

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

MADISON AT HAMLIN PLANTATION
TOWNHOME ASSOCIATION, INC., and
Timothy J. Rollins, individually, and on behalf
of all others similarly situated,

Plaintiffs,

vs.

JW HOMES, LLC; RESIDENTIAL
PARTNERS, LLC; WHEELOCK STREET
CAPITAL, LLC; and JOHN WIELAND
individually,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-10-_____

COMPLAINT

(Jury Trial Demanded)

FILED
2015 SEP -4 AM 10:18
JULIE A. STROMS
CLERK OF COURT

The Plaintiffs, Madison at Hamlin Plantation Townhome Association, Inc., and Timothy J. Rollins, individually and on behalf of all others similarly situated, would respectfully allege and show the Court as follows:

PARTIES AND JURISDICTIONAL STATEMENT

1. Plaintiff Madison at Hamlin Plantation Townhome Association, Inc. (the "Association") is a non-profit corporation organized and existing under the laws of the State of South Carolina.
2. The Association is the property owners association for Madison at Hamlin Plantation Townhomes.
3. Madison at Hamlin Plantation consists of one hundred fourteen (114) townhomes in twenty-five (25) buildings located within the Hamlin Plantation subdivision which is located

in Mount Pleasant, South Carolina. The townhomes and common and limited common elements are hereinafter referred to collectively as “The Madison.”

4. By virtue of the governing documents, the Association is charged with certain duties, powers, rights and authority in connection with The Madison.

5. The Association is charged with, *inter alia*, the management and administration of The Madison, the investigation, maintenance and repair of The Madison’s Common and Exterior Elements and Areas of Responsibility, and has the right and obligation to bring this action on behalf of The Madison, the Association, and the respective owners and members.

6. Plaintiff Timothy J. Rollins (hereinafter “Plaintiff Rollins”) is a citizen of Charleston County, South Carolina and is an owner of a townhome located in Madison at Hamlin Plantation, more particularly described as 3485 Billings Street, Mount Pleasant, South Carolina, 29466.

7. Plaintiff Rollins purchased the above-described real property in August 2012.

8. By virtue of property ownership in The Madison, Plaintiff Rollins is a member of the Association, has been a member of the Association at all times relevant hereto, and has ownership and membership rights relating thereto.

9. Builders Support Services of the Carolinas, Inc., individually and f/k/a John Wieland Homes and Neighborhoods Of The Carolinas, Inc., individually and as result of merger as John Wieland Homes and Neighborhoods Of The Carolinas, Inc., and John Wieland Homes and Neighborhoods Of South Carolina, Inc. is a foreign corporation organized and existing under the laws of the State of Georgia. At all times relevant to this action, Builders Support Services was engaged in the business of constructing, repairing and/or selling homes in Charleston County, South Carolina.

10. The foregoing Builders Support/Wieland entities are collectively referred to hereafter as “Wieland” or “Wieland Entities”.

11. The Wieland Entities were responsible for the development and construction of The Madison townhomes.

12. Defendant John Wieland is an individual with his primary place of domicile in the state of Georgia.

13. Defendant John Wieland is the founder, owner, controller, and public face of the above named Wieland Entities.

14. Defendant JW Homes, LLC (hereinafter “JW Homes”) is a foreign corporation organized and existing under the laws of the State of Delaware.

15. JW Homes currently possesses the assets, business, intellectual property, and goodwill of Wieland.

16. Defendant Residential Partners, LLC (hereinafter “Residential Partners”) is a foreign corporation organized and existing under the laws of a state other than South Carolina.

17. Residential Partners owns, manages, and controls JW Homes.

18. Defendant Wheelock Street Capital, LLC (hereinafter “Wheelock”) is a foreign corporation organized and existing under the laws of the State of Delaware.

19. Wheelock owns, manages, and controls Residential Partners and JW Homes.

20. JW Homes, Residential Partners, and Wheelock act as agents for each other.

21. JW Homes, Residential Partners, and Wheelock are de facto joint venture partners in the operation of John Wieland Homes and Neighborhoods (“The Business”).

22. JW Homes, Residential Partners, Wheelock, and John Wieland are hereinafter referred to as “Defendants”.

23. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto and venue is proper in this forum.

