

STATE OF NORTH CAROLINA

File No.

24CV81895

BRUNSWICK County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff
DOMINION LAND CORPORATION, et al.

FILED

CIVIL SUMMONS

Address

2024 OCT 23

ALTAJIAN'S PLURIES SUMMONS (ASSESS FEE)

City, State, Zip

BRUNSWICK CO., C.S.C.

VERSUS

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s)
CITY OF BOILING SPRING LAKES

BY

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1
City of Boiling Spring Lakes
c/o Gordon Hargrove, City Manager
9 East Boiling Spring Rd
Boiling Spring Lakes NC 28461

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out!
You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales.
¡NO TIRE estos papeles!
Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Gary K. Shipman/Thomas R. Harvey, III
Shipman & Wright, LLP
575 Military Cutoff Road, Suite 106
Wilmington NC 28405

Date Issued

10/23/24

Time

4:44

AM PM

Signature

[Handwritten signature]

Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

AM PM

Signature

Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF BRUNSWICK

FILED

24 CVS 1895

DOMINION LAND CORPORATION, and
LOGAN DEVELOPERS, INC.,

2024 OCT 23 P 4: 45

Plaintiffs

BRUNSWICK CO., C.S.C.

vs.

BY _____

COMPLAINT

(Jury Trial Demanded)

CITY OF BOILING SPRING LAKES,

Defendant

Plaintiffs, complaining of the Defendant, alleges and says:

PARTIES, JURISDICTION AND VENUE

1. The Plaintiff Dominion Land Corporation (herein "Dominion") is a corporation organized and existing under the laws of the State of North Carolina with its principal office and place of business located in New Hanover County.

2. The Plaintiff Logan Developers, Inc. (herein "Logan") is a corporation organized and existing under the laws of the State of North Carolina with its principal office and place of business located in Brunswick County.

3. The City of Boiling Spring Lakes (herein "BSL") is a North Carolina municipal corporation, and a body politic and corporate, capable of suing and being sued, located in Brunswick County, North Carolina having, upon information and belief, no governmental immunity for the relief sought herein.

4. This Court has jurisdiction over the parties and the subject matter of this proceeding.

5. Venue for this action is proper in Brunswick County.

FACTUAL ALLEGATIONS

HISTORY

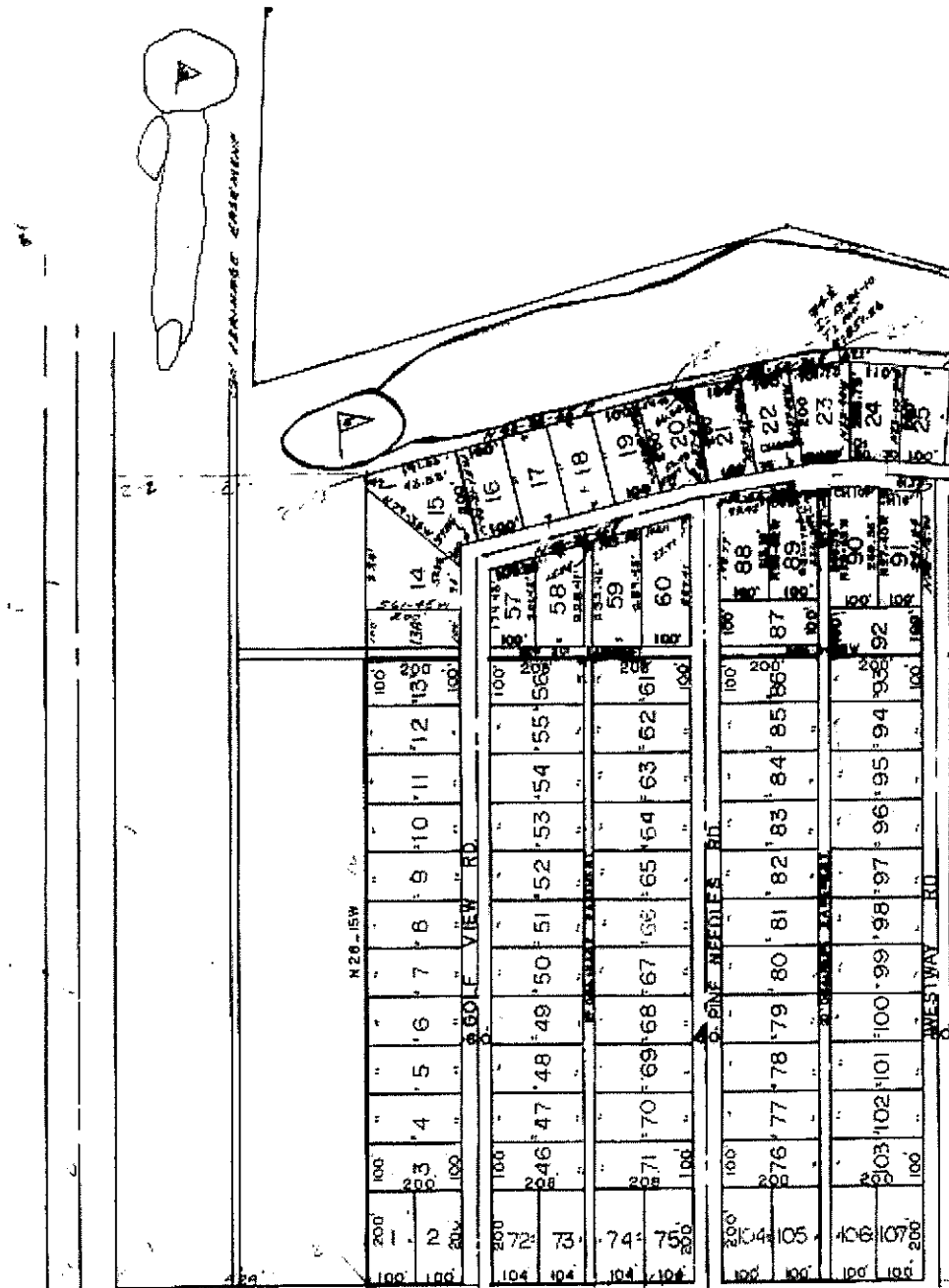
6. The City was established in the late 1950's as primarily a planned, low density residential retirement community. Growth in the City was modest in the 1960's, but escalated dramatically during the 1970's.

