IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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| BETTY BRIDGEWATER and JERRY P. WILLIAMS, Individually and on behalf of a Class of All Others Similarly Situated<br><br>Plaintiffs,<br><br>v.<br><br>DOUBLE DIAMOND-DELAWARE, INC., DOUBLE DIAMOND, INC., R. MIKE WARD, FRED CURRAN, WHITE BLUFF CLUB CORP., WHITE BLUFF GOLF, INC., THE INN AT WHITE BLUFF, INC., WHITE BLUFF MARINA, INC., THE LIGHTHOUSE DINING CO., and THE WHITE BLUFF 19th HOLE, INC.<br><br>Defendants. | § | 3-09CV1758-B<br>Civil Action No. _____<br><br>**COMPLAINT**<br><br>**CLASS ACTION**<br><br>**JURY TRIAL DEMANDED** |

## COMPLAINT - CLASS ACTION

1. Plaintiffs Betty Bridgewater and Jerry P. Williams, individually and on behalf of a class of all others similarly situated (the "Class"), file this class action against Defendants Double Diamond-Delaware, Inc. (a Delaware corporation), Double Diamond, Inc. (a Texas corporation), R. Mike Ward, Fred Curran, White Bluff 19th Hole, Inc., White Bluff Club Corp., White Bluff Marina, Inc., The Lighthouse Dining Co., The Inn at White Bluff, Inc., and White Bluff Golf, Inc.

## I.

## PARTIES

2. Plaintiff Betty Bridgewater is an individual resident of the State of Texas, who

resides in Tarrant County, Texas.

3. Plaintiff Jerry P. Williams is an individual resident of the State of Texas, who resides in Tarrant County, Texas.

4. Double Diamond Delaware, Inc. ("DD Delaware") is a Delaware for-profit corporation with its principal place of business in Dallas County, Texas and may be served by service upon its registered agent: Wilmington Trust SP Services, Inc. 1105 N. Market Street, Suite 1300, Wilmington, Delaware 19801.

5. Double Diamond, Inc. ("Double Diamond") is a Texas for-profit corporation, and a wholly owned subsidiary of DD Delaware. Double Diamond has its principal place of business in Dallas, Dallas County, Texas and may be served by service upon its registered agent: R. Jeffrey Schmidt, 10100 N. Central Expy., #600, Dallas, TX 75231.

6. R. Mike Ward is an individual residing in Dallas County, Texas and may be personally served by delivery of process at: 3716 Miramar Ave., Dallas, Texas 75205 or any other place at which he may be found. Ward owns approximately ninety-three percent of the shares of DD Delaware. Ward is the President of Double Diamond and an officer and director of the White Bluff Property Owners' Association, Inc.

7. Fred Curran is an individual residing in Dallas County, Texas and may be personally served by delivery of process at: 2501 Partridge Place, Carrollton, Texas 75006 or any other place at which he may be found. Curran is a certified public accountant and the Chief Financial Officer of Double Diamond. Curran is also an officer and director of the White Bluff Property Owners' Association, Inc.

8. White Bluff Club Corp is a Texas for-profit corporation and a wholly owned subsidiary of Double Diamond. White Bluff Club Corp. is the entity to which the assessments are paid, including the food and beverage assessments made the subject of this suit. White Bluff

Club Corp has its principal place of business in Dallas, Dallas County, Texas and may be served by service upon its registered agent: R. Jeffrey Schmidt, 10100 N. Central Expy., #600, Dallas, TX 75231.

9. White Bluff Golf, Inc. is a Texas for-profit corporation and a wholly owned subsidiary of Double Diamond. White Bluff Golf, Inc. owns the two golf courses at White Bluff Resort. White Bluff Golf, Inc. has its principal place of business in Dallas, Dallas County, Texas and may be served by service upon its registered agent: R. Jeffrey Schmidt, 10100 N. Central Expy., #600, Dallas, TX 75231.

10. The Inn at White Bluff, Inc. is a Texas for-profit corporation and a wholly owned subsidiary of Double Diamond. The Inn at White Bluff owns the hotel, one of the "amenities" at the White Bluff Resort. The Inn at White Bluff has its principal place of business in Dallas, Dallas County, Texas and may be served by service upon its registered agent: R. Mike Ward, 10100 N. Central Expy., #600, Dallas, TX 75231.

11. White Bluff Marina, Inc. is a Texas for-profit corporation and a wholly owned subsidiary of Double Diamond. White Bluff Marina, Inc. owns and operates the marina at White Bluff Resort. White Bluff Marina, Inc. has its principal place of business in Dallas, Dallas County, Texas and may be served by service upon its registered agent: R. Jeffrey Schmidt, 10100 N. Central Expy., #600, Dallas, TX 75231.

12. The Lighthouse Dining Co. is a Texas for-profit corporation and wholly owned subsidiary of Double Diamond. The Lighthouse Dining Co. owns and operates The Lighthouse Restaurant at the White Bluff Resort. The Lighthouse Dining