FACTUAL ALLEGATIONS

24. This matter arises out of the alleged demise of Wieland and depletion of corporate assets available to satisfy legal obligations related to the construction, sale, and repair of The Madison.

25. Plaintiffs have brought suit in Charleston County South Carolina, Court of Common Pleas, against Wieland (case number 2013-CP-10-5559) alleging defective construction and breaches of various related duties.

26. Defendant John Wieland transferred the assets, business, intellectual property, and goodwill of Wieland in late 2012 to Defendants Residential Partners, Wheelock, and JW Homes (hereinafter “the Transaction”).

27. JW Homes continues to operate The Business under the “John Wieland” tradename.

28. JW Homes continued The Business with many of the same employees.

29. JW Homes continued The Business with many of the same management personnel.

30. JW Homes continued The Business with one or more of the same Board members and/or executive personnel.

31. JW Homes occupies the same corporate office as Wieland did prior to the Transaction.

32. JW Homes maintains the same local telephone number as Wieland did prior to the Transaction.

33. JW Homes maintains the same internet and email domain (“jwhomes.com”) as Wieland did prior to the Transaction.

34. JW Homes continues to market itself utilizing the reputation, awards, experience, and history of the Wieland Entities.

35. Although JW Homes was not created until October 30, 2012, it claims to have forty-five (45) years of experience as of September 2, 2015. See Exhibit A.

36. JW Homes could only have forty-five (45) years of experience if in fact it is a continuation of Wieland.

37. JW Homes, through its website, claims to have been founded in 1970. See Exhibit A.

38. JW Homes continues to use Wieland’s “enduring core values, known as epic: Excellence, Passion, Presentation, Integrity, Completeness.” See Exhibit A.

39. Defendant John Wieland continues to avail himself of the benefits of the Wieland assets and names while hiding from the Wieland liabilities.

40. JW Homes continued the Wieland Business in the same locations Wieland previously operated.

41. JW Homes possesses the corporate records of Wieland.

42. The same management, personnel, officers, and/or directors of Wieland Entities continued The Business for JW Homes after the Transaction.

43. The Transaction vested assets, including the real estate, computers, records, trademark, and other property owned by Wieland, in the surviving entities of JW Homes, Residential Partners, and Wheelock, and did so without impairment.

44. Wieland was subsumed by JW Homes, Residential Partners, and Wheelock at the time of the Transaction.

45. Wieland has defended over one hundred (100) lawsuits claiming defective construction in Charleston County.

46. Defendants knew or should have known of Wieland's long history of defective construction.

47. Defendants knowingly and willfully stripped Wieland of assets and left Wieland with no assets available to compensate its clients' for defectively constructed homes and/or to rectify the defects.

48. As a direct and proximate result of Defendants' forgoing activities, Plaintiffs have been proximately damaged in an amount to be determined by the trier of fact, and have had to incur reasonable attorney's fees and costs.

49. Plaintiffs have been deprived of recourse and repair monies for their defective homes.

50. Plaintiffs have further had to endure substandard and potentially dangerous living conditions, delays in repairs, and loss of the value of their equity in their homes.

51. For most class members, these townhomes constitute their most significant asset currently and in retirement; and the impairment of this asset and lack of repair funds causes the Plaintiff class financial stress.

52. Plaintiffs are incurring increased expenses for temporary repairs while the permanent resolution is delayed by Defendants' activities.

53. Plaintiff Association's reserves are being depleted by the foregoing and Plaintiff class members are facing higher regime fees and/or future assessments as a result.

CLASS ACTION ALLEGATIONS

54. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Rollins brings this action both individually and as

a proposed class action against Defendants on behalf of himself and all other similarly situated persons and entities, who own a townhome within The Madison (hereinafter collectively referred to as the “Class”). The Class is more particularly defined as follows:

All persons and entities that are members of The Madison at Hamlin Plantation Townhome Association.

Excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and their legal representatives, assigns and successors of Defendants and Defendants’ current or former employees, investors, members, or officers; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

55. *Numerosity:* The Class is composed of in excess of one hundred twenty persons geographically dispersed in and out of the State of South Carolina, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be nearly two hundred members.