7. In response to the growth of the City, in the 1970's lots within the City were platted and sold, including in Section 17 of the City, as shown on a Map recorded in Map Cabinet G at Page 96 of the Brunswick County Registry (herein "Section 17").

8. The lots in Section 17 border what the City has represented to be "paved streets maintained by the City", and include Golf View Road; Pine Needles Road; Westway Road; Downing Road; Plymouth Road; Skyway Road; Morningside Road; and Fox Squirrel Drive.

9. The dimensions of the lots within Section 17 are precisely depicted on the Map of Section 17, and are generally 100' x 200' (a few lots being 100' x 208') and the lots dimensions do not extend into the public streets shown on this Map, and the public right of way is precisely depicted as being 60 feet.

10. As shown on the Map of Section 17, at the time this Map was created, and prior to the recombination of a portion of these lots into what would become "The Highlands at Boiling Spring Lakes", there existed a series of drainage ditches, labeled as "NEW 20' EASEMENT" or "15' DRAINAGE EASEMENT", located adjacent to, but not within the boundaries of, any of the lots in Section 17, as shown below:



11. In addition to these ditches, prior to the recombination of a portion of the lots within Section 17 into what would be called "The Highlands", drainage ditches have been located within the 60' rights of way/public streets shown on the Map of Section 17, and those ditches interconnect

with one or more of the other ditches (collectively the “Section 17 Ditches”), referenced and depicted above.

12. No portion of the Section 17 Ditches are located within the boundaries of any of the lots shown on the Map of Section 17.

13. No portion of the Section 17 Ditches are located within the boundaries of any of the lots in The Highlands.

14. The Plaintiffs have never owned any of the areas that comprise the 60’ rights of way/public streets shown on the Map of Section 17.

15. The Plaintiffs have never owned any of the areas that comprise the Section 17 Ditches.

16. Although the lots within Section 17 of Boiling Spring Lakes were under private ownership for more than forty (40) years, prior to the recombination of a portion of those lots into what would be called “The Highlands”, no obligation to maintain any of the Section 17 Ditches has ever been imposed upon the owners of any of those lots, including any of the Plaintiffs, by the City or anyone else with any alleged authority to do so.

17. In 1974, the State of North Carolina adopted the Coastal Area Management Act that, among other things, required that coastal municipalities, like the City, adopt and enforce a land use plan.

18. Prior to the adopting its CAMA Land Use Plan in 1983, the City, like any other small municipalities, had not adopted a land use plan or many local development regulations.

19. At the time of the preparation and adoption by the City of its 1983 CAMA Land Use Plan, there was much uncertainty regarding whether the City had any flood hazard areas.

20. However, with the assistance of FEMA and other governmental organizations, as of 2018, the City's "Flood Prevention Ordinance" and related Maps were approved by all required governmental entities, and the approved ordinance and maps designates the area that comprised Section 17 and what is now The Highlands as "Zone X", which is a zone that is considered "low to moderate risk" of flooding, and outside the 500 year flood areas.

21. Property owners within Zone X are not required, by any lender or otherwise, to obtain flood insurance, but Federal flood insurance is available to property owners within the City, regardless of where their property is located.

22. Construction of single family residential homes is not prohibited within Zone X.

23. Since the lots in Section 17 were platted and sold, one of the impediments to building anything on any of these lots was the lack of water and sewer to these lots, located within the municipal boundaries of the City, and the inability of the City to provide it.

24. Over the years, the City has made it clear, by its conduct and representations, that it is the City that has undertaken the responsibility of maintaining the Section 17 Ditches, and other drainage ditches within the City.

25. Over the years, residents of the City have complained and, as the media reported, "expressed frustrations" with "flooding in city drainage ditches."

26. As the City's website make clear, the City, because of its "relatively flat landscape" (<https://www.cityofbsl.org/public-works/storm-water-conveyance-system>) relies upon an "open-channel" flow to collect and convey storm water.

27. As the City has made clear, "water collected in these ditches does not necessarily flow out until dry."

28. The City has made clear that it has undertaken the responsibility to “maintain...ditches along the edge of the roadways.” “The primary purpose of our roadway ditch system is to provide temporary storage during rainfall events and prevent flooding of the roadway pavements.” “Your Public Works Department is continuously monitoring our ditches.....” “*Currently the Public Works Department can only maintain those ditches that are oriented along the edge of the roadways.*”

29. There are ditches among the Section 17 Ditches that are located “along the edge of the roadways” within Section 17, now The Highlands.

30. Beginning in 1999 with Hurricane Floyd, the City and surrounding areas have been hit with approximately nine (9) multi-hundred or thousand-year storm events, including Hurricane Florence in 2018 and most recently, Potential Tropical Cyclone 8, each of which dumped a record amount of rainfall in the City and surrounding areas in a short period of time, resulting in flood damage in some areas.

31. However, Federal, State and local building codes, zoning ordinances and land use plans, including any adopted by the City, have never prohibited construction within areas that carry a “Zone X” designation, in recognition of the historical reality that while flood events may occur in areas that carry a “Zone X” designation, they are rare and statistically unlikely, at least to the point where property is damaged.

32. A review of the minutes of the Board meetings for the City make clear that the City has been struggling for many years to find the required resources to maintain the stormwater drainage infrastructure within the City, including the Section 17 Ditches, and to otherwise take measures to maintain these ditches and to reduce the incidence of flooding.

33. There have been many citizen forums over the years, during which representatives of the City have never informed property owners in what was Section 17 that it was their responsibility to maintain the Section 17 Ditches.

34. In September, 2018, Hurricane Florence produced a “1,000 year storm event” that resulted in flooding in the City and a breach of the City’s dam, when the water reached over 4 billion gallons. When residents and property owners of the City contended that the flooding could have been prevented, a member of the City’s Board informed the media what was indeed true – “Everyone is calling this a thousand year storm now....So, no matter what type of system we had in place, nobody could say this would or wouldn’t have happened....”

