

**UNANIMOUS WRITTEN CONSENT
OF THE
MEMBERS OF THE BOARD OF DIRECTORS
OF
DEVAUN PARK COMMUNITY ASSOCIATION, INC.**

We the undersigned, being all of the members of the Board of Directors of Devaun Park Community Association, Inc. ("Association") hereby adopt and consent, pursuant to Article VI, Section 8 of the Bylaws of the Association, the following resolutions and the taking of the actions contemplated thereby, with said resolutions and the consent to said action to have the same force and effect as if duly adopted at a meeting duly called and held.

CONSENT JUDGMENT

WHEREAS, various disputes have arisen between the Association and Stanaland Stewart Company, LLC and W. Vaughn Stanaland (hereinafter collectively referred to as "Stanaland") concerning the Founder Control Period and Founder Rights as described in the Proclamation of Protective Covenants and concerning the conveyance of property to the Association from Stanaland;

WHEREAS, it is deemed desirable for the Association to resolve these various disputes with Stanaland pursuant to the Consent Judgment which, along with all exhibits attached thereto, is attached hereto as Exhibit A (the "Consent"); and,

WHEREAS, the Association has engaged professionals to assist it in analyzing the issues and reviewing the Consent and the matters addressed therein, and based on the Board's review of such professional advice the Board has determined that it is deemed desirable and in the best interest of the Association to enter into the Consent.

NOW, THEREFORE, BE IT RESOLVED, that the Association enter into and perform its obligations under the Consent and that the form, terms and conditions of the Consent, and the exhibits attached thereto, be, and they hereby are, in all respects approved;

RESOLVED, FURTHER, that the Board of Directors hereby authorizes Gary Miller, President of the Association, to execute and deliver, by and on behalf of the Association, the Consent, and such other agreements, documents, instruments and certificates as may be deemed necessary or advisable, to consummate the transactions contemplated by the Consent, with the exercise of such discretion being evidenced by the execution of such documents; and,

RESOLVED, FURTHER, that any of the foregoing actions which may already have been taken hereby are ratified and approved.

[SEPARATE SIGNATURE PAGES FOLLOW]

This action is effective as of the 28 day of June, 2017.



Gary Miller, Director

[ADDITIONAL SIGNATURE PAGES FOLLOW]

Mark St. Clair

Mark St. Clair, Director

FOR: CONSENT JUDGMENT
[ADDITIONAL SIGNATURE PAGES FOLLOW]

A handwritten signature in black ink, appearing to read "Beth Mann", written over a horizontal line.

Beth Mann, Director

[ADDITIONAL SIGNATURE PAGES FOLLOW]


Dennis Major, Director

[ADDITIONAL SIGNATURE PAGE FOLLOWS]

Diane Mangipane

Diane Mangipane, Director

a

EXHIBIT A

Consent Judgment

[Attached]

EXHIBIT A

V-11carter 6/26

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File #16-CvS-1694

DEVAUN PARK COMMUNITY
ASSOCIATION, INC. AND
EDWARD C. MALONE,

Plaintiffs

v.

STANALAND STEWART COMPANY,
LLC AND W. VAUGHN STANALAND,

Defendants

CONSENT JUDGMENT

This matter comes before the court by consent of the parties requesting the entry of this judgment resolving all matters between them. To the consent of the parties the court makes the following findings of fact, conclusions of law, and enters this order/judgment:

FINDINGS OF FACT

A.

Jurisdiction

1. This court has jurisdiction over the subject matter of this action.
2. The Defendants have not filed a formal answer but hereby make a general appearance in this action and submit to the court's jurisdiction over them personally, as evidenced by their respective signatures below.
3. Plaintiff's complaint asserts certain claims arising out of differences between the parties as set forth in said complaint. Although Defendant Stanaland Stewart Company, LLC (hereinafter "SSC") and Vaughn Stanaland, individually (hereinafter "Stanaland"), have not filed

their respective formal answers or asserted any counterclaims, each Defendant asserts various claims against the Plaintiff.

4. The Plaintiff Edward C. Malone has dismissed his complaint/claims against the Defendants with prejudice and is no longer a party to this action. The remaining parties to this action have resolved their differences and have requested the entry of this judgment by the court.

B.
Founder Control

5. SSC developed a real estate community known as Devaun Park (“Devaun Park” or “the Community”) pursuant to the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes.