56. *Commonality:* Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include the following:

- (a) Whether the construction and/or repair of The Madison was defective;
- (b) Whether Defendants have acted or refused to act on grounds generally applicable to the Class;
- (c) Whether Defendants are financially responsible to pay the full costs and expenses of repair of said defective conditions, and/or any judgment obtained against Wieland;
- (d) Whether Plaintiffs and the Class are entitled to additional compensation for the afore described special damages; and,

- (e) Whether the Plaintiffs are entitled to prejudgment interest, statutory damages, punitive damages, attorneys' fees and costs from Defendants.

57. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in constructing The Madison.

58. *Adequate Representation*: Plaintiff Rollins will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff Rollins has retained counsel experienced in the prosecution of construction defect claims and complex litigation, including consumer class actions involving product liability and product design defects.

59. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

60. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice. All Class Members have the same legal right to and interest in redress for damages associated with the defective conditions existing within The Madison.

61. Plaintiff Rollins and the Class envision no unusual difficulty in the management of this action as a class action.

62. Each Class Member has an interest of more than \$100.00.

63. The amount of money at stake for each Class Member is not sufficient for each member to hire their own counsel and engineers and bring their own action.

**ESTOPPEL FROM PLEADING AND TOLLING OF
APPLICABLE STATUTES OF LIMITATIONS**

64. Defendants are estopped from relying on any statutes of limitation or repose by virtue of its acts. Upon information and belief, Defendants knew or should have known Wieland owed Plaintiffs certain warranty and other legal obligations at the time Defendants purchased Wieland's assets and business.

65. Defendants had a duty to inform Plaintiffs that Defendants were liquidating Wieland's assets available to fulfill Wieland's warranty and other legal obligations. Notwithstanding its duty, Defendants never disclosed this to Plaintiffs.

66. Despite exercising reasonable diligence, Plaintiffs could not have discovered the liquidation of Wieland's assets.

67. Given Defendants' failure to disclose this non-public information and because Plaintiffs could not reasonably have known of Wieland's inability to fulfill its warranty and other obligations, Defendants are estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

**FOR A FIRST CAUSE OF ACTION
(Civil Conspiracy as to All Defendants)**

68. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

69. Defendants have conspired and acted in concert and in combination in the above acts with the intent to injure the Plaintiffs for the Defendants' gain and benefit.

70. The Defendants' above-described acts have caused the Plaintiffs the above described special damages.

71. The Plaintiffs are entitled to an award of damages in an amount to be determined by the trier of fact.

72. If it is shown that defendants actions were committed maliciously, wantonly, and/or with reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages against the Defendants.

FOR A SECOND CAUSE OF ACTION
(Violation of the Unfair Trade Practices Act as to Association by Wheelock)

73. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

74. Defendant is in the business of purchasing and/or investing in businesses by buying assets, shedding liabilities, and operating through corporate shells as has been done here.

75. Defendant is engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.

76. Defendant's above and below described activities, including raiding, depleting, and wasting the corporate assets of Wieland such that Wieland is unable to honor its warranty and other legal obligations to Plaintiffs, constitute unfair and deceptive practices in the conduct of their trade.

77. Defendants' above-described acts are capable of repetition and adversely affect the public interest.

78. Defendants knew or should have known their conduct was in violation of South Carolina Code Section 39-5-20.

79. Defendants' wrongs entitle the Plaintiffs to an award of treble damages, attorneys' fees, and costs.

FOR A THIRD CAUSE OF ACTION
(Successor Liability as to JW Homes)

80. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

81. JW Homes is liable to Plaintiffs on Wieland's obligations as:

- a. The Transaction was an implied or de facto merger;
- b. JW Homes is a mere continuation of Wieland;
- c. The transfer of assets constituted a fraudulent transfer for inadequate consideration;
- d. There exists a continuity of enterprise between Wieland and JW Homes; and/or
- e. JW Homes continued the Wieland product line; and,
- f. The Transaction was inequitable and left Plaintiffs without an adequate remedy.

82. Therefore, JW Homes is responsible and liable for the obligations of Wieland, including the cost of repair, loss of use, and any judgment thereon.