35. In 2018, the City adopted Article 11 of its Code of Ordinances, entitled “Flood Damage Prevention Ordinance”, whose provisions were to apply and have been applied to “flood prone areas” and the defined “Special Flood Hazard Area” of the City.

36. As of September 16, 2024, when the City and surrounding Counties received the effects of the 1,000 year rainfall event associated with “Potential Tropical Cyclone 8”, the area that comprises Section 17, and currently, The Highlands, was not located within a “Special Flood Hazard Area” of the City, and is therefore, not subject to the City’s Flood Damage Prevention Ordinance.

37. The area that comprises Section 17, and currently, The Highlands, is designated by the City’s Zoning Districts and Development Standards as permitting the construction of single family residential dwellings.

38. The City’s 2017 Land Use Plan contained an “ANALYSIS OF COMMUNITY FEATURES”, including stormwater, and provided that “....drainage swales (ditches are used to collect and convey stormwater as an open-channel flow.”

Since the ground surface is relatively level, water collected in these ditches does not necessarily flow out until dry. One significant advantage of open channel flow is that permeable ditch bottoms allow downward percolation of water (which does not occur in piped systems). This advantage becomes less evident after heavy or extended rainfall when a saturated condition can result. The primary purpose of the roadway ditch system is to provide temporary storage during rainfall events and to prevent flooding of the roadway pavements.

The Public Works Department is continuously monitoring ditches and cleaning out obstructions when appropriate. Grass or other vegetation is not always an obstruction, and as such may prevent erosion or promote bio-retention in the swales.

Culverts (pipes) are another important component of the system, and the Public Works Department assists contractors and homeowners in the proper placement of *culverts under driveways* to make sure they are installed at the proper elevation. Once installed, it is the property owner's responsibility to maintain the driveway and the culvert/ditch system for eight (8) feet on either side of the driveway (per City Ordinance).

The City has identified drainage issues at the following locations:

- Holly, Walnut, and Redwood Drive
- Trevino, Souchak, and Fifty Lakes Drive

The City has solicited proposals for the completion of a Stormwater Master Plan and corresponding Management Ordinance. Both initiatives will help the City maintain and improve the overall stormwater drainage system.

39. The Fifty Lakes Drive area is immediately adjacent and provides access to Section 17.

40. The City's 2017 Land Use Plan makes no mention of any obligation on the part of property owners to maintain any drainage ditches, except for "culverts under driveways." In fact, the City's 2017 Land Use Plan makes clear that the City was "continuously monitoring ditches and cleaning out obstructions when appropriate."

41. The City's 2017 Land Use Plan lists, as the City's second most significant issue, "[e]nhance stormwater management and flood control measures in the City", and the "most

significant facility needs” as the “Stormwater System”, which committed the City to “complete a Stormwater Master Plan and develop a corresponding Management Ordinance” and to “address localized drainage issues.”

RELATIONSHIP BETWEEN THE CITY AND DOMINION

42. Beginning in approximately 2010, the City entered into agreements with Brunswick County to provide water and sewer service along the N.C. Hwy. 87 commercial corridor within the City, and in 2013, Brunswick County began providing limited sewer services to some property within the City, not including Section 17 or some of the surrounding residential properties.

43. Dominion learned of the existence of platted lots in residentially zoned areas of the City that had lay dormant for many years, including lots within Section 17, because of the lack of water and sewer to these lots, and the unsuitability of the soils on these lots to support septic tanks.

44. Further, Dominion learned that despite the fact that the City claimed that the streets within Section 17 were purportedly paved streets maintained by the City, each of the public streets within Section 17 were in poor condition and needed to be improved.

45. The City, on the other hand, lacked the available resources to undertake needed improvements to the public streets located within Section 17, and had not been able to facilitate the extension of sewer transmission lines by Brunswick County so as to facilitate sewer service being provided to Section 17 and surrounding residential areas.

46. On August 18, 2017, the City’s Board of Commissioners held a “Workshop” to discuss a “Memorandum of Understanding” with Dominion. In attendance at that meeting were the City’s Mayor, the City Manager (Jeff Repp), three (3) members of the Brunswick County Board of Commissioners, and representatives of Dominion.

47. At this workshop, Mr. Repp informed the City's Board of Commissioners:

3. **Introduction – City Manager Jeff Repp**

Mr. Repp explained the Board is meeting today to review a draft Memorandum of Understanding (MOU) for the potential development of 159 lots in a portion of Boiling Spring Lakes that is partially serviced by water; however, there is no sewer service to the area. The area we are specifically talking about is between the golf course and Cougar Road and borders on one side by NC Rt. 87. That portion of NC Rt. 87 is already serviced by sewer which has been in place over to Morningside Lane. The area to install sewer collection lines will be on Goldsboro Road and Fifty Lakes Road as reflected in the MOU. Austin 512, LLC currently owns the 159 lots; however, the roads in this area are maintained by the city. The Board has agreed to consider a development agreement by either reimbursing or creating a special assessment for those roads.

48. Members of the Brunswick County Board of Commissioners endorsed the “project”, and stated “this project is a win, win for the city....We want growth in the city and growth in the commercial district. Based on the figures we will see a larger tax base. The sewer assessment will only affect the homeowners and those funds will be paid back to the city.”

49. The members of the Brunswick Board of Commissioners and the City's Mayor “agreed this project is overall a major step forward for the city and our commercial district and Sanco Homes [Dominion].”

50. In December 2017, the City and Dominion entered into a “Memorandum of Understanding” (the “MOU”), which provided, in part that:

a. Dominion (including its assignees and associates) had options to purchase lots within the City, including within Section 17, and had inquired of the City about “the availability of water and sewer service for said lots and possible future road improvements.”

b. The City would “cooperate with Dominion in its efforts to make water and sewer service available to said lots, along with road improvements for the streets serving said lots when requested by Dominion, with the costs of road improvements to be assessed pursuant to Article 10, Chapter 160A of the General Statutes.”

c. The City would initiate proceedings to “levy special assessments against benefitted property to install a sewer collection line....

d. Dominion would post a letter of credit for its assessments for the lots that it owned or controlled.

e. In the event that Dominion voluntarily improved any of the City’s public streets “required by the City for acceptance, the City agrees to reimburse Dominion for the reasonable cost of street improvements....”

