing Articles of Organization with the South Carolina Secretary of State. See Exhibit 1 (Articles of Organization). Bull Point, LLC was created to serve as the original developer and "Declarant" of Bull Point Plantation, a private waterfront community located in Beaufort County, South Carolina. On September 22, 1995, Mr. Kirkland and Mr. Wolfson as "Managing Partners" of Bull Point, LLC signed the "Declaration of Covenants, Conditions, and Restrictions for Bull Point Plantation" (hereinafter the "Declaration"). See Exhibit 2 (Declaration).[1] The Declaration provided that Bull Point, LLC was the original Declarant of Bull Point Plantation. Id. at 1.01(j). The very same day, Mr. Kirkland signed Articles of Incorporation for the non-profit corporation Bull Point Homeowners Association, Inc. See Exhibit 3 (Articles of Incorporation).[2] These Articles of Incorporation expressly state that the Association was the property owners' association for Bull Point Plantation. Id. at ¶3 ("This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purpose for which it is formed is to provide for maintenance, preservation and architectural control of the residence lots and common areas within . . . the Bull Point Property, and to promote the health, safety and welfare of the residents within

[1] The Declaration was amended from time to time and in 2000 was restated. The parties agree that the 2000 version of the Declaration is the currently effective version, and that is the version attached hereto.

[2] As discussed herein, Bull Point Homeowners Association, Inc. changed its name twice, settling on Bull Point Plantation Property Owners Association, Inc. (the Plaintiff here). Bull Point, LLC has claimed in other legal filings that Bull Point Homeowners Association, Inc. and its successors in name was a "Developer's Holding Company." As will be shown below, as Mr. Gavigan himself has represented, and as Judge Mullen has ruled, the Association is in fact the property owners' association for Bull Point Plantation, not a "Developer's Holding Company."

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the above-described property . . . ." While the Declaration itself identified the "Association" by a slightly different name -- "Bull Point Plantation Owners Association, Inc., a South Carolina non-profit corporation" -- the Association's Articles of Incorporation state that it (not Defendant Bull Point Plantation Owners Association, Inc.) shall "exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the" Declaration. The Articles of Incorporation contain other provisions which unmistakably identify it as a residential development's property owners' association, not a "Developer's Holding Company" as Defendants have argued:

- The Association has the power to fix, levy, and collect assessments and pay expenses (¶3(a));
- Every record owner of a lot which is subject to the Declaration is a member of the Association (¶4);
- The Association's members shall elect its Board of Directors (¶6);
- The Association shall manage and control the common areas in Bull Point Plantation (¶10).

On July 5, 2006, the Association changed its name to Bull Point Property Owners Association, Inc. and changed its address to 97 Bull Point Drive, Seabrook, South Carolina, 29940. See Exhibit 4 (Articles of Amendment). Between 2006 and 2008, Bull Point, LLC followed through with the Bull Point Plantation development plan and conveyed the common properties to the Association. These conveyances were made through fifteen separate deeds, all conveying elements of the common properties to Bull Point Plantation Owners Association, Inc. Exhibit 5 is a chart summarizing the deeds.

Beginning in 2008 when the Recession hit, Bull Point LLC became unable to meet its financial obligations. It ultimately filed for bankruptcy protection and lost its remaining Bull Point Plantation property to foreclosure in 2012.

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On March 6, 2013, the Association changed its Registered Agent from Stancel Kirkland to Russell Dimke. See Exhibit 6 (Notice of Change of Registered Agent). On December 31, 2014, the Association changed its name to Bull Point Plantation Property Owners Association, Inc. See Exhibit 7 (Articles of Amendment). The Association has had the same tax identification number since at least 2006. See Exhibit 8, Affidavit of Michael Pellechia. It has served continuously as the property owners' association since its inception in 1995. Among other things, the Association has annually assessed its members for the cost of maintaining the common properties, including building a contingency fund; has maintained the common properties; has paid the property taxes on the common properties; and has insured the insurable common properties.

2. *Mr. Gavigan's Entry Into Bull Point Plantation*

After Bull Point, LLC defaulted on its development loan, BB&T initiated foreclosure proceedings. BB&T then assigned the loan to German American Capital Corporation ("GACC"), which acquired most of Bull Point, LLC's remaining real estate interests in Bull Point Plantation and immediately transferred them to its affiliated company, DB Aster, LLC. On December 28, 2012, Bull Point, LLC purported to assign its Declarant rights to DB Aster. DB Aster served as the Declarant of Bull Point Plantation until August of 2017. On August 21, 2017, GSI, LLC ("GSI"), a Gavigan-owned entity, purchased DB Aster's remaining Bull Point Plantation property. That same day, a document was recorded which purported to assign the Declarant rights from DB Aster to GSI, LLC. See Exhibit 9. GSI immediately assigned most of its interests (including the Declarant rights) to Defendant Bull Point SC, LLC (no relation to Bull Point, LLC), of which Gavigan is also the sole member. See Exhibit 10.

Gavigan, as managing member of Bull Point SC, LLC, began acting as the Declarant of Bull Point Plantation and appointed himself as President of the Association. He later appointed

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Michael Carey, Christopher Quick, James Riordan, and Richard Riney as members of the Association's Board of Directors. Gavigan, through Bull Point SC, LLC also purported to amend the Declaration and refused to pay assessments on lots owned by Bull Point SC, LLC, claiming that the Declarant did not have to do so. All the while, Gavigan held himself out to be President of the Association and operated the Association as he desired, often to his own benefit and to the Association's detriment. Mr. Gavigan never questioned that Bull Point Plantation Property Owners Association, Inc. was the true property owners' association. In fact, he repeatedly and invariably represented that it was. See, e.g., Exhibits 11 through 14.

3. The Attridge Litigation

In 2018 Mr. Gavigan began using the Association's contingency fund – which by then was almost a million dollars – to fund a substantial operating deficit that had begun to occur during his tenure as President of the Association. Under the Declaration, the Declarant is responsible for covering any budget deficits. On November 16, 2018 Mr. Gavigan amended the Declaration to eliminate the contingency fund oversight committee and to transfer the contingency fund into the operating fund where he would have direct access to it. See Exhibit 15. On December 3, 2018, a group of members of the Association, both individually and derivatively on behalf of the Association, filed a lawsuit against Bull Point SC and the then-purported Board of Directors challenging to stop the misappropriation of contingency fund money (hereinafter the "Attridge Litigation"). The plaintiffs later amended the Complaint to, among other things, challenge whether Bull Point SC was actually the Declarant, whether it had authority to unilaterally amend the Declaration, and whether it had authority to appoint the members and officers of the Association's Board of Directors. On July 2, 2019, the plaintiffs in the Attridge Litigation filed a Motion for Partial Summary Judgment seeking an order that Bull Point SC was not the Declarant of Bull Point and/or that, even if it was, Bull Point

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SC did not have the right to appoint the members of the Association's Board of Directors, as those members were to be elected by the membership. On September 19, 2019, Bull Point SC and Gavigan filed a cross Motion for Partial Summary Judgment in the, seeking conversely a declaration that Bull Point SC was the proper Declarant and that it had the right to amend the Declaration and to appoint the Association's Board of Directors.

On November 18, 2019, Judge Mullen entered an Order granting the plaintiffs' motion for partial summary judgment, denying Bull Point SC and Gavigan's motion for partial summary judgment, and ordering, among other things: (1) that Bull Point SC was never the Declarant of Bull Point Plantation; (2) that the Association's members have the exclusive right to elect its Board of Directors; (3) that Bull Point SC's purported appointment of the Board of Directors was a nullity; (4) that all actions of the illegally appointed Board of Directors were nullities; (5) that all actions Bull Point SC took as the purported Declarant (including appointing members of the Association's Board of Directors) are void; (6) that Gavigan and the other individual Defendants were not members of the Association's Board of Directors; and (7) that Gavigan and the other individual defendants were enjoined from serving on the Association's Board (unless elected by the membership) and from taking any action in further governance of the Association. Exhibit 16. This Order is on appeal, but no motion to stay it pending appeal was filed.

Mr. Gavigan refused to comply with Judge Mullen's November 18, 2019 Order and the plaintiffs' filed a motion for preliminary injunction and motion/petition for rule to show cause, and then a supplemental motion. As part of these proceedings, Mr. Gavigan argued that the Association – Bull Point Plantation Property Owners Association, Inc. (and its predecessors in name) – was never actually the property owners' association of Bull Point Plantation. Rather, Mr. Gavigan argued that a corporation he created on February 5, 2020 – Bull Point Plantation Owners

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Association, Inc. – is the only true property owners' association because that is how the Declaration defines "Association." This argument is inconsistent with what Mr. Gavigan previously told the members - - that the correct name of the POA was Bull Point Plantation Property Owners Association, Inc. On December 4, 2020, Judge Mullen issued an Order rejecting Mr. Gavigan's new argument, stating: "The Court readily concludes that Bull Point Plantation Property Owners Association, Inc. is and has been the Bull Point Plantation POA." The Court reasoned that while the Association's name "is slightly different from the one specified in the Declaration, it is the only corporation that was created contemporaneously with the Declaration and it meets every substantive requirement of the Association described in the Declaration." See Exhibit 17.

4. The Association's Common Properties

Over time and long before Mr. Gavigan's arrival in Bull Point, Bull Point, LLC transferred the common areas within Bull Point Plantation to the Association. These conveyances started in 2006 and continued through 2008 and included the roads, community dock, community boat landing, maintenance area, Clubhouse complex with swimming pool and tennis courts, Magnolia Island, William Bull Park, etc. See Exhibit 5. The deeds identified the grantee as Bull Point Property Owners Association, Inc. which was the Association's name at that time. If there were any doubt that Bull Point, LLC believed Bull Point Property Owners Association, Inc. was the correct name of the Association, that doubt is resolved by comparing the Association's November 21, 2008 Annual Meeting Minutes to some of the deeds. At the meeting, Stan Kirkland told the Association's members that he recorded the deeds transferring some common property to the Association. See Exhibit 17. One day before the meeting, Mr. Kirkland, as Managing Member of Bull Point, LLC executed some of the deeds identified in Exhibit 5 transferring roads, trails, a

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bridge, and drainage easements from Bull Point, LLC to Bull Point Property Owners Association, Inc.). See Exhibit 18. During Mr. Gavigan's purported tenure as President of the Association, he treated the common area properties as if they were owned by the Association, which they were. It was not until after Judge Mullen determined that Mr. Gavigan was not the President of Bull Point Plantation Property Owners Association, Inc. that he began to assert that this was not the real POA.

The foregoing provides the context for the matter now before the Court, which is Mr. Gavigan's potentially catastrophic attempt to transfer the Association's common properties to himself. Sometime after the Attridge Litigation was filed, Defendant Gavigan purported to obtain all interests in Bull Point, LLC, which at that time was a shell corporation without any assets. On September 27, 2019, Judge Mullen notified the parties that she would hear the cross-motions for partial summary judgment in the Attridge Litigation on October 15, 2019. See Exhibit 20. On October 4, 2019 (eleven days before the summary judgment hearing), Defendant Gavigan, as purported President of the Association, and Defendant Riney, as purported Secretary of the Association, signed two separate Quit Claim Deeds transferring a large part of the Association's valuable common elements to Bull Point, LLC, Mr. Gavigan's newly-acquired corporation. These Quit Claim Deeds were recorded in the Beaufort County Register of Deeds on October 10, 2019. See Exhibits 21 and 22. These deeds took from the Association its clubhouse/business office, swimming pool complex, tennis court complex, boat ramp, community dock, parks, Magnolia Island and its boardwalk, roads, open spaces, leisure trails, drainage easements, and other common areas. When the Attridge Litigation plaintiffs complained, Mr. Gavigan explained that the transfer of the common areas to Bull Point, LLC was necessary to remedy certain errors contained in the deeds by which Bull Point, LLC originally transferred the common areas to the Association, but

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assured Judge Mullen that the properties would be transferred back to the Association. In fact, in a November 12, 2019 letter to Judge Mullen objecting to the November 18, 2019 Order in the Attridge Litigation, Mr. Gavigan's counsel wrote: "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." See Exhibit 23 at n.2. Mr. Gavigan's counsel referenced an email from Attorney Eversole to Mr. Gavigan sent September 25, 2019. In that email (attached as Exhibit 24), Attorney Eversole wrote:

> In short, what we are doing is having the current owners (BPPOA and BPPOA, Inc. and OSP, Inc.) quit claim their interests back to Bull Point, LLC using the legal descriptions provided in the current recorded deeds. Many of the descriptions in those deeds are vague and incorrect. Once the Quit Claim Deeds are recorded, deeds will be done for Bull Point, LLC to convey each parcel to the BPPPOA, Inc. using correct and proper legal descriptions. It is a fairly simple process, but requires a lot of organization and details to attend to.

Ms. Eversole wrote, and Gavigan represented to the Court, that the ultimate goal of his property transfers was to re-convey the common area properties to Bull Point Plantation Property Owners Association, Inc. (or "BPPPOA, Inc." as Ms. Eversole called it).

Despite multiple demands, Mr. Gavigan has not transferred the properties back to the Association. Instead, on February 5, 2020 he created Defendant Bull Point Plantation Owners Association, Inc. (see Exhibit 25) and, on March 6, 2020 signed a Quit Claim Deed as Managing Member of Bull Point, LLC transferring some but not all of the property that he previously transferred from the Association to his new company. See Exhibit 26. Remarkably, Gavigan's purported intent for transferring the properties to Bull Point, LLC in the first place was to correct the fact that "Bull Point Plantation Owners Association, Inc." was the record title holder, when "Bull Point Plantation Property Owners Association, Inc." should have been. Gavigan's March 6, 2020 transfer not only contradicts what he claimed to be his valid reason for transferring the properties to Bull Point, LLC, but also is simply a transfer from one Gavigan entity to another, not a transfer back to the Association.

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Gavigan's March 6, 2020 transfer also is in violation of the Court's November 18, 2019 Order, as it results in his continued control over the Association's common area properties.

Gavigan still refuses to transfer the properties back to the Association. Instead, he continues to assert control over the properties and argues that he owns them. For example, Mr. Gavigan (proceeding *pro se* as a plaintiff in a defamation lawsuit against Bull Point Plantation resident Harriet Bosiack) sent subpoenas for depositions to be held at the Bull Point Clubhouse, which Bull Point, LLC has not transferred back to the Association. Mr. Gavigan wrote that "Bull Point, LLC has graciously allowed us to conduct the depositions at 114 Barnaby Bluff in Bull Point," which is the address of the Clubhouse. See Exhibit 27. Yet despite claiming ownership over these properties that are vital to the Association, Mr. Gavigan refuses to pay the insurance premiums or property taxes associated with them. See Exhibits 28 and 29

Meanwhile, the Association learned that there were outstanding judgments[3] against Bull Point, LLC such that those judgments would potentially attach to the properties which Gavigan transferred from the Association to Bull Point, LLC. Accordingly, the Association demanded that in addition to transferring the properties back to the Association, Bull Point, LLC obtain a full release in favor of the Association of any and all rights to enforce any judgments or liens against the properties. It is because of these judgments that Plaintiff requests that the conveyances be nullified, not simply that the Defendants be required to give the properties back.

5. This Action

On April 3, 2020, the Association filed this action seeking (1) a declaration that the October 4, 2019 deeds transferring property from the Association to Bull Point, LLC are void, of no legal effect, and should be set aside because Defendants Gavigan and Riney were not members of the

[3] Another of Gavigan's companies owns the largest of these judgments, in excess of a million dollars.

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Association's Board of Directors (as established by the final judgment of this Court entered on November 18, 2019) and, thus, had no authority to sign the deeds; and in the alternative (2) an order that the transfers of property from the Association to Bull Point, LLC was a "conflict of interest transaction" under the Nonprofit Corporations Act because they were for the benefit of Mr. Gavigan (through his company Bull Point, LLC) and to the detriment of the Association; in the alternative (3) an order requiring Defendants Bull Point, LLC and Bull Point Plantation Owners Association, Inc. to transfer all properties back to the Association free and clear of all liens and judgments that were not present prior to October 4, 2019; and (4) an order finding that Gavigan and Bull Point, LLC committed fraud in transferring the properties to Bull Point Plantation Owners Association, Inc. and not to the Association.

On February 1, 2021, the Association filed a Motion to Amend its Complaint in this case to add new causes of actions and a new party based on information it discovered since in initially filed this case. However, the claims for which the Association seeks summary judgment here remain unchanged in the proposed amended complaint.

ARGUMENT

The Association asks this Court to grant it summary judgment, finding that (1) the October 4, 2019 deeds are void, have no legal effect, and should be set aside because Gavigan and Riney did not have authority to sign them; or in the alternative (2) the October 4, 2019 deeds are void, have no legal effect, and should be set aside because they were conflict of interest transactions; (3) the March 6, 2020 deed should be set aside; and/or (4) that Bull Point, LLC and Bull Point Plantation Owners Association, Inc. must transfer all properties taken from the Association by way of the October 4, 2019 deeds back to the Association, free and clear of all judgments and liens that did not exist before the properties were taken.

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1. THE OCTOBER 4, 2019 DEEDS ARE VOID, HAVE NO LEGAL EFFECT, AND SHOULD BE SET ASIDE BECAUSE GAVIGAN AND RINEY DID NOT HAVE AUTHORITY TO SIGN THEM

This Court need look no further than Judge Mullen's November 18, 2019 Order to find that Gavigan and Riney did not have the authority to sign the October 4, 2019 deeds. Judge Mullen clearly and unequivocally found: (1) that Bull Point SC was never the Declarant of Bull Point Plantation; (2) that the Association's members have the exclusive right to elect its Board of Directors; (3) that Bull Point SC's purported appointment of the Board of Directors was a nullity; (4) that all actions of the illegally appointed Board of Directors were nullities; (5) that all actions Bull Point SC took as the purported Declarant (including appointing members of the Association's Board of Directors) are void; and (6) that Gavigan and the other individual Defendants were not members of the Association's Board of Directors. See Exhibit 16. While Judge Mullen's November 18 Order is on appeal, it has not been stayed and, therefore, it must be enforced.

"As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal . . . ." (Rule 241(a), SCACR). However, Rule 241(b) enumerates a list of some, but not all, of the exceptions to the general rule. That list includes orders granting an injunction, judgments directing delivery of documents or personal property, and judgments directing the delivery of possession of real property. Judge Mullen's November 18 Order did all three of those. It granted an injunction ("The Injunction requested in the Plaintiffs' second cause of action is granted. . . . Defendants are enjoined from serving on the POA's Board of Directors (unless elected by the POA members)"). Exhibit 16 at p. 18. It ordered possession of real property (the Clubhouse), documents, and personal property to be delivered ("the Defendants shall turn over possession of: (a) the clubhouse offices and all property 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 card, debit cards, financial records (both

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physical and electronic)."). Id. at pp.18-19. Mr. Gavigan, through his counsel, recognized that the November 18 Order would not be subject the general rule and would not be automatically stayed, as he complained to Judge Mullen about the same. See Exhibit 23 at p.2 (complaining that the proposed order "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 . . . ."). Nobody has argued that Judge Mullen's November 18 Order is stayed. Accordingly, it remains in full force and effect while the appeal in pending. Arnal v. Fraser, 371 S.C. 512, 519, 641 S.E.2d 419, 422-23 (2007), rehearing denied, certiorari denied 128 S.Ct. 136, 552 U.S. 821, 169 L.Ed.2d 29 (finding that an order that is subject to a Rule 241(b) exception and thus, not automatically stayed, is binding and enforceable in the circuit court while it is on appeal). Even if Judge Mullen's order were subject to collateral attack, only she would have the power to consider it. See Cook v. Taylor, 272 S.C. 536, 252 S.E. 2d 923 (1979) (one circuit judge may not enter an order changing an order of another circuit court judge). Should Judge Mullen's order be reversed on appeal, Defendants can seek relief under SCRCP 60(b)(5), which allows for relief from a judgment when "a prior judgment upon which it is based has been reversed or otherwise vacated."

It is hornbook law that a signed instrument is not valid if the signatures were not properly authorized. Stott v. White Oak Manor, Inc., 426 S.C. 568, 828 S.E.2d 82, 86 (Ct. App. 2019), reh'g denied (June 6, 2019), cert. denied (Sept. 25, 2019) (finding that a document signed by someone without authority to sign it is not effective). Accordingly, the Association requests that the Court issue an order finding that the October 4, 2019 deeds are void, have no legal effect, and are set aside.

2. THE OCTOBER 4, 2019 DEEDS ARE VOID, HAVE NO LEGAL EFFECT, AND SHOULD BE SET ASIDE BECAUSE THEY WERE CONFLICT OF INTEREST TRANSACTIONS

If it should later be determined that Mr. Gavigan and Mr. Riney did have authority to sign

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deeds on behalf of the Association, conveying the POA's common properties to Mr. Gavigan's personal company was – to say the least – a conflict of interest. The Nonprofit Corporation Act provides that a "conflict of interest transaction" is voidable unless it is found to be fair to the corporation. It should go without saying that conveying the Association's invaluable common properties to Mr. Gavigan is not fair to the Association; indeed, it poses an existential threat to the Association.

The Association is a South Carolina nonprofit corporation and, thus, is governed by the South Carolina Nonprofit Corporation Act, S.C. Code §33-31-101 et seq (hereinafter the "Act"). Section 33-31-810 of the Act is entitled Director Conflict of Interest. It provides, in relevant part:

> a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair to the corporation at the time it was entered into or is approved as provided in subsections (b) or (c).

It follows then that a conflict of interest transaction *is* voidable and the basis for imposing liability on the director if it was *unfair* to the corporation at the time it was entered and *was not* approved as provided in subsections (b) or (c). Subsection (b) applies to public benefit or religious corporations while subsection (c) applies to mutual benefit corporations. The Association is a mutual benefit corporation, so subsection (b) is inapplicable here. Under §33-31-810(c):

> A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:
>
> (1) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or
>
> (2) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

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Here, the October 4, 2019 deeds transferring the Association's common area properties from the Association to Bull Point, LLC was a conflict of interest transaction because Gavigan signed them as President of the Association but also claims to own the recipient, Bull Point, LLC. Accordingly, Mr. Gavigan had a direct or indirect interest in the transaction, outside of his purported role as President of the Association. The deeds were patently unfair to the Association because they transferred its invaluable property away from it and to another entity. Accordingly, the deeds are voidable unless they were approved under §33-31-810(c). They were not. As noted above, Mr. Gavigan misrepresented his intentions in making the conveyance, claiming that he was just trying to correct title defects and would convey the properties back to the Association. Even if Gavigan's appointed Board was the Board and approved the transaction, they had to have been materially misled as to its nature. It could not possibly have been in the Association's best interests to give away its common properties.

Further, Mr. Gavigan's transfer of the common properties from the Association to Bull Point, LLC was a prohibited distribution under the Act. Section 33-31-1301 provides that "Except as authorized by Section 33-31-1302, a corporation may not make any distributions." Section 33-31-1302 contains a list of authorized distributions, none of which apply here. The Act defines "distribution" as a "direct or indirect transfer of assets . . . of a corporation to its members, directors, of officers." The October 4 deeds were distributions because they resulted in an indirect transfer of the Association's assets to Mr. Gavigan, one of its purported directors and officers.

Accordingly, the Court should nullify the improper transfer of assets.

3. THE MARCH 6, 2020 DEED SHOULD BE SET ASIDE

As argued above, the October 4, 2019 deeds were void and must be set aside, meaning that

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Bull Point, LLC did not acquire legal title to the Association's common properties. The March 6, 2020 deed from Bull Point, LLC to Bull Point Plantation Owners Association, Inc. purports to transfer the properties that Bull Point, LLC received "by deed of Bull Point Property Owners Association, Inc. dated October 24, 2019 and recorded at the Office of the Register of Deeds for Beaufort County, South Carolina Office in Book 3802 at Page 185-192." Presumably, the reference to October 24 is a scrivener's error, as one of the two deeds Mr. Gavigan and Mr. Riney signed on October 4, 2019 was recorded in Book 3802 at Page 185-192 and purported to convey the very same parcels as the March 6, 2020 deed. Since the October 4, 2019 deeds are void, Bull Point, LLC never obtained title to the property that it purported to transfer in the March 6 deed. Accordingly, the March 6, 2020 deed is void, has no effect, and should be set aside.

4. BULL POINT, LLC AND BULL POINT PLANTATION OWNERS ASSOCIATION, INC. MUST TRANSFER ALL PROPERTIES TAKEN FROM THE ASSOCIATION BY WAY OF THE OCTOBER 4, 2019 DEEDS BACK TO THE ASSOCIATION, FREE AND CLEAR OF ALL JUDGMENTS AND LIENS THAT DID NOT EXIST BEFORE THE PROPERTIES WERE TAKEN

If the Court disagrees that the October 4, 2019 and March 6, 2020 deeds are void and should be set aside, it should then grant an injunction requiring Bull Point, LLC and Bull Point Plantation Owners Association, Inc. to convey those properties back to the Association, and do so free of any liens and judgment that may have attached to them since October 4, 2019. The common properties in Bull Point Plantation are supposed to be owned by the Association, not Bull Point, LLC or Bull Point Property Owners Association, Inc. Mr. Gavigan contends that Bull Point Plantation Owners Association, Inc. is the true property owners' association, but Judge Mullen rejected that argument in her December 4, 2020 Order in the Attridge Litigation. Accordingly, this Court must accept that Bull Point Plantation Property Owners Association, Inc. (the Plaintiff here) is Bull Point Plantation's property owners' association.

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The Declaration provides that "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." See Exhibit 2 at Section 3.01. The Declaration also provides that "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 . . . ." Id. at Section 3.02. Since every property owner in Bull Point Plantation is a member of the Association, not Bull Point, LLC or Bull Point Plantation Owners Association, Inc., it is necessary that the Association own the common areas to effectuate the requirements of Section 3.01 and 3.02 of the Declaration. Otherwise, other entities would own the common areas and would be able to exclude the owners of property in Bull Point Plantation from using and enjoying the same.