FOR A FOURTH CAUSE OF ACTION
(Amalgamation Liability as to JW Homes, Residential Partners, and Wheelock)

83. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

84. These Defendants have operated JW Homes in such a manner that the distinctions between the entities and their activities have become blurred.

85. There is excessive interrelationship between the three entities and their activities; a sharing of management and employees and other public assets; and an absence of delineation between the entities such that the public is unable to tell where one entity's activities stop and the next entity's activities start.

86. Treating these Defendants as separate entities will perpetuate an injustice on Plaintiffs and allow Defendants to unjustly enrich themselves by untoward means.

87. Residential Partners and Wheelock should be amalgamated with JW Homes for purposes of any judgment in this action.

FOR A FIFTH CAUSE OF ACTION
(Veil Piercing Liability as to Residential Partners and Wheelock)

88. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

89. JW Homes is undercapitalized to meet the continuing obligations stemming from the Transaction.

90. JW Homes did not pay adequate consideration to Residential Partners for the assets, business, intellectual property, and goodwill it received as a result of the Transaction.

91. Residential Partners and Wheelock were aware of the likelihood of Plaintiffs', and others', claims of defective construction against JW Homes as successor to Wieland.

92. It is fundamentally unfair to allow Residential Partners and Wheelock to hide from Plaintiffs' claims behind JW Homes' corporate shield.

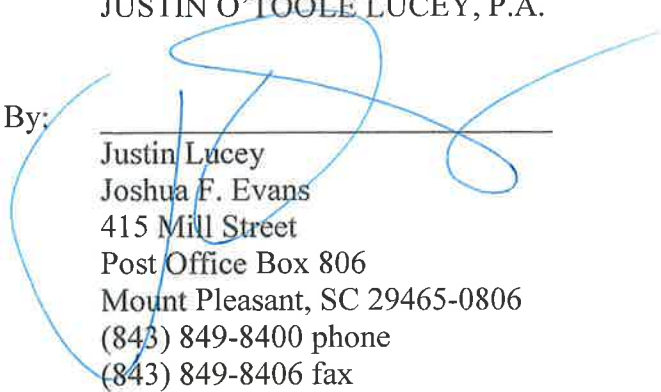
93. JW Homes and Residential Partners' corporate veils should be pierced and Wheelock held liable for any judgement against JW Homes.

WHEREFORE, Plaintiffs demand a trial by jury and pray actual, consequential, and special damages; statutory or punitive damages; reasonable attorneys' fees; costs of suit; prejudgment interest; and granting such further relief as the Court deems just and proper.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By:



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September 4, 2015
Charleston, South Carolina

9/2/2015

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2015 marks the 45th anniversary of John Wieland Homes and Neighborhoods. Take a look at our history -- and future -- on the leading edge of new home design.

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The John Wieland Story

Founded in Atlanta, GA by John Wieland in 1970, John Wieland Homes and Neighborhoods set out to be a different kind of homebuilding company. One focused on being special, not just big. One where constant innovation leads to unmatched excellence in new home design. Where thoughtful neighborhood planning and architecture with character combine into one-of-a-kind places to call home. One that would settle for nothing but the best in quality and have the confidence to stand behind it.

More than four decades later, the John Wieland name is synonymous with all of this and more. Now the Southeast's leading builder of exceptional new homes and neighborhoods, John Wieland Homes and Neighborhoods continues to set new standards in meeting the evolving needs of today's new home buyer. Masterful planning, innovative architectural design and the power to personalize are hallmarks of today's new John Wieland home, as are industry-leading quality and the confidence of the exclusive Wieland 5 Year-20 Year Warranty.

Today, the John Wieland team continues its commitment to delivering the best for each and every new home buyer, guided by our company's enduring core values, known as epic: Excellence, Passion, Presentation, Integrity, Completeness.

Excellence: We always give our best as we relentlessly reach for and achieve ever higher levels of quality, service and efficiency.

Passion: We work with an energy born of believing in what we do, giving more when less would do and doing whatever it takes to get the job done.

Presentation: We know that appearances do matter whether it's our homes, our neighborhoods, our offices or ourselves. We never settle for less than the best, proving our pride and professionalism.

Integrity: We conduct our business and our lives by the yardsticks of honesty, fairness and respect and are totally committed to keeping promises.

