



-2-

Title to the Ranch is divided into 2400 undivided interests (hereafter "Units").

-3-

Defendant, Crosswind 1040 Partners, LLC, is a Delaware Limited Liability Company, but is subject to the jurisdiction of this Court under the authority of O.C.G.A. § 9-10-91 in that said Defendant is the owner of certain real property in Lumpkin County, Georgia, and such real property is the basis of the instant controversy.

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Defendant's agent for service of process is: Agents and Corporations, Inc., located at 1201 Orange Street, Suite 600, One Commerce Center, Wilmington, New Castle County, Delaware 19801 and Defendant has been served with a copy of Plaintiff's Original Petition by the Sheriff's Department of New Castle County, Delaware, in accordance with O.C.G.A. § 9-10-94.

-5-

Plaintiff shows that it is in a position of uncertainty and insecurity with respect to its rights, status and other legal obligations concerning an actual controversy between it and the Defendant as more particularly set forth hereinafter.

**CONTROVERSY REGARDING WHETHER DEFENDANT**

**IS AN OWNER OF UNITS**

-6-

The Ranch and its owners (hereafter the "Owners") are governed by that certain Declaration of Covenants, Conditions and Restrictions made March 31, 1983 (hereafter the "Declaration") by R-Ranch One, Ltd., a Georgia Limited Partnership (hereafter the "Declarant") and recorded at Book K-4, Pages 766-797, Lumpkin County, Georgia, public records.

-7-

The provisions of the Declaration are covenants running with the land.

-14-

Declarant did not include Tracts IV and V purchased from Oglethorpe Farms as part of the Ranch.

-15-

Pursuant to a Consent and Subordination Agreement dated October 5, 1983, recorded in Deed Book N-4, pages 222-223 Lumpkin County, Georgia, public records, the Deed to Secure Debt is subject to and subordinate to the Declaration.

-16-

As funds were raised by sales of Units to the general public, a portion of the proceeds of such sales was applied to the Debt, and the interest in real property sold to the general public was released from the Deed to Secure Debt, to the extent that such interest was so encumbered.

-17-

On June 23, 2006, Defendant became the Assignee of the Deed to Secure Debt.

-18-

At the time the Deed to Secure Debt was assigned to the Defendant, certain real property remained subject to the Deed to Secure Debt, including Tracts IV and V and also including a 545/2400 interest in Tracts I, II, and III, but not including any interest in Tract VI.

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No interest in Tract VI was ever subject to the Deed to Secure Debt.

-20-

On July 5, 2006, Defendant foreclosed the Deed to Secure Debt and purchased the Encumbered Property (except for a 1800/2400 interest in Tract IV) (the "Foreclosure Sale").

-21-

Pursuant to Section 1.10 of the Declaration a "Unit" is an undivided interest in the property comprising the Ranch (Tracts I, II, III and VI).

Pursuant to Section 1.8 of the Declaration, an "Owner" is the person who owns fee simple title to a "Unit".

23.

All provisions of the Declaration applicable to foreclosure of the Deed to Secure Debt provide that upon foreclosure Oglethorpe Farms will become an owner of Unit Interests in the Ranch, in spite of the fact that the Tracts subject to the Deed to Secure Debt were not co-extensive with the Tracts comprising the Ranch.

24.

The Association is in a position of great uncertainty regarding whether Defendant is or is not an owner of Unit Interests in the Ranch because it does not make logical sense that the Declaration would provide for certain rights and obligations that are specifically applicable to Oglethorpe Farms unless Oglethorpe Farm's Deed to Secure Debt was secured by Unit Interests in the Ranch.

25.

As an owner of Unit Interests in the Ranch, Defendant would be obligated to pay certain assessments.

26.

Pursuant to Defendant's Deed under Power of Sale, Defendant's property is subject to the Declaration.

27.

Pursuant to the Declaration, the Declaration constitutes covenants running with the land which inure to the benefit of present and future owners of the Ranch.

28.

There is a justiciable controversy regarding the rights and obligations of Defendant, the Board is now in a position of great uncertainty regarding its rights and obligations with respect to the

Defendant and without a ruling from this Court regarding the rights and obligations of Defendant as the owner of a 545/2400 undivided interests in Tracts I, II and III the Board cannot properly administer the business and affairs of the Association in accordance with its duties under the Declaration.

**CONTROVERSY REGARDING VOTING RIGHTS OF DELINQUENT UNITS**

-29-

Pursuant to Section 6.1 of the Declaration, each Owner, by acceptance of a Unit, covenants and agrees to pay certain annual assessments to the Association and pursuant to Section 6.5 of the Declaration, if such assessments are not paid, the voting rights appurtenant to such Unit (hereafter a "Delinquent Unit") are suspended until all delinquent assessments are paid in full.

-30-

Since January 1, 1985, the Declarant failed to pay any assessments on the 545 Units it owned, which assessments were required by the Declaration to be paid by the Declarant.

-31-

On May 13, 1988, the Declarant filed a Chapter 7 Bankruptcy Petition, which Bankruptcy was closed on July 16, 1991 and since at least July 16, 1991, the Declarant ceased to exist.

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Section 1.7 of the Declaration provides as follows: "Oglethorpe Farms shall mean Oglethorpe Farms, Inc. or any subsequent holder of that certain Deed to Secure Debt, dated February 14, 1983 and recorded in Deed Book K-4, Page 299, Lumpkin County, Georgia".