Next, when initially confronted about the October 4, 2019 deeds, Mr. Gavigan (through his counsel) represented to Judge Mullen unequivocally that the deeds were necessary to correct some title issues and that Mr. Gavigan would be transferring the properties back to "Bull Point Plantation Property Owners Association, Inc." See Exhibit 23 Another attorney, Alysoun Eversole, represented the same thing in an email to Mr. Gavigan. See Exhibit 24. Mr. Gavigan has now taken a different position, stating under oath that he never represented that he would transfer the properties back to "Bull Point Plantation Property Owners Association, Inc." but rather that he always intended to transfer them to his new company Bull Point Plantation Owners Association, Inc. See Exhibit 30 at ¶31(Gavigan Affidavit). The Association asks that this Court enter an injunction forcing Mr. Gavigan to be bound by his representation to Judge Mullen and transfer the properties at issue back to the Association, and do so free of post-October 4, 2019 liens, judgments,

and other title clouds.

CONCLUSION

The issue before the Court is every bit as simple as it seems. Mr. Gavigan's parting shot as he was about to be removed as president of the Board of Directors of Bull Point Plantation Property Owners Association, Inc. was to transfer the corporation's common properties to himself. He did so under the pretext that he was trying to correct a title defect, but it is now evident that he intends to keep the property – probably as means to circumvent Judge Mullen's order that the Defendants do not have the right to control the Association. Either Defendants did not have the power to act on the corporation's behalf in executing the deeds or doing so was an egregious breach of their fiduciary duties and voidable under the South Carolina Nonprofit Corporation Act. Either way, the appropriate remedy is to nullify the improper transactions and declare the corporation the rightful owner if its common properties.

Respectfully Submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: /s/ M. Dawes Cooke, Jr.
M Dawes Cooke, Jr. (SC Bar #1376)
Jeffrey M. Bogdan (SC Bar #76354)
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Facsimile: 843-577-7708
Attorneys for Plaintiff

February 25, 2021
Charleston, South Carolina

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EXHIBIT 1

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE
Feb 06 2020
REFERENCE ID: 468444
Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

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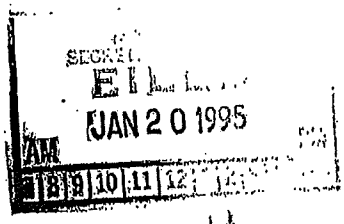
STATE OF SOUTH CAROLINA
SECRETARY OF STATE
JIM MILES
ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY



1. The name of the limited liability company which complies with §33-43-103 of the South Carolina Code of 1976 as amended is Bull Point LLC

2. The street address of the initial registered office of the limited liability company is 1700 Sunset Boulevard, West Columbia, South Carolina 29171

and the initial registered agent of the limited liability company at that office is Stancel E. Kirkland

3. The latest date upon which the limited liability company is to dissolve December 31, 2040

4. (x) Check this box only if management of the limited liability company is vested in a manager or managers.

5. Set forth any other provisions which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement. None

6. The following are the names and signatures of each person who is forming this limited liability company and who will be initial members. (Two persons are required to form the limited liability company.)

Robert L. Wolfson, Manager — Robert L. Wolfson
Name — Signature

Stancel E. Kirkland, Manager — Stancel E. Kirkland
Name — Signature

Date: Jan 20th 1995

95-001508BC

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EXHIBIT 2

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66 Pages 5318 1950

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

NINTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BULL POINT PLANTATION

This Ninth Amendment to 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**, (hereinafter referred to as "Declarant").

W I T N E S S E T H

WHEREAS, Declarant executed a Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation on September 22, 1995, which was recorded in Book of Deeds 805 at Page 218 on September 26, 1996 (the "Declaration"); and

WHEREAS, Declarant has executed Amendments First through Eighth (inclusive) to the Declaration which have been recorded in the Register of Deeds Office for Beaufort County; and

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

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

1. The First, Second, Third, Fourth, Fifth, Sixth, and Seventh Amendments are deleted in their entirety and the within Ninth Amendment to the Declaration is substituted in their place and stead.

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2. The effective date of the within Ninth Amendment is the date and time of recordation of this amendment in the Register of Deeds Office for Beaufort County.

3. The Eight Amendment to the Declaration of Covenants, Conditions and Restrictions remains in full force and effect.

4. The Declaration, as amended by this Ninth Amendment to the Declaration, is attached hereto and incorporated herein as Exhibit "A".

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

Signed, sealed and delivered in the presence of:

As to all Signatures

DECLARANT

BULL POINT, LLC
A South Carolina Limited Liability Company

By: Robert Woofson

Its: Managing Member

By:

Its: Managing Member

SWORN to before me this 4th day of February, 2000

Notary Public (seal)

TONYA SULLIVAN WILLIAMS
Notary Public, South Carolina
My Commission Expires Mar. 18, 2001

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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.**

W I T N E S S E T H:

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.

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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.

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(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.

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(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

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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.

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)

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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.

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(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

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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

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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

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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 a 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.

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(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 (70^{th}) 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.

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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.

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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

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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 other of a residential unit within any portion of the Additional Property not so added to the Development, such Owner shall pay the Association annual 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.

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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

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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
MAINTENTANCE

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

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the cost incurred by the Association for repairing, replacing, maintaining, or cleaning 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 hereitament 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

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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 particularly 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

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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 coverages as are 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 polices obtained by the Association and hereafter in force with respect to the Development shall be vested in

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the Board of Directors; provided, however, that no Mortgages or other security holder of the Common Areas having an interest in such losses may be prohibited form 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 boen issued.

(iv) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees, and all policies shall contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual Owners or their Mortgagees.

(v) All 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.

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

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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

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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.

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:

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(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 talking 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)

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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 is accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations.

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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

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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

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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.

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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

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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

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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;

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(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

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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.

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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

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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.

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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

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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

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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

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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

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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

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

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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,

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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

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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.

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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.

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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.

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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

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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 covenant's 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.

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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.

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(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 PROVISONS

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

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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 an 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

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(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 Mortgagee Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchase to maker or purchaser 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

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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

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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 files 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 ordnance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record on the Records of the 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

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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 talking 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.

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IN WITNESS WHEREOF, duly authorized officers of the undersigned Declarant have executed this Declaration under seal, this 4th day of Feb., 2000.

Signed, sealed and
Delivered in the
Presence of:

Declarant:

BULL POINT, LLC
A South Carolina Limited
Liability Company

BY: Neal E. Kirkland

Its: Managing Partner

BY: _____

Its: Managing Partner

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STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF BEAUFORT)

PERSONALLY appeared before me this undersigned witness who, on oath, says that (s)he saw the within named BULL POINT, LCC, 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 7th day of Feb, 2000.

Notary Public for South Carolina

My Commission Expires:
28 Sept 2002

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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.

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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.

2020

Shan Kirkland

FILED
JOHN A. SULLIVAN, JR
R.M.C.
BEAUFORT COUNTY, S.C.
20 FEB -4 AM 11:42
BK 1757 PG 1099
FOLDER #

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EXHIBIT 3

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE
May 12 2020
REFERENCE ID: 518102

Jim Miles
SECRETARY OF STATE
FILED
SEP 2 6 1995

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

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

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

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

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

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

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

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

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

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

a. [X] This corporation will have members.

b. [ ] This corporation will not have members.

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

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

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

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

_____

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

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

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

_____

_____

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

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May 12 2020
REFERENCE ID: 518103
Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

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

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

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

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

Signature of director
(only if named in articles)

Signature of director
(only if named in articles)

11. Each incorporator must sign the articles.

Stancel E Kirkland
Signature of incorporator

Signature of incorporator

Signature of incorporator

FILING INSTRUCTIONS

1. Two copies of this form, the original and either a duplicate original or a conformed copy, must be filed.
2. If space in this form is insufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk which will allow for expansion of space on the form.
3. This form must be accompanied by the filing fee of $25.00 payable to the Secretary of State.

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

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE
May 12 2020
REFERENCE ID: 518103
Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

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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;

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ORIGINAL ON FILE IN THIS OFFICE
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SECRETARY OF STATE OF SOUTH CAROLINA

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(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

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Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

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:ation 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 Gantt

Holly Moore

BULL POINT HOMEOWNERS ASSOCIATION, INC.

STANCEL E. KIRKLAND

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EXHIBIT 4

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE
Apr 24 2018
REFERENCE ID: 1804231836503
Mark Hammond

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STATE OF SOUTH CAROLINA
SECRETARY OF STATE

NONPROFIT CORPORATION
ARTICLES OF AMENDMENT

TYPE OR PRINT CLEARLY WITH BLACK INK

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

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

2 Date incorporated September 26, 1995

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

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

B July 5th 2006

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

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

(a) Designation (Classes of Membership)

(b) Number of memberships outstanding

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

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

(e) Complete one of the following as appropriate

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

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

0698817-0130 FILED 08/14/2006
BULL POINT PROPERTY OWNERS ASSOCIATION INC
Filing Fee $10.00 ORIG

Mark Hammond South Carolina Secretary of State

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE
Apr 24 2018
REFERENCE ID: 1804231836503

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Bull Point Homeowners Association, Inc
Name of Corporation

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

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

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

Date 5 July 2006

Bull Point Homeowners Association, Inc
Name of Corporation

Stancel E. Kirkland Sr.
Signature or Officer

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

FILING INSTRUCTIONS

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

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

3 This form must be accompanied by the filing fee of $10 00 payable to the Secretary of State

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

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Exhibit 5

Chart Summarizing Deeds

BULL POINT PROPERTY OWNERS ASSOCIATION, INC COMMON AREA CONVEYANCES

DATE RECORDED	INSTRUMENT	GRANTOR	GRANTEE	DEED BOOK	PAGE	PROPERTY DESCRIPTION (BRIEFLY)	PLAT BOOK	PAGE
11/21/2008	WD	BULL POINT, LLC	BULL POINT PROPERTY OWNERS ASSOCIATION, INC.	2785	2037 et seq	0.72 acres incl. boat ramp & community dock	75	180
11/21/2008	WD	Id.	Id.	2785	2022 et seq	9.42 acres w/improvements Maint. Area	123	38
11/21/2008	WD	Id.	Id.	2785	2019 et seq	Phase I. Roads, R/Ws , and drainage easemts & improv.	51	165
11/21/2008	WD	Id.	Id.	2785	2025 et seq	Phase II, roads r/ways, & drainage easemts & improvs.	75	180
11/21/2008	WD	Id.	Id.	2785	2031 et seq	Phase III, roads,r/ways & drainage/trail easements	87	22
11/21/2008	WD	Id.	Id.	2785	2016 et seq	Phase VA roads,r/ways, bridge, drainage improvs.	119	195
11/21/2008	WD	Id.	Id.	2785	2028 et seq	Phase VB roads,r/ways, easements, drainage improv.	92	34
11/21/2008	WD	Id.	Id.	2785	2034 et seq	Phase VI roads,r/ways, drainage easemts. , trails,	105	106
12/29/2006	WD	Id.	Id.	2499	0738 et seq	Clubhouse site Phase VIII 7.37 acres + improvs.		
12/28/2006	WD	Id.	Id.	2497	1060 et seq	Magnolia Island, bridge, and access	96	116
10/11/2007	WD	Id.	Id.	2637	812 et seq	Agreemt. Re Clubhouse DB no subdivision	121	153
10/11/2007	WD	Id.	Id.	2637	819 et seq	Amended Clubhouse Deed -8.24 acres	121	153
12/28/2006	WD	Id.	Id.	2497	1071 et seq	WILLIAM BULL PARK	86	176
12/28/2006	WD	Id.	Id.	2497	1067 ET SEQ	Boat & RV Storage Area 8.97 acres	Ph VIII plat	
12/28/2006	WD	Id.	Id.	2497	1064 et seq	0.74 acres Huspah Boat Landing	86	176

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EXHIBIT 6

CERTIFIED TO BE A TRUE AND CORRECT COPY
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REFERENCE ID: 1804231836503

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STATE OF SOUTH CAROLINA SECRETARY OF STATE

NOTICE OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OR BOTH OF A NONPROFIT CORPORATION

TYPE OR PRINT CLEARLY WITH BLACK INK

Pursuant to Sections 33-31-502 and 33-31-1508 of the 1976 South Carolina Code of Laws, as amended, the undersigned corporation submits the following information:

1. The name of the corporation is Bull Point Property Owners Association, Inc.
(Must match name on record with Secretary of State's Office)

2. The corporation is (complete either "a" or "b", whichever is applicable)

   a. A domestic nonprofit corporation incorporated in South Carolina on September 26, 1995 or
   (Must match date on record with Secretary of State's Office)

   b. A foreign nonprofit corporation incorporated in _____ on _____,
   State
   and authorized to do business in South Carolina on _____.
   (Must match date on record with Secretary of State's Office)

3. The street address of the registered office (currently on file) in South Carolina is
97 Bull Point Drive (Street Address) Seabrook (City), South Carolina 29940 (Zip Code).

4. If the current registered office is to be changed, the new street address will be
114 Barnaby Bluff (Street Address) Seabrook (City), South Carolina 29940 (Zip Code).

5. The name of the registered agent currently on file is Stancel Kirkland.

6. If the current registered agent is to be changed, the name of the new registered agent is
Russell Dimke.

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

Russell Dimke
Signature of New Registered Agent

*Pursuant to Sections 33-31-502(5) and 33-31-1508(5) of the 1976 South Carolina Code of Laws, as amended, the written consent of the registered agent may be attached to this form.

7. The street addresses of the registered office and of the office of the registered agent, as changed, will be identical.

130318-0230 FILED: 03/11/2013
BULL POINT PROPERTY OWNERS ASSOCIATION, INC
Filing Fee: $10.00 ORIG

Mark Hammond
South Carolina Secretary of State

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE
Apr 24 2018
REFERENCE ID: 1804231836503

March 6, 2013
Date

Bull Point Property Owners Association, Inc.
Name of Corporation

Signature of Officer

Russell Dimke
Type or Print Name

Secretary/Treasurer
Position of Officer

FILING INSTRUCTIONS

1. Two copies of this form must be submitted for filing.
2. $10.00 filing fee made payable to the South Carolina Secretary of State.
3. Self-addressed stamped return envelope.
4. Return to: Secretary of State
   Attn: Corporations
   1205 Pendleton St., Ste. 525
   Columbia, SC 29201

Form Revised by South Carolina Secretary of State, March 2012

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

EXHIBIT 7

CERTIFIED TO BE A TRUE AND CORRECT COPY
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ORIGINAL ON FILE IN THIS OFFICE
Apr 24 2018
REFERENCE ID: 1004231836503

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STATE OF SOUTH CAROLINA
SECRETARY OF STATE

NONPROFIT CORPORATION
ARTICLES OF AMENDMENT

TYPE OR PRINT CLEARLY WITH BLACK INK

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

1. The name of the nonprofit corporation is Bull Point Property Owners Association, Inc.
(Must match name on record with Secretary of State's Office)

2. Date Incorporated September 26, 1995
(Must match date on record with Secretary of State's Office)

3 On November 1, 2014, the following amendment was adopted,
(Date the amendment was decided upon)
That the name of the corporation be changed from Bull Point Property Owners Association, Inc. to: Bull Point Plantation Property Owners Association, Inc.

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

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

(a) Designation (Classes of Membership) _____

(b) Number of memberships outstanding _____

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

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

(e) Complete one of the following as appropriate

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

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

150208-0277 FILED: 02/04/2015
BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATIO
Filing Fee: $10.00 ORIG
Mark Hammond South Carolina Secretary of State

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE
Apr 24 2018
REFERENCE ID: 1804231836503

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Bull Point Property Owners Association, Inc.
Name of Corporation

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

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

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

12/31/14
Date

Bull Point Property Owners Association, Inc.
Name of Corporation

Signature of Officer

Russell Dimke
Type or Print Name

Secretary / Treasurer
Position of Officer

FILING INSTRUCTIONS

1. Two copies of this form must be submitted for filing.
2. Filing fee of $10.00 payable to the Secretary of State
3. A self addressed stamped return envelope.
4. If the space in this form is insufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk which will allow for expansion of space on the form.

Mail to: Secretary of State
Attn: Corporations
1205 Pendleton St, Suite 525
Columbia, SC 29201

Form Revised by South Carolina Secretary of State, March 2012

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EXHIBIT 8

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

I. STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Civil Action 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 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, 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 POINT SC, LLC, GSI, LLC and WILLIAM E. GAVIGAN,

ADDITIONAL AFFIDAVIT OF MICHAEL PELLECCHIA IN OPPOSITION TO THE MOTION FOR PRELIMINARY INJUNCTION AND RULE TO SHOW CAUSE OF WILLIAM E. GAVIGAN AND BULL POINT SC, LLC

Third-Party Plaintiffs,

-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.

BEFORE ME PERSONALLY APPEARED MICHAEL PELLECCHIA, who first being duly sworn, deposes and says as follows:

1. I am over 21 years of age and am competent to attest to the facts stated herein.
2. All of the facts stated herein are within my personal knowledge.
3. At all times relevant to this Affidavit I have been a member in good standing of the Bull Point Plantation Property Owners Association (hereinafter the "POA").
4. I am signing the Affidavit solely in my capacity as a member of the Bull Point Plantation Property Owners Association, Inc. Board of Directors.
5. I was a Health Care Executive and retired CPA prior to moving to South Carolina where I live in retirement.
6. I am a current member of the Board of Directors of the POA, having been duly elected on February 15, 2020 by the POA membership in a court ordered election. I am currently acting Treasurer of the Board of Directors of the POA. As such, I have become involved in the operational aspects of the POA,

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including, its financial affairs. I have reviewed and become familiar with the financial records referred to in this Affidavit.

7. I have reviewed certain bank accounts of the POA from BB&T Bank that were generated both before and after February 5, 2015. These bank accounts show that the main bank account number for deposit of POA assessments and other POA receivables has remained the same and has not changed from 2006 thru November, 2019 at which time the account was closed and moved to Ameris Bank.

8. I have reviewed certain Federal and State of South Carolina Tax Returns of the POA from 2006 through 2018, including, a random review of interest income claimed on several returns, verifying those dollars matched with the General Ledger in the Quick Books Accounting software of the POA. These tax returns show that POA's Tax Identification Number (EIN) has remained the same and has not changed from 2006 to the present. The tax year 2019 has not been filed yet but will also use the same EIN.

9. In compliance with Chief Justice Beatty's April 22, 2020 Order Governing the Operation of the Trial Courts During the Coronavirus Emergency, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

FURTHER AFFIANT SAYETH NAUGHT.

MICHAEL PELLECCHIA
as a Member and on behalf of the
Bull Point Plantation Property Owners Association Board of Directors

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EXHIBIT 9

8 SW 13 9333 D. Johnson

BEAUFORT COUNTY SC - ROD
BK 3600 Pgs 2579-2586
FILE NUM 2017045468
08/21/2017 01:19:51 PM
REC'D BY sherrellw RCPT# 861
RECORDING FEES $13.00

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After recording return to:
Darrell Thomas Johnson, Jr.
300 Main Street,
P.O. Box 1124
Hardeeville, SC 29927

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ASSIGNMENT AND ASSUMPTION OF DECLARANT'S RIGHTS

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

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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

By: _____ (SEAL)
Name: Janelle Iturbe
Its: Vice-President

By: _____ (SEAL)
Name: Joseph Steinhauser
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 Iturbe and Joseph Steinhauser, 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.

_____
Notary Public
My commission expires: 4.15.20

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
HEATHER L. McGILL, Notary Public
Horsham Twp., Montgomery County
My Commission Expires April 15, 2020

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ASSIGNEE:

WITNESSES:

GSI, LLC,
a South Carolina limited liability company

By: _____(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.

Notary Public
My commission expires:

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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

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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 Corner, 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,

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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

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EXHIBIT 10

3 8PB Darnell Johnson

BEAUFORT COUNTY SC - ROD
BK 3600 Pgs 2641-2643
FILE NUM 2017045480
08/21/2017 01:34:03 PM
REC'D BY pbaxley RCPT# 881357
RECORDING FEES $8.00

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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 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.

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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]

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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

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EXHIBIT 11

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BULL POINT PLANTATION

Property Owners Association, Inc.

May 8, 2019

M. Dawes Cooke, Jr., Esq.
Barnwell Whaley Patterson & Helms, LLC
PO Drawer H
Charleston, SC 29402

Re: *Jon Attridge, et al. v. the Board of Directors of Bull Point Plantation Property Owners Association, Inc., et al.*,
Case No. 2018-CP-07-02345

Dear Mr. Cooke:

On behalf of the Bull Point Plantation Property Owners Association, Inc., I write to request that you and your firm withdraw from representation of the plaintiffs in the above-referenced matter and, further, that you and your firm provide to the Association all attorney-client privileged and work-product regarding the same.

The Association requests your withdrawal as there exists a clear conflict of interest as a result of your prior meetings with Association personnel regarding the subject matter of the Action. As early as January 2017, and possibly before, you were in communication with Association personnel. By way of example, on January 4, 2017, Gary Okey wrote to you and stated: "Ron [Lambe], Pete [Marzluff] and I would very much like to meet with you to discuss your possible representation of the Bull Point [Plantation Property Owners Association, Inc.]." At the time of this letter, Ron Lambe was the Association's Secretary and Treasurer, Pete Marzluff was the Association's Director of Operations, and Gary Okey was a Non-Voting Member of the Association's Board of Directors. Thus, this communication was by Association personnel in connection with Association-related matters.

In the January 2017 communication, Mr. Okey indicated that issues to be considered included, among other things, certain legal options regarding Billy Gavigan and the means by which homeowners and/or the POA could acquire the Declarancy. Whether directly or indirectly, these matters are at issue in the Action.

Following your January 4th email exchange, the Association further understands that you met with Messrs, Lambe, Marzluff, and Okey on January 11, 2017.

The Association contends that it is immaterial and irrelevant that Messrs, Lambe, Marzluff, and Okey no longer are officers and/or directors of the Association because these individuals met with you in their corporate capacity. The attorney-client relationship, therefore, exists with the Association.

The Association was not properly informed and has not given its consent to waive these conflicts. Please be advised that the Association hereby requests that you and your firm withdraw from representation of the plaintiffs (and third-party defendants) in the Action. Further, you are requested to produce to the Association all attorney-client privileged and work-product materials.

The Association would expect your response within 10 working days of the date of this letter. We appreciate your attention to this letter and look forward an immediate response.

Very Truly Yours,

BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC.

/s/ Billy Gavigan
Billy Gavigan,
President

cc: S. Jahue Moore, Esq.
Maryann Blake, Esq.
Gene Matthews, Esq.

114 Barnaby Bluff • Seabrook, South Carolina 29940
telephone 843.379.9940 fax 843.379.9942
info@bullpointpoa.com

5/12/19

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EXHIBIT 12

4/10 RB Bull Point PI $10.00

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	LIEN NO. _____
BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC., a South Carolina nonprofit corporation, Plaintiff, vs. OLD SOUTH PROPERTIES, INC., a South Carolina corporation, Defendant.	NOTICE AND CERTIFICATE OF LIEN

BEAUFORT COUNTY SC - ROD
BK 127 Pgs 365-368
FILE NUM 2017063067
11/20/2017 03:01:33 PM
REC'D BY rbins RCPT# 871385
RECORDING FEES $10.00

NOTICE IS HEREBY GIVEN that as of November 1, 2017, Bull Point Plantation Property Owners Association, Inc. ("Association") is due the sum of **$39,160.66** in past-due assessments, fines, late charges, interest and/or other authorized charges, as set forth in the Verified Statement of Account which is attached hereto and incorporated for all purposes as Exhibit "A," plus additional assessments, fines, late charges, interest and/or other authorized charges as may accrue, plus attorneys' fees and the costs of collection.

That said debt is due the Association for assessments, fines, late charges, interest and/or other authorized charges imposed for the common expenses of Bull Point Plantation, plus the costs of collection, attorney's fees and/or other authorized and proper purposes and charges, as authorized by the Declaration of Covenants, Conditions, and Restrictions for Bull Point Plantation dated September 22, 1995; the Ninth Amendment to Declaration of Covenants, Conditions and

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Restrictions for Bull Point Plantation dated January 17, 2000; and any amendments thereto, recorded in the Office of the Register of Deeds for Beaufort County.

That by virtue thereof, and by virtue of this Notice and Certificate of Lien, the Association has and claims a lien to secure the payment of the debt so due and the costs of enforcing such lien upon the following described real property:

> All that piece, parcel and tract of land, with improvements thereon, situate lying and being in Sheldon Township, Gardens County, Beaufort County, South Carolina, and being shown as 1.492 acres, Parcel A, Phase One, Bull Point Subdivision on a plat prepared by Andrews Engineering Co. Inc. dated January 2, 2004 to be recorded.

BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC.

By: _____
Billy Gavigan,
President

November 14, 2017

114 Bull Point Drive
Seabroook, SC 29940

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EXHIBIT A
TO NOTICE OF CERTIFICATE OF LIEN

VERIFIED STATEMENT OF ACCOUNT

CREDITOR:	Bull Point Plantation Property Owners Association, Inc.
DEBTOR:	Old South Properties, Inc.
REAL PROPERTY:	1.492 acres, Parcel A, Phase One, Bull Point Subdivision on a plat prepared by Andrews Engineering Co. Inc. dated January 2, 2004.
AMOUNT DUE:	**$39,160.66** plus additional assessments, fines, late charges, interest and/or other authorized charges, plus the costs of collection and attorney's fees.

Personally appeared before me the undersigned, William E. Gavigan, who, after being duly sworn, swears and affirms the following to be true and correct:

1. That he is the President for the Association and in that capacity he helps manage its day-to-day accounting and financial operations, and as such has personal knowledge of the facts set forth herein.

2. That as of November 1, 2017, the amount of $39,160.66 was owed for past-due assessments, fines, late charges, interest and/or other authorized charges, plus reasonable attorney's fees and the costs of collection, and such additional assessments, fines, late charges, interest and/or other authorized charges as continue to accrue.

[Remainder of page intentionally blank]

3. That the foregoing is a true and accurate statement of the account representing all amounts due the Association as of November 1, 2017, and all just credits have been applied.

BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC.

By: _____
Billy Gavigan,
President

SWORN to and subscribed before me
this 20th day of November, 2017.