Completeness: We finish what we start and we check and recheck the details along the way to ensure that quality exists because of us.

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Equal Employment and Housing Opportunity

STATE OF SOUTH CAROLINA)

COUNTY OF Charleston)

MADISON AT HAMLIN PLANTATION)
 TOWNHOME ASSOCIATION, INC., and)
 TIMOTHY J. ROLLINS, individually, and on)
 behalf of all others similarly situated,)

Plaintiff(s))

vs.)

JW HOMES, LLC; RESIDENTIAL PARTNERS,)
 LLC; WHEELOCK STREET CAPITAL, LLC;)
 and, JOHN WIELAND, individually,)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-10-4898

2015-CP -

2015 SEP -4 AM 10:18
 CLERK OF COURT

FILED

Submitted By: Justin O'Toole Lucey
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 Mount Pleasant, SC 29464

SC Bar #: 15438
 Telephone #: 843-849-8400
 Fax #: 843-849-8406
 Other:
 E-mail: jlucey@lucey-law.com

NOTE: The coversheet and information contained herein neither replaces the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)**If Action is Judgment/Settlement do not complete*

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
<input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> Employment (120)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Other (199) | Torts - Professional Malpractice
<input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
20__-NI-_____
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) | Torts - Personal Injury
<input type="checkbox"/> Assault/Slander/Libel (300)
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Other (399) | Real Property
<input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) |
| Inmate Petitions
<input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) | Administrative Law/Relief
<input type="checkbox"/> Reinstate Drv. License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture—Consent Order (850)
<input type="checkbox"/> Other (899) | Judgments/Settlements
<input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
<input type="checkbox"/> Confession of Judgment (770)
<input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)
<input type="checkbox"/> Other (799) | Appeals
<input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Comm. (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) |
| Special/Complex /Other
<input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input checked="" type="checkbox"/> Other (699) | | | |
| <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Out-of State Depositions (650)
<input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)
<input type="checkbox"/> Sexual Predator (510) | | | |

Submitting Party Signature: _____

Date: September 4, 2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MADISON AT HAMLIN PLANTATION
TOWNHOME ASSOCIATION, INC., and
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CAPITAL, LLC; and JOHN WIELAND
individually,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO. 2015-CP-10-04898
)
)

) **PLAINTIFFS' MOTION FOR A WRIT OF**
) **COMMISSION REQUESTING THE**
) **ISSUANCE OF A FOREIGN SUBPOENA**
) **FOR THE PRODUCTION OF**
) **DOCUMENTS AND THE DEPOSITION**
) **OF DEPOSITION OF JOHN WIELAND**
)
)

Plaintiffs, by and through their undersigned counsel, respectfully move the Court for a writ of commission directing the Clerk of the Superior Court in the County of Cobb to issue a subpoena directing John Wieland to appear for and give testimony at a deposition upon oral examination in Cobb County, Georgia for use in the above-referenced action, and further directing John Wieland to bring any and all documents in his possession, access, or control as set forth more fully in Plaintiffs' Notice of Deposition (Duces Tecum) attached hereto as Exhibit 1 and Subpoena attached hereto as Exhibit 2.

The grounds for this motion are that John Wieland has information and personal knowledge that is relevant to the subject matter of this lawsuit. Plaintiffs are informed and believe that John Wieland's place of business is Chattahoochee Enterprises, 2355 Log Cabin Dr. SE, Smyrna, GA 30080. John Wieland is a party to the present lawsuit, but not represented by

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2015 SEP 25 AM 11:17
J. ARMSTRONG
CLERK OF COURT

counsel, and he is subject to the subpoena power of the Clerk of the Superior Court in the County of Cobb. Plaintiffs offer the affidavit of Joshua F. Evans, Esquire, in support of this Motion which is attached hereto as Exhibit 3.

Wherefore, Plaintiffs respectfully request the Court issue a writ of commission requesting that Clerk of the Superior Court in the County of Cobb issue a subpoena requiring John Wieland to appear for a deposition and produce documents in accordance with Plaintiffs' Notice of Deposition.

This motion is based on all the pleadings on file in this action and the applicable law of both the State of South Carolina and the State of Georgia.