6. SSC recorded a “Proclamation of Protective Covenants” (“the Proclamation”) for Devaun Park on September 11, 2002, in Book 1628, page 1129 of the Brunswick County Registry¹. SSC is referred to in the Proclamation as “the Founder”.

7. Section 1.1(m) of the Proclamation established a “Founder Control Period” during which time the Founder had certain rights that could be exercised unilaterally, including the right to amend the Proclamation if the amendment did not cause “a material adverse effect upon any Owner’s rights under the Proclamation or adversely affects the title to any Unit.”

8. The Proclamation specified that the Founder Control Period would terminate on the earlier of:

- a. The year 2032,
- b. when 95% of the lots intended for development in Devaun Park were sold, or
- c. three months after the Founder gave up the right to appoint the members of the Board of Aldermen of the Devaun Park Community Association, Inc. (the “Association”).

¹ Book and page references are to documents recorded in the Brunswick County Register of Deeds office, unless otherwise indicated.

9. At a Special Meeting of the membership of Association on October 17, 2011, the Founder informed the membership of several amendments to the Proclamation the Founder, SSC, intended to make. The Founder thereafter executed five (5) separate amendments to the Proclamation which were recorded on November 2, 2011, in the Brunswick County Register of Deeds office as follows:

- a. Book 3207 page 1153 deleting section 1.1(m)(iii) from the Proclamation.
- b. Book 3207 page 1154 increasing the Board Of Aldermen to 9 members.
- c. Book 3207 page 1155 reflecting Founder's appointment of the 9 members of the increased Board.
- d. Book 3207 page 1156 reflecting Founder's waiver of further rights to appoint members to the Board of Aldermen but reserving all other Founder rights in the Proclamation.
- e. Book 3207 page 1159 reflecting Founder's waiver of further rights to appoint or remove members of the Board of Aldermen and to appoint or remove other officers of the Association, and reflecting Founder's waiver of its special voting privileges with respect to election of the members of the Board of Aldermen.

10. Section 1.1(m)(iii) was deleted from the Proclamation by the Amendment to Proclamation filed and recorded in Book 3207 page 1153.

11. After section 1.1(m)(iii) was deleted, SSC then waived its right under section 6.3 of the Proclamation to appoint aldermen to the Board of Aldermen of the Association.

12. The removal of section 1.1(m)(iii) of the Proclamation was prior to SSC's waiver of the right to appoint Aldermen; therefore, the later recorded waiver of the right to appoint Aldermen did not trigger the clock on termination of Founder Control, section 1.1(m)(iii) having been removed from the Proclamation.

13. When section 1.1(m)(iii) was removed from the Proclamation by the above-referenced Amendment, the Founder Control Period had not expired; specifically, 95% of the lots intended for development in Devaun Park had not been sold, SSC had not surrendered its

authority pursuant to section 6.3 of the Proclamation to appoint Aldermen of the Devaun Park Community Association, Inc., and the year 2032 had not arrived.

14. As of November 2, 2011, SSC retained the unilateral right pursuant to Section 15.2 of the Proclamation to amend the Proclamation if the amendment did not cause a “material adverse effect” on any property owner in Devaun Park.

15. Neither the Plaintiff nor any owner/member of any property in Devaun Park objected to Founder’s unilateral right to amend the Proclamation or brought any action challenging the validity of the amendments to the Proclamation within one year of the 2011 Amendments.

16. On February 18, 2015, the Association recorded a document entitled “Termination of Founder Control Period” with the Brunswick County Register of Deeds’ office in Book 3612, page 626. The Founder Control Period had not terminated as of that date and the recorded document was ineffectual to terminate the Founder Control Period and was therefore null and void.

17. As a result of the settlement between the parties embodied in this judgment, SSC will amend the Proclamation to provide that the Founder Control period will expire no later than December 31, 2020, (unless this date is changed by the joint written approval of the Founder and the Aldermen) and to further reduce certain rights of the Founder during the Founder Control period as set forth in this judgment.

C.

Removal of Property from the Proclamation

18. As of December 15, 2016, the following property was part of the Devaun Park Community and subject to the Proclamation:

- Lots 194-197, Phase Six-B
- Lot 281A, Phase Seven-B-2

19. As of December 15, 2016, the following property was not, nor had it ever been, a part of the Devaun Park Community or subject to the Proclamation:

- Tract 2, Section 1 Revised, Phase Six-B
- Tract 3, Section 1 Revised, Phase Six-B
- Tract 2, Section 4 Revised, Phase Six-B

20. On December 15, 2016, SSC filed an Amendment to Proclamation, recorded in Book 3851, page 273, withdrawing Lots 194-197, Phase Six-B; and Lot 281A, Phase Seven-B-2 from the Devaun Park Community and the Proclamation.