_____
Notary Public for South Carolina
My Commission Expires: 3/8/2023

LIZ BROWN NOTARY PUBLIC COM. EXP. 3-8-2023 SOUTH CAROLINA

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EXHIBIT 13

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ELECTRONICALLY FILED - 2019 Jan 14 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701895

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS CIVIL CASE NO.: 2018-CP-07-01895
JOSEPH P. D'AMBROSIO and MARY A. D'AMBROSIO, Plaintiffs, v. WILLIAM E. GAVIGAN, PAUL NOLAN, ROBERT BRITT, DENNIS RATCHUP, UNKNOWN "JOHN DOE," BULL POINT SC, LLC, Defendants, BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC., Intervenor.	**AFFIDAVIT OF WILLIAM E. GAVIGAN**

PERSONALLY APPEARED BEFORE ME WILLIAM E. GAVIGAN, who being first duly sworn, deposes and says:

1. I am over the age of 21 and am competent to make the statements in this affidavit, which are made from personal knowledge under oath and penalty of perjury.

2. All the facts and matters stated herein I make of my own personal knowledge and/or based on my review of business records of Bull Point Plantation Property Owners Association, Inc. The statements made herein are based upon my personal observation.

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3. I offer this Affidavit in support of the Amended Motion for a Preliminary Injunction filed on behalf of Bull Point Plantation Property Owners Association, Inc., and myself as President of the Board of Directors of that organization. I also offer this Affidavit in support of the Motion to Intervene of Bull Point Plantation Property Owners Association, Inc.

4. I am the President of the Board of Directors of Bull Point Plantation Property Owners Association, Inc. (the "POA").

5. I incorporate herein my affidavit dated October 5, 2018, and filed with this Court on or about October 25, 2018.

6. Lake Bellinger is a common area of the POA. For years, the POA has maintained Lake Bellinger and the area immediately around the lake.

    a. The POA needs access to Lake Bellinger in order to perform its duties under the governing documents, and its duties to the members of the POA, and to comply with government standards and requirements.

    b. Everyone who lives, or owns property, on Lake Bellinger is aware, or should be aware, that for years the POA has performed that work on and around the lake.

    c. Everyone who lives, or owns property, on Lake Bellinger therefore has notice of the POA's access to and work on the lake and the area immediately around the lake.

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7. If the Motion for Preliminary Injunction is not granted, the POA will suffer irreparable harm. That irreparable harm includes, but is not limited to:

   a. Inability of the POA to access Lake Bellinger and the area completely around the lake for the purpose of (among other things) maintenance, including to ensure the proper standards of the lake and its surrounding shorelines;

   b. Likely injury to POA workers and personnel through the actions of Mr. D'Ambrosio;

   c. Possible injury to Mr. D'Ambrosio himself if he continues to inject himself in front of the machinery used to maintain common areas of the POA;

   d. Significant deterioration of the condition of Lake Bellinger and the area around the lake, which becomes exponentially more difficult to restore as the condition of the lake deteriorates;

   e. Likely significant decrease in property values at Bull Point due to the deterioration of the lake and the area around the lake;

   f. Likely loss of residents and members of the POA due to the decrease in property values and condition on the common area, as articulated above;

   g. Likely loss of prospective residents and members of the POA due to the deterioration of the common area, as articulated above.

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8. If the Motion for Preliminary Injunction is granted, the POA will continue to maintain the lake and the area around the lake, and the *status quo* will be maintained.

9. For, *inter alia*, the reasons described above, the POA has legal and factual interests in the issues that are the subject of this action, including:

   a. the easements around Lake Bellinger and the numerous properties that border the lake;

   b. the POA's and its officers' and agents' ability to use those and other easements to fulfill the POA's duties under the governing documents and to its members; and

   c. the interpretation of the POA's governing documents, which likely would affect the POA's rights and interests in other areas.

10. The disposition of this action may as a practical, factual, and legal matter impair or impede the POA's ability to protect its numerous interests.

[SIGNATURE APPEARS ON THE NEXT PAGE]

FURTHER AFFIANT SAYETH NOT.

William E. Gavigan

SWORN to and subscribed before me

this 14 day of January, 2019

(L.S.)

Notary Public for SC

My Commission Expires: 6/8/28

COURTNEY TEPERA
NOTARY
PUBLIC
SOUTH CAROLINA

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EXHIBIT 14

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ELECTRONICALLY FILED - 2018 Sep 26 5:52 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701895

"OLD SOUTH" ?
upfront & inside
Bull Point
YES CAROL

THAT MOBILE HOME
THAT IS OWNED BY BULL POINT LLC
AS SHOWN ON TITLE BY DMV
YES CAROL

The POA, In my professional view, Is stronger than it's ever beel New Members are moving and calling Bull Point home. The staff has Bull Point looking great and more Members have real knowledge, attend. Even complain (Carol) Yes about "Members Conduct" policies... than EVER Beforel

1. More sales
2. Higher values
3. Communication is 1000% More
4. No more One email a year " Send Your Proxy" as non resident Members
5. Processes are underway to improve the Member services and connectivity to the community.
6. More Puppies

There has a very small 2-3% group In Bull Point for a long time in the "know"... well It's Time to:

MAKE BULL POINT GREAT AGAIN

Carol WE showcase our Members from California to N.J and All Members matter Carol Goodwin Even You... FROM GARY IN NJ TO GARY IN CALIFORNIA EVEN **GARRY IN BULL POINT! Sir Semper Fi Sir!**

Carol YOUR answers are BELOW! **And yes Blue Is my favorite** Color. Join the team Carol and Make Bull Point Great Again and NO ONE NEEDS $10,000.00 to Be a Member Carol... Sorryl **BLUE BIRDS..**

Q and A with My Friend and Fan Carol... I see You Carol :-]

- On November 21st, 2017, Mr. Gavigan, representing the BP POA, filed a lien with the Beaufort County Recorder of documents, on a Bull Point property that he asserted was in arrears since 2004. **CORRECT See Attached Phase I plat reference.. 58 Bull Point drive.**

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- The property, owned by Old South Properties, actually is NOT a lot contained within Bull Point Plantation WRONG and has never been subject...to annual property owners' dues

REFER TO YOUR CC&RS ON WHAT PROPERTY IS EXEMPT, I WAS NOT A VOTING BOARD MEMBER THEN, OBVIOUSLY, SO PLEASE ASK THE PREVIOUS VOTING MEMBERS.....OR DECLARANT CORPORATION WHO "APPOINTED" THEM FROM 2004-2017?

- The amount of the lien filed on that date by Mr. Gavigan, on behalf of the Bull Point Property Owners Association, was in excess of $39,000 (see attached PDF copy of the official lien, signed by Mr. Gavigan, President, Bull Point Property Owners Association.).

Carol AS I'M SURE YOU KNOW CAROL THE LEGAL NAME OF OUR POA IS:

"BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC" (NOW)

1. WILLIAM GAVIGAN IS THE REGISTERED AGENT
2. IN GOOD STANDING AND ACTIVE
3. A SC NON PROFIT FORMED IN 1995

NOT TO BE CONFUSED WITH SOME OTHER SEEMINGLY ODD DISSOLVED ENTITY THAT WAS ALSO REGISTERED TO THE POA ADDRESS? (CHECK THE SEC OF STATE WEBSITE)

"BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION" ???

THE "POA" LEGAL CORP NAME LINAGE IS BELIEVED TO BE as follows

"BULL POINT HOME OWNERS ASSOCIATION, INC" 1995-2007
"BULL POINT PROPERTY OWNERS ASSOCIATION, INC" 2007-2015
"BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC" 2/2015 PRESENT

PHASE 1 SUBDIVISON PLAT BELOW
CLICK BELOW

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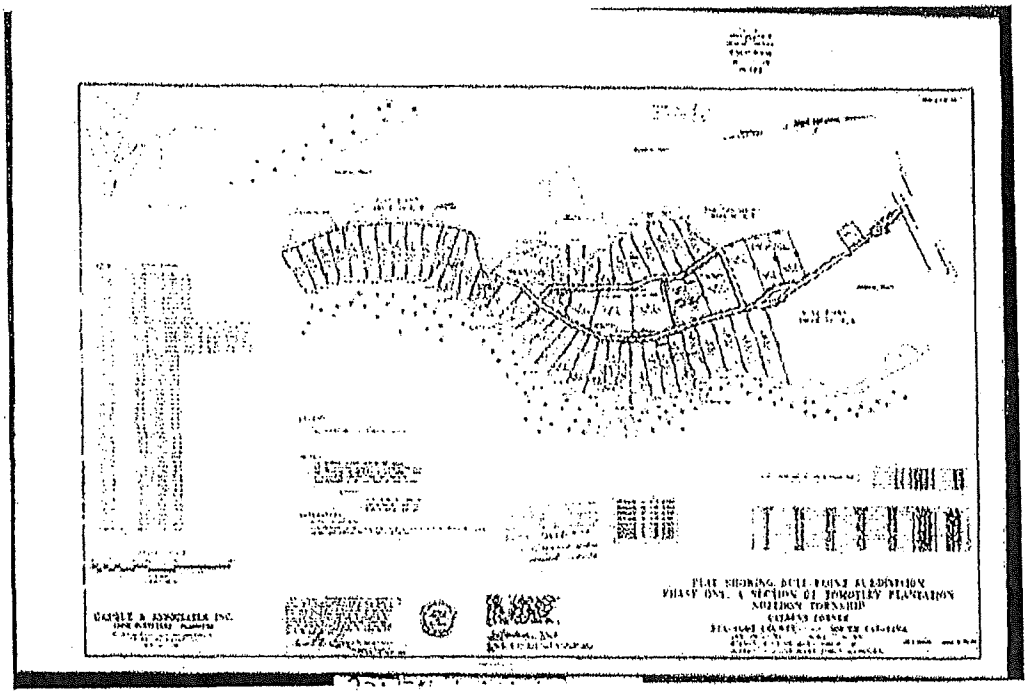

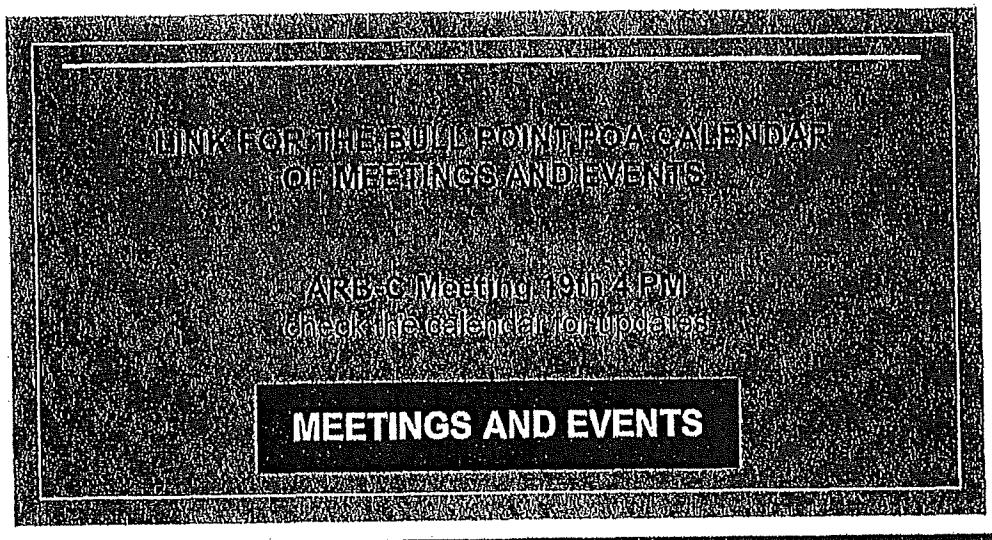

See what is going on at Bull Point

UPDATES TO AMENITIES

Bull Point is looking great. See the great updates that are underway. Bull Point is looking great see a few of the great things getting done. Bull Point is growing and sales are underway.

NEW HOMES UNDERWAY

More members are making the move to Bull Point. The ARB-C Process is being updated and NEW HOMES are underway.

POA WEBSITE **BULL POINT WEBSITE**

Bull Point POA | 114 Barnaby Bluff, SEABROOK, SC 29940

Unsubscribe maryjoed@bellsouth.net

Update Profile | About our service provider

Sent by billy@bullpointpoa.com in collaboration with

Constant Contact

Try it free today

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Exhibit 15

Eighteenth Amendment to Declaration dated November 16, 2018

bull

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

11/07/2018 03:45:47 PM
REC'D BY sherrellw RCPT# 1912
RECORDING FEES $12.00

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

EIGHTEENTH AMENDMENT TO 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

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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

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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.]

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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

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

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

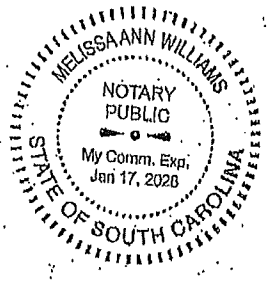

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EXHIBIT 17

ELECTRONICALLY FILED - 2020 Dec 04 9:39 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345
ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

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 PELLECCHIA, JANICE S. PELLECHIA, FRANK H. ROBERTS SR., RICHARD SWILPA, MICHELE GALLANT, PHYLLIS K. KAUPP-SEAS, ROBERT P. BRENDZA, and ROBIN E. BRENDZA individually and in their derivative capacity on behalf of BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, 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 SC, LLC; GSI, LLC; and WILLIAM E. GAVIGAN,

Third-Party Plaintiffs,

-vs-

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' SUPPLEMENTAL MOTION FOR PRELIMINARY INJUNCTION AND MOTION/PETITION FOR RULE TO SHOW CAUSE

ELECTRONICALLY FILED - 2020 Dec 04 9:39 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702345
ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

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.

This matter is before the Court on Plaintiffs' Supplemental Motion for Preliminary Injunction and Motion/Petition for Rule to Show Cause. Plaintiffs filed this motion on September 29, 2020, supplementing the motion that they filed on February 13, 2020, which the Court has under advisement. Also under advisement is the Motion of Defendants Gavigan and Bull Point SC, LLC for Preliminary Injunction and/or Rule to Show Cause Via Evidentiary Hearing filed on May 8, 2020. The Court heard the previously filed motions on June 1, 2020 and allowed the parties until September 4 to supplement the record on them.

Plaintiffs' Supplemental Motion is based upon actions of certain Defendants that have occurred since the record closed on the previously filed motions. Plaintiffs requested an expedited hearing and moved for a temporary restraining order until the matter could be heard on the merits. The Court granted the temporary restraining order on October 13 and heard argument on the motion on Friday, October 16. The Court informed the parties that it did not intend to take live testimony on the motion. See SCRCP 43(e). The Court heard the motion by videoconference on October 16 as provided in the Supreme Court's Order on the Operation of the Trial Courts During the Coronavirus Emergency as last amended on April 22, 2020. The Court received and considered briefs, affidavits, and other documents submitted by the parties. The Plaintiffs were represented at the hearing by Dawes Cooke, Esq. and the Defendants were represented by Ryan Neville, Esq. and Eugene Matthews, Esq.

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Plaintiffs' motion states that it was filed to enforce the judgment that this Court entered in this matter on November 18, 2019, granting Plaintiffs' Motion for Partial Summary Judgment and denying Defendants' cross Motion for Partial Summary Judgment and ordering that governance of the Bull Point Plantation property owners' association (the "POA") be turned over to a Board of Directors to be elected by the members of the POA. That judgment is currently on appeal. Defendants did not request a stay of the judgment pending appeal.

Plaintiffs contend, in essence, that the Defendants – particularly Defendants William Gavigan and Christopher Quick -- have purported to take over the POA in violation of this Court's order that enjoined the Defendants from "taking any actions in further governance of the POA", ordered that Defendants "immediately cease acting as the POA's Board of Directors", and directed that the POA's members be allowed to elect its Directors. Plaintiffs' motion focuses on two significant recent acts by the Defendants. First, Defendants Gavigan and Quick, along with non-party Rich Riney, have formed a putative Board of Directors of the POA and filed a lawsuit in the name of the POA to enjoin the current, elected Board from acting on behalf of the POA. Second, the Defendant Gavigan has pronounced his corporation Bull Point, LLC to be the Declarant of Bull Point Plantation and has recorded another amendment[1] to the Declaration of Covenants, Conditions, and Restrictions for Bull Point Plantation (the "Declaration").

The Court's Order

This Court's November 18, 2019 Order provides that "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...." (Order, paragraph 4, p. 18). The Court appointed an interim Board of Directors and directed that the members of the POA

[1] The twentieth amendment was recorded on September 25, 2020. The nineteenth amendment, recorded on January 24, 2020 was one of the subjects of Plaintiffs' February 13 motion.

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elect a Board: "The Court orders that an election will take place within 90 days of the date of this Order. ... 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."

Defendants contend that they did not violate this Order because the Order is addressed to some other POA, not Bull Point Plantation Property Owners Association, Inc. Specifically, Defendants contend that Plaintiffs brought this suit for the benefit of either an unincorporated association or another corporation that was dissolved in 2013, named "Bull Point Plantation Property Owners Association" (without an "Inc."). Defendants base this contention on the fact that the captions of Plaintiffs' Complaint and this Court's November 18, 2019 Order state that Plaintiffs bring this action "individually and in their derivative capacity on behalf of Bull Point Plantation Property Owners Association." (without the "Inc."). Therefore, Defendants contend, they are not enjoined from serving on the Board of, or taking actions in further governance of, Bull Point Plantation Property Owners Association, Inc. The Court finds this contention without merit. The omission of "Inc." in part of the caption notwithstanding, there is no mistaking what POA the Order refers to. The Order (at p. 3) recites that "On September 26, 1995 the Bull Point Plantation Homeowners Association, Inc. was incorporated by filing Articles of Incorporation (hereinafter 'Articles') with the State of South Carolina Secretary of State." Footnote 1 to that sentence explains, "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." This much is uncontested; the Defendants do not deny that Bull Point Plantation Property Owners Association, Inc. is the same corporation as Bull Point Homeowners Association, Inc. This entity is referred to as the POA throughout the Order. Clearly the POA that the Order refers to is Bull Point Plantation Property Owners Association, Inc. It is obvious that the omission of the "Inc."

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from the Plaintiff side of the caption was a typographical error. The caption includes the "Inc." on the Defendant side of the caption ("The Board of Directors of Bull Point Plantation Property Owners Association, Inc.; ....").[2] The original Complaint omitted the "Inc.", but the body of the Complaint clearly stated that Plaintiffs were bringing the case for the benefit of Bull Point Plantation Property Owners Association, Inc. The caption was corrected on June 13, 2019 when Plaintiffs filed their Amended Complaint including the "Inc." in the caption. Defendants contend that the amendment was not authorized, but this is incorrect. Plaintiffs moved to amend their Complaint on April 22, 2019, attaching the proposed Amended Complaint as an exhibit to the motion. The proposed Amended Complaint included the "Inc." on both sides of the caption. Nobody objected to the addition of the "Inc.", and Judge Maite Murphy granted the motion to amend on June 13, 2019. Thus, since June 13, 2019 the correct caption of this case has included the "Inc." on both sides.

This Court's November 18, 2019 Order clearly enjoins the Defendants from acting as the Board of Directors of the Bull Point Plantation POA, Bull Point Plantation Property Owners Association, Inc.

Defendants' Recent Actions

On September 14, 2020, the Defendants Gavigan, Quick, and another former Gavigan-appointed Director Rich Riney, each "in his capacity as a Director of Bull Point Plantation Property Owners Association, Inc." executed an "Action by Unanimous Written Consent of the Board of

[2] The Court notes that the Order was prepared by Plaintiffs' counsel as a proposed Order. It is evident that the proposed Order used the original caption of the case, as the original Complaint also omitted the "Inc." The proposed Order was presented to the Defendants for comment before the Court signed it. While the Defendants made numerous comments on the proposed Order and a number of changes were made, no mention was made of the omission of the "Inc." from the caption.

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Directors of Bull Point Plantation Property Owners Association, Inc." The resolution acknowledges this Court's November 18, 2019 Order:

> **WHEREAS,** in or about November 2019, the court in the Attridge Action issued an order (the '2019 Order'), which, among other things, directed that an Interim Board of Directors be appointed for the POA;

Then the resolution misstates the Order's import by incorrectly reciting that the POA was not referenced in the Order and that the Plaintiffs are not members of the POA:

> **WHEREAS,** following the 2019 Order, the Interim Board for the POA held an election for and on behalf of this Corporation, which was not a party to the Attridge Action, which was not referenced in the 2019 Order, which none of the plaintiffs therein are members, and which no one at the election is a member, rather than for the POA as mandated by the 2019 Order;

The resolution goes on to declare all of the actions of the Court-ordered Board of Directors to be ultra vires, and it then resolves "that this Corporation shall be and hereby is authorized to commence a legal action, among other things, for declaratory relief and to enjoin all Ultra Vires Actions" of the elected Board. Defendants Gavigan and Quick and Mr. Riney then made good on their resolution, filing suit on September 16 to declare that the Directors who were elected pursuant to this Court's Order are not authorized to serve on the POA's Board and to enjoin them from doing so.

The Court finds that these actions by the Defendants Gavigan and Quick violate this Court's November 18, 2019 Order because the Defendants purport to serve on the POA's Board of Directors without being elected by the POA's members and because they purport to take actions in further governance of the POA, which the Order enjoins them from doing.

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Defendant Gavigan's Actions as Purported Declarant

On January 24, 2020, Mr. Gavigan, acting as Manager of the original developer Bull Point, LLC[3], recorded the "Nineteenth Amendment" to the Declaration. This was one of the subjects of Plaintiffs' February 13 motion, which the Court has under advisement. Now Mr. Gavigan, again as Manager of Bull Point, LLC, has recorded the "Twentieth Amendment". The Amendment recites that until 2020 the POA was "an unincorporated nonprofit association" and was finally incorporated on February 5, 2020. Contrary to this recitation, this Court's November 18, 2019 Order – as explained above -- provides that the POA is Bull Point Plantation Property Owners Association, Inc. On February 5, 2020 Mr. Gavigan filed with the Secretary of State articles of incorporation for "Bull Point Plantation Owners Association, Inc." In other words, the Twentieth Amendment purports to nullify this Court's Order by deeming Mr. Gavigan's new corporation to be the POA. The Twentieth Amendment also purports to ratify all prior acts of the previous Declarants, including specifically Gavigan's companies Defendants GSI, LLC and Bull Point SC, LLC. This Court's November 18, 2019 Order found that "Defendants [including specifically Bull Point SC, LLC] did not have the authority to amend the Declarations to eliminate the Fifteenth Amendment...." (Order, paragraph 3, p. 18). The Order enjoined the Defendants "from repealing or refusing to comply with the Fifteenth Amendment of the Declarations." (Id. at paragraph 4). The Order declared that "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

[3] The Court assumes, without finding, that Mr. Gavigan is in fact the owner and Manager of Bull Point, LLC. Bull Point, LLC was the developer and original Declarant of Bull Point Plantation. It defaulted on its development loan in 2011, filed for bankruptcy protection in 2012, and subsequently surrendered its properties through foreclosure. Bull Point, LLC has exercised none of the rights and performed none of the duties of the Declarant since at least December 2012, when it purported to assign its Declarant rights to DB Aster.

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amending the Declarations, are void." (Id. at paragraph 5). The Order invalidated the Defendants' Eighteenth Amendment (that had turned the Contingency Fund over to the Defendants) and reinstated the Fifteenth Amendment (giving control of the Contingency Fund to the POA's Contingency Fund Committee) (Id. at paragraph 7). In purporting to ratify all of the acts of Defendant Bull Point SC, LLC, the purported Twentieth Amendment would nullify this Court's Order.

The Amendment also purports to change numerous other provisions of the Declaration, evidently to improve Mr. Gavigan's arguments that Bull Point, LLC is the Declarant and that Mr. Gavigan's new property owners' association is the real POA. In the process, it would remove Phases III and V-B from the POA. This would expel forty to fifty members from the POA, both depriving them of the benefits of membership and depriving the POA of the ability to assess them for their share of the cost of maintaining Bull Point Plantation. This would cause a significant increase in assessments to other members who would have to absorb the lost assessments.

Plaintiffs strenuously contest the Defendants' claim that Bull Point, LLC is the Declarant. They point out that Bull Point, LLC abandoned its claim to the Declarancy in 2012 when it executed a purported assignment of Declarant's rights to DB Aster; that since that time Bull Point, LLC never performed any of the obligations or exercised any of the rights of the Declarant; and that Bull Point, LLC relinquished all of its property interests in Bull Point Plantation. The Declaration does not require there always to be a Declarant; the Declarancy is not permanent anyway, and the POA is designed to operate in perpetuity without a Declarant. Plaintiffs contend that if anyone is the Declarant, it is the POA itself because in 2015 the POA acquired Bull Point, LLC's entire remaining property interest in Bull Point Plantation through foreclosure of the mortgage on Lot 223 – which satisfies the Declaration's definition of Declarant. The question of

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who, if anyone, is the Declarant is not before the Court, however. Indeed, Bull Point, LLC is not a party to this case and had not claimed to be the Declarant when this Court issued its November, 2018 Order.[4] Nevertheless, the Court finds that Defendant Gavigan's attempts to exercise the authority of the Declarant through his company Bull Point, LLC violated this Court's November 18, 2019 Order. Mr. Gavigan initiated and signed the Nineteenth and Twentieth Amendments to the Declaration. He also executed the "Consent and Approval" to the Twentieth Amendment on behalf of Defendants Bull Point SC, LLC and GSI, LLC. The Twentieth Amendment radically changes the structure of Bull Point Plantation, among other ways by excluding many property owners from the POA. Perhaps most significantly, the amendment changes Bull Point Plantation Property Owners Association, Inc. from the POA into the "Declarant Holding Company", and it makes Mr. Gavigan's new company, Bull Point Plantation Owners Association, Inc., the POA. The Order enjoins the Defendants "from taking any actions in further governance of the POA." The purported enactment of these amendments are unquestionably actions in further governance of the POA.

The Court finds unavailing Defendant Gavigan's contention that he did not take any actions in further governance of the POA, but rather his company, Bull Point, LLC did. One is not insulated from responsibility for his own acts because he performed them in the name of an LLC. *16 Jade St., LLC v. R. Design Constr. Co.,* 398 S.C. 338, 728 S.E.2d 448 (S.C. 2012). This Court enjoined the Defendants, including Mr. Gavigan, from taking *any* actions in furtherance of the governance of the POA. The Court finds that Defendant Gavigan did take actions in further governance of the POA. If, as he contends, he is the Manager and sole member of Bull Point,

[4] On January 10, 2020 Bull Point, LLC filed a "Petition for Interpleader", the substance of which appeared to be a motion to intervene as a party to claim the status of Declarant. However, it withdrew its petition before it could be heard.