Through a copy of this Motion, Plaintiffs have given all counsel of record notice of the Plaintiffs' Motion and Plaintiffs' intent to take the deposition of John Wieland as set forth herein and in the attached Notice of Deposition.

JUSTIN O'TOOLE LUCEY, P.A.

By: 

Justin Lucey
Joshua F. Evans
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

Attorneys for Plaintiffs

September 11, 2015
Charleston, South Carolina

EXHIBIT 1

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NO. 2015-CP-10-04898
)	
MADISON AT HAMLIN PLANTATION)	
TOWNHOME ASSOCIATION, INC., and)	
Timothy J. Rollins, individually, and on)	
behalf of all others similarly situated,)	
)	PLAINTIFFS' NOTICE OF DEPOSITION,
)	DUCES TECUM, OF JOHN WIELAND
Plaintiffs,)	
)	
vs.)	
)	
JW HOMES, LLC; RESIDENTIAL)	
PARTNERS, LLC; WHELOCK STREET)	
CAPITAL, LLC; and JOHN WIELAND)	
individually,)	
)	
Defendants.)	

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2015 SEP 25 AM 11:22
JULIE J. ARMSTRONG
CLERK OF COURT

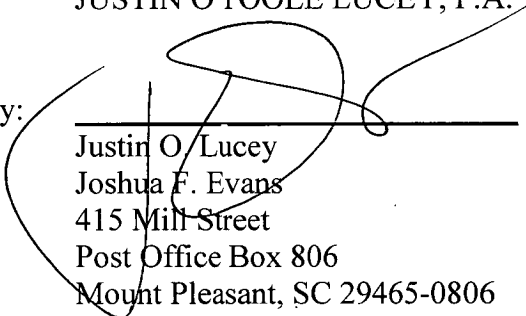
YOU WILL PLEASE TAKE NOTICE that pursuant to the South Carolina Rules of Civil Procedure 30 and for the purposes therein authorized, Plaintiffs will take the deposition of **John Wieland** (the "Deponent") on **December 1, 2015** at **Atlanta Marriott Northwest at Galleria, 200 Interstate North Parkway SE, Atlanta, GA 30339**, before a Notary Public or some other officer authorized by law to administer oaths and is to be recorded by stenographic means. The deposition will begin at **10:00 a.m.** and will continue until completed. **The Deponent is hereby notified in accordance with Rule 30 that he may be questioned about any and all of the documents produced in discovery.**

The Deponent is further instructed to bring with him any and all evidence in his possession which relates to the Plaintiffs; Madison at Hamlin Plantation Townhomes in Mt.

Pleasant, South Carolina; the last three years of operations of Builders Support Services of the Carolinas, Inc.'s; the sale of the assets and business of Builders Support Services of the Carolinas, Inc. to any Defendant named in this action; the Deponent's role, responsibilities, and/or position with Residential Partners, LLC, JW Homes, LLC, and/or Wheelock Street Capital, LLC; and/or any other Defendant in this matter.

JUSTIN O'TOOLE LUCEY, P.A.

By:



Justin O. Lucey
Joshua F. Evans
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
Telephone: (843) 849-8400
Fax: (843) 849-8406
jlucey@lucey-law.com
jevans@lucey-law.com

Charleston, South Carolina
Dated: September 11, 2015

15-4896

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Justin O'Toole Lucey, P.A., attorney for the Plaintiffs, do hereby certify that I have served ***Plaintiffs' Notice of Deposition, Duces Tecum, of John Wieland, individually***, by sending a copy of same via U.S. Mail to all parties as follows:

JW Homes, LLC
Corporation Service Company
1703 Laurel Street
Columbia, SC 29201

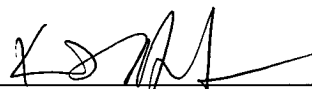
Residential Partners, LLC
Corporation Service Company
2711 Centerville Rd.
Wilmington, DE 19808

Wheelock Street Capital, LLC
Corporation Service Company
2711 Centerville Rd.
Wilmington, DE 19808

John Wieland, individually
Chattahoochee Enterprises
2355 Log Cabin Dr. SE
Smyrna, GA 30080