-33-

It is the position of the Board that any Units acquired by Defendant pursuant to the Deed to Secure Debt have no voting rights because pursuant to Section 6.5 of the Declaration, Units have no voting rights unless and until all past due assessments are paid in full.

-34-

Thus, the Board is in a position of great uncertainty regarding the voting rights of Defendant and without a ruling from this Court, the Board cannot properly administer the business and affairs of the Association in accordance with its duties under the Declaration.

**CONTROVERSY REGARDING CONTROL OF BOARD**

-35-

Pursuant to Section 1.5 of the Declaration, a party that acquires ownership of all of Declarant's Unit interests in the Ranch has the right to elect to be treated as the Declarant under the Declaration.

-36-

Pursuant to Section 4.3 of the Declaration, the Declarant has the right to appoint or remove any Director or Directors of the Association or any officer or officers of the Association until the first of the following to occur: (a) the date 80% of the Unit Interests have been conveyed by Declarant to Owners other than Declarant or Oglethorpe Farms; or (b) the surrender of authority by the Declarant, such surrender to be made an express amendment to the Declaration executed and recorded by Declarant.

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Further, pursuant to Section 4.3 of the Declaration, when either 4.3(a) or 4.3(b) occurs the right of the Declarant to appoint the Board expires and thereafter the Board can only be appointed by a majority vote of all of the Ranch Unit Owners at a duly conducted election.

-38-

If Defendant has the right to elect to be the Declarant, the Board is uncertain about whether the right of the Declarant to appoint the Board has expired as contemplated by Section 4.3 of the Declaration because, notwithstanding the fact that an express amendment to the Declaration surrendering the right has not been executed and recorded by Declarant, there is a legal issue as to

whether such right has expired as a matter of law because for the past 19 years, since 1988 when the Declarant became bankrupt and was dissolved:

- (i) it has been impossible as a matter of law, for Declarant to exercise any right;
- (ii) it has been impossible as a matter of law, for Declarant to execute the amendment contemplated by Section 4.3(b); and
- (iii) the Declarant has had nothing to do with the appointment of the Board and has had no involvement whatsoever with the Ranch, nor was it possible, as a matter of law, to do so.

-39-

It is the position of the Board that when the Declarant ceased its existence, it necessarily surrendered the right to appoint the Board of the Owner's Association and at that point in time, the right of the Declarant or any successor Declarant to appoint the Board of Directors expired as set forth in paragraph 38 above.

-40-

Without a ruling from this Court as to whether or not Defendant has the right to be the Declarant and further whether or not the Declarant's right to appoint the Board has expired, the Board and the Owners of the Ranch are uncertain about the leadership of the Association and have a legitimate need to know whether or not their duly elected Board of Directors can legally be replaced by Defendant.

#### RIGHT TO DECLARATORY JUDGMENT

-41-

Plaintiff shows that because of the justiciable controversy existing between Plaintiff and Defendant, as described in this Petition, Plaintiff is in a position of great uncertainty regarding conflicting claims, is unable to determine how to proceed without guidance from this Court and is entitled to a declaration of its rights and obligations as provided by O.C.G.A. § 9-4-2 (a) and (b).

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Plaintiff further shows that the issues of fact raised by this Petition should be submitted to a jury for a determination of such issues of fact.

-43-

Plaintiff further shows that it is entitled to a hearing before the Court at a time no sooner than 20 days after Defendant's receipt of this Amended Petition.

**WHEREFORE**, Plaintiff prays and demands as follows:

- a. That Defendant answer this Amended Petition as provided by law;
- b. That the Court hear said matter and that a jury be selected to determine the issues of fact;
- c. That all matters herein be inquired into and that a judgment be entered declaring whether or not Defendant is an owner of Units;
- d. Whether or not Defendant is entitled to vote unless and until all delinquent assessments are paid on such Units;
- e. Whether or not the right of Declarant or any successor declarant to control Plaintiff's Board of Directors has lapsed and expired;
- f. Whether or not the only method of appointing the Board of Directors is by majority vote of all bona fide and eligible Unit Owners at a duly conducted election; and
- g. That Plaintiff has such other and further relief, as the Court may deem equitable and just.

Respectfully submitted, this \_\_ day of December, 2007.

**WHELCHER & DUNLAP, LLP**

By: Madeline Wirt  
Madeline S. Wirt  
Attorneys for Plaintiff  
GA State Bar Number 717094

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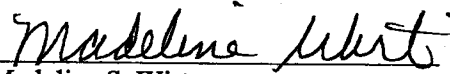
WHELCHER, DUNLAP,  
JARRARD & WALKER, LLP  
405 WASHINGTON ST., N.E.  
POST OFFICE BOX ONE  
GAINESVILLE, GEORGIA  
30503  
(770) 535-4001

**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that I have this date served the within and foregoing Second Amendment to Petition for Declaratory Judgment upon Defendant by placing a true and correct copy of same in the United States mail, postage prepaid in an amount sufficient to ensure delivery upon Defendant addressed as follows:

John R. Grimes  
Eleven Piedmont Center  
Suite 806  
Atlanta, Georgia 30305

This 13<sup>th</sup> day of December, 2007.

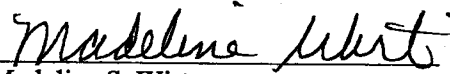
  
Madeline S. Wirt  
Georgia State Bar Number: 717094  
Attorney for Plaintiff

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Madeline S. Wirt  
Georgia State Bar Number: 717094  
Attorney for Plaintiff