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LLC, then only he could cause that company to enact and record purported amendments to the Declaration. The purported enactment of amendments to the Declaration – and other instances that the Plaintiffs have brought to the Court's attention where Mr. Gavigan has purported to represent the Declarant – were undeniably intended to govern the POA.

The Court also finds unavailing Defendant Gavigan's argument that Bull Point Plantation Property Owners Association, Inc. was never the real Bull Point POA. Defendants argue that Bull Point Plantation Property Owners Association, Inc. is not the POA because the Declaration defines the "Association" as "Bull Point Plantation Owners Association, Inc., a South Carolina non-profit corporation." Defendants point out that this name is different than Bull Point Plantation Homeowners Association, Inc., the predecessor of Bull Point Plantation Property Owners Association, Inc. On February 5, 2020 Defendant Gavigan filed Articles of Incorporation for a company called Bull Point Plantation Owners Association, Inc. He subsequently conveyed to this new corporation some of the POA's common properties that he conveyed from Bull Point Plantation Property Owners Association, Inc. to Bull Point, LLC in October 2019. He contends that his new corporation is the rightful POA because it has the same name as the "Association" defined in the Declaration. This argument overlooks the undisputed facts surrounding the POA. The Articles of Incorporation for the original Bull Point Plantation Homeowners Association, Inc. were filed in September 1995, contemporaneously with the recordation of the Declaration. The name itself suggests that the corporation is a property owners' association, and the Articles of Incorporation specifically say so. In fact, they say that the corporation's purpose is to "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')." All of the duties and powers described in the Articles are those

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of a property owners' association. The Articles also provide that "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." This corporation has served as the Bull Point Plantation POA since its inception, including the two-plus years of Defendant Gavigan's tenure as its president. Mr. Gavigan himself executed numerous documents as president of Bull Point Plantation Property Owners' Association, Inc., including a recorded affidavit attesting to the authenticity of the company's Bylaws and including the deeds to the POA's common properties that he had the POA convey to Bull Point, LLC. While the name of the corporation is slightly different than the one specified in the Declaration, it is the only corporation that was created contemporaneously with the Declaration and it meets every substantive requirement of the Association described in the Declaration. The Declaration certainly does not provide for the POA to remain an unincorporated association for twenty-five years and then blossom into a corporation, as Defendant Gavigan contends. The Court readily concludes that Bull Point Plantation Property Owners Association, Inc. is and has been the Bull Point Plantation POA.

Even if this were not the case, this Court's November 18, 2019 Order enjoins the Defendants from taking any actions in further governance of the POA. As described at length above, it is unmistakable that the Order addresses the governance of the Bull Point Plantation property owners' association. The Order is on appeal, so this Court retains jurisdiction to enforce it but not to change it. *Arnal v. Fraser,* 641 S.E.2d 419, 371 S.C. 512 (2007); *Wingate v. Wingate*, 259 S.C. 574, 575, 347 S.E.2d 878, 878 (1985). This Court must require the parties to adhere to this Order unless and until it is overturned on appeal. The Order unambiguously enjoins the Defendants from attempting to govern the property owners' association.

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For the foregoing reasons, Plaintiffs' Supplemental Motion for Injunctive relief is GRANTED.

Defendants' Request for Appointment of a Receiver

After Plaintiffs filed their original Motion for Preliminary Injunction and Rule to Show Cause, Defendants filed their own motion. On May 8 they filed their Motion for Preliminary Injunction and/or Rule to Show Cause, in which they sought to enjoin the elected Board of Directors from operating the POA. At the hearing on all motions on June 1, Defendants modified their motion to request appointment of a Receiver for the POA rather than entry of an injunction. The Court permitted the parties to supplement the record after the hearing, finally closing the record on September 4. The Court finds no basis upon which to appoint a Receiver at this time.

"'The appointment of a receiver is a drastic remedy and should be granted only with reluctance and caution.' [*Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control*, 391 S.E.2d 535, 301 S.C. 224 (S.C. 1989)] (citing *Vasiliades v. Vasiliades*, 231 S.C. 366, 98 S.E.2d 810 (1957)). '[A]s a rule, a receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined.' *Pelzer v. Hughes*, 27 S.C. 408, 416, 3 S.E. 781, 785 (1887) (internal quotation marks and citation omitted)." Richland County v. S.C. Dep't of Revenue, 811 S.E.2d 758, 422 S.C. 292 (2018). The statutory grounds for appointing a receiver are set out in S.C. Code Ann. §15-65-10, and the Court has seen no evidence that any of these grounds are met. Among the accusations that Defendants have made against the elected Board are that it improperly transferred five hundred thousand dollars in contingency funds to an out-of-state bank; that it used contingency fund money without proper authority; that it purchased frivolous items such as a

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silencer and a meat processor; that it disturbed historic archaeological sites; and that it improperly authorized installation of utilities. Defendants also claim that the election of Directors violated this Court's Order. All of these claims are without merit. The questioned transfer of contingency funds occurred in 2016, long before the current Board took office, as did the allegedly unauthorized expenditures. Further, the Quick Group audit that Defendant Gavigan commissioned in 2017 revealed that the Contingency Fund was all properly accounted for and that the "transfer" was to purchase certificates of deposit to increase the rate of return. The POA owned a silencer for culling deer long before the current Board took office. The POA does not own a meat processor. There is no evidence that the current Board has ever disturbed a protected archaeological site. The evidence shows that Dominion Energy installed utilities pursuant to an easement that Defendant Gavigan granted in September 2017 on behalf of the then-putative Declarant Bull Point SC, LLC. In short, there is no evidence whatsoever of misfeasance by the current Board of Directors. To the contrary, the evidence demonstrates that the elected Board has brought stability and sound fiscal management to the POA. Plaintiffs submitted an affidavit of support signed by more than seventy members of the POA. Despite Defendant Gavigan's parting shot in announcing that many Bull Point Plantation properties are not actually in Bull Point Plantation and do not have to pay assessments, the current Board has paid off significant debts left by the prior board and is on track to operate the POA in the black in 2020 – which never happened during the prior board's tenure.

The Court is also not persuaded that the Court-ordered election of the Board was handled improperly. Notice of the members' meeting was disseminated through the Constant Contact system, which is how POA meetings and other events have been announced for years. Defendants moved to enjoin the meeting, but Judge Marvin Dukes denied their motion and directed that the meeting go forward. Defendants challenge the validity of the election of the Board because

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members who live in the allegedly excluded phases were allowed to vote and some members were not allowed to vote because they were not current on their payment of assessments. The evidence reflects that the vote was overwhelmingly in favor of the slate of current Board members, so any irregularity in voting eligibility could not have affected the outcome. There is no evidence that proper voting procedures under the governing documents were not followed in connection with the disallowed voters. Further, Board members do not have to be members of the POA, so it makes no difference whether any of the elected Board members live in excluded phases.

In conclusion, the Court finds no basis to appoint a receiver for the POA. The current Board appears to be performing just as this Court intended in its November 18, 2019 Order. The Court will consider any claims of misfeasance that might arise in the future, but the record contains no evidence of misfeasance by the current Board. At this time, Defendants' request for appointment of a receiver is DENIED.

Relief Granted

The Court found in its November 18, 2019 that Bull Point SC, LLC is not and never was the Declarant of Bull Point Plantation and that its actions – including enacting the Eighteenth Amendment and appointing the Board of Directors of the POA – were invalid. The Court granted injunctive relief in recognition of the vital need to restore financial and operational stability to Bull Point Plantation. The evidence before the Court shows every indication that this has occurred, except for the Defendants' interference. The members of the Bull Point Plantation POA have elected a board by an overwhelming majority. The elected Board has restored financial stability, paying off debts that were left by the prior Board and operating the POA within budget for the first time since 2017. The Board has repaired roads and corrected other deferred maintenance within the community infrastructure. In short, it appears that the results intended by the Court's

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November 18, 2019 Order are being accomplished except for the uncertainty and discord that the Defendants' self-help actions are causing. As this Court observed at the June 1, 2020 hearing on the parties' previous motions, a court should not have to enjoin parties from disregarding its orders. However, this appears to be necessary due to the Defendants' determination to avoid the mandates of this Court's previous Order. Accordingly, Plaintiffs' motion for relief is GRANTED as follows:

1. The Court declares that the Nineteenth and Twentieth Amendments are null and void, and the Defendants (acting directly or indirectly, individually or through any other entity) are enjoined from enforcing those amendments;
2. The Court declares that the purported Resolution authorizing Bull Point Plantation Property Owners Association, Inc. to sue the Court-ordered elected Board of Directors is null and void. This Court will assume jurisdiction over the lawsuit that Bull Point Plantation Property Owners Association, Inc. filed against the elected Board of Directors.
3. The Defendants are enjoined from acting, directly or indirectly, individually or through any other entity, as the Declarant of Bull Point Plantation or otherwise purporting in any way to govern or act on behalf of the Bull Point Plantation property owners' association (whether under the name Bull Point Plantation Property Owners Association, Inc. or any other name).
4. The captions of all filings in this case since the amendment of Plaintiffs' Complaint on June 13, 2019 shall be deemed amended to reflect that Plaintiffs are suing individually "and in their derivative capacity on behalf of Bull Point Plantation Property Owners Association, Inc."

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Sanctions

Plaintiffs ask for an award of sanctions for the Defendants Gavigan's and Quick's violations of this Court's November 18, 2019 Order. Specifically, they ask that the Defendants be required to pay Plaintiffs' costs and legal fees incurred in pursuing their February Motion for Preliminary Injunction and Rule to Show Cause, in defending against Defendants' Motion for Preliminary Injunction and Rule to Show Cause, and in pursuing Plaintiffs' instant Supplemental Motion for Preliminary Injunction. "Even though a party is found to have violated a court order, the question of whether or not to impose sanctions remains a matter for the court's discretion." *Metts v. Mims*, 384 S.C. 491, 682 S.E.2d 813 (S.C. 2009), quoting *Lindsay v. Lindsay*, 328 S.C. 329, 338, 491 S.E.2d 583, 588 (Ct.App.1997). As detailed above, the Court finds that the Defendants Gavigan and Quick have violated the Court's Order. Nevertheless, Defendants have articulated at least a colorable explanation why they did not believe that their actions violated the Order, including the inadvertent omission of the "Inc." on the Plaintiff side of the caption of the Order. While the Court does not find the Order ambiguous, in its discretion it declines to impose sanctions at this time. For this reason, Plaintiffs' motion for sanctions is DENIED. The Court reserves the right to impose appropriate sanctions for any further violations of its Orders.

AND IT IS SO ORDERED!

Carmen T. Mullen
Presiding Judge, Fourteenth Judicial Circuit

October ___, 2020

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Beaufort Common Pleas

Case Caption: Jon H. Attridge , plaintiff, et al VS Bull Point Plantation Property Owners Association Inc Board , defendant, et al

Case Number: 2018CP0702345

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142

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EXHIBIT 18

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Minutes
2009 Property Owners Association
Annual Meeting
November 21, 2008

The meeting was called to order by Stan Kirkland who welcomed everyone to the 2009 Property Owners Association Annual Meeting. Russ Dimke, Secretary of the POA, verified and reported the proxies. The total number of votes represented at the meeting exceeded 55% of the eligible membership.

Minutes of the 2008 POA Annual Meeting were approved.

Stan Kirkland reviewed the "Letter from the Developers" (Bull Point LLC) which was included in this year's Budget package. He noted the current economic conditions which had a negative impact on lot sales. Only one (1) Developer lot sold in 2008. Stan pointed out that the source of Developer funds are lot sales and, if that is not sufficient, then borrowed money is needed. Stan stated that Bull Point LLC has a Development Loan in place with BB&T but the loan cannot be used for operating costs like dues. He noted that Bull Point LLC has given the POA a secured mortgage note in the amount of 2008 dues owed by them, plus interest.

Lex Alperin* asked Stan to clarify Bull Point LLC's obligation to pay 2009 dues. Stan noted that for Budgeting Purposes, LLC would only commit to pay one half of their dues but hopes to pay the entire amount in 2009 if sales conditions improve. Lex asked specifically if LLC is obligated to pay dues on all their lots and Stan responded "Yes".

Tim Ristau* asked Stan to summarize the status of LLC's payment of 2007 and 2008 dues. Russ Dimke reported that LLC has paid all their 2007 dues including delinquency charges. For 2008 Russ noted LLC did not make any cash payment of dues but did transfer title of $27,600 in equipment to the POA as a partial payment of these dues. The remaining 2008 dues balance was covered by a secured mortgage note which totals $112,000 including delinquency charges. Tim asked how many lots were represented by the mortgage. Russ reported 42 lots.

Jay Coleman, POA representative, put forward a question submitted by Mark Carpenter** asking why liens were not placed Developer lots for non-payment of dues. Stan responded that if a lien was placed on Developer lots, then they could not sell them.

Stan turned over the meeting to Russ Dimke to present the **2008 Forecast versus 2008 Budget**. A major issue in 2008 was the inability of Bull Point LLC to pay their dues. Russ noted this issue was apparent by mid-year allowing Dick Lovett, Director of Operations, to take sufficient cost control actions to offset most of the dues shortfall of approximately $80,000. Russ stated that POA income for 2008 is expected to be $28K more than Budget due primarily to increased gate fees resulting from higher than anticipated new house construction. An unplanned payment of delinquent 2007 dues on 3 lots also contributed to the income gain.

Community Service Expenses are forecast to be $52K less than Budget due to the cost control actions implemented over the second half of 2008. Labor costs are projected to be $35K less than planned while delays and/or temporary suspension of other cost categories yielded another $14K in savings.

There were 6 lots for which property owners did not pay their 2008 dues. The 2008 Budget assumed 12 such lots, so this favorable result helped overcome the Developer dues shortfall. Russ noted that the 2009 Budget assumes 12 property owner lot dues will be unpaid.

Ed Aguirre* asked about the outlook for dues escalation in the future. Russ stated that the POA takes over responsibility for maintaining an area once the Developers complete it. For 2009, the bridge and

*Property Owner attending the meeting
**Property Owner not present at the meeting

road on Big Bull Island as well as Lake Pocataligo will be added to POA Maintenance's workload. Russ noted that 2009 Budget assumes taking on this added activity without any increase in employee headcount.

Looking ahead, beyond 2009, the addition of the new phase will certainly increase maintenance costs but hopefully this will be offset by the additional dues associated with the new lots. Stan stated that lots in the new phase are not expected to come on stream for another 18- 24 months. Russ commented that the Developers are previously committed to pay dues on the new lots beginning when they become available for sale.

Terry Stone* asked who is responsible for the infrastructure costs of the new phase prior to the release of the lots for sale. Russ stated that all such costs are the responsibility of the Developers and the POA only takes over the costs when the sections are completed.

Dick Lovett noted that any work the POA maintenance does at Bull Point LLC's request, on the property is charged to the Developers. Dick also commented that the Developers pay a portion of his salary (reimburse the POA) for the work he does in conjunction with managing Developer projects.

Mark Michaels* expressed his concern that in the future he would hope dues stabilize or even decrease, if possible. Russ Dime pointed out that the 2009 Budget is actually slightly less than the 2008 Budget. The dues increase this year results from the economic difficulties facing the Developers which has limited them to committing to paying half their dues. Russ noted that when conditions allow the Developers to pay the rest of their 2009 dues, then those funds could help offset some future inflationary increases.

Wayne Cousar* asked about POA staffing and wages. Dick Lovett pointed out an organization chart he prepared which was on display (copy attached). The chart includes the POA Board members, the Architectural Review Board members (volunteers) as well as the paid POA positions. Dick noted that POA Maintenance has five (5) employees ranging in salary from $40K for the manager down to $12/hour for semi-skilled laborers. Part of the labor force is also "contract" labor, i.e. people who provide services for a fee but without receiving any benefits. The POA has 4 contract employees including: The Director of Operations (Dick Lovett); the ARB Administrator, amenity cleaning person, and pool/tennis court maintenance person (Guy Collier).

The question was raised concerning outsourcing of some or all POA Maintenance. Dick answered that outside bids have been obtained for pool maintenance, front gate lawn maintenance, and amenity cleaning services but all exceeded our current internal costs.

Bill Wehmer* commented that he has had experiences with other POA's and has observed that Bull Point Maintenance is very productive and efficiently managed. He specifically noted the outstanding and conscientious job Guy Collier performs, keeping the pool immaculate.

Mark Michaels* asked how many people were covered on the POA medical insurance plan and what increases in premiums are expected. Dick reported 7 employees are covered by the plan. Coverage is offered to the employees only and does not extend to their families. Our 2008 claims experience has been very good (low) and we expect our 2009 rate adjustment to be in the 10% range.

Next on the agenda was the **Review of the 2009 Budget** by Russ Dimke. 2009 Revenues are expected to be $45K less than the 2008 forecast. Security Gate fees are projected to decline by $25K due to much lower new home construction activity. A property owner of 3 lots also paid their delinquent 2007 dues in 2008 and such a windfall is not expected in 2009.

2009 Community Service Expenses are expected to be $34K more than 2008 forecast. $7K of this increase is the result of spending in areas (termite treatment, pond maintenance, etc) that were temporarily suspended in 2008. Labor costs and associated expenses are expected to increase by about 5% or $20K.

*Property Owner attending the meeting 2
**Property Owner not present at the meeting

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This is driven by a modest wage increase, inflationary increases in medical and workman's compensation insurance and no planned repeat of the temporary unfilled positions we experienced during 2008. Utilities are forecast to increase by $4K in 2009 versus 2008 due to an electric rate increase and power usage increase from running the wells to fill the new and existing lakes.

In summary, the 2009 Budget in dollars is actually a little less than the 2008 Budget but the dues payment per lot is increasing by 4.9%. This is the impact of few lots paying dues in 2009 specifically the Developers committing to only paying half their lots.

Courtland Burton* asked what items made up the "All Other Expenses" line under Community Service Expenses on page 5 of the Budget package. Russ responded that the detail cost categories could be found on page 1 of the packet but any specific questions by line item could be addressed by the POA office if requested.

Michael Woods* asked why Lake Bellinger shore areas are still being maintained given the lake will be repaired. Dick Lovett responded that the lake shores are considered part of the Lake Bellinger amenity. Mike also asked if the POA still provides the labor to maintain the median of Route 21 in front of Bull Point as well as collect trash on Old Sheldon Church Road. Dick answered that the POA continues to do so. He noted that the Board reviewed this service after last year's annual meeting and voted to continue it.

Terry Stone* asked if the lakes are owned by the POA and Stan Kirkland noted that although they are designated common areas, they have not yet been deeded to the POA. He said that once they are fully completed, they will be transferred over to the POA.

Russ updated the status of the Contingency Fund. He noted that $88K of the Capital Equipment Funds was spent to obtain title of maintenance equipment previously owned by Bull Point LLC. In addition, the POA purchased a wheel tractor and a used backhoe. After these expenditures, the Capital Equipment Reserve still has a balance of $32K.

Only a few items in 2008 were funded out of the main Contingency Reserve. These were the video surveillance system installed at the Clubhouse Complex ($16K) and $3K spent to install gutters on the entrance porch of the Clubhouse. The current balance of this reserve is now $329K. Russ and Dick estimate the main Contingency Reserve should be grown to at least $1million citing the future cost to repave the road and address any future storm damage.

Wayne Cousar* asked if the reserve funds are invested. Russ responded that the monies are kept in interest bearing accounts. Because of our substantial balance, the POA has been able to obtain market interest rates yet retain immediate access to the funds if needed.

Lamar Nix* asked if there are plans to repair the deck piers at the dock on Magnolia Island. Dick reported that the piers are scheduled to be repaired within the next few months.

Stan Kirkland then made a motion to approve the 2009 Budget. The motion was seconded and approved by unanimous voice vote.

Next Stan introduced Sandy Dimke, chairperson of the Architectural Review Board. Sandy introduced the other two property owners on the ARB: Wayne Cousar and Dick Garrett. Sandy noted that the ARB also includes four non-residents: two architects, a landscape architect and an administrator. She reported six (6) houses were completed in 2009 and that 5 more houses are now under construction. Currently there are 33 completed houses at Bull Point. Applications for new homes, however, have fallen off considerably so the outlook for housing starts in 2009 will likely be much lower than in 2008.

Dick Lovett provided an overview of the **Operations and Maintenance Activities** in 2008. He noted that the Developers have landscaped the Clubhouse and completed 90-95% Lake Pocataligo. Dick

*Property Owner attending the meeting 3
**Property Owner not present at the meeting

reported the POA has an on-going project to build up the dirt level in back of the Clubhouse and adjoining pool area to make this area flatter and thus more user friendly. This work currently has been suspended to conserve 2008 operating funds.

Dick then reviewed the joint Developer/ POA project to deepen and enlarge Lake Izard. A detailed engineering drawing indicating the increase in size and how it impacts each lot surrounding the lake was presented. Dick noted we were in the final stage of obtaining all impacted property owners to agree on the plan and then the next step would be to present the plan for approval to Beaufort County. Dick also pointed out that the island in the lake will be bridged to the fire access road, allowing community access.

Wayne Cousar* asked about the currently empty "goldfish" pool next to the swimming pool. Dick noted that the fish pool is too shallow and raccoons and shore birds clean out the fish within days of restocking. Also algae growth in the shallow water is a constant maintenance problem. The POA Board is considering filling in the pool with dirt to make it an attractive planter. Wayne also asked if the unfinished exterior of the goldfish pond would be addressed. Dick responded it would be completed.

Becky Rosenberg asked when the fire suppression would be completed at the Clubhouse. Stan responded that he has retained a company from Columbia, SC to finalize the system design. This has been completed and approved by the state. Stan noted that he is now seeking remediation from the original clubhouse contractor for the work needed to implement the new approved system. Even if he is unsuccessful with the remediation, he plans to proceed to install the system using a new company.

Stan also pointed out that the new design places the water tank at the rear of the Clubhouse such that a deck will be built to cover the tank. This deck will provide additional public space at the Clubhouse.

Terry Stone* asked how the Lake Izard project is being funded. Dick answered that the POA has committed to pay a maximum of $30K in support of this project with all remaining costs paid by the Developer. The total cost of the project is expected to be at least $60-$65K but needs to be rebid based upon the new final plan.

Russ Dimke informed the attendees that a detail SCDOT plan of the new Route 17/21 interchange just north of Bull Point entrance was available for review after the meeting. Completion of this state project is scheduled for 2010.

Stan Kirkland continued with a review of Developer Projects. He outlined the extensive Clubhouse landscaping, now completed, noting that the Developer went well beyond the basics by incorporating brick pavers, tabby walkways and an expanded wood deck the connect the Clubhouse with the Pool.

Don Barrett, Developer and POA Board member, commented on the **Turnover of Bull Point to the POA**. The Budget process and day-to-day management of the POA is now totally turned over. Don noted that the final turnover depends upon the county approval and marketing of the 45 lots in the new phase. Due to the current economic conditions, the timing of the new phase has been delayed so no firm date for the final turnover has been determined. Don was asked what the pricing on the new lots will be and he responded that prices will be the same as comparable lots in the current development. Frank Roberts* asked if ATU septic systems have been approved for the new phase and Don answered in the affirmative.

Terry Stone* asked if the current roads with Bull Point have been turned over to the POA. Stan Kirkland responded that he is in the final stages of deeding the roads to the POA.

Don was asked why the POA should shoulder the maintenance costs for a bridge to Big Bull Island since it benefits only the four lots on that island. Don noted that the bridge and road were always presented on the total Development Plan as common area property.

*Property Owner attending the meeting 4
**Property Owner not present at the meeting

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Ed Aguirre* asked Don if the Dvelopers have considered promoting Bull Point as a "Green" development including the potential building of a "Green" show house. Don responded that a "Green" marketing concept is an idea worth considering by the Developers.

Stan Kirkland returned to the review of **Developer Projects** by noting that Lake Pocataligo should be completed with 3 weeks. Stan was also asked when the well to fill the lake will be completed. Stan responded that the well would be dug shortly after the lake work is done.

The next priority will be the Lake Izard project followed by the improvements to Lake Bellinger. Dick outlined the Lake Bellinger project citing the deepening of the lake at the two dry hydrant locations. Also part of the project is the build-up of the lakeshore in a few areas which will allow the lake to be filled to a higher level. Dick was asked if this project will solve the silting problem. He responded that this issue is an ongoing one in made-make lakes in the Lowcountry so we could expect to face similar problems again but not in the near future. Stan was unable to provide a timetable for the Lake Bellinger project noting it will depend upon an improvement in lot sales to fund these projects. There is also the potential to add this project to the Developer's bank loan.

Stan summarized the plan for the Future Phase. A detailed road, retention ponds, drainage, open space, and lot size drawing was presented for review. The first five (5) lots of the 45 could be brought to market using roads already completed. Stan expects to bring on the rest of the lots in phases, as the new roads are constructed. Completion of this final phase is uncertain due to the economic conditions but Stan hopes to complete it in the next 18-24 months.

Stan then reported that he has recorded deeds today (November 21, 2008) to transfer the following property to the POA: Roads and drainage ditches for Phases I, II, III, IV, V, and V-A Also transferred was the public boat ramp area (Huspah landing) and the Maintenance Area.

Bill Wehmer* asked when the lighting portion of the Clubhouse Landscape Plan, including the parking lot, would be implemented by the Developers. Stan answered that the original plan bids came in too high and a revised, simpler lighting plan is now being developed. Sandy Dimke noted, and Stan agreed, that any revised plan would have to be reviewed and approved by the ARB.

Bob Wolfson* suggested lighting some of the large live oaks within the common areas of Bull Point should be considered. Russ responded that the POA (not the Developers) would be responsibility for this added expense. The subject has previously been discussed by the POA Board and rejected as being too costly.

Jay Coleman read a question sent in by a property owner unable to attend the meeting. They asked the status of the pool house project. Stan answered that the project is funded by the Developers BB&T Bank loan and is expected to be completed in 2009. The project includes the installing of a bar counter area with cabinets, refrigerator and sink. Casual tables and chairs will also be purchased.

Next on the agenda was the appointment and election of the 2009 POA Board members. Stan reported that Bull Point LLC has appointed Don Barrett and himself as voting Board Members. Stan then asked for nominations for the remaining two positions to be filled by property owners. Russ Dimke was nominated for the voting Secretary position and Jay Coleman was nominated for the non-voting position. Both were voted in by unanimous voice votes.