51. Pursuant to the MOU, the City established a sanitary Special Assessment District for certain properties within the City, a plan implemented by the City to make the lots owned by Dominion more economically viable, so as to assist the City in increasing its revenues by the associated construction of single family homes.

52. Pursuant to the MOU, Dominion purchased platted lots in Section 17 and facilitated or assisted in the facilitation of the provision of sewer service by Brunswick County to other properties in the City, including Section 17, and voluntarily improved at its expense, pursuant to plans approved by the City, certain public streets within Section 17.

53. On or about March 6, 2018, the City’s Board of Commissioners authorized Mayor Craig Castor to submit a formal request to Brunswick County to conduct a citywide sewer service study in the City, and in August, 2018, Brunswick County began to formally solicit proposals from consultants to assist in conducting a Sewer Master Plan for the City.

54. At the time that Brunswick County began to solicit proposals to conduct a Sewer Master Plan for the City, Jeff Repp, then the City Manager, informed the press that “[i]t would probably open upon pretty significant development in the town if it were to happen.....We’re just

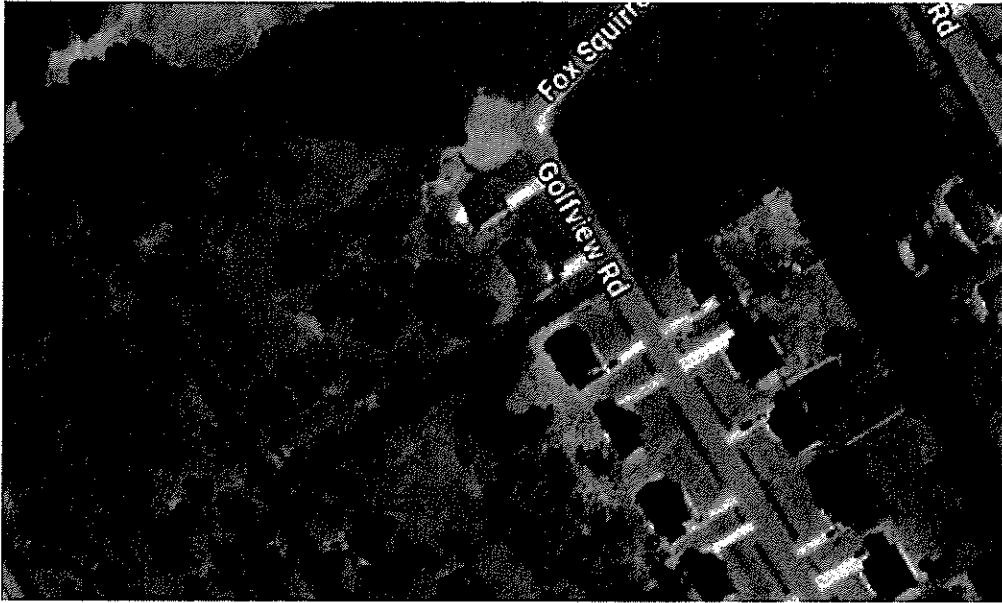
wanting them to take a look at expanding it off that mainline now into the residential parts of the city....”, which included the “residential” lots in Section 17.

55. In April 2019, Brunswick County approved spending monies to study the City’s existing sewer infrastructure, as a prelude to expanding the availability of sewer service to the City. As the media reported “[h]undreds of parceled-out but still undeveloped tracts still waiting for development in the city, with public sewer service as a major missing key for construction. This study will help aid future sewer expansion efforts by recommending new collection systems, pump stations, mains and upgrades to the city’s existing sewer network.” By reason of this study, Brunswick County ultimately agreed to provide sewer service to other areas of the City.

56. Beginning in April, 2020, Dominion caused a portion of the already platted Section 17 to be recombined into “The Highlands”, and “recombination plats” of those lots recorded in the Brunswick County Registry, maintaining (with some limited exceptions) the exact lot dimensions as shown on the Map of Section 17, and depicting the “60’ PUBLIC R/W” in Section 17 and the various “drainage easements” and ditches located adjacent to, but not within the boundaries of, any of the lots in The Highlands.

57. At the time that Dominion recorded these recombination plats, the Section 17 Ditches existed, including drainage ditches located within the 60’ rights of way/public streets (see below), a portion of which are shown on the recombination plats, and those ditches interconnect with one or more of the other ditches that collectively comprise the Section 17 Ditches.

58. These ditches are intended to direct stormwater flow to other ditches located outside the perimeter of Section 17, including ditches and pipes that are located within the boundaries of the adjacent privately owned “Lakes Golf Club.”



59. On or about June 15, 2020, Dominion, as the Declarant, caused a “DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HIGHLANDS AT BOILING SPRING LAKES” to be recorded in Book 4377 at Page 955 of the Brunswick County Registry (the “Highlands Declaration”).

60. The Highlands Declaration created a Planned Community under North Carolina’s Planned Community Act for The Highlands; created various restrictions on the manner in which lots within The Highlands could be used or maintained; created an Architectural Review process for the construction of homes; required that lot owners maintain their lots; provided that water and sewer service would be provided by Brunswick County; created an “Owners Association” and for the payment of assessments; contains a prohibition against the “alteration of the drainage” on a lot without approval, the prohibition of filling in or piping of any “vegetative conveyances”, except under certain circumstances; and provides that with respect to any “stormwater device, ditch, swale and/or facility” installed on any lot, “the ongoing maintenance and repair of such device, ditch, swale and/or facility shall be the sole responsibility of the Lot Owner.”

61. The provisions of the Highlands Declaration were never intended to apply to any of the Section 17 Ditches, as those ditches are not located within the boundaries of any of the lots within The Highlands. The provisions of the Highlands Declarations apply only to activities, facilities, and structures located within the boundaries of any of The Highlands lots.

62. At no time prior or subsequent to the execution of the MOU did the City ever inform Dominion that it was Dominion's obligation to maintain the Section 17 Ditches.

ADOPTION OF THE STORMWATER MANAGEMENT MASTER PLAN

63. Beginning in 2019 and prior to May, 2021, the City engaged Sungate Design Group to assist the City with the development of a "Stormwater Management Master Plan."