21. As of the December 15, 2016 Amendment to the Proclamation withdrawing the above property from Devaun Park and the Proclamation, the Founder Control Period had not expired and SSC had the unilateral right to withdraw the property from Devaun Park and the Proclamation.

22. Section 2.1(b) of the Proclamation expressly permitted withdrawal of the property by the Founder.

23. Tract 2, Section 1 Revised, Phase Six-B; Tract 3, Section 1 Revised, Phase Six-B; and Tract 2, Section 4 Revised, Phase Six-B were not part of Devaun Park Community nor subject to the Proclamation and the purported withdrawal of those tracts was unnecessary.

D.
Real Estate

24. On March 28, 2016, SSC recorded a deed naming the Association as the Grantee of twenty-four (24) parcels of real estate in Devaun Park, said deed being recorded in Book 3749 Page 231. The Association did not accept that deed, thus no property was conveyed. However, nothing appears on the public record that indicates the Association's non-acceptance of the deed; thus, the public record incorrectly indicates that the property was conveyed to the Association.

In order to clarify the record title to the property, the Association will execute a Quitclaim Deed to SSC, in the form attached hereto as **Exhibit A**, so the public record will reflect title to the twenty-four (24) tracts remains with SSC.

25. Immediately following recordation of the deed attached hereto as **Exhibit A**, SSC will execute and deliver to the Association a Quitclaim Deed in the form attached hereto as **Exhibit B** conveying to the Association any and all of SSC's interest in Tracts 2 through 24 of the March 28, 2016 deed recorded in Book 3749, Page 231.

26. In 2011, SSC offered to convey the "Clubhouse Tract" to the Association. The Association will now accept title to the Clubhouse Tract (all that tract or parcel of land being shown and designated as "Devaun Park Common Area/Open Space 153,363 S.F./3.521 Ac. Tax Parcel # 2550002865" on plat prepared by Donald G. Crews, P.L.S. dated October 21, 2015, recorded November 13, 2015 in Map Cabinet 92, at Page 21 in the Office of the Register of Deeds of Brunswick County). SSC shall convey this tract to the Association, which will be included in the above-referenced deed attached hereto as **Exhibit B**.

E.

Association's Dues, Assessments, and Contributions

27. The Association asserts liens against various properties owned by Defendants SSC; and Stanaland; MGSS, LLC; Murphy Carolinas, LLC; and other SSC-related and Stanaland-related entities, said liens being subject to proceedings in the Brunswick County Clerk of Superior Court's office (file numbers 15-SP-540 through 15-SP-556) to foreclose said liens.

28. SSC asserts a claim against the Association for developer contributions to the Association in an amount exceeding the dues and assessments claimed by the Association but the Association disputes this claim.

29. The parties have agreed to resolve the issue of outstanding Association dues, assessments, and other claims, and SSC's claim for developer contributions, by SSC paying the Association the sum of \$62,038.90, of which Stanaland has already paid \$5,100.12, leaving the amount of \$56,938.78, which shall be paid as a result of this consent order. In return, the Association will dismiss with prejudice all pending foreclosures against real estate in Devaun Park Community owned by SSC, Stanaland, MGSS, LLC, Murphy Carolinas, LLC, and all other SSC-related and Stanaland-related entities, and will credit to a zero-balance all related Association accounts through December 31, 2017.

F.
Streets, Rights of Way and Easements

30. SSC has certain rights of way and easements over roads, streets, and alleys within Devaun Park Community for access to and from its properties in and around the Devaun Park Community.

31. SSC shall convey to the Association the underlying title to all roads, streets, and alleyways that SSC owns in Devaun Park, reserving unto itself, its successors and assigns a non-exclusive easement for SSC, its successors and assigns, and the current owners, their heirs, successors and assigns, of properties previously owned by SSC for access to, from, and across all roads, streets, alleyways and other easements and right of ways within the Devaun Park Community and to and from the Devaun Park Community. A copy of the deed is attached hereto as **Exhibit C**.

G.
Amendment of Proclamation For Undeveloped Properties

32. The Founder shall amend the Proclamation to add a new Article 17 as shown on **Exhibit D** attached hereto and to make certain other amendments to the Proclamation agreed to by the parties hereto. The Association expressly recognizes Founder's authority to do so.