Carol Alperin* asked if the date for the annual meeting be set as much as a year in advance to accommodate those non-resident property owners who wish to make advance travel and accommodation plans. Stan responded that this will be considered by the Board and such a date chosen in advance if practical.

*Property Owner attending the meeting 5
**Property Owner not present at the meeting

There were no other questions from the floor and with the agenda completed Stan Kirkland thanked all who attended and adjourned the meeting.

Minutes prepared and submitted by:
Russ Dimke
Secretary, Bull Point POA
November 30, 2008

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*Property Owner attending the meeting 6
**Property Owner not present at the meeting

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Exhibit 19

Deed recorded January 29, 2009

3/10 RB

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

DEED

KNOW ALL MEN BY THESE PRESENTS, that **BULL POINT LLC**, (hereinafter referred to as "Grantor"), for and in consideration of the sum of FIVE and 00/100 DOLLARS ($5.00) and no other valuable consideration to the Grantors in hand paid at and before the sealing of these presents, by **BULL POINT PROPERTY OWNERS ASSOCIATION, INC.** (hereinafter referred to as "Grantee") in the State aforesaid, (the receipt of which is hereby acknowledge) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the Grantee, its successors and assigns forever, the following described property, to wit:

SEE ATTACHED EXHIBIT "A" FOR A COMPLETE DESCRIPTION

Phase I Bull Point Subdivision

BEAUFORT COUNTY SC - ROD
BK 02785 PGS 2019-2021
DATE: 11/21/2008 03:33:53 PM
INST # 2008071774 RCPT# 588365

Grantee's Address: 114 Barnaby Bluff
Seabrook, SC 29940

Said Property is conveyed subject to all obligations, restrictions, limitations, covenants and benefits as contained in the Declaration of Covenants, and Restrictions for Bull Point Plantation dated the 22nd day of September, 1995, and recorded in the RMC Office for Beaufort County on September 26, 1995 in Book 805 at Page 218, as amended and all other easements, covenants and restrictions of record.

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

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto **BULL POINT PROPERTY OWNERS ASSOCIATION, INC.**, its successors and assigns, forever.

And the Grantor does hereby bind itself, its successors and assigns to warrant and forever defend all and singular the premises unto the Grantee, its successors and assigns, against itself and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

1

RECORDED
2009 Jan -29 12:38 PM
Sharon Q. Burris
BEAUFORT COUNTY AUDITOR

ADD DMP Record 1/29/2009 09:08:21 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0254	0000	00

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal this 20th day of November 2008.

Signed, Sealed and Delivered in the Presence of:

WITNESS:

Paulette L Crosby

A Q Davis

GRANTOR
BULL POINT LLC

Debut E Kirkland
MANAGING MEMBER

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

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

SWORN to before me this 20th day of Nov, 2008.

Paulette L Crosby
Witness

A Q Davis
Notary Public for South Carolina
My Commission Expires: 1-10-15

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

Exhibit A
Phase I Bull Point Subdivision

All those certain roads and right of ways with improvements thereon shown and dedicated as the Bull Point Drive 50 foot right of way for access, ingress and egress for the entrance way and Phase I of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 14th day of January, 1995 and recorded in the office of the Register of Deeds Office for Beaufort County South Carolina on January 23td, 1995 in Plat Book 51 at page 165 (hereinafter the Phase I Plat).

ALSO

All those certain parcels designated as meandering trails and drainage easements on the Phase I Plat.

ALSO

All those certain pieces parcels and tracts of land on which road right of ways and/or meandering trails and drainage improvements have been constructed outside of the designated right of way or meandering trail easements as shown and designated on the Phase I Plat

The above referenced Phase 1 Plat is incorporated herein. by Reference SER

TMS: R 700 020 000 0054
Derivation: Book 756 at Page 196
Recorded: January 23, 1995

Deed Prepared by Stancel E. Kirkland

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

3/10 RB

STATE OF SOUTH CAROLINA)
) DEED
COUNTY OF BEAUFORT)

KNOW ALL MEN BY THESE PRESENTS, that **BULL POINT LLC**, (hereinafter referred to as "Grantor"), for and in consideration of the sum of FIVE and 00/100 DOLLARS ($5.00) and no other valuable consideration to the Grantors in hand paid at and before the sealing of these presents, by **BULL POINT PROPERTY OWNERS ASSOCIATION, INC.** (hereinafter referred to as "Grantee") in the State aforesaid, (the receipt of which is hereby acknowledge) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the Grantee, its successors and assigns forever, the following described property, to wit:

SEE ATTACHED EXHIBIT "A" FOR A COMPLETE DESCRIPTION

Phase II Bull Point Subdivision

BEAUFORT COUNTY SC - ROD
BK 02786 PGS 2025-2027
DATE: 11/21/2008 03:33:53 PM
INST # 2008071776 RCPT# 568366

Grantee's Address: 114 Barnaby Bluff
Seabrook, SC 29940

Said Property is conveyed subject to all obligations, restrictions, limitations, covenants and benefits as contained in the Declaration of Covenants, and Restrictions for Bull Point Plantation dated the 22nd day of September, 1995, and recorded in the RMC Office for Beaufort County on September 26, 1995 in Book 805 at Page 218, as amended and all other easements, covenants and restrictions of record.

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

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto **BULL POINT PROPERTY OWNERS ASSOCIATION, INC.**, its successors and assigns, forever.

And the Grantor does hereby bind itself, its successors and assigns to warrant and forever defend all and singular the premises unto the Grantee, its successors and assigns, against itself and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

RECORDED
2009 Jan -29 12:38 PM
Sharon W. Burris
BEAUFORT COUNTY AUDITOR

1

ADD DMP Record 1/29/2009 09:06:51 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	027	000	0199	0000	00

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal this 20th day of November 2008.

Signed, Sealed and Delivered in the Presence of:

WITNESS:

Paulette L Cuzby

A Dard

GRANTOR
BULL POINT LLC

David E Kirkland
MANAGING MEMBER

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

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

SWORN to before me this 26th day of Nov, 2008.

Paulette L Cuzby
Witness

A Dard
Notary Public for South Carolina
My Commission Expires: 1-10-15

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

Exhibit A
Phase II Bull Point Subdivision

All those certain roads and right of ways with improvements thereon shown and dedicated as the Bull Point Drive 50 foot right of way for access, ingress and egress Phase II of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 8th day of November, 1995, with latest revision date of August 28th, 2000 and recorded in the office of the Register of Deeds Office for Beaufort County South Carolina in Plat Book 75 at page 180 (hereinafter the Phase II Plat).

ALSO

All those certain parcels designated as a meandering trails and drainage easements on the Phase II Plat.

ALSO

All those certain pieces parcels and tracts of land on which road right of ways and/or meandering trails and drainage improvements have been constructed outside of the designated right of way or meandering trail easements as shown and designated on the Phase II Plat

The above referenced Phase II Plat is incorporated herein by this reference thereto.

TMS: R 700 020 000 0054
Derivation: Book 834 at Page 834
Recorded: January 18, 1996

Deed Prepared by Stancel E. Kirkland

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

3/15 RB

STATE OF SOUTH CAROLINA)
) DEED
COUNTY OF BEAUFORT)

KNOW ALL MEN BY THESE PRESENTS, that **BULL POINT LLC**, (hereinafter referred to as "Grantor"), for and in consideration of the sum of FIVE and 00/100 DOLLARS ($5.00) and no other valuable consideration to the Grantors in hand paid at and before the sealing of these presents, by **BULL POINT PROPERTY OWNERS ASSOCIATION, INC.** (hereinafter referred to as "Grantee") in the State aforesaid, (the receipt of which is hereby acknowledge) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the Grantee, its successors and assigns forever, the following described property, to wit:

SEE ATTACHED EXHIBIT "A" FOR A COMPLETE DESCRIPTION

Phase III Bull Point Subdivision

BEAUFORT COUNTY SC - ROD
BK 02785 PGS 2031 - 2033
DATE: 11/21/2008 03:33:53 PM
INST # 2008071778 RCPT# 568355

Grantee's Address: 114 Barnaby Bluff
Seabrook, SC 29940

Said Property is conveyed subject to all obligations, restrictions, limitations, covenants and benefits as contained in the Declaration of Covenants, and Restrictions for Bull Point Plantation dated the 22nd day of September, 1995, and recorded in the RMC Office for Beaufort County on September 26, 1995 in Book 805 at Page 218, as amended and all other easements, covenants and restrictions of record.

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

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto **BULL POINT PROPERTY OWNERS ASSOCIATION, INC.**, its successors and assigns, forever.

And the Grantor does hereby bind itself, its successors and assigns to warrant and forever defend all and singular the premises unto the Grantee, its successors and assigns, against itself and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

RECORDED
2009 Jan -29 12:38 PM
Sharon G. Burris
BEAUFORT COUNTY AUDITOR

1

ADD DMP Record 1/29/2009 09:04:43 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0126	0000	00

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal this 20th day of November 2008.

Signed, Sealed and Delivered in the Presence of:

WITNESS:

Paulette L Cosby

A E Daniel

GRANTOR
BULL POINT LLC

Steve E Kirkland

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

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

SWORN to before me this 20th day of Nov, 2008.

Paulette L Cosby
Witness

A E Daniel
Notary Public for South Carolina
My Commission Expires: 1-10-15

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

Exhibit A
Phase III Bull Point Subdivision

All those certain roads and right of ways with improvements thereon shown and dedicated as the Stephens Path and a portion of the Barnaby Bluff 50 foot right of ways for access, ingress and egress for Phase III of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 2nd day of May, 2002 and recorded in the Register of Deeds Office for Beaufort County South Carolina in Plat Book 87 at page 22 (hereinafter the Phase III Plat).

ALSO

All those certain parcels designated and/or constructed within the leisure trail easements for Phase III and any drainage easements on the Phase III Plat.

ALSO

All those certain pieces parcels and tracts of land on which road right of ways improvements have been constructed outside of the designated right of way easements as shown and designated on the Phase III Plat

The above referenced Phase III Plat is incorporated herein by reference

TMS: 700-020-000-024 (portion)
Derivation: Book 918 at Page 2559
Recorded: January 23, 1995

Deed Prepared by Stancel E. Kirkland

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ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

3 TO RB Kirkland 2016

BEAUFORT COUNTY SC- ROD
BK 02785 PGS 2016-2018
DATE: 11/21/2008 03:33:53 PM
INST # 2008071773 RCPT# 566365

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

DEED

KNOW ALL MEN BY THESE PRESENTS, that **BULL POINT LLC**, (hereinafter referred to as "Grantor"), for and in consideration of the sum of FIVE and 00/100 DOLLARS ($5.00) and no other valuable consideration to the Grantors in hand paid at and before the sealing of these presents, by **BULL POINT PROPERTY OWNERS ASSOCIATION, INC.** (hereinafter referred to as "Grantee") in the State aforesaid, (the receipt of which is hereby acknowledge) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the Grantee, its successors and assigns forever, the following described property, to wit:

SEE ATTACHED EXHIBIT "A" FOR A COMPLETE DESCRIPTION

Phase VA Bull Point Subdivision

Grantee's Address: 114 Barnaby Bluff
Seabrook, SC 29940

Said Property is conveyed subject to all obligations, restrictions, limitations, covenants and benefits as contained in the Declaration of Covenants, and Restrictions for Bull Point Plantation dated the 22nd day of September, 1995, and recorded in the RMC Office for Beaufort County on September 26, 1995 in Book 805 at Page 218, as amended and all other easements, covenants and restrictions of record.

Grantor also Quit Claims to the Grantee, its successors and assigns, all of its rights, title and interest in and to the land located between the OCRM critical line and the mean water mark and to the marshland over which the vehicular bridge is constructed

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

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto **BULL POINT PROPERTY OWNERS ASSOCIATION, INC.**, its successors and assigns, forever.

And the Grantor does hereby bind itself, its successors and assigns to warrant and forever defend all and singular the premises unto the Grantee, its successors and assigns, against itself and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

1

RECORDED
2009 Jan -29 12:37 PM
Sharon B. Burris
BEAUFORT COUNTY AUDITOR

ADD DMP Record 1/29/2009 08:58:26 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	026	000	0176	0000	00

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal this 20th day of November 2008.

Signed, Sealed and Delivered in the Presence of:

WITNESS:

Paulette L Crosby

A Z David

GRANTOR
BULL POINT LLC

David E Kuhlke
MANAGING MEMBER

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

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

SWORN to before me this 20th day of Nov, 2008.

Paulette L Crosby
Witness

A Z David
Notary Public for South Carolina
My Commission Expires: 1-10-15

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

Exhibit A
Phase VA Bull Point Subdivision

All those certain roads and right of ways with improvements thereon shown and dedicated as the Island Way 50 foot right of way for access, ingress and egress for Phase VA Big Bull Island, Bull Point Subdivision on a plat prepared by Andrews & Burgess, Inc. Engineering dated the 9th day of May, 2007 and Recorded in Plat Book 119 at page 195 at the Register of deeds Office for Beaufort County, South Carolina. The improvements transferred by the within deed includes, but is not limited to the constructed vehicular bridge providing ingress and egress from the main land of the Bull Point Subdivision to Big Bull Island. The above referenced Phase VA Plat is incorporated herein by Reference: SKK

ALSO

All of the parcels with improvements thereon shown and designated as drainage improvements on the Phase VA Plat.

TMS: R700 020 000 0054 (Portion of)
Derivation: Book 918 at Page 2559

Deed Prepared by Stancel E. Kirkland

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

3/5 RE

STATE OF SOUTH CAROLINA)
) DEED
COUNTY OF BEAUFORT)

KNOW ALL MEN BY THESE PRESENTS, that **BULL POINT LLC**, (hereinafter referred to as "Grantor"), for and in consideration of the sum of FIVE and 00/100 DOLLARS ($5.00) and no other valuable consideration to the Grantors in hand paid at and before the sealing of these presents, by **BULL POINT PROPERTY OWNERS ASSOCIATION, INC.** (hereinafter referred to as "Grantee") in the State aforesaid, (the receipt of which is hereby acknowledge) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the Grantee, its successors and assigns forever, the following described property, to wit:

SEE ATTACHED EXHIBIT "A" FOR A COMPLETE DESCRIPTION

Phase VB Bull Point Subdivision

BEAUFORT COUNTY SC - ROD
BK 02785 PGS 2028-2030
DATE: 11/21/2008 03:33:53 PM
INST # 2008071777 RCPT# 566355

Grantee's Address: 114 Barnaby Bluff
Seabrook, SC 29940

Said Property is conveyed subject to all obligations, restrictions, limitations, covenants and benefits as contained in the Declaration of Covenants, and Restrictions for Bull Point Plantation dated the 22nd day of September, 1995, and recorded in the RMC Office for Beaufort County on September 26, 1995 in Book 805 at Page 218, as amended and all other easements, covenants and restrictions of record.

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

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto **BULL POINT PROPERTY OWNERS ASSOCIATION, INC.**, its successors and assigns, forever.

And the Grantor does hereby bind itself, its successors and assigns to warrant and forever defend all and singular the premises unto the Grantee, its successors and assigns, against itself and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

RECORDED
2009 Jan -29 12:38 PM
Sharon Q. Burris
BEAUFORT COUNTY AUDITOR

ADD DMP Record 1/29/2009 09:02:37 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0126	0000	00

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal this 20th day of November 2008.

Signed, Sealed and Delivered in the Presence of:

WITNESS:

Paulette L Cusley

A S David

GRANTOR
BULL POINT LLC

David E Kuhlmann
MANAGING MEMBER

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

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

SWORN to before me this 20th day of Nov, 2008.

Paulette L Cusley
Witness

A S David
Notary Public for South Carolina
My Commission Expires: 1-10-15

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

Exhibit A
Phase VB Bull Point Subdivision

All those certain roads and rights of way with improvements thereon shown and dedicated as the Sheldon Lane 50 foot right of way for access, ingress and egress for Phase VB of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 9th day of November, 1998, last revised March 17th, 2003 and recorded in the office of the RMC for Beaufort County South Carolina in Plat Book 92 at pages 34 and 35 (hereinafter the Phase VB Plat).

ALSO

All those certain pieces parcels and improvement tracts of land on which road right of ways have been constructed outside of the designated right of way easements as shown and designated on the Phase VB Plat.

ALSO

All of the parcels with improvements thereon shown and designated as drainage improvements on the Phase VA Plat.

The above referenced Phase VB Plat is incorporated herein: By Reference.

TMS: 700-020-000-0054
Derivation: Book 1644 at Page 1492
Recorded: October 7, 2002

Deed Prepared by Stancel E. Kirkland

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

3/10RB

RECORDED
2009 Jan -29 12:38 PM
Sharon G. Burris
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

DEED

KNOW ALL MEN BY THESE PRESENTS, that **BULL POINT LLC**, (hereinafter referred to as "Grantor"), for and in consideration of the sum of FIVE and 00/100 DOLLARS ($5.00) and no other valuable consideration to the Grantors in hand paid at and before the sealing of these presents, by **BULL POINT PROPERTY OWNERS ASSOCIATION, INC.** (hereinafter referred to as "Grantee") in the State aforesaid, (the receipt of which is hereby acknowledge) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the Grantee, its successors and assigns forever, the following described property, to wit:

SEE ATTACHED EXHIBIT "A" FOR A COMPLETE DESCRIPTION

Phase VI Bull Point Subdivision

BEAUFORT COUNTY SC- ROD
BK 02785 PGS 2034-2036
DATE: 11/21/2008 03:33:53 PM
INST # 2008071779 RCPT# 568356

Grantee's Address: 114 Barnaby Bluff
Seabrook, SC 29940

Said Property is conveyed subject to all obligations, restrictions, limitations, covenants and benefits as contained in the Declaration of Covenants, and Restrictions for Bull Point Plantation dated the 22nd day of September, 1995, and recorded in the RMC Office for Beaufort County on September 26, 1995 in Book 805 at Page 218, as amended and all other easements, covenants and restrictions of record.

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

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto **BULL POINT PROPERTY OWNERS ASSOCIATION, INC.**, its successors and assigns, forever.

And the Grantor does hereby bind itself, its successors and assigns to warrant and forever defend all and singular the premises unto the Grantee, its successors and assigns, against itself and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

ADD DMP Record 1/29/2009 09:00:21 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
		1			
R700	020	000	0248	0000	00

ADD DMP Record 1/29/2009 09:01:01 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0249	0000	00

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal this 20th day of November 2008.

Signed, Sealed and Delivered in the Presence of:

WITNESS:

Paulette L Cosby

A E David

GRANTOR
BULL POINT LLC

Adam C Kuhlkin
MANAGING MEMBER

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

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

SWORN to before me this 20th day of Nov, 2008.

Paulette L Cosby
Witness

A E David
Notary Public for South Carolina
My Commission Expires: 1-10-15

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

Exhibit A
Phase VI Bull Point Subdivision

All those certain roads and right of ways with improvements thereon shown and dedicated as the King Charles Drive and a portion of Barnaby Bluff 50 foot right of ways for access, ingress and egress for Phase VI of the Bull Point Subdivision on a plat prepared by Andrews Engineering Company dated February 24, 2005, revised March 15, 2005 and recorded in the office of the RMC for Beaufort County South Carolina in Plat Book 105 at page 106 (hereinafter the Phase VI Plat).

ALSO

All those certain parcels shown as designated as a leisure trail and/or drainage easements on the Phase VI Plat.

ALSO

All those certain pieces parcels and tracts of land on which the road right of ways and/or leisure trail improvements which have been constructed outside of the designated right of way or leisure trail easements as shown and designated on the Phase VI Plat.

The above referenced Phase VI Plat is incorporated herein. by Reference only

TMS: R 700 020 000 0054
Derivation: Book 1644 at Page 1492 and Deed Book 918 at Page 2559
Recorded:

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

Exhibit 20

September 27, 2019 e-mail from Judge Mullen setting hearing for October 15th

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

Jeffrey M. Bogdan

From: M. Dawes Cooke
Sent: Friday, September 27, 2019 10:55 PM
To: Gene Matthews; Mullen, Carmen T. Law Clerk (Laura Wilkes-D'Amato); MJ Wilson; Angel J. Robinson-Jones; Diane Corley; Lauran N. Bradstream; E. Hood Dawson; Jake Moore; jdambrosio@dambrosiolaw.net; Jeff Bogdan; Bryan C. Letteer; Roseneau, Jerri A.; MJ Wilson; Diana Murray; Karen Jessee; Johnson, Karen; 'Billy Gavigan' (billy@gavigangroup.com); 'Terry Stone' (tstone1313@gmail.com)
Subject: Re: Attridge v Bull Point - 2018CP0702345 - Motions Hearing Scheduling

Gene is correct about the motions pending. October 15 works for me, and thanks so much for your efforts setting this up.

DAWES COOKE
BARNWELL WHALEY PATTERSON & HELMS, LLC
288 MEETING STREET
CHARLESTON, S.C. 29401
(843)577-7700
(843)729-2545 (m)

From: Eugene Matthews <GMatthews@RichardsonPlowden.com>
Date: Friday, September 27, 2019 at 4:26 PM
To: "Mullen, Carmen T. Law Clerk" <CMullenLC@sccourts.org>, MJ Wilson <mwilson@richardsonplowden.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>, joe dambrosio <jdambrosio@dambrosiolaw.net>, Jeff Bogdan <jbogdan@barnwell-whaley.com>, "Bryan C. Letteer" <bryan@mttlaw.com>, "Roseneau, Jerri A." <jroseneau@bcgov.net>, MJ Wilson <mwilson@richardsonplowden.com>, Diana Murray <dmurray@barnwell-whaley.com>, Karen Jessee <kjessee@barnwell-whaley.com>, "M. Cooke" <mdc@barnwell-whaley.com>, "Johnson, Karen" <kjohnson3@bcgov.net>, "'Billy Gavigan' (billy@gavigangroup.com)" <billy@gavigangroup.com>, "'Terry Stone' (tstone1313@gmail.com)" <tstone1313@gmail.com>
Subject: RE: Attridge v Bull Point - 2018CP0702345 - Motions Hearing Scheduling

Laura:

Actually I believe you are referring to (1) Plaintiffs' Motion for Summary Judgment, and (2) Defendants' response and Cross-Motion for Summary Judgment.

Dawes, is that correct?

Thanks,
Gene

From: Mullen, Carmen T. Law Clerk (Laura Wilkes-D'Amato) [mailto:CMullenLC@sccourts.org]
Sent: Friday, September 27, 2019 4:23 PM
To: Gene Matthews; MJ Wilson; Angel J. Robinson-Jones; Diane Corley; Lauran N. Bradstream; E. Hood Dawson; Jake Moore; jdambrosio@dambrosiolaw.net; Jeff Bogdan; Bryan C. Letteer; Roseneau, Jerri A.; MJ Wilson; Diana Murray; Karen Jessee; M. Dawes Cooke; Johnson, Karen
Subject: RE: Attridge v Bull Point - 2018CP0702345 - Motions Hearing Scheduling

Good afternoon,

Judge Mullen is available to hear Dawes' motions at 9:30am on Tuesday, October 15th in Charleston County. Please let me know if this will be an issue for anyone. Thanks.

Laura Wilkes-D'Amato
Law Clerk
To the Honorable Carmen T. Mullen
14th Judicial Circuit
(843) 255-5070
cmullenlc@sccourts.org

From: Mullen, Carmen T. Law Clerk (Laura Wilkes-D'Amato)
Sent: Friday, September 27, 2019 11:59 AM
To: Gene Matthews <GMatthews@RichardsonPlowden.com>; MJ Wilson <mwilson@richardsonplowden.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>; jdambrosio@dambrosiolaw.net; Jeff Bogdan <jbogdan@barnwell-whaley.com>; Bryan C. Letteer <bryan@mttlaw.com>; Roseneau, Jerri A. <jroseneau@bcgov.net>; MJ Wilson <mwilson@richardsonplowden.com>; Diana Murray <dmurray@barnwell-whaley.com>; 'Karen Jessee' <kjessee@barnwell-whaley.com>; M. Dawes Cooke <mdc@barnwell-whaley.com>; Johnson, Karen <kjohnson3@bcgov.net>
Subject: Attridge v Bull Point - 2018CP0702345 - Motions Hearing Scheduling

Good afternoon, all,

I mistakenly included the wrong contact for our clerk's office in the last email chain. Please use this email chain to communicate from this point on. I will be in contact regarding scheduling Dawes' motions once I discuss with Judge Mullen this afternoon. Thanks!

Laura Wilkes-D'Amato
Law Clerk
To the Honorable Carmen T. Mullen
14th Judicial Circuit
(843) 255-5070
cmullenlc@sccourts.org

CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

Exhibit 21

Quit Claim Deed recorded 10/10/2019

RECORDED
2019 Oct -31 08:51 AM
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 3802 Pgs 185-192
FILE NUM 2019054880
10/10/2019 02:45:35 PM
REC'D BY cwarren RCPT# 949526
RECORDING FEES $15.00

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

8 CW
15
8504

Prepared by and Return to:
Alysoun M. Eversole
EVERSOLE LAW FIRM, P.C.
1509 King Street
Beaufort, SC 29902

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that, **BULL POINT PROPERTY OWNERS ASSOCIATION, INC. k/n/a BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC,** in the State aforesaid, for the monetary consideration of TEN AND NO/100 ($10.00), to it in hand paid at and before the sealing of these presents by **BULL POINT, LLC,** in the state aforesaid, the receipt of which is hereby acknowledged, has remised, released and forever quit-claimed, and by these presents do remise, release and forever quit-claim unto the said **BULL POINT, LLC,** its Successors and Assigns, all its right, title and interest in and to the following described real property, to wit:

"SEE EXHIBIT A"

Grantees Address: 114 Barnaby Bluff
Seabrook, SC 29940

This conveyance is made subject to any and all easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said Premises before mentioned unto the said **BULL POINT, LLC,** its Successors and Assigns, forever, so that neither the Grantor nor its successors and assigns, nor any other persons claiming under it shall at any time hereafter, by any

way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part thereof, forever.

WITNESS our hands and seals this 4th day of October, 2019

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

BULL POINT PROPERTY OWNERS ASSOCIATION, INC. k/n/a BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC.

Witness

By: William E. Gavigan, President

Witness (Notary)

Richard Riney, Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, Alysoun Eversole, the undersigned Notary, do hereby certify that BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC., by William E. Gavigan, President, and Richard Riney, Secretary, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this, the 4th day of October, 2019.