64. In May, 2021, Sungate presented the City with a "Preliminary Engineering Report" for "Phases 1, 2, 3, 4, 5, 6 and 7" of the City's "Stormwater Management Master Plan."

65. At that time, based on Sungate's field observations, "it was apparent that most of the ditches in the City were full of sand and debris." Sungate recommended that "BSL develop a proactive Ditch Maintenance Program to inspect and clean out ditches on regular intervals. Typical ditches should be a minimum of one foot deep and provide positive drainage toward an outfall. During these regular operations, maintenance staff can assess problem areas and define action plans."

66. Sungate noted that "there are several ditches that cross private lots that provide drainage for the surrounding lots which are critical to the overall network of drainage ditches. These drainage ditches have not been maintained by the property owners with some entirely filled. Sungate recommends that BSL acquire permanent drainage easements where possible so maintenance of ditches can be completed as part of an annual program."

67. Sungate made certain “site specific” recommendations, and each site was classified “according to severity....” The area that comprises The Highlands was classified as a Level 3 (“Medium – Minor flooding impacts to neighborhood roads and/or buildings not above the finished floor elevation.”), with the following notes:

Site 2.05-2:

Level 3 – The neighborhood bounded by Golfview Road, Fox Squirrel Road, Morningside Road, and Fifty Lakes Drive is primarily undeveloped with only a few homes currently constructed. Drainage in this neighborhood includes ditches at the rear of all parcels that run generally from south to north. A few of the ditches are located in existing City owned drainage easements (between Golfview and Westway Road) however the ditches are heavily wooded and have not been maintained. Between Westway Road and Morningside Road, there does not appear to be any existing easements. Prior to this area being developed, easements should be obtained where missing and cleared with ditches reestablished.

68. Thus, even Sungate confirmed what is indeed true – there are ditches located in The Highlands “in existing City owned drainage easements (between Golfview and Westway Road) however the ditches are heavily wooded and have not been maintained.”

69. Sungate confirmed that between “Westway Road and Morningside Road, there does not appear to be any existing easements. Prior to this area being developed, easements should be obtained where missing and cleared with ditches reestablished.”

70. Sungate’s Report and the Stormwater Management Master Plan was adopted by the City’s Board of Commissioners on January 4, 2022, and no one with the City disclaimed any of the contents of Sungate’s report.

71. However, since its adoption, the City has ignored the recommendations contained therein, and upon information and belief, has not adopted “a proactive Ditch Maintenance Program to inspect and clean out ditches on regular intervals”, or made any effort to insure that the ditches maintain “a minimum of one foot deep and provide positive drainage toward an outfall.”

72. In addition, since the City's adoption of Sungate's Report and the Stormwater Management Master Plan, the City has never informed Dominion that it was Dominion's or anyone else's obligation to maintain, inspect and clean out any of the Section 17 Ditches.

73. Upon information and belief, there have not been any "regular operations" by the City's "maintenance staff" to "assess problem areas and define action plans."

74. Even though the City was granted "drainage easements" by the owners of lots within Section 17 in 2021, other than cleaning vegetation out of a portion of the ditches between Golf View and Pine Needles Road, Plaintiffs are not aware of any action undertaken by the City to perform work within those "drainage easements" that the City was granted.

75. In December, 2020, then City Manager Jeff Repp began communications with owners of certain lots within Section 17, including Dominion, regarding granting drainage easements to the City for drainage easements already shown on the recorded Map of Section 17, including the Section 17 Ditches, and further depicted on the recombination plats of The Highlands.

76. Upon information and belief, the City engaged McGill Associates, in January, 2021, to assess the condition of the City's drainage ditches, including the Section 17 Ditches, and on January 19, 2021, Mr. Repp informed Dominion that "I did have an opportunity to meet with McGill Associates, the City's contractual engineers, out on the site last week and discuss what can be done with the ditch and really not much....since it has flowing water in it any dredging or removal of material other than brush from the ditch will, most likely run into needing a USACE permit which we don't want to do....lord knows what they would find/require. Based on the survey stakes out there the City would request a 10' maintenance easement on all of the lots that have frontage on that ditch *so that the City can perform ongoing maintenance.*"

77. Mr. Repp provided Dominion with the lot numbers over which the City desired to have easements, and the City had those easements prepared, and on January 26, 2021, those easements were provided to Dominion by Mr. Repp.

78. On February 8, 2021, the easements were signed and mailed back to Mr. Repp, and Mr. Repp notified via email that Dominion had done so.

79. Those easements conveyed a “perpetual drainage easement” to the City, described as “an area 10 feet in width” running along the southern line (rear line)” of Lots 57, 58, 59, and 60; the northwestern line of Lots 86, 92, and 93; the southern line (side line) of Lot 87; and the southeastern line of Lot 13AR, all as shown on the Map of Section 17.

80. From and after that date, it was clearly the City’s obligation to maintain, clear and open any drainage ditches contained within those easement areas.

DEVELOPMENT OF THE HIGHLANDS

81. By the Summer of 2022, Dominion had begun the sale of lots within The Highlands to Logan, and was concerned about the potential drainage issues that may exist in The Highlands, and addressed those concerns to the City, through its then City Manager, Mike Hargett.

82. Consistent with assurances provided by his predecessor (Jeff Repp), Mr. Hargett informed Dominion that the City was in the process of designing a pipe for the ditch that crosses under one of the public streets within The Highlands, Golf View Road, and by October, 2022, Mr. Hargett (in a phone call) assured Dominion that the City was committed to correcting the drainage issues in the area bounded by Fifty Lakes, the golf course, the western boundary of the lots on the west side of Golf View Road and the eastern boundary of the lots on the east side of Morningside Road (which is the area that comprises The Highlands) and indicated that the City had already hired an engineer to design the drainage improvements.

83. No mention was made in this phone call of *any* obligation on the part of Dominion or any of the owners of lots within The Highlands to maintain any of the Section 17 Ditches.

84. On October 27, 2022, Mr. Hargett emailed Dominion a sketch showing the areas where the City intended to make drainage improvements “within the Highlands. As we discussed, these cross ditches are intended to carry the stormwater away from the lots to alleviate the ponding currently being experienced during heavy rainfall.”