FILED
2015 SEP 25 AM 11:22
JULIE J. ARMSTRONG
CLERK OF COURT

By:



Kristina K. Shernoff

This 11 day of September, 2015
Charleston, South Carolina

EXHIBIT 2

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF CHARLESTON

The MADISON AT HAMLIN PLANTATION
TOWNHOME ASSOCIATION, INC., and
Timothy J. Rollins, individually, and on behalf of
all others similarly situated, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

JW HOMES, LLC; RESIDENTIAL PARTNERS,
LLC; WHEELOCK STREET CAPITAL, LLC;
and JOHN WIELAND individually, Defendant

Case Number: 2015-CP-10-04898

Pending in Charleston County

TO: John Wieland, Chattahoochee Enterprises, 2355 Log Cabin Dr. SE, Smyrna, GA 30080

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION
Atlanta Marriott Northwest at Galleria, 200
Interstate North Parkway SE, Atlanta, GA 30339

DATE AND TIME December 1, 2015, 10:00 AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

DOCUMENTS: A complete copy of your file related to the above referenced matter This request includes but is not limited to any and all documents and/or tangible evidence in your possession relating to the last three (3) years of operations and transactions relating to Builders Support Services of the Carolinas, Inc., individually and f/k/a John Wieland Homes and Neighborhoods Of The Carolinas, Inc., individually and as a result of merger as John Wieland Homes and Neighborhoods Of The Carolinas, Inc., and John Wieland Homes and Neighborhoods Of South Carolina, Inc. (hereinafter "Wieland Entities"), and your role and participation in Wheelock Street Capital, LLC, JW Homes, LLC and Residential Partners, LLC.

PLACE

JUSTIN O'TOOLE LUCEY, P.A.

415 Mill Street

Mt. Pleasant, SC 29464

843-849-8400

DATE AND TIME October 15, 2015 , 10:00 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature
Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number :

09/11/15

Joshua F. Evans, Esquire

Date

Print Name

Attorney for Plaintiffs

415 Mill St., Mt. Pleasant, SC 29464

(843)849-8941

Clerk of Court/Issuing Officer's Signature
Pro Se Litigant's Name, Address and Telephone Number :

Date

Print Name

PROOF OF SERVICE

SERVED	DATE _____, 2015	FEES AND MILEAGE TENDERED TO WITNESS <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$
	PLACE _____	
SERVED ON John Wieland		MANNER OF SERVICE Process Server
SERVED BY _____		TITLE _____

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on ____/____/2015

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT 3

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

MADISON AT HAMLIN PLANTATION
TOWNHOME ASSOCIATION, INC., and
Timothy J. Rollins, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

JW HOMES, LLC; RESIDENTIAL
PARTNERS, LLC; WHEELOCK STREET
CAPITAL, LLC; and JOHN WIELAND
individually,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO. 2015-CP-10-04898
)

) **AFFIDAVIT OF JOSHUA F. EVANS IN**
) **SUPPORT OF PLAINTIFFS' MOTION**
) **FOR A WRIT OF COMMISSION**
) **REQUESTING THE ISSUANCE OF AN**
) **OUT-OF-STATE SUBPOENA FOR THE**
) **PRODUCTION OF DOCUMENTS AND**
) **THE DEPOSITION OF JOHN WIELAND**

FILED
2015 SEP 25 AM 11:22
JULIE J. ARMSTRONG
CLERK OF COURT

PERSONALLY appeared before me, Joshua F. Evans, who, being first duly sworn,
deposes and states as follows:

1. I am an attorney practicing law in the firm of Justin O'Toole Lucey, P.A. This affidavit is submitted in support of Plaintiffs' Motion for a Writ of Commission Requesting the Issuance of an Out-of-State Subpoena for the Production of Documents and the Deposition of John Wieland.
2. Documents and information obtained during discovery in related case 2013-CP-10-05559 have established that John Wieland was actively involved in the sale of the assets and business of Builders Support Services of the Carolinas, Inc..
3. By virtue of John Wieland's involvement in the sale of the assets and business of Builders Support Services of the Carolinas, Inc., Plaintiffs are informed and believe that John Wieland has personal information and knowledge that is relevant to the claims and defenses asserted in this litigation.
4. Plaintiffs are informed and believe that John Wieland currently maintains a place of business in Cobb County, Georgia at Chattahoochee Enterprises, 2355 Log Cabin Dr. SE, Smyrna, GA 30080.