ALYSOUN M. EVERSOLE NOTARY PUBLIC EXP. 11/04/2019 SOUTH CAROLINA

Notary Public for South Carolina
My Commission Expires: 11-4-2019

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

"EXHIBIT A"

All those certain roads and rights of way with improvements thereon shown and dedicated as the Sheldon Lane 50 foot right of way for access, ingress and egress for Phase VB of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 9th day of November, 1998, last revised March 17th, 2003 and recorded in the Office of the RMC for Beaufort County, South Carolina in Plat Book 92 at Pages 34 and 35 (hereinafter the Phase VB Plat).

ALSO

All those certain pieces, parcels and improvement tracts of land on which road right of ways have been constructed outside of the designated right of way easements as shown and designated on the Phase VB Plat.

ALSO

All of the parcels with improvements thereon shown and designated as drainage improvements on the Phase VA Plat

R700-020-000-0126

This being the same property conveyed to Bull Point Plantation Property Owners Association, Inc. by deed of Bull Point, LLC dated November 20, 2008 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2785 at Page 2028.

AND ALSO:

All that certain piece, parcel or lot of land, consisting of 9.42 acres, with improvements thereon, situate, lying and being in Sheldon Township, Beaufort County, South Carolina and being shown and designated on a plat prepared for Bull Point, LLC dated the 18th day of September 2007 and recorded in the office of the Register of Deeds Office for Beaufort County, South Carolina on December 14, 2007 in Plat Book 00123 at Page 0038. Said plat is incorporated herein for a more complete description.

TMS No. R700-020-000-0252-0000

AND

All that certain piece, parcel or lot of land, consisting of 2.551 acres situate, lying and being in Beaufort County, South Carolina and being shown and designated a Parcel 2 on a plat prepared for Bull Point, LLC dated the 4th day of December 2007 and recorded in the office of the Register of Deeds Office for Beaufort County, South Carolina on December 14, 2007 in Plat Book 00123 at Page 0037. Said plat is incorporated herein for a more complete description.

TMS No. R700-020-000-0127-0000

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated September 24, 2012 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 3177 at Page 2705.

AND ALSO:

All those certain roads and right of ways with improvements thereon shown and dedicated as the Stephens Path and a portion of the Barnaby Bluff 50 foot right of ways for access, ingress and egress for Phase III of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 2nd day of May, 2002 and recorded in the Register of Deeds Office for Beaufort County, South Carolina in Plat Book 87 at Page 22 (hereinafter the Phase III Plat).

ALSO

All those certain parcels designated and/or constructed within the leisure trail easements for Phase III and any drainage easements on the Phase III Plat.

ALSO

All those certain pieces, parcels and tracts of land on which road right of ways improvements have been constructed outside of the designated right of way easements as shown and designated on Phase III Plat.

R700-020-000-0176

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated November 20, 2008 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2785 at Page 2031.

AND ALSO:

And those certain roads and right of ways with improvements thereon shown and dedicated as the King Charles Drive and a portion of Barnaby Bluff 50 foot right of ways for access, ingress and egress for Phase VI of the Bull Point Subdivision on a plat prepared by Andrews Engineering Company dated February 24, 2005, revised March 15, 2005 and recorded in the office of the RMC for Beaufort County, South Carolina in Plat Book 105 at Page 106 (hereinafter the Phase VI Plat).

ALSO

All those certain parcels shown as designated as a leisure trail and/or drainage easements on the Phase VI Plat.

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

ALSO

All those certain pieces, parcels and tracts of land on which the road right of ways and/or leisure trail improvements which have been constructed outside of the designated right of way or leisure trail easements as shown and designated on the Phase VI Plat.

R700-020-000-0248
R700-020-000-0249

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated November 20, 2008 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2785 at Page 2034.

AND ALSO:

All those certain roads and rights of ways with improvements thereon shown and dedicated as the Bull Point Drive 50 foot right of way for access, ingress and egress for the entrance way and Phase I of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 14th day of January, 1995 and recorded in the office of the Register of Deeds Office for Beaufort County, South Carolina on January 23rd, 1995 in Plat Book 51 at Page 165 (hereinafter the Phase I Plat).

ALSO

All those certain parcels designated as meandering trails and drainage easements on the Phase I Plat.

ALSO

All those certain pieces, parcels and tracts of land on which road right of ways and/or meandering trails and drainage improvements have been constructed outside of the designated right of way or meandering trail easements as shown and designated on the Phase I Plat.

R700-020-000-0254

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated November 20, 2008 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2785 at Page 2019.

AND ALSO:

All those certain roads and right of ways with improvements thereon shown and dedicated as the Island Way 50 foot right of way for access, ingress and egress for Phase VA Big Bull Island, Bull Point Subdivision on a plat prepared by Andrew and Burgess, Inc. Engineering dated the 9th day of May, 2007 and recorded in Plat Book 119 at Page 195 at the Register of Deeds Office for Beaufort County, South Carolina. The improvements transferred by the within deed includes, but is not limited to the constructed vehicular bridge providing ingress and egress from the main land of the Bull Point Subdivision to Big Bull Island. The above referenced Phase VA Plat is incorporated

herein.

ALSO

All of the parcels with improvements thereon shown and designated as drainage improvements on the Phase VA Plat.

R700-026-000-0176

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated November 20, 2008 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2785 at Page 2016.

AND ALSO:

All that certain piece, parcel or lot of land consisting of 2.09 acres with improvements thereon, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and being shown and designated as William Bull Park and Lot 87, on a plat entitled Lot Line Revision, William Bull Park, prepared for Bull Point Plantation, Gardens Corner, Beaufort County, South Carolina by David E. Gasque, RLS, Gasque & Associates, Inc., dated May 7, 2002 and recorded in Plat Book 00086 at Page 0176 on May 8, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina. Said Plat being incorporated herein and made a part hereof by reference for a more complete description.

R700-027-000-0138-0000

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated December 28, 2006 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2497 at Page 1071.

AND ALSO:

All those certain roads and right of ways with improvements thereon shown and dedicated as the Bull Point Drive 50 foot right of way for access, ingress and egress Phase II of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 8th day of November, 1995, with latest revision date of August 28th, 2000 and recorded in the office of the Register of Deeds Office for Beaufort County, South Carolina in Plat Book 75 at Page 180 (hereinafter the Phase II Plat).

ALSO

All those certain parcels designated as a meandering trails and drainage easements on the Phase II Plat.

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ALSO

All those certain pieces, parcels and tracts of land on which road right of ways and/or meandering trails and drainage improvements have been constructed outside of the designated right of way or meandering trail easements as shown and designated on the Phase II Plat.

R700-027-000-0199

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated November 20, 2008 and recorded at the Register of Deeds Office in Book 2785 at Page 2025.

AND ALSO:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in Sheldon Township, Beaufort County, South Carolina and being shown and designated as .61 acres of common area with improvements thereon for access to Magnolia Island located between Lot 51 and Lot 52, on a plat showing lot line revision between common area, Lot 51 and Lot 52, Bull Point, Phase I, prepared for Stan Kirkland, Gardens Corner, Beaufort County, South Carolina, by Gasque and Associates, Inc. dated November 21, 2003 and recorded November 24, 2003 in Book 96 on Page 116.

Also, ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and being shown as the Boardwalk to Magnolia Island 851.51 feet in length as shown on the above referenced Plat recorded in Book 96 at Page 116.

Also, All that certain piece, parcel and tract of land designated as Magnolia Island containing 2.61 acres as shown on Exhibit A1 attached thereto and incorporated herein. It is the intent of Grantor to deed the Magnolia access easement common area, the 851.58 boardwalk from the mainland to Magnolia Island and the 2.62 acres, with improvements thereon, known as Magnolia Island.

The Grantors Quit-Claim any and all its right, title and interest to any and all property located below the OCRM Critical Line or Mean High Water Line.

R700-027-000-0203

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated December 28, 2006 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2497 at Page 1060.

AND ALSO:

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

R700-027-000-0217

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated September 27, 2007 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2637 at Page 819.

AND ALSO:

All that certain piece, parcel or lot of land, consisting of 0.72 acres, with improvements thereon, situate, lying and being in Sheldon Township, Beaufort, South Carolina and being shown and designated on a plat of Phase II prepared for Bull Point, LLC dated the 8th day of November 1995 with the latest revision date of August 28th, 2000 and recorded in the office of the Register of Deeds Office for Beaufort County, South Carolina in Plat Book 75 at Page 180. The above .72 acres is located between and contiguous to Lot 68 and Lot 69 as shown on within Phase II Plat. The improvements on the 0.72 tract include paving, boat ramp and community dock. The above referenced Phase II Plat is incorporated herein.

R700-027-000-0241

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated November 21, 2008 and recorded at the Register of Deeds for Beaufort County, South Carolina Office in Book 2785 at Page 2037.

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ADD DMP Record 10/29/2019 10:33:55
--> Book/Page O BK 3802 PG 193A
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0126	0000	00

ADD DMP Record 10/29/2019 10:33:55
--> Book/Page O BK 3802 PG 193A
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0252	0000	00

ADD DMP Record 10/29/2019 10:33:55
--> Book/Page O BK 3802 PG 193A
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0127	0000	00

ADD DMP Record 10/29/2019 10:33:55
--> Book/Page O BK 3802 PG 193A
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0248	0000	00

ADD DMP Record 10/29/2019 10:33:55
--> Book/Page O BK 3802 PG 193A
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0249	0000	00

ADD DMP Record 10/29/2019 10:33:55
--> Book/Page O BK 3802 PG 193A
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0254	0000	00

ADD DMP Record 10/29/2019 10:33:55
--> Book/Page O BK 3802 PG 193A
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	026	000	0176	0000	00

ADD DMP Record 10/29/2019 10:33:55
--> Book/Page O BK 3802 PG 193A
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	027	000	0138	0000	00

ADD DMP Record 10/29/2019 10:33:55
--> Book/Page O BK 3802 PG 193A
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	027	000	0199	0000	00

ADD DMP Record 10/29/2019 10:33:55
--> Book/Page O BK 3802 PG 193A
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	027	000	0203	0000	00

ADD DMP Record 10/29/2019 10:33:55
--> Book/Page O BK 3802 PG 193A
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	027	000	0241	0000	00

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Exhibit 22

Quit Claim Deed recorded 10/10/2019

RECORDED
2019 Oct -31 08:52 AM

BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 3802 Pgs 195-197
FILE NUM 2019054882
10/10/2019 02:45:35 PM
REC'D BY cwarren RCPT# 949526
RECORDING FEES $15.00

CHANGE DMP Record 10/30/2019 12:11:58 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	027	000	0239	0000	00

3 00
15
8503

Prepared by and Return to:
Alysoun M. Eversole
EVERSOLE LAW FIRM, P.C.
1509 King Street
Beaufort, SC 29902

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

QUIT CLAIM DEED

WHEREAS, Bull Point, LLC was the developer of Bull Point Plantation and executed two deeds, one recorded in Book 3092 at Page 2123 and the other recorded in Book 2707 at Page 668, conveying certain parcels of real property to "Bull Point Property Owners Association", inadvertently omitting the "Inc." from the Grantee's name; and

WHEREAS, Bull Point Property Owners Association, Inc. changed its name to Bull Point Plantation Property Owners Association, Inc.; Now therefore,

KNOW ALL MEN BY THESE PRESENTS, that **BULL POINT PROPERTY OWNERS ASSOCIATION a/k/a , BULL POINT PROPERTY OWNERS ASSOCIATION, INC. n/k/a BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC.,** in the State aforesaid, for the monetary consideration of TEN AND NO/100 ($10.00), to it in hand paid at and before the sealing of these presents by **BULL POINT, LLC**, in the state aforesaid, the receipt of which is hereby acknowledged, has remised, released and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto the said **BULL POINT, LLC**, its Successors and Assigns, all its right, title and interest in and to the following described real property, to wit:

"SEE EXHIBIT A"

Grantees Address: 114 Barnaby Bluff
Seabrook, SC 29940

This conveyance is made subject to any and all easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

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TO HAVE AND TO HOLD, all and singular the said Premises before mentioned unto the said **BULL POINT, LLC**, its Successors and Assigns, forever, so that neither the Grantor nor its successors and assigns, nor any other persons claiming under it shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part thereof, forever.

WITNESS our hands and seals this 4th day of October, 2019

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

BULL POINT PROPERTY OWNERS ASSOCIATION a/k/a BULL POINT PROPERTY OWNERS ASSOCIATION, INC. n/k/a BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC.

Witness

By: William E. Gavigan, President

Witness (Notary)

Richard Riney, Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, Allyson Eversole, the undersigned Notary, do hereby certify that BULL POINT PROPERTY OWNERS ASSOCIATION a/k/a BULL POINT PROPERTY OWNERS ASSOCIATION, INC., n/k/a/ BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC. by William E. Gavigan, President, and Richard Riney, Vice President, who personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this, the 4th day of October, 2019.

Notary Public for South Carolina
My Commission Expires: 11-4-2019

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"EXHIBIT A"

All that certain piece, parcel or tract of land, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and 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.

R700-020-000-0054
R700-020-000-0066
R700-020-000-0184
R700-020-000-0191
R700-020-000-0217
R700-020-000-0218
R700-020-000-0219
R700-020-000-0247
R700-026-000-0175
R700-027-000-0119
R700-027-000-0198
R700-027-000-0216

This being the same property conveyed to Bull Point Property Owners Association by deed of Bull Point, LLC dated October 21, 2011 and recorded at the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3092 at Page 2123.

AND ALSO

All those certain pieces, parcels and lots of land, situate, lying and being in Sheldon Township, Garden's Corner, Beaufort County, South Carolina, consisting of two parcels containing a total of 1.79 acres and described as; Area Quit Claimed to Open Space (1.25 acres) and Area Quit Claimed to Open Space (0.54 acres) on a plat entitled Lot Line Abandonment and Lot Deconfiguration on Lot 11, Lot 192, and Open Space prepared by Gasque and Associates Inc. dated November 30, 2007 revised January 19, 2008 and recorded in the Beaufort County Register of Deeds Office on March 12, 2008 in Book 00124 at Page 0032 and attached hereto and incorporated herein for a more complete description.

R700-027-000-0239
R700-027-000-0240

This being the same property acquired by Bull Point Property Owners Association by deed of Bull Point, LLC dated March 26, 2008 and recorded in the Register of Deeds Office for Beaufort County, South Carolina in Book 2707 at Page 668.

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Exhibit 23

November 12, 2019 letter to Judge Mullen from Gene Matthews

RICHARDSON PLOWDEN
RICHARDSON PLOWDEN ROBINSON, P.A.
ATTORNEYS AT LAW

COLUMBIA P.O. Drawer 7788 · Columbia, SC 29202
1900 Barnwell Street, Columbia, SC 29201 P 803.771.4400 F 803.779.0016

MYRTLE BEACH P.O. Box 3646 · Myrtle Beach, SC 29578
2103 Farlow Street, Myrtle Beach, SC 29577 P 843.448.1008 F 843.448.1533

CHARLESTON P.O. Box 21203 · Charleston, SC 29413
235 MaGrath Darby Boulevard, Suite 100, Mount Pleasant, SC 29464 P 843.805.6550 F 843.805.6599

www.RichardsonPlowden.com

REPLY TO COLUMBIA
E-mail address for Eugene H. Matthews
gmatthews@richardsonplowden.com

Certified Specialist in Employment & Labor Law
by the Supreme Court of South Carolina

Licensed in South Carolina and North Carolina

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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:

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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.

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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 *entire*[3] 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.

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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.

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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

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)

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Exhibit 24

September 25, 2019 e-mail to Gavigan from Eversole

From: Alysoun Eversole <aeversole@eversolelaw.com>
Date: September 25, 2019 at 17:51:16 EDT
To: Billy Gavigan <billy@gavigangroup.com>
Subject: Bull Point

Billy,

Attached are the tax maps for the parcels that need clarification for the deeds from Bull Point, LLC to the appropriate grantee for each property.

In short, what we are doing is having the current owners (BPPOA and BPPOA, Inc. and OSP, Inc.) quit claim their interests back to Bull Point, LLC using the legal descriptions provided in the current recorded deeds. Many of the descriptions in those deeds are vague and incorrect. Once the Quit Claim Deeds are recorded, deeds will be done for Bull Point, LLC to convey each parcel to the BPPPOA, Inc. using correct and proper legal descriptions. It is a fairly simple process, but requires a lot of organization and details to attend to.

Please get with me about clarification of the attached parcels as soon as possible.

Thanks, and have a good evening.

Alysoun

Alysoun M. Eversole
EVERSOLE LAW FIRM, P.C.
1509 King Street
Beaufort, SC 29902
Phone (843)379-3333
Fax (843)379-5558

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EXHIBIT 25

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

Feb 06 2020
REFERENCE ID: 468438

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Filing ID: 200205-110500

Filing Date: 02/05/2020

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STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF INCORPORATION
Nonprofit Corporation – Domestic
Filing Fee $25.00

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

1. The name of the nonprofit corporation is
   BULL POINT PLANTATION OWNERS ASSOCIATION, INC

2. The initial registered office (registered agent's address in SC) of the nonprofit corporation is
   2216 Moss Street
   (Street Address)
   Beaufot, South Carolina 29902
   (City, State, Zip Code)

   The name of the registered agent of the nonprofit corporation at that office is
   WILLIAM E. GAVIGAN
   (Name)

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

   (Agent's Signature)

3. Check "a", "b", or "c", whichever is applicable. Check only one box.
   a. ☐ The nonprofit corporation is a public benefit corporation.
   b. ☐ The nonprofit corporation is a religious corporation.
   c. ☒ The nonprofit corporation is a mutual benefit corporation.

4. Check "a" or "b" whichever is applicable
   a. ☒ This corporation will have members.
   b. ☐ This corporation will not have members.

5. The principal office of the nonprofit corporation is
   2216 Moss Street
   (Street Address)
   Beaufot, South Carolina 29902
   (City, State, Zip Code)

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

SC Secretary of State
Mark Hammond

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

Feb 06 2020

REFERENCE ID: 468438

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

BULL POINT PLANTATION OWNERS ASSOCIATION, INC

Name of Corporation

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

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

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

OR

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

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

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

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

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

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

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

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Feb 06 2020
REFERENCE ID: 468438

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

BULL POINT PLANTATION OWNERS ASSOCIATION, INC

Name of Corporation

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

William E. Gavigan
(Name)
2216 Moss Street
(Business Address)
Beaufot, South Carolina 29902
(City, State, Zip Code)

(Name)
(Business Address)
(City, State, Zip Code)

(Name)
(Business Address)
(City, State, Zip Code)

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

William E Gavigan
(Name – only if names in articles)
William E. Gavigan
(Signature of Director)

(Name – only if names in articles)
(Signature of Director)

(Name – only if names in articles)
(Signature of Director)

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

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AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Feb 06 2020

REFERENCE ID: 468438

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

BULL POINT PLANTATION OWNERS ASSOCIATION, INC

Name of Corporation

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

William E. Gavigan
(Signature of Incorporator)

(Signature of Incorporator)

(Signature of Incorporator)

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

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Exhibit 26

Quit Claim Deed recorded 3/10/2020

4 15 PB Bull Point LLC CC

RECORDED
2020 Mar -24 04:51 PM
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 3844 Pgs 2148-2151
FILE NUM 2020013351
03/10/2020 12:57:15 PM
REC'D BY pbaxley RCPT# 967386
RECORDING FEES $15.00

ADD DMP Record 3/20/2020 11:50:15 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	020	000	0126	0000	00

CHANGE DMP Record 3/20/2020 11:50:43 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	026	000	0176	0000	00

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Prepared by and Return to:
Alysoun M. Eversole
EVERSOLE LAW FIRM, P.C.
1509 King Street
Beaufort, SC 29902

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that, **BULL POINT, LLC,** in the State aforesaid, for the monetary consideration of TEN AND NO/100 ($10.00), to it in hand paid at and before the sealing of these presents by **BULL POINT PLANTATION OWNERS ASSOCIATION, INC., a South Carolina Non-profit Corporation** in the state aforesaid, the receipt of which is hereby acknowledged, has remised, released and forever quit-claimed, and by these presents do remise, release and forever quit-claim unto the said **BULL POINT PLANTATION OWNERS ASSOCIATION, INC., a South Carolina Non-profit Corporation,** its Successors and Assigns, all its right, title and interest in and to the following described real property, to wit:

"SEE EXHIBIT A"

Grantees Address: 114 Barnaby Bluff
Seabrook, SC 29940

This conveyance is made subject to any and all easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said Premises before mentioned unto the said **BULL POINT PLANTATION OWNERS ASSOCIATION, INC., a South Carolina Non-profit Corporation,** its Successors and Assigns, forever, so that neither the Grantor nor its successors and assigns, nor any other persons claiming under it shall at any time hereafter, by any

CHANGE DMP Record 3/20/2020 11:51:11 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	027	000	0199	0000	00

way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part thereof, forever.

WITNESS our hands and seals this 6th day of March, 2020

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

BULL POINT, LLC

Witness

By: William E. Gavigan,
Its Managing Member

Witness (Notary)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) ACKNOWLEDGEMENT

I, Alysoun Eversole, the undersigned Notary, do hereby certify that BULL POINT, LLC by William E. Gavigan, its Member, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this, the 6th day of March, 2020.

ALYSOUN M. EVERSOLE NOTARY PUBLIC STATE OF SOUTH CAROLINA My Commission Expires 09-20-2028

Notary Public for South Carolina
My Commission Expires: 9/20/2028

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"EXHIBIT A"

All those certain roads and rights of way with improvements thereon shown and dedicated as the Sheldon Lane 50 foot right of way for access, ingress and egress for Phase VB of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 9th day of November, 1998, last revised March 17th, 2003 and recorded in the Office of the RMC for Beaufort County, South Carolina in Plat Book 92 at Pages 34 and 35 (hereinafter the Phase VB Plat).

ALSO

All those certain pieces, parcels and improvement tracts of land on which road right of ways have been constructed outside of the designated right of way easements as shown and designated on the Phase VB Plat

ALSO

All of the parcels with improvements thereon shown and designated as drainage improvements on the Phase VA Plat recorded in Plat Book 119 at Page 195.

R700-020-000-0126

AND ALSO:

All those certain roads and right of ways with improvements thereon shown and dedicated as the Stephens Path and a portion of the Barnaby Bluff 50 foot right of ways for access, ingress and egress for Phase III of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 2nd day of May, 2002 and recorded in the Register of Deeds Office for Beaufort County, South Carolina in Plat Book 87 at Page 22 (hereinafter the Phase III Plat).

ALSO

All those certain parcels designated and/or constructed within the leisure trail easements for Phase III and any drainage easements on the Phase III Plat.

ALSO

All those certain pieces, parcels and tracts of land on which road right of ways improvements have been constructed outside of the designated right of way easements as shown and designated on Phase III Plat.

R700-020-000-0176

AND ALSO:

All those certain roads and right of ways with improvements thereon shown and dedicated as the Island Way 50 foot right of way for access, ingress and egress for Phase VA Big Bull Island, Bull

Point Subdivision on a plat prepared by Andrew and Burgess, Inc. Engineering dated the 9th day of May, 2007 and recorded in Plat Book 119 at Page 195 at the Register of Deeds Office for Beaufort County, South Carolina. The improvements transferred by the within deed includes, but is not limited to the constructed vehicular bridge providing ingress and egress from the mainland of the Bull Point Subdivision to Big Bull Island. The above referenced Phase VA Plat is incorporated herein.

ALSO

All of the parcels with improvements thereon shown and designated as drainage improvements on the Phase VA Plat.

R700-026-000-0176

AND ALSO:

All those certain roads and right of ways with improvements thereon shown and dedicated as the Bull Point Drive 50 foot right of way for access, ingress and egress Phase II of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 8th day of November, 1995, with latest revision date of August 28th, 2000 and recorded in the office of the Register of Deeds Office for Beaufort County, South Carolina in Plat Book 75 at Page 180 (hereinafter the Phase II Plat).

ALSO

All those certain parcels designated as a meandering trails and drainage easements on the Phase II Plat.

ALSO

All those certain pieces, parcels and tracts of land on which road right of ways and/or meandering trails and drainage improvements have been constructed outside of the designated right of way or meandering trail easements as shown and designated on the Phase II Plat.

R700-027-000-0199

This property is conveyed subject to all obligations, restrictions, limitations, covenants, easements and benefits as contained in the Declaration of Covenants, Conditions, and Restrictions for Bull Point Plantation dated the 22nd day of September, 1995 and recorded at the Office of the Register of Deeds for Beaufort County, South Carolina on September 26, 1995 in Book 805 at Page 218, as amended, from time to time and all other easements and restrictions of record applicable thereto.

All these parcels being a portion of the same property conveyed to the within Grantor by deed of Bull Point Property Owners Association, Inc. k/n/a Bull Point Plantation Property Owners Association, Inc. dated October 24, 2019 and recorded at the Office of the Register of Deeds for Beaufort County, South Carolina Office in Book 3802 at Page 185-192.

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Exhibit 27

January 24, 2021 letter to Chamberlain from Gavigan

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

Bull Point
WATERFRONT LIVING

January 4th, 2021

Via Email: pcornduff@gwblawfirm.com

To: M. Paige Chamberlain, Counsel of Record, Harriet Bosiack
From: William E. Gavigan, Pro Se, Plaintiff

Subj: Notice of Subpoenas and depositions third-party 2020-CP-07-02017 Bull Point SC, LLC vs Bosiack

Dear M Paige Chamberlain,

I write to notify you of the subpoenas being served in the Bull Point SC, LLC v Bosiack matter. I would like to schedule the deposition of Mrs. Bosiack for the same week. The third-party depositions are noticed for the 18th and 19th of January. I have attached the three subpoenas for your records and would like to coordinate with you to schedule the deposition of Mrs. Bosiack. Subpoenas are noticed for;

1. Russ Dimke 18th 10 A.M.
2. Michael Pellecchia 19th 10 A.M.
3. Joseph D'Ambrosio 19th 1 P.M.

I may be reached at 843-252-3559 or billy@gavigangroup.com for any related matters. Bull Point, LLC has graciously allowed us to conduct the depositions at 114 Barnaby Bluff in Bull Point. The appropriate C-19 procedures havebeen taken into consideration.