85. On that same date, Mr. Hargett indicated that a new City Manager (Gordon Hargrove) would be starting that following Monday. On October 28, 2022, Mr. Hargett confirmed that he had informed the new City Manager, Gordon Hargrove, of his prior commitments on behalf of the City.

86. As Logan was beginning the construction of homes within The Highlands, the City raised a question regarding whether Logan or anyone else constructing homes within The Highlands would be required to obtain a State stormwater permit.

87. By letter dated December 16, 2022, provided to the City by Dominion, the State of North Carolina confirmed that The Highlands was exempt from the requirements to obtain a State stormwater permit.

88. *At no time* prior to Logan undertaking to construct any homes within The Highlands has the City *ever* taken the position that it was anyone’s obligation other than the City’s to develop a ditch maintenance program for the Section 17 ditches, or to inspect and clean out those ditches on regular intervals. In fact, the City committed to do that.

89. Logan obtained all required Federal, State and local (the City and Brunswick County) approvals for the construction and sale by Logan of single family homes within The Highlands.

90. The construction and sale of single family homes by Logan within The Highlands was fully compliant with the City's Development Standards and Zoning Ordinances.

91. In January, 2023, Dominion reached out to the City Manager, Gordon Hargrove, to ascertain the status of the promised drainage improvements in The Highlands.

92. On February 2, 2023, a meeting was held that was attended by representatives of Dominion and Logan; and various representatives of the City, and the sole purpose of this meeting was to discuss the drainage issues in this area.

93. During this and subsequent meetings, Mr. Hargrove made clear that the City had no intentions of following through on the commitments made by his predecessors, Jeff Repp and Mike Hargett, regarding the drainage improvements that the City had agreed to undertake in The Highlands.

94. Without any authority to do so, Mr. Hargrove demanded that Dominion, at its expense, have an engineered "drainage plan" prepared for The Highlands, and on June 29, 2023, that drainage plans was presented by Dominion to Mr. Hargrove.

95. A critical component of the drainage plan presented to the City called for the City to lower a culvert over which it had control (under Golf View Road) and through which stormwater from The Highlands was to flow, and the need to lower a culvert located on the adjacent privately owned golf course.

96. After being presented with this plan, Mr. Hargrove agreed that the City would lower the culvert over which it had control only if Dominion would, at its expense, contact the owner of the golf course about agreeing to have the one located on the golf course lowered.

97. The drainage plan was accepted by the City on July 14, 2023, with certain modifications, and the revised drainage plan was received and provided to the City on September

18, 2023. From and after that date, the City took no action to lower the culvert over which they had control.

98. Dominion, at its expense, had an agreement prepared for execution by the owner of the golf course, but despite extensive efforts by Dominion to contact the owner of the golf course, Dominion received no response and the owner of the golf course would not execute the agreement.

99. The City was informed that Dominion's efforts to gain the cooperation of the owner of the golf course were not successful. Even though the City possesses the power of eminent domain to acquire whatever drainage easements across the golf course that are necessary to undertake the work to lower the pipe located thereon, the City has refused to use that authority.

100. Beginning in October, 2023, the City informed Dominion that it was "concerned with the cost of road improvements in the Highlands" and that the "City would like to sit down and discuss a cost share solution, possible payment options and then formalize solutions in a contract."

101. On October 26, 2023, representatives of Dominion met with Mr. Hargrove, during which Mr. Hargrove expressed a lack of knowledge about any conversations between Dominion and any representative of the City about the creation of a "special assessment district" to pay for the repaving of the public streets within The Highlands, or any knowledge about the communications from Mike Hargett, his predecessor, about the City undertaking drainage improvements within The Highlands. During this meeting, Mr. Hargrove informed Dominion's representative that the "City will lower the cross tile on Golf View contingent on the golf course allowing you to do the improvements on their property."

102. By letter dated December 21, 2023, the City informed Dominion that it would not honor its commitment to reimburse Dominion for the City streets it had reconstructed, at its

expense, in The Highlands, contending that the MOU “is not a legally enforceable agreement.”

No mention was made as to what the City was doing to fulfill its commitments on the drainage issues.

103. A meeting was held on April 24, 2024, attended by representatives of Dominion and the City, including Mr. Hargrove. The only topic discussed during that meeting was whether or not Dominion was going to be reimbursed for the paving of the City’s streets that it had already undertaken, and whether further paving of any other streets would be performed. During this meeting there was no mention of any obligation on the part of any lot owners within The Highlands to maintain any of the Section 17 Ditches.

104. Between April, 2024 and September, 2024, the City continued to refuse to reimburse Dominion for the costs of the street improvements within The Highlands undertaken by Dominion pursuant to the MOU. However, in that interim period of time, the City *never* informed Dominion, Logan or the owner of any lot/home within The Highlands that it was their obligation to maintain the Section 17 Ditches.

105. On September 5, 2024, a meeting was held with representatives of Dominion and the City, including Mr. Hargrove. At that meeting, Mr. Hargrove informed Dominion that the City was attempting to get monies to reimburse Dominion for the work done on the City’s public streets, and to also get monies for drainage improvements. At this meeting, there was again no suggestion that Dominion, Logan or the owner of any lots/home within The Highlands were responsible for maintaining the Section 17 Ditches.

POTENTIAL TROPICAL CYCLONE EIGHT

106. Between 5 a.m. and 5 p.m. on September 16, 2024, Potential Tropical Cyclone Eight dumped historic amounts of rain on Brunswick County and the City, causing flooding and

damage to parts of the City, including homes contained within The Highlands. The storm brought almost 20 inches of rain to the area of the City, and upon information and belief, washed out portions of the City's dam reconstruction project that was underway.

107. Even had the Section 17 Ditches and the other ditches contained within the City been perfectly maintained, flooding within The Highlands would have occurred anyway, as these facilities or other stormwater facilities are not designed to withstand a "1,000 year rainfall" event, which is considered an extreme rarity with a low probability of occurring in any given year. No stormwater facilities are required to be designed to accept flows from a "1,000 year rainfall" event.