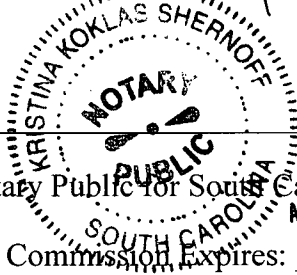
5. John Wieland is a party to the present lawsuit and is not represented by counsel.
6. Plaintiffs require a writ of commission from this Court in order to obtain John Wieland's testimony and copies of any documents in John Wieland's possession, access, or control relating to the Madison.

FURTHER AFFIANT SAYETH NOT.


Joshua F. Evans

SWORN to and subscribed before me this

11th day of September, 2015.


Notary Public for South Carolina
My Commission Expires February 8, 2022
My Commission Expires: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MADISON AT HAMLIN PLANTATION
TOWNHOME ASSOCIATION, INC., and
Timothy J. Rollins, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

JW HOMES, LLC; RESIDENTIAL
PARTNERS, LLC; WHEELOCK STREET
CAPITAL, LLC; and JOHN WIELAND
individually,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO. 2015-CP-10-04898
)

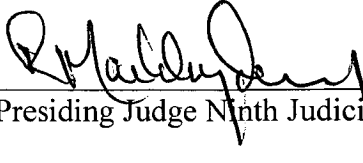
) **ORDER GRANTING PLAINTIFFS'**
) **MOTION FOR A WRIT OF COMMISSION**
) **REQUESTING THE ISSUANCE OF AN**
) **OUT-OF-STATE SUBPOENA FOR THE**
) **PRODUCTION OF DOCUMENTS AND**
) **THE DEPOSITION OF JOHN WIELAND**

FILED
2015 SEP 25 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT

This matter is before the Court pursuant to Plaintiffs' Motion for a Writ of Commission to the appropriate authorities in Cobb County, Georgia, to request that those authorities issue a subpoena commanding John Wieland to appear for a deposition in the State of Georgia and produce documents relevant to the above-referenced lawsuit at his deposition as set forth more fully in the Notice of Deposition attached hereto as Exhibit 1 and incorporated fully herein. It appears to this Court that John Wieland resides in the County of Cobb, Georgia, he is a party to this lawsuit, and that the just adjudication of the issues presented in the above-referenced lawsuit will be furthered by the deposition of John Wieland and his production of documents as set forth in the attached Notice of Deposition.

Handwritten signature/initials

The Court hereby grants Plaintiffs' Motion, and therefore, requests that the appropriate authorities in Cobb County, Georgia, issue a subpoena compelling John Wieland to appear for a deposition and to produce documents as set forth in the attached Notice of Deposition.


Presiding Judge Ninth Judicial Circuit

September 18, 2015
Charleston, South Carolina

RMB/2

JUSTIN O'TOOLE LUCEY, PA
Attorney at Law

Justin Lucey
Joshua F. Evans
Stephanie D. Drawdy
Dabny Lynn
James L. Floyd, III

415 Mill Street, Mount Pleasant, SC 29464
Phone: 843.849.8400 • Fax: 843.849.8406 • office@lucy-law.com

Reply to:
P.O. Box 806
Mount Pleasant, SC 29465

September 11, 2015

VIA US MAIL

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Madison At Hamlin Plantation Townhome Assoc., Inc., et al v. JW Homes, LLC,
Residential Partners, LLC, Wheelock Street Capital, LLC, and John Wieland
individually
Case No.: 2015-CP-10-04898

Dear Ms. Armstrong:

Enclosed for filing please find the original and one (1) copy of the Plaintiffs' Motion for Issuance of Out of State Subpoena and Proposed Order in connection with the above-referenced matter. I would appreciate it if you would please file the original of this pleading with the Court and return the file-stamped copy to me in the self-addressed, stamped envelope provided.

Thank you for your attention to this matter.

With best regards, I remain

Very truly yours,



Kristina K. Shernoff

/kks
Enclosure (stated)