Respectfully,

/s/ William E. Gavigan
William E Gavigan

Pro Se

CC: Brian Boger, Esq
Attorney for GSI, LLC and Bull Point SC, LLC
CC: Irish Ryan Neville, Esq
Attorney for GSI, LLC and Bull Point SC, LLC

Exhibit 28

January 13, 2020 e-mail to Cooke, Matthews & Letteer from Jake Moore

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

Jeffrey M. Bogdan

From: Jake Moore <jake@mttlaw.com>
Sent: Monday, January 13, 2020 10:43 AM
To: M. Dawes Cooke; Gene Matthews; Bryan C. Letteer
Cc: Jeff Bogdan; Diana Murray
Subject: RE: Bull Point

Your folks took over the common elements didn't They? I suppose we suggest your folks pay the taxes on the common elements. Gene am I missing something? Dawes your guys have the check book. I am sure your folks would not suggest using the reserves for this payment.

From: M. Dawes Cooke [mailto:mdc@barnwell-whaley.com]
Sent: Monday, January 13, 2020 10:40 AM
To: Gene Matthews <GMatthews@RichardsonPlowden.com>; Jake Moore <jake@mttlaw.com>; Bryan C. Letteer <bryan@mttlaw.com>
Cc: Jeff Bogdan <jbogdan@barnwell-whaley.com>; Diana Murray <dmurray@barnwell-whaley.com>
Subject: Re: Bull Point

Following up again on the issue below. Property taxes are due this week on the common properties. What does Mr. Gavigan propose with regard to paying the taxes? This has become urgent, as you know.

What does he say about re-conveying the properties?

Thanks

DAWES COOKE
BARNWELL WHALEY PATTERSON & HELMS, LLC
288 MEETING STREET
CHARLESTON, S.C. 29401
(843)577-7700
(843)729-2545 (m)

From: "M. Cooke" <mdc@barnwell-whaley.com>
Date: Tuesday, January 7, 2020 at 3:38 PM
To: Eugene Matthews <GMatthews@RichardsonPlowden.com>, Jake Moore <jake@mttlaw.com>, "bryan@mttlaw.com" <bryan@mttlaw.com>

Cc: Jeff Bogdan <jbogdan@barnwell-whaley.com>, Diana Murray <dmurray@barnwell-whaley.com>
Subject: Re: Bull Point

Gene, Jake, and Bryan:

Happy New Year. I hope you had a good holiday season.

Do you have any news on the transfer of the common properties? As noted below, property taxes are due next week, so the situation is becoming more critical.

Thanks

DAWES
BARNWELL WHALEY PATTERSON & HELMS, LLC
288 MEETING STREET
CHARLESTON, S.C. 29401
(843)577-7700
(843)729-2545 (m)

From: "M. Cooke" <mdc@barnwell-whaley.com>
Date: Sunday, December 22, 2019 at 7:07 PM
To: Eugene Matthews <GMatthews@RichardsonPlowden.com>, Jake Moore <jake@mttlaw.com>, "bryan@mttlaw.com" <bryan@mttlaw.com>
Cc: Jeff Bogdan <jbogdan@barnwell-whaley.com>, Diana Murray <dmurray@barnwell-whaley.com>
Subject: Re: Bull Point

Gene, Jake, and Bryan:

I'm following up on the items below. I'm told that Mr. Gavigan repeated at a recent meeting at Bull Point that he intends to reconvey the common properties to the POA. Can you please let us know right away what his timetable for this is? The insurance situation is past critical, and property taxes are due shortly.

On another note, Mr. Gavigan has been sending out litigation updates to the Members of the POA. Would you please ask him to take Mr. and Mrs. D'Ambrosio off his mailing list? They do not wish to receive emails from him.

Have a great Holiday Season.

Thanks

DAWES
BARNWELL WHALEY PATTERSON & HELMS, LLC
288 MEETING STREET

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CHARLESTON, S.C. 29401
(843)577-7700
(843)729-2545 (m)

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

From: "M. Cooke" <mdc@barnwell-whaley.com>
Date: Wednesday, December 11, 2019 at 10:45 AM
To: Eugene Matthews <GMatthews@RichardsonPlowden.com>, Jake Moore <jake@mttlaw.com>, "bryan@mttlaw.com" <bryan@mttlaw.com>
Cc: Jeff Bogdan <jbogdan@barnwell-whaley.com>, Diana Murray <dmurray@barnwell-whaley.com>
Subject: Re: Bull Point

Gene, Jake, and Bryan:

I'm following up on the second paragraph of my November 27 email (below) to Gene. I'm including Jake and Bryan in case you are handling this issue. Can you advise me of the status of Mr. Gavigan's plan to have Bull Point, LLC re-convey the Common Properties to the POA? Aside from the POA's obvious interest in confirming its ownership of these properties, the Interim Board has two pressing concerns. The first is mentioned below: the POA needs to make sure that these properties are insured. The POA has casualty insurance in place, but the properties might not be covered if they are not titled in the POA's name. The second concern is that property taxes are due on January 15, and a seven percent penalty will be applied if the taxes are not paid on time. It is important that someone pay these taxes on time.

Can you confirm whether Bull Point, LLC intends to complete the reconveyance of the properties soon, and if not whether it will obtain insurance on the properties immediately and pay the taxes by January 15?

Thanks

DAWES COOKE
BARNWELL WHALEY PATTERSON & HELMS, LLC
288 MEETING STREET
CHARLESTON, S.C. 29401
(843)577-7700
(843)729-2545 (m)

From: "M. Cooke" <mdc@barnwell-whaley.com>
Date: Wednesday, November 27, 2019 at 3:45 PM
To: Eugene Matthews <GMatthews@RichardsonPlowden.com>
Cc: Jeff Bogdan <jbogdan@barnwell-whaley.com>, MJ Wilson <mwilson@richardsonplowden.com>, Diana Murray <dmurray@barnwell-whaley.com>
Subject: Bull Point

Gene, a couple of things:

First, should we assume that we've gotten all the answers that we're going to get from the Defendants in response to the access questions below?

Second, what information can you provide as to the status of insurance on the Bull Point common properties? Recall that in your November 12 letter to Judge Mullen you said that the quitclaim deeds from the POA to Bull Point, LLC were made to enable Bull Point, LLC to convey the properties lawfully to the POA. However, Bull Point, LLC has not yet conveyed the properties to the POA. Aside from the obvious concerns about this omission, the Interim Board is concerned that the POA's insurance policies on these properties might not cover any losses if the properties are not titled in the POA. Has Mr. Gavigan made any arrangement to insure these properties through Bull Point, LLC? Needless to say, this is a matter of considerable urgency.

Thanks in advance for any help you can provide. Have a great Thanksgiving!

DAWES
BARNWELL WHALEY PATTERSON & HELMS, LLC
288 MEETING STREET
CHARLESTON, S.C. 29401
(843)577-7700
(843)729-2545 (m)

From: "M. Cooke" <mdc@barnwell-whaley.com>
Date: Tuesday, November 26, 2019 at 9:51 AM
To: Eugene Matthews <GMatthews@RichardsonPlowden.com>
Cc: Jeff Bogdan <jbogdan@barnwell-whaley.com>, MJ Wilson <mwilson@richardsonplowden.com>, Diana Murray <dmurray@barnwell-whaley.com>
Subject: Re: POA employees

Thanks for your call back. Diana, our paralegal, overheard me talking to you, and she offered to get on a call with Billy and work through these various login issues if that would be helpful. Just let us know.

DAWES
BARNWELL WHALEY PATTERSON & HELMS, LLC

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Exhibit 29

February 16, 2021 letter to Matthews, Neville & Boger from Bogdan

ELECTRONICALLY FILED - 2021 Feb 25 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP070817

EST. 1938
BARNWELL WHALEY
ATTORNEYS AT LAW

JEFFREY M. BOGDAN
MEMBER ATTORNEY
JBOGDAN@BARNWELL-WHALEY.COM

February 16, 2021

Via E-mail Only
5427.002

Eugene H. Matthews, Esq.
Richardson Plowden
1900 Barnwell St.
Post Office Drawer 7788
Columbia, SC 29202
GMatthews@RichardsonPlowden.com

I. Ryan Neville, Esq.
Spitz & Neville
151 Meeting Street, Suite 350
Charleston, SC 29401
irn@spitzandneville.com

Brian L. Boger, Esq.
Boger Law Firm
P.O. Box 65
Columbia, SC 29201
Brian@BogerLaw.com

RE: Bull Point Plantation Property Owners Association, Inc

Dear Gene, Ryan and Brian,

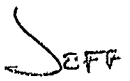
Bull Point Plantation Property Owners Association, Inc. (the "Association") has received numerous 2020 Beaufort County Property Tax Bills for real estate that your client(s) transferred from the Association to his other entities (Bull Point, LLC and/or Bull Point Plantation Owners Association, Inc.). These tax bills are enclosed. While the Association believes that these transfers were void as a matter of law, I am writing to provide you notice of these bills. Please advise by March 15, 2020 if Mr. Gavigan; Bull Point, LLC; and/or Bull Point Plantation Owners Association, Inc. intend to pay property taxes on these properties. The Association is not waiving its claim to title over these properties by giving your client(s) an opportunity to pay the tax bills. Unless other arrangements are made, the Association reserves its right to pay the taxes on or after March 16, 2020.

Further, when Mr. Gavigan transferred these properties away from the Association, the properties lost their status of being owned by a homeowners' association and, thus, lost the special valuation available to property owned by homeowners' associations. This has resulted in increased property taxes. Please

ask Mr. Gavigan to immediately complete an application with the Beaufort County Tax Assessor to have these properties re-qualified for the special valuation (a blank copy of the application form is enclosed). If the taxes are not reduced, the Association will include the increased tax bills (thousands of dollars) as part of its claim for damages in the litigation it filed for, amongst other things, return of these properties.

With kind regards,

Yours truly,



Jeffrey M. Bogdan

JMB/jgc
Enclosures

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Exhibit 30

Affidavit of William E. Gavigan

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ELECTRONICALLY FILED - 2020 May 28 12:46 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700845

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AFFIDAVIT OF WILLIAM E. GAVIGAN

I, WILLIAM E. GAVIGAN, hereby declare as follows:

1. I am over the age of 18 years. I am a resident of Beaufort, South Carolina. As set forth below, I am the owner of the companies mentioned herein below. In that capacity, I could and would competently testify thereto regarding the following:

Corporate Ownership

2. I am the owner, either directly or through other entities I own, of the below listed companies, each of which has some relationship with Bull Point Plantation. I am also the Manager, Managing Member or President, as applicable, of said below listed companies:

a. BDG RECOVERY, LLC, a South Carolina limited liability company.

b. BULL POINT, LLC, a South Carolina limited liability company.

c. BULL POINT SC, LLC, a South Carolina limited liability company.

d. GSI, LLC, a South Carolina limited liability company.

e. OLD SOUTH PROPERTIES, INC., a South Carolina corporation.

3. I am a developer and hold the title of declarant for several communities in Beaufort County, South Carolina.

4. I have been in the real estate development profession since 2006. Our companies have been involved with master planned communities in North Carolina, South Carolina, and Georgia. I have directly led the sale and development of over ten thousand acres of land to include the $61 million sale of 5,000 acre in Jasper County known as River Port.

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ELECTRONICALLY FILED - 2020 May 29 12:46 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

5. Since 2009 my primary focus has been acquiring troubled assets and communities, obtaining the required compliance with Federal and State agencies, and then increasing the value of these communities through enhancement, improvement, sales and development.

History of the Declarant at Bull Point Plantation

6. On January 23, 1995, Metropolitan Properties, Inc. conveyed to Bull Point, LLC the first of several parcels that consists of 694-acres commonly referred to as Bull Point Plantation, which was developed and continues to be developed as a phased subdivision.

7. On September 22, 1995, Bull Point, LLC executed restrictive covenants, entitled the "Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation" (the "Declaration"). (Recorded in Book 805, at Page 218.)

8. Under the Declaration, Bull Point, LLC is the "Declarant" and the "Association," defined in Section 1.01(e), is "Bull Point Plantation Owners Association, Inc." Significantly, since 1995, Bull Point, LLC has amended the Declaration approximately twenty-five (25) times. No amendment has modified the definition of "Declaration." No amendment has modified the definition of "Association."

9. In 2011, one of Bull Point, LLC's lenders, BB&T, commenced a foreclosure action, United States District Court Case No. 9:11-cv-00629-SB, against property secured by a mortgage (the "BB&T Foreclosure Action").

10. Defendants in this action included, *inter alia*, Bull Point, LLC, Bull Point Property Owners Association, Inc., and Bull Point Plantation Property Owners Association. Bull Point Property Owners Association, Inc. did not file a responsive pleading, whereas Bull Point Plantation Property Owners Association did file an answer. In its answer, Bull Point Plantation Property Owners Association admitted that it "was deferent and [was] not an active association."

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11. During the pendency of the BB&T Foreclosure Action, German American Capital Corporation (GACC) acquired the BB&T-Bull Point, LLC loan and stepped into the shoes of BB&T. GACC was successful in the action, and on July 5, 2012, the court in the foreclosure action issued its Deed by Judicial Order, and transferred to DB Aster, LLC most of Bull Point, LLC's real property. Subsequently, on December 28, 2012, Bull Point, LLC executed an Assignment of Rights Under Declaration, with the intent to convey the Declarant Rights to DB Aster, LLC, an assignee of GACC.

William Gavigan's Involvement and Relationship with Bull Point Plantation

12. I first became involved with Bull Point during the pendency of the BB&T Foreclosure Action, when Stan Kirkland and Donald Barrett sought me out to assist in the completion of the development. To that end, Bull Point, LLC and one of my companies executed an agreement to complete the development and I later testified in a federal court proceeding regarding the development and our plan to finish out and complete the development.

13. My agreement with Bull Point, LLC was suspended due to the successful foreclosure by GACC; however, I maintained contact with Bull Point, LLC's principles and GACC's representatives because of my interest in Bull Point.

14. When Bull Point came on the market, I was contacted by the owner's agent. After considerable negotiation, on August 18, 2017, one of my companies, GSI, LLC, purchased from DB Aster, LLC and German American Capital Corporation (GACC): (1) all right, title and interest in the real property at Bull Point, (2) the development and permit rights for future phases, (3) the Declarant Rights, and (4) a judgment by GACC against Bull Point, LLC for $2.4 million (inclusive of interest).

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15. On August 21, 2017, GSI, LLC, conveyed to Bull Point SC, LLC everything it acquired from DB Aster, LLC and GACC, exclusive of a handful of lots.

The Foreclosure of Lot 223

16. On May 5, 2014, Bull Point Plantation Property Owners Association, Inc. commenced that action entitled *Bull Point Plantation Property Owners Association, Inc. v. Bull Point, LLC, et al.*, Circuit Court Case No. 2014CP0701080 (the "Lot 223 Foreclosure Action"). On said date, no entity was registered with the South Carolina Secretary of State with the name Bull Point Plantation Property Owners Association, Inc.

17. On January 21, 2015, the court in the Lot 223 Foreclosure Action, issued its Master's Deed, which conveyed Lot 223 to Bull Point Plantation Property Owners Association, Inc. On said date, *no* such entity was registered with the South Carolina Secretary of State with the name Bull Point Plantation Property Owners Association, Inc.

The Fraudulent Name Change Following the Foreclosure of Lot 223

18. On February 5, 2015, the same date that the Master's Deed for Lot 223 was recorded, Russ Dimke, in the putative capacity as Secretary/Treasurer, submitted to the Secretary of State Articles of Amendment to change the name of Bull Point Property Owners Association, Inc. to Bull Point Plantation Property Owners Association, Inc. This name change was improper because:

a. The Articles of Incorporation require any amendment to have "the assent of seventy-five (75%) of the entire membership"; no such amendment was ever voted on by the members, let alone receiving approval of 75% of the membership.

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b. The Bylaws require that all written instruments be signed by the President; the President did not sign the Articles of Amendment.

c. Russ Dimke was not a member of the corporation and did not have the authority to do this.

The Attridge Action Ruling Regarding the Declarant Rights

19. On December 3, 2018, a handful of owners at Bull Point commenced that action entitled *Jon Attridge, et al v. The Board of Directors of Bull Point Plantation Property Owners Association, Inc., et al.*, Circuit Court Case No. 2018CP0702345 (the "Attridge Action"). Among other things, the action sought to have the court rule that Bull Point SC, LLC was not the Declarant.

20. On November 18, 2019, the court in the Attridge Action issued its Order. The Order held, among other things, that Bull Point SC, LLC was not the Declarant. (Order, ¶ 5.)

21. Although that part of the Order entitled "Relief Granted" did not state why it ruled Bull Point SC, LLC was not the Declarant, earlier in the Order the court stated that the definition of "Declarant" could only be interpreted such that the Declarant Rights transferred only upon the foreclosure of the Declarant's "entire interest." As set forth in the Facts section of the Order, Bull Point, LLC's entire interest was not foreclosed upon and, therefore, the Declarant Rights did not transfer to DB Aster, LLC and, subsequently, to GSI, LLC and, subsequently, to Bull Point SC, LLC.

Bull Point, LLC's Interest in Bull Point Plantation

22. At all times, from September 1995 to the present, Bull Point, LLC has continued to have an interest in Bull Point Plantation.

23. On July 5, 2012, on the date the court issued its Deed by Judicial Order in the BB&T Foreclosure Action:

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a. The deed did *not* convey Lot 223, Phase VI, Bull Point Plantation.

24. On January 21, 2015, on the date the court issued its Master's Deed in the Lot 223 Foreclosure Action:

a. There did not exist an entity with the name Bull Point Plantation Property Owners Association, Inc., the purported grantee of Lot 223.

25. Under the express terms of the Declaration, Bull Point, LLC owned and continues to own:

a. Approximately 25 acres consisting of (i) Lake Bellinger, (ii) Lake Izard, and (iii) Lake Pocotaligo;

b. Approximately 9 acres consisting of the maintenance area and storage area.

c. The gated and guarded monitored access.

d. The interest under that Easement Agreement, dated July 12, 2001, between Bull Point, LLC and the owner of Lot 35, Phase I. (Recorded 10/31/2001, Book 01490, at Page 0973.)

e. The interest under that Easement Agreement, dated January 12, 2005, between Bull Point, LLC and the owner of Lot 33, Phase I. (Recorded 01/14/2005, Book 02084, at Pages 1196-1200.)

f. The interest under that Easement Agreement, dated July 21, 2005, between Bull Point, LLC and the owner of Lot 35, Phase I. (Recorded 08/11/2005, Book 02207, at Pages 0896-0899.)

g. The interest under that Conservation Easement, dated December 22, 2003. (Recorded 12/24/2003, in Book 01889, at Pages 2334-2348.)

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Declarant Alone Can Add Property to Declaration

26. Under Article II, Sections 2.01 and 2.02, of the Declaration, only the Declarant may add property to the Development.

27. The following property has been made a part of the Development, as that term is defined in the Declaration:

a. Phase I

b. Phase II

c. Phase IV

d. Phase V-A

e. Phase VI

28. Attached hereto as Exhibit A is a true and correct copy of the *Nineteenth Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation* that added Phase V-A and which recounts the history of the phases being made a part of the Development.

29. The following property has *not* been made a part of the Development:

a. Phase III and lots therein

b. Phase V-B and lots therein

c. Future Phase VII and (45 lots) therein

d. Future Phase VIII, portions of which are intended for Common Area and the property at 114 Barnaby Bluff (resort pool, tennis, Club house).

e. The Clubhouse

f. Magnolia Island

g. The Boat launch and landing, docks, etc.

h. The Bird Sanctuary

i. Lake Izard (association funds were used to dig the lake)

j. All other Additional Property.

The Developer's Vision the for Bull Point Plantation

30. My intent since acquiring Bull Point Plantation has been and remains to finish the development of the subdivision, and to make it a flagship community in the Lowcountry. To that end, I have, among other things, invested time and resources to perform a capital reserve study, conduct a road maintenance study, fix and repair items suffering from lack of maintenance (which in some respects appears to have been intentional), coordinate the installation of data and power, implement new and improved procedures, remedy defective titles, greatly increased property values, brought about a 50-fold increase in sales, *and* submitted portions of Additional Property to the Declaration by adding Phase V-A to the Development.

31. Certain persons have represented, falsely, that I committed to transferring property to the "POA." At no time have I ever committed to transferring any property to the POA, which was defined in the Court's Order as Bull Point Plantation Property Owners Association. Further, I have never committed to transferring property to Bull Point Plantation Property Owners Association, Inc., which certain persons contend is an owner's association. Rather, at all times my commitment and duty has been and is to the "Association," as defined in the Declaration as Bull Point Plantation Owners Association, Inc. There is, however, a caveat to this. Certain deadlines are set forth in the Declaration, including possibly September 2020. After this deadline, it is possible/probable that no further amendments may be made to the Declaration by the Declaration, including adding Common Areas.

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32. Unfortunately, my goal of completing the Development of Bull Point Plantation has been hindered by a handful of owners (i.e., those involved with Huspah Properties, LLC) that have sought to acquire for themselves the Declarant Rights and control of the Association. This obstruction has included these owners filing several legal actions, which have impeded my efforts to further proceed with development of Bull Point Plantation. But for their obstruction, I believe that Bull Point Plantation would be in a much better place, additional portions of the Additional Property would be part of the Development, and the property values at Bull Point would be significantly higher.

33. That in compliance with Chief Justice Beatty's April 22, 2020 Order Governing the Operation of the Trial Courts During the Coronavirus Emergency, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

FURTHER THE AFFIANT SAYETH NOT:

William E. Gavigan

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EST. 1938

BARNWELL WHALEY

ATTORNEYS AT LAW

JEFFREY M. BOGDAN
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February 26, 2021

Via E-File
Beaufort County Clerk of Court

Re: *Bull Point Plantation Property Owners Association, Inc. vs. Bull Point SC, LLC, et al,*
C/A No: 2020-CP-07-00817

Madame Clerk:

Attached please find Plaintiff's Exhibit 16 to its Memorandum in Support of Motion for Summary Judgment that was inadvertently omitted from the e-filing yesterday. Please file the attachment and append it to Plaintiff's Memorandum in Support of Motion for Summary Judgment as Exhibit 16.

Thank you for your assistance.

Sincerely yours,

/s/ M. Dawes Cooke, Jr.

M. Dawes Cooke, Jr.

MDCjr/jgc
Encl.

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EXHIBIT 16

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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 PELLECCHIA, JANICE S. PELLECHIA, FRANK H. ROBERTS SR., RICHARD SWILPA, MICHELE GALLANT, PHYLLIS K. KAUPP-SEAS, ROBERT P. BRENDZA, and ROBIN E. BRENDZA individually and in their derivative capacity on behalf of BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION,

Plaintiffs/Counterclaim Defendants,

-vs-

THE BOARD OF DIRECTORS OF BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC.; BULL POINT SC, LLC; WILLIAM E. GAVIGAN; MICHAEL CAREY; CHRISTOPHER J. QUICK; JAMES RIORDAN; DB ASTER, LLC; AND GSI, LLC,

Defendants/Counterclaimants,

and
BULL POINT SC, LLC and WILLIAM E. GAVIGAN,

Third-Party Plaintiffs,

-vs-

ORDER

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JOSEPH P. D'AMBROSIO, MARY D'AMBROSIO, MICHAEL POWERS, HARRIET BOSIACK, ROBERT WOLFSON, JAMES HAYES, STEVE ANDREWS, RON LAMBE, DAVE PREZVYS, RIVERS REACH AT POCOTALIGO, LLC, RIVERS REACH REALTY, LLC AND JOHN DOES 1-10,

Third-Party Defendants.

This matter came before the Court on cross motions for partial summary judgment: Plaintiffs' Motion for Partial Summary as well as the Motion for Partial Summary Judgment of Defendants/Counterclaimants Bull Point SC, LLC; William E. Gavigan; Michael Carey; Christopher Quick; James Riordan and Third Party Plaintiffs Bull Point Plantation Property Owners Association, Inc.; Bull Point SC, LLC; and GSI, LLC's (hereinafter collectively "Defendants"). After considering all materials submitted by Plaintiffs and Defendants and hearing arguments, Plaintiffs' Motion for Partial Summary Judgment in GRANTED and Defendants' Motion for Partial Summary Judgment is DENIED.

BACKGROUND

Plaintiffs commenced this suit individually and in their derivative capacity as property owners and members of the Bull Point Plantation Property Owners' Association (the "Association" or the "POA"), for injunctive relief and for a declaratory judgment as to the rights of the Association and its members under the Declaration of Covenants, Conditions and Restrictions of Bull Point Plantation ("Declarations"). In short, Plaintiffs contend that Defendant Bull Point SC, LLC -- which is owned by the Defendant Gavigan -- has wrongly claimed that it is the Declarant of Bull Point Plantation and assumed the Declarant's rights. Plaintiffs allege that Bull Point SC, LLC has wrongly purported to appoint all the members of the POA's Board of Directors (refusing to allow the POA members to elect the POA's Board), to name Gavigan President of the Board,

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and to amend the Declarations. Plaintiffs also contend that the Defendants have breached their fiduciary duties to the POA by, among other things, invading the POA's Contingency Fund and misspending and overspending the POA's money.

In their Motion for Partial Summary Judgment, Plaintiffs seek the following declarations:

1. That under the terms of the Declarations, Defendant Bull Point SC, LLC is not the Declarant and therefore cannot exercise the Declarant's rights and that the actions taken by the Defendant as putative Declarant are invalid; and
2. In the alternative, that even if Bull Point SC, LLC is the Declarant, the South Carolina Nonprofit Corporations Act and the Bull Point Plantation governing documents provide that the members of the Association are entitled to elect the Association's Board of Directors, rather than the Directors being appointed by the Declarant and that an immediate election be held in this regard.

In their competing Motion for Partial Summary Judgment, the Defendants seek the following declarations:

1. That Defendant Bull Point SC, LLC is the Declarant; and
2. That Defendant Bull Point SC, LLC has the right to appoint and remove members of the POA's Board of Directors.

FACTS

A. The Articles of Incorporation, the Declarations, and the Bylaws

Bull Point Plantation is a private waterfront community located in Seabrook in Beaufort County, South Carolina. On September 26, 1995, the Bull Point Plantation Homeowners Association, Inc.[1] was incorporated by filing Articles of Incorporation (hereinafter "Articles") with

[1] The Articles have been amended to change the name of the entity from Bull Point Homeowners Association, Inc. to Bull Point Plantation Property Owners Association, Inc.