108. Notwithstanding that stormwater engineering reality, almost immediately after this rainfall event, the City began efforts to deflect responsibility for the flooding within The Highlands to Dominion, Logan and The Highlands Homeowners Association (currently controlled by Dominion).

109. By letter dated October 8, 2024, the City, through its attorney, directed a "CEASE AND DESIST" letter to Logan, demanding that Logan stop telling anyone that the City had any obligation to maintain the Section 17 Ditches, and for the first time, contended that it was the obligation of The Highlands Homeowners Association to do so.

110. Because of concerns of citizens within the City, on October 17, 2024, a Special meeting of the Board of Commissioners of the City was held.

111. During the meeting, the City provided what it contended to be "Historical Documents Re: the Highlands", and representatives of the City informed those in attendance that "Dominion had vested rights" to develop The Highlands "under...1962 rules..."

112. The City's Mayor falsely informed those in attendance that "in order for the City to provide assistance" with the maintenance of the Section 17 Ditches, the "HOA needs to reach

out directly” to the City. When certain residents of The Highlands pointed out that the HOA (through Dominion) had reached out to the City, members of the Board of Commissioners falsely denied that.

113. The City’s Mayor informed residents of The Highlands that the City did not bring pumps into The Highlands “because there was no agreement with the HOA and the City was worried about liability.”

114. The City’s Mayor then falsely informed residents of The Highlands that the City had made efforts to lower the pipe on Golf View for numerous years, but the project was on hold waiting for Dominion “to arrange access to the private golf course land to complete the project.” Residents of The Highlands questioned why the City had not utilized its power of eminent domain to acquire that access, as Dominion had previously suggested, and no one with the City could provide any meaningful response.

115. When residents of The Highlands questioned the City’s Board about the ditches located, not on any lots within The Highlands, but adjacent to the lots, representatives of The City falsely claimed that Brunswick County, not the City, regulates stormwater and that the City had no “oversight” over the trenches.

116. Throughout the meeting, the City’s Mayor falsely claimed that the City’s pipes worked correctly, and that The Highlands drained properly prior to any development. In fact, as the City’s Mayor well knew or should have known, the City’s pipes did not work correctly in the area of The Highlands and elsewhere throughout the City because they were overwhelmed by the rainfall associated with this 1,000-year storm event.

117. No one with the City informed anyone who attended this meeting of the truth:

a. That the City had previously acknowledged to Dominion, beginning in 2020, the need for the City to improve the drainage infrastructure, including the Section 17 Ditches, pursuant to its own duly adopted Stormwater Master Plan.

b. That the Section 17 Ditches are either located within the City's 60' street rights of way within The Highlands (referred to by the City as the "roadside ditches" which it was maintaining) or on property that no one within The Highlands owns or has a right to control.

c. That since 2020, representatives of Dominion had been in contact with representatives of the City about improvements to the drainage infrastructure within The Highlands, including maintenance of the Section 17 Ditches, and have provided the City with easements over the lots it controlled to facilitate the City's maintenance thereof.

d. That significant efforts had been made by Dominion to get the owner of the private golf course to agree to provide access over the golf course to facilitate the lowering of the pipe located thereon, but those efforts had been unsuccessful, and the City had not been willing to exercise its right of eminent domain to acquire that access.

e. That as of the 1,000 year storm event of September 16, 2024, the City was fully aware of the condition of the Section 17 Ditches and its prior commitment to undertake drainage improvements within The Highlands, having obtained perpetual drainage easements from Dominion in which to do so.

f. That as of the 1,000 year storm event of September 16, 2024, the City had refused to undertake any further drainage improvements within The Highlands, but had informed Dominion that it was attempting to get the funds in which to do so.

g. That there were no Federal, State or local (the City or Brunswick County) laws or regulations that prevented Logan from building homes on lots within The Highlands, or prevented Dominion from selling lots within The Highlands to Logan to facilitate that.

h. That the City's Stormwater Management Master Plan, adopted in 2022, made clear that there were ditches located in The Highlands "in existing City owned drainage easements (between Golfview and Westway Road)" that had not been maintained, and that the City was to have adopted a "proactive Ditch Maintenance Program" to "inspect and clean out ditches on regular intervals", but that the City had not done that with the Section 17 Ditches.. .

i. As importantly, no one associated with The City informed anyone in attendance at this meeting what is indeed true – from a pure stormwater engineering perspective - even had the Section 17 Ditches and the other ditches contained within the City been perfectly maintained, flooding within The Highlands would have occurred anyway because of this "1,000 year rainfall" event.

118. During this meeting, residents of The Highlands openly discussed their intentions to sue Dominion and/or Logan, and to start a GoFundMe page to raise money to do so.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment – N.C.G.S. §1-253, *et. seq.*)

119. The Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 118 as if fully set forth herein.

120. This Court has jurisdiction over the parties and there exists an actual justiciable case and/or controversy between the Plaintiffs and the Defendant regarding, among other things:

a. Whether Dominion now has or ever had an obligation to maintain the Section 17 Ditches;

b. Whether Logan now has or ever had an obligation to maintain the Section 17 Ditches;

c. Whether any other individual lot owner within The Highlands has or ever had an obligation to maintain the Section 17 Ditches;

d. Whether the Highlands Homeowners' Association has or ever had an obligation to maintain the Section 17 Ditches;

e. Whether the City now has or ever had an obligation to maintain the Section 17 Ditches;

f. Whether the City voluntarily undertook an obligation to maintain any of the Section 17 Ditches;

g. Whether maintenance of the Section 17 Ditches is necessary for the City to comply with its duly adopted Stormwater Master Plan;

h. Whether the City has had the authority of eminent domain to acquire whatever access is necessary over the privately owned golf course in order to lower a pipe located thereon;

i. Whether the lowering of the pipe located on the golf course is reasonably necessary to effectuate a proper flow of stormwater from The Highlands;

j. Whether the lowering of the pipe located on Golf View is reasonably necessary to effectuate a proper flow of stormwater from The Highlands;

k. Whether the City could have acquired an easement over the golf course to effectuate the lowering of the pipe located thereon prior to September 16, 2024;

l. Whether the City could have completed drainage infrastructure improvements within The Highlands prior to September 16, 2024;

m. Whether the City was aware of the condition of the Section 17 Ditches as of September 16, 2024;

n. Whether the City had ever committed to undertake meaningful improvements to the Section 17 Ditches;

o. Whether Logan was permitted, under all applicable Federal, State and local (the City and Brunswick County) laws or regulations to build the homes that it constructed within The Highlands

p. Whether, from a pure stormwater perspective, even had the Section 17 Ditches and the other drainage infrastructure within The Highlands been perfectly maintained, flooding within The Highlands would have occurred anyway because of this “1,000 year rainfall” event.