33. The parties waive any and all further findings of fact, agree that the relief granted below is appropriate based on the scope of the Association's claims set forth in the complaint, and the claims of SSC and Stanaland, respectively, against the Association, even though said claims have not then formally asserted in written answers by the Defendants. The parties request the entry of this judgment granting the relief set forth herein, all as indicated by their signatures.

34. All matters included in the Conclusions of Law below that are findings of fact are incorporated herein.

CONCLUSIONS OF LAW

1. The Court adopts the above Findings of Fact as its own findings.
2. Any matters included in the Findings of Fact above that are conclusions of law are incorporated herein.
3. The Founder Control Period has not expired and SSC's amendments to the Proclamation were, are, and have been valid under the Proclamation.

ORDER

IT IS ORDERED, ADJUDGED AND DECREED:

1. The Association shall execute a Quitclaim Deed to SSC in the form attached hereto as **Exhibit A** that includes the property described in Exhibit A of said deed.
2. SSC shall then convey by Quitclaim Deed in the form attached hereto as **Exhibit B** that includes the property described in Exhibit A of said deed.

3. Stanaland shall release the property described in **Exhibit A** and **Exhibit B** attached hereto from his judgment against SSC.

4. Stanaland and SSC, jointly and severally, shall release any and all claims they or either of them have for credits or reimbursements for alleged developer contributions heretofore claimed or made by SSC to or for the benefit of the Association, and all of said claims are deemed satisfied and are hereby extinguished.

5. SSC and/or Stanaland shall pay the Association the sum of \$56,938.78 for homeowners dues and assessments through December 31, 2017, against all properties in Devaun Park owned by SSC; Stanaland; MGSS, LLC; Murphy Carolinas, LLC; and all other SSC-related and Stanaland-related entities.

6. SSC shall pay the Association an additional \$12,000 for application to the property taxes to be paid by the Association pursuant to the findings of fact above. The Association shall pay any and all outstanding property taxes on the Clubhouse Tract and the other parcels identified in the findings of fact above and the parcels described in the exhibits attached to this judgment.

7. Devaun Park Community Association, Inc. shall dismiss its pending foreclosure proceedings with prejudice against those properties, individuals and entities mentioned in the above paragraph, cancel and release all liens against those properties, and will credit to a zero-balance all related Association accounts through December 31, 2017, for SSC; Stanaland; MGSS, LLC; Murphy Carolinas, LLC; and all other SSC-related and Stanaland-related entities.

8. SSC shall execute a Quitclaim Deed in the form attached hereto as **Exhibit C**, conveying any interest it has in all road and street rights of way and alleyways within Devaun Park to Devaun Park Community Association, Inc.; reserving, however, for itself, its previous

and future successors, assigns, and their heirs, a non-exclusive perpetual easement appurtenant and right of way to use said roads for access to, from, across, and within the Devaun Park Planned Unit Development as the community now exists and may be added to in the future,.

9. The document entitled "Termination of Founder Control Period" recorded by the Association on February 18, 2015, in Book 3612 page 626 is null and void *ab initio*.

10. SSC, as Founder, will amend the Proclamation pursuant to **Exhibit D** attached hereto adding an Article 17 which addresses issues involving unimproved property both within and adjoining the Devaun Park Community as it now exists, and which makes certain changes to the Founder Control Period.

11. The remaining claims and other matters asserted by the Association against SSC and Stanaland are hereby denied with prejudice and Plaintiff shall have and recover nothing further from the Defendants other than the matters and provisions set forth in this judgment.

12. Each party shall bear its own costs.

Date: _____

Superior Court Judge Presiding

CONSENTED TO:

DEVAUN PARK COMMUNITY ASSOCIATION, INC.

By: _____
_____, its _____

Date: _____

Allen N. Trask, III, Ward and Smith, P.A.
Attorneys for Devaun Park Community
Association, Inc.

Date: _____

Harrison Freedland, Craige and Fox, PLLC
Attorneys for Devaun Park Community
Association, Inc.

Date: _____

STANALAND STEWART COMPANY, LLC

By: _____
W. Vaughn Stanaland, Member/Manager

Date: _____

Kenneth A. Shanklin
Attorney for Stanaland Stewart Company, LLC

Date: _____

W. Vaughn Stanaland

Date: _____

James Oliver Carter
Attorney for W. Vaughn Stanaland

Date: _____