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the State of South Carolina Secretary of State. In addition to the standard Nonprofit Corporation Articles of Incorporation form, this document includes a typewritten "Articles of Incorporation, Bull Point Homeowners Association, Inc." The document contains ten articles that set out the framework of the Association. Section 6 sets out the establishment and maintenance of the Board of Directors. It lists the initial three members of the Board of Directors by name. It then proceeds to prescribe the selection of future Directors. Beginning with the first annual meeting, the members of the Association were to elect Directors in staggered terms (e.g., one Director for a one (1) year term, one Director for a two (2) year term, and one Director for a three (3) year term). By the fourth annual meeting, Bull Point Plantation POA members were supposed to be electing members of the Board of Directors every year for one (1) year terms. The Articles of Incorporation make no provision for the Declarant to appoint or remove Directors.

The Declarations were first recorded in 1995, revised in 2000, and amended numerous times thereafter. Among other things, the Declarations define "Declarant" and set out the Declarant's rights. The Declarations define "Declarant" as follows:

> "Declarant" shall mean and refer to Bull Point, LLC which has executed this Declaration with respect to the Property and the Additional Property at the time of such transfer to said successor-in-title, or any party which acquires said Declarant's entire interest with respect to the Property and the Additional Property at the time of such acquisition pursuant to Foreclosure of a Mortgage encumbering said Declarant's interest in the Property and the Additional Property.

Declarations, Section 1.01(j).

The Declarations conflict with the Articles of Incorporation in one important respect, by providing that the Declarant has the authority to appoint and remove members of the Board of Directors. The Declarations purport not to give the members the right to elect Directors until the Declarant's rights expire.

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The POA's Bylaws were reputedly enacted in 1995, but they were first formally recorded on January 10, 2019 in order to comply with the new South Carolina Homeowners Association Act, S.C. Code Ann. Sec. 27-30-110 (2018) et seq. As will be discussed later, when there is any conflict between governing documents, the Nonprofit Corporations Act resolves these conflicts in favor of the Articles of Incorporation.

B. GSI, LLC and Bull Point SC, LLC Purchase

The Bull Point Plantation Property Owners' Association was formed in 1995 by developer Bull Point, LLC[2] in Beaufort County, South Carolina. Bull Point, LLC was eventually unable to meet its financial obligations and filed for bankruptcy protection. Most of Bull Point, LLC's remaining property was foreclosed upon and sold at public auction on January 23, 2012, wherein the developer's lender, German American Capital Corporation ("GACC") submitted a successful credit bid of $5.4 million dollars. On July 9, 2012, GACC acquired Bull Point, LLC's real estate interests in Bull Point Plantation. GACC simultaneously assigned its bid to its affiliated company, DB Aster, LLC. On December 28, 2012, Bull Point, LLC conveyed five additional lots and purported to assign its Declarancy Rights to DB Aster, LLC. The Assignment was recorded on January 8, 2013.

On or about February 23, 2016, DB Aster entered into a contract with GSI, LLC, ("GSI") a Gavigan-owned entity, to sell its remaining Bull Point Plantation property. On or about June 7, 2016, DB Aster declared GSI, LLC in default under the contract. Litigation ensued between GSI, LLC and DB Aster. The parties entered into a new contract on August 9, 2017, and the suit was dismissed on August 10. On August 21, 2017, GSI purchased the property owned by DB Aster for $1.2 million and title was conveyed by Limited Warranty Deed. Also, on August 21, 2017 a

[2] No relation to the purported Declarant Bull Point SC, LLC.

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document was recorded which purported to assign the Declarant's rights from DB Aster to GSI, LLC. On the same day, GSI, LLC assigned most of its interest to Defendant Bull Point SC, LLC, of which Gavigan is also the sole member. GSI, LLC also executed an "Assignment of Rights Under Declaration" to Bull Point SC, LLC. This purported assignment differs from the previous assignments from Bull Point, LLC to DB Aster and from DB Aster to GSI, LLC, in that this assignment "specifically excludes any and all claims, demands, responsibilities, liabilities and obligations of or against Declarant, whether in tort or contract, being an expressed or implied warranty, or resulting from Assignor's acts or failures to act, and arising under the Declaration or Assignor's development activities or the exercise of control of the Bull Point Property Owners Association prior to the date hereof."

Critically, Defendant Bull Point SC, LLC did not acquire the entire interest of the original Declarant, Bull Point, LLC. In fact, it did not acquire the entire interest of the original Declarant's successor, DB Aster, LLC. It did not even acquire the entire interest of DB Aster's immediate successor in title, GSI, LLC. As noted above, DB Aster obtained Declarant Bull Point LLC's interest in the Bull Point Property in 2012. DB Aster did not sell that entire interest to GSI, LLC, however. Between July 2012 and August 21, 2017, when it sold its interest to GSI, LLC, DB Aster made a conveyance of property to the POA. It also sold at least five individual lots. Therefore, GSI, Inc. did not acquire the entire former interest of the original Declarant.

Nor did GSI, LLC convey its entire interest to the Defendant Bull Point SC, LLC. On September 1, 2017 GSI, LLC conveyed a parcel, Lot 260 of Phase V-B, "that being a portion of that same property conveyed to GSI, LLC by DB Aster, LLC ...", to Craig Elachie, LLC. Further, GSI, LLC still owns a parcel, Lot 170 located at 87 Barnaby Bluff. Thus, Defendant Bull Point SC, LLC did not acquire the entire interest of GSI, LLC, let alone the entire interest of the

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Declarant Bull Point, LLC. Of course, it did not obtain *any* interest in Bull Point Plantation pursuant to foreclosure of a mortgage, as GSI, LLC purchased its interest from DB Aster and then assigned it to Bull Point SC, LLC.

Nevertheless, since August 2017 Defendant Bull Point SC, LLC has purported to exercise Declarant's rights, among other ways by purporting to remove and appoint the members of the Board of Directors of the Association, including appointing Defendant Gavigan as President; by unilaterally purporting to amend the Declarations; and by not paying assessments on the Lots that it owns individually or through related entities.

On June 13, 2019, Plaintiffs filed their Verified Amended Complaint for Declaratory Judgment, Injunctive Relief, and Accounting. Plaintiffs allege generally, among other things, that Defendant Bull Point SC, LLC is not and never was the Declarant and that it never had the authority to appoint the POA's Board; that all actions undertaken by the appointed POA Board are null and void, including the purported amendments of the Declarations; and that the Defendants breached duties to the Plaintiffs and all other POA members by improperly spending POA funds for their own benefit. Plaintiffs asserted nine separate causes of action: (1) a Declaratory Judgment that the Defendants did not have authority to amend the Declarations, particularly to eliminate the Fifteenth Amendment to the Declarations which gave the POA's members control over the POA's Contingency/Reserve Fund, and that Defendants had no authority to use the Contingency Fund for their own benefit; (2) an Injunction prohibiting the Defendants from having control over the Contingency Fund, particularly by eliminating the Fifteenth Amendment and adopting the Eighteenth Amendment (which purported to give Defendants control over the Contingency Fund), and prohibiting the Defendants from using the Contingency Fund for their

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own benefit;[3] (3) an Accounting of the POA; (4) failure to allow inspection of POA records under S.C. Code § 33-31-1602; (5) a Declaratory Judgment that Bull Point SC, LLC is not and never was the Declarant, making all actions it took as purported Declarant null and void, including but not limited to its amendment of the Declarations and appointments of the POA's directors; (6) a Declaratory Judgment that, regardless of who the Declarant is, the POA members have the right to elect the POA's directors and, thus, the POA's Board of Directors, as appointed by Defendant Bull Point SC, LLC is and has been illegally constituted; (7) a Declaratory Judgment that, regardless of who the Declarant is, Defendant Bull Point SC, LLC's enactment of the Eighteenth Amendment to the Declarations was improper because it was not approved by a vote of three-fourths (3/4) of the POA members in good standing; (8) a Declaratory Judgment that the POA members have the right to repeal the Eighteenth Amendment; and (9) a Declaratory Judgment that, since Defendant Bull Point SC, LLC is not and never has been the Declarant, it is responsible for paying annual assessments on the lots it owns within Bull Point since August 21, 2017, when it acquired the same.

STANDARD OF REVIEW

Summary Judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRCP. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452 548 S.E.2d 868, 874 (2001). "Where a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous." MCG Management of Charleston, Inc. v. Kinghorn Ins. Co., 336 S.C. 542, 546 520 S.E. 2d 820, 822 (Ct.

[3] In their Amended Complaint, Plaintiffs also asked for all "injunctive relief necessary to enforce the declarations sought in the remaining Causes of Action herein; and such further injunctive relief as the Court deems appropriate."

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App. 1999). "*See* S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302-303 (2001) (stating the determination of whether a contract's language is ambiguous is a question of law); Thalia S. ex rel. Gromacki v. Progressive Select Ins. Co., 401 S.C. 395, 399, 736 S.E.2d 863, 865 (Ct. App. 2012) (stating the construction and enforcement of an unambiguous contract is a question of law for the court and thus can be properly disposed of at summary judgment); Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997) (defining an ambiguous contract as one where the terms of the contract are inconsistent on their face or are reasonably susceptible of more than one interpretation); ERIE Ins. Co. v. Winter Constr. Co., 393 S.C. 455, 461, 713 S.E.2d 318, 321 (Ct. App. 2011) ("When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect and the court must construe it according to its plain, ordinary, and popular meaning."). "The fundamental rule in construing covenants and restrictive agreements is that the intention of the parties *as shown by the agreement*, governs." Forest Land Co. v. Black, 216 S.C. 255 57 S.E.2d. 420 (1950) (emphasis added).

"When cross motions for summary judgment are filed, the issue is decided as a matter of law. Wiegand v. U.S. Auto. Ass'n, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)." Neumayer v. Phila. Indem. Ins. Co. (S.C., July 24, 2019).

ANALYSIS

The Court agrees with the Plaintiffs that Defendant Bull Point SC, LLC is not and never was the Declarant and that, even it was the Declarant, the Directors of the POA should have been elected by the POA membership, not appointed by Bull Point SC, LLC. Accordingly, the Court

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grants Plaintiffs' Motion for Partial Summary Judgment and denies Defendants' Motion for Partial Summary Judgment.

I. Defendant Bull Point SC, LLC is not and never was the Declarant of Bull Point Plantation

As stated above, the Declarations define "Declarant" as "Bull Point, LLC ... or any party which acquires said Declarant's entire interest with respect to the Property and the Additional Property at the time of such acquisition pursuant to Foreclosure of a Mortgage encumbering said Declarant's interest in the Property and the Additional Property." Bull Point SC, LLC did not acquire any of the interest – let alone the entire interest -- of the original Declarant, Bull Point, LLC through foreclosure. GACC acquired the interest of Bull Point, LLC through foreclosure after Bull Point, LLC filed for bankruptcy. GACC then assigned its interest to its affiliate, DB Aster, LLC. DB Aster ultimately sold its remaining interest to GSI, LLC (owned by Defendant Gavigan) at arm's length for $1.2 million, and GSI, LLC assigned its interest to Bull Point SC, LLC. Defendant Gavigan owns GSI, LLC and Bull Point SC, LLC, but neither he nor they had any relationship to GACC or to DB Aster. In fact, Bull Point SC, LLC litigated against DB Aster over the sale.

Defendant Bull Point SC, LLC did not acquire Bull Point, LLC's entire interest in the Property. After DB Aster obtained GACC's foreclosed interest, it conveyed common areas to the POA and sold at least five lots to separate individuals. Thus, DB Aster did not convey the original Declarant's entire interest to GSI, LLC. Moreover, Defendant Bull Point SC, LLC did not obtain GSI, LLC's entire interest in the remaining Property. Instead, on November 1, 2017, GSI, LLC – *after* its assignment of interests to Defendant Bull Point SC, LLC – GSI, LLC conveyed a parcel, Lot 260 of Phase V-B, to Craig Elachie, LLC, "that being a portion of that same property conveyed to GSI, LLC by DB Aster, LLC ... ." Further, GSI, LLC still owns a parcel, Lot 170 located at

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87 Barnaby Bluff. Thus, Defendant Bull Point SC, LLC did not acquire the "entire interest" of GSI, LLC relating to the Property of Bull Point Plantation, let alone the entire interest of the Declarant Bull Point, LLC.

Defendant Bull Point SC, LLC acquired none of its interest in Bull Point Plantation through foreclosure of a mortgage, and it did not acquire Bull Point, LLC's entire interest in the Property. Either of these facts alone disqualifies Bull Point SC, LLC as the Declarant as defined in Section 1.01(j) of the Declarations.

Declarant's rights are assignable if and to the extent the declarations permit assignment. "Restrictive covenants[4] are contractual in nature. Hoffman v. Cohen, 262 S.C. 71, 75, 202 S.E.2d 363, 365 (1974). The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution." Hardy v. Aiken, 631 S.E.2d 539, 369 S.C. 160 (2006). The transferability of Declarant's rights depends on whether the Declarations make them transferable. Highlands Prop. Owners Ass'n, Inc. v. Shumaker Land, LLC, 397 S.C. 432, 437, 724 S.E.2d 685, 687 (Ct. App. 2012) is directly on point. Like this case, Highlands involved a dispute between property owners and a developer hinging on whether the developer was in fact the declarant. In deciding this issue, the Court of Appeals looked to the language of the association's declarations and the definition of "Declarant," which was as follows:

> "Declarant" shall mean and refer to HIGHLANDS DEVELOPMENT LIMITED PARTNERSHIP, or any other person or entity who succeeds to the title of Declarant to any portion of the Properties by sale or assignment of all of the interests of the Declarant in the Properties, *if the instrument of sale or assignment expressly so provides....*

724 S.E.2d at 687 (emphasis by the Court). The developer/putative declarant had acquired certain lots from the prior declarant through a deed that did not refer to or assign the declarant's rights.

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[4] The Declarations are, of course, covenants. Their full title is "Declaration of Covenants, Conditions and Restrictions of Bull Point Plantation."

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The purported transfer of declarant rights occurred fourteen months later through a separate assignment document. The Association members, pointing to the fact that the deed did not expressly provide for a transfer of declarant rights, took the position that the developer/putative declarant was in fact not the declarant under the definition in the declarations. This is exactly the situation here. In applying the above definition, the Highland's Court recognized the issue as one of contract law:

> "The law in this state regarding the construction and interpretation of contracts is well settled." Conner v. Alvarez, 285 S.C. 97, 101, 328 S.E.2d 334, 336 (1985). When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect. Ellie, Inc. v. Miccichi, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004). In addition, "[w]here an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." Id. (citing Heins v. Heins, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001)).

Highlands Prop. Owners Ass'n v. Shumaker Land, LLC, 397 S.C. at 437, 724 S.E.2d at 687. Applying the above principles, the Court first found the definition of "Declarant" to be unambiguous. The Court then went on to apply the definition of declarant, looking to the plain language of the definition:

> We find the Covenants, when read in their entirety, support a finding that Shumaker LLC is not the Declarant. As noted previously, Article I, Section 7 of the Covenants defines Declarant as the "HIGHLANDS DEVELOPMENT LIMITED PARTNERSHIP, or any other person or entity who succeeds to the title of Declarant . . . by sale or assignment of all of the interests of the Declarant in the Properties, *if the instrument of sale or assignment expressly so provides.*" [emphasis by the Court]. HDLP, as the original Declarant under the Covenants, conveyed the property to Shumaker on July 28, 2006. The deed to Shumaker does not reference any rights held by HDLP as Declarant, nor does the deed purport to transfer any of those rights to Shumaker. Because the deed does not expressly convey the Declarant's rights to Shumaker upon taking title to the seven lots, Shumaker does not qualify as a Declarant under Article I, Section 7 of the Covenants."

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397 S.C. at 437, 724 S.E.2d at 688. In other words, the purported assignee of the declarancy rights was not the declarant because the purported assignment agreement did not meet the requirements set out in the declaration's definition of declarant.

Defendants cite Cullen v. McNeal, 390 S.C. 470, 483, 702 S.E.2d 378, 385 (S.C. App. 2010), *cert. dismissed as improvidently granted*, 411 S.C. 270, 768 S.E.2d 401 (2015) because it permitted assignment of declarant's (there called Developer's) right, but that decision is consistent with Highlands. As it did in Highlands, the Court looked to the definition of declarant (or "Developer") contained in the declarations. In Cullen the definition of Developer recognized two different ways that the developer's rights could be transferred. The definition of Developer included a successor-in-title *or* a successor-in-interest to the original developer. The Court of Appeals held that the putative Developer qualified under the declaration's definition of Developer even though it was not the successor-in-title, because it was the successor-in-interest by assignment. By contrast, the Declaration in this case provides only one way for a successor to acquire the Declarant's rights, and Bull Point SC LLC did not acquire the rights that way. The definition requires that a successor acquire the original Declarant's entire interest by foreclosure. The Defendant Bull Point SC, LLC does not meet this requirement.

Defendants contend that the Plaintiffs should be estopped to deny that Bull Point SC, LLC is the Declarant because some of the Plaintiffs submitted affidavits in this case in which they refer to Bull Point SC, LLC as the Declarant. The Court does not find these affidavits inconsistent with the position the Plaintiffs have taken from the outset of this litigation. In the original Complaint filed on December 3, 2018 – before the subject affidavits were submitted – the Plaintiffs allege, at paragraph 3, "Defendant Bull Point SC, LLC ('Declarant') is a separate Limited Liability Company incorporated under the laws of South Carolina and is currently the purported declarant

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of the Bull Point Plantation (although it does not meet the definition of Declarant under the Declarations)." The affidavit references to Bull Point SC, LLC as the Declarant are consistent with the Plaintiffs' contention in this case.

Defendants also point to various past meeting minutes and other documents in which some of the Plaintiffs referred to the assignment of the Declarant's rights. However, those references were to DB Aster, not to Bull Point SC, LLC. Plaintiffs do not contend in this case that DB Aster did not acquire Bull Point SC, LLC's Declarant's rights. Recognizing DB Aster as the Declarant is not inconsistent with Plaintiffs' contention that Bull Point SC, LLC is not the Declarant.

Finally, Defendants contend that Section 1.01(j) of the Declarations, which defines Declarant, must be read in conjunction with the rest of Declarations, which refer in various places to the Declarant's "assigns." These references do not conflict with the unambiguous language of Section 1.01(j), however. Section 1.01(j) does not purport to say that the Declarant's rights are not assignable; it merely limits assignability to entities that obtain the original Declarant's entire interest in the Property through foreclosure. It is thus possible for the original Declarant to have "assigns," so there is nothing anomalous about referring elsewhere in the Declaration to the Declarant and its assigns.

Section 1.01(j) is clear and unambiguous in limiting the definition of Declarant to the original Declarant and "any party which acquires said Declarant's entire interest with respect to the Property and the Additional Property at the time of such acquisition pursuant to Foreclosure of a Mortgage encumbering said Declarant's interest in the Property and the Additional Property." The Defendant Bull Point SC, LLC simply does not meet this definition.

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The Declaration's limitation on assignability of Declarant's rights is not a mere technicality but was obviously intentional on the part of the original developer. The developer clearly did not intend for the Declarant's rights to be bought and sold as a commodity, which would threaten the very integrity of the Bull Point Plantation community. Indeed, the actions of Defendants alleged in the Amended Complaint, if proven, would exemplify the adverse consequences of freely assignable Declarant's rights.

For the foregoing reasons, the Plaintiffs are entitled to a declaration that the Defendant Bull Point SC, LLC is not the Declarant of Bull Point Plantation and that actions taken by Bull Point SC, LLC in connection with the POA Board and amendment of the Declarations are invalid.

II. Regardless of who was or is the Declarant, the POA members have the right to elect the POA's Board of Directors

Even if Defendant Bull Point SC, LLC were the Declarant, its appointment of the Board of Directors was a nullity because it contravened the provisions of the Association's Articles of Incorporation and the South Carolina Nonprofit Corporations Act.[5]

The South Carolina Nonprofit Corporation Act of 1994 (the "Act") governs mutual benefit corporations including homeowners' associations such as the POA. Bull Point's Declarations provide – as they must -- that South Carolina law governs any conflicts in its interpretation. The Act in turn resolves conflicts among governing documents in favor of the articles of incorporation. Section 33-31-206 provides:

> (a) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.
> (b) The bylaws may contain any provision for regulating and managing the affairs of the corporation *that is not inconsistent with law or the articles of incorporation.*

[5] See: S.C. Code Ann. §33-31-10 *et seq*

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The Code defines "bylaws" as, in essence, any governing document other than the articles of incorporation: "'Bylaws' means the code or codes of rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation *irrespective of the name or names by which the rules are designated.*" S.C. Code Ann. §33-31-104(4) (emphasis added). The Official Comments to §33-31-104 state, "The term 'bylaws' has a particularly expansive definition. The term refers to the code or codes of rules, other than the articles, adopted for regulation or management of corporate affairs regardless of the name by which such rules are designated." Accordingly, Bull Point's Declarations are referred to as "bylaws" in the Act. The Act allows the Declarations to contain any provision for the operation of the Association that does not conflict with the law or with the Articles of Incorporation.

The Bull Point Plantation Declarations conflict with the Articles of Incorporation in one important respect. The Articles of Incorporation provide for the election of the Board members by the members of the POA, whereas the Declarations purport to allow the Declarant, during the term of the Declarancy, to appoint and remove the members of the POA's Board of Directors. As shown in the statement of Facts above, the POA's Articles of Incorporation provide for the annual election of members of the Board of Directors:

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

This provision is inconsistent with the Declarations/Bylaws, which purport to allow the Declarant to appoint and remove members of the Board of Directors:

> NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BY-LAWS OF THE ASSOCIATION, Declarant hereby retains to right to appoint and remove any member or members of the Board of Directors of the Association by and for the term set forth in Section 8.01 hereof.

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(capitalization in original). However, the Declarations/Bylaws provide that the Act takes precedence in the event of a conflict among the governing documents:

> Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the South Carolina Code relating to non-profit corporations, this Declaration, the By-Laws, and the Articles, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies among the South Carolina Code, this Declaration, the By-Laws, or the Articles, *the provisions of the South Carolina Code, this Declaration, the By-Laws and the Articles, in that order, shall prevail*, and each Owner of a Lot or Dwelling by acceptance of a deed or other conveyance thereof, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

(emphasis added). Thus, the Declarations expressly conform themselves to the Act, which expressly conforms them to the Articles of Incorporation. The Board of Directors of the Association must therefore be elected by the members, not appointed by the Defendant Bull Point SC, LLC.[6]

Accordingly, Defendants' purported appointment of the Board of Directors was a nullity and the actions of the illegally appointed Board are nullities.

RELIEF GRANTED

Based on these findings, the Court makes the following rulings and grants the following relief:

1. Plaintiffs' Motion for Partial Summary Judgment is granted;

2. Defendants' Motion for Partial Summary Judgment is denied;

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[6] The Act elsewhere protects the rights of members to elect their Board members. Section 33-31-804 states, "(a) If the corporation has members entitled to vote for directors, all the directors, except the initial directors, *must be elected* at the first annual meeting of members, *and at each annual meeting thereafter*, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated." (emphasis added).

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3. Plaintiffs' request for Declaratory Judgment in its first cause of action is granted. Defendants did not have the authority to amend the Declarations to eliminate the Fifteenth Amendment and Defendants must immediately relinquish control of the Contingency Fund;

4. The injunction requested in Plaintiffs' second cause of action is granted, as it is necessary to effect the Court's declaratory judgment. Defendants are enjoined from repealing or refusing to comply with the Fifteenth Amendment of the Declarations; Defendants are enjoined from exercising any control over the Contingency Fund; Defendants are enjoined from serving on the POA's Board of Directors (unless elected by the POA members); Defendants are enjoined from taking any actions in further governance of the POA, including scheduling of an Annual Meeting or issuance of a Proposed Budget for 2020; Defendants are enjoined from occupying the offices in the POA clubhouse, and they must vacate the clubhouse offices within 24 hours of the entry of this Order; Defendants are enjoined from exercising any control over the POA funds.

5. Plaintiffs' request for Declaratory Judgment in its fourth cause of action is granted. Defendant Bull Point SC, LLC is not and never was the Declarant and, therefore, all actions it took as purported Declarant, including appointing the POA's directors and amending the Declarations, are void.

6. Plaintiffs' request for Declaratory Judgment in its sixth cause of action is granted. The POA members have and always have had the right to elect the POA's Board of Directors. The Court orders that an election will take place within 90 days of the date of this Order. Defendants shall provide the Plaintiffs with the names and every form

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of contact information they have for all of the POA members. In the meantime, upon entry of this Order, the Defendants, and anyone they appointed to serve, will immediately cease acting as the POA's Board of Directors. To ensure continuity, to provide for orderly governance, to avoid harm to the Bull Point community, and to provide for administrative control over necessary POA functions, the Court appoints an interim Board of Directors consisting of five members of the POA who agree to serve. Plaintiffs are directed to provide the Court, within three days from entry of this Order, the names of the interim Directors. This interim Board of Directors will serve and have the full power and authority of the Board of Directors in accordance with the POA's governing documents and the laws of South Carolina to conduct the affairs of the POA until the POA members can elect a Board of Directors.

7. Plaintiffs' request for Declaratory Judgments in its seventh and eighth cause of action is granted. The Eighteenth Amendment to the Declarations is rescinded and the Fifteenth Amendment is reinstated, providing the POA members control over the POA's Contingency Fund.

8. Immediately upon the Plaintiffs notifying Defendants of the appointment of the interim Board of Directors, the Defendants shall turn over possession of: (a) the clubhouse offices and all property and records (both physical and electronic) located therein, including but not limited to cellular telephones and keys belonging to the POA; (b) all POA check books, credit cards, debit cards, financial records (both physical and electronic). At the same time, Defendants shall sign over to the interim Board all authority and control of all POA financial accounts and provide the interim Board all log-in credentials for all accounts as well as those needed to access the POA's

computers.

IT IS SO ORDERED!

Carmen T. Mullen
Presiding Judge

_____, 2019

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Beaufort Common Pleas

Case Caption: Jon H. Attridge , plaintiff, et al VS Bull Point Plantation Property Owners Association Inc Board , defendant, et al

Case Number: 2018CP0702345

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142