121. The Plaintiffs are entitled to a declaratory judgment on these and other issues that may arise during the course of this action.

122. This Court has the power to declare rights, status and other legal relations, whether or not further relief could be claimed.

123. Litigation over these issues appears unavoidable; the residents in The Highlands have already announced that.

124. Because of the City’s contentions that maintenance of the Section 17 Ditches are not its responsibility, the City, despite assurances to Dominion to the contrary, has steadfastly refused to undertake any maintenance or improvements of the Section 17 Ditches, and has instead, attempted to distort and ignore the historical facts, and now contended that it was the responsibility of Dominion and/or Logan and/or The Highlands HOA and/or individual lots owners to undertake maintenance of the Section 17 ditches, located on properties not owned by *any* of them.

125. The declaratory judgment that Plaintiffs seek here is not designed to provide them or the City with “practical guidance” concerns their legal affairs. An actual controversy exists here, and Dominion’s extensive efforts to resolve it have not been productive, and the disingenuous and deceptive efforts on the part of the City to cast blame for the unavoidable flooding associated with the “1,000 year storm event” of September 16, 2024 will only lead to further uncertainty.

SECOND CLAIM FOR RELIEF
(Writ of Mandamus)

126. The Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 125 as if fully set forth herein.

127. On January 4, 2022, the City adopted the City’s Stormwater Management Master Plan, presented to the City by Sungate in May, 2021.

128. The City’s Stormwater Management Master Plan committed the City to, among other things, develop a proactive Ditch Maintenance Program; clean out ditches on regular intervals; maintain the ditches at a minimum of one foot and provide positive drainage toward an outfall; access problems with any of the ditches and define action plans; create permanent slope stabilization methods with slopes steeper than 3:1; maintain ditches with side slopes 3:1; acquire permanent drainage easements over properties in the City so that maintenance of ditches can be completed as part of an annual program; create maintenance agreements with property owners, where necessary, so that the City can access and maintain drainage features; replace pipes smaller than 18” in diameter; maintain a minimum pipe diameter of at least 18”; and replace the corroded corrugated steel pipes with either polypropylene pipe (PP), Corrugated aluminum pipe (CAAP) and/or reinforced concrete pipe (RCP).

129. With the adoption of the City's Stormwater Management Master Plan, the City committed to perform absolute, certain, and imperative duties, involving the execution of specific duties as specified in the City's Stormwater Management Master Plan.

130. In addition, the City committed to perform maintenance and undertake needed improvements to the Section 17 Ditches.

131. The acts that were/are to be performed by the City under its duly adopted Stormwater Management Master Plan are ones to be performed in a prescribed manner, in obedience to the mandate of legal authority associated with the City's adoption of the Stormwater Management Master Plan, without the exercise of any personal judgment upon the propriety of the acts that are to be done, and instead, premised upon specific items and procedures specified therein.

132. As the owners of properties within the City, Dominion and Logan have a clear right to demand that the City perform its obligations under its duly adopted Stormwater Master Plan, and the City is under a positive legal obligation to undertake actions pursuant to its duly adopted Stormwater Master Plan, which actions are ministerial in nature, and do not involve the exercise of discretion, as the duly adopted Stormwater Master Plan is specific as to the actions that the City is to undertake.

133. The City has failed to perform actions under its duly adopted Stormwater Master Plan, and the Plaintiffs have no other legally adequate remedy to compel the City to do so.

134. This Court cannot refuse a petition for writ of mandamus when it is sought by the Plaintiffs to enforce a clearly established legal right, and the issuance of a writ of mandamus is necessary to coerce and compel the City to perform actions under its duly adopted Stormwater Master Plan.

135. No one who is not a party to this action will be injuriously affected by this Court issuing a writ of mandamus to the City to compel it to comply with its duly adopted Stormwater Management Plan; in fact, other residents and property owners within the City will be benefited by this Court doing so.

WHEREFORE, the Plaintiffs pray the Court as follows:

1. That the Court entered a Declaratory Judgment pursuant to the Plaintiff's First Claim for Relief.
2. That the Court issue a writ of mandamus, compelling the City to comply with its duly adopted Stormwater Master Plan, and in that regard, to undertake maintenance and needed improvements to the Section 17 Ditches.
3. That the costs of this action, including the Plaintiff's reasonable attorneys' fees, be taxed by the Court against the Defendant.
4. For trial by jury on all issues so triable.
5. For such other and further relief as to the Court seems just and proper.

This the 23rd day of October, 2024.

SHIPMAN & WRIGHT, LLP

Attorneys for Plaintiff

By: 

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STATE OF NORTH CAROLINA

VERIFICATION

COUNTY OF Brunswick

D. Logan, being first duly sworn, says that he/she has read the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things he/she believes them to be true.

This the 23 day of October, 2024.

D Logan
(print name), President
(title)

Sworn to and subscribed before me
This the 23 day of October, 2024.

Todd Peebles
NOTARY PUBLIC

TODD PEEBLES
NOTARY PUBLIC
Forsyth County
North Carolina
My Commission Expires Feb. 14, 2029

My Commission Expires: 2/14/29

STATE OF NORTH CAROLINA

VERIFICATION

COUNTY OF New Hanover

Nathan Sanders, being first duly sworn, says that he/she has read the foregoing Complaint and knows the contents thereof; that the same is true of his/her own knowledge save and except those matters and things therein set forth upon information and belief, and as to those things he/she believes them to be true.

This the 23 day of October, 2024.

Nathan J. Sanders
NATHAN S. SANDERS President
(print name) (title)

Sworn to and subscribed before me
This the 23 day of October, 2024.

Amy Wheeler
NOTARY PUBLIC

My Commission Expires: May 7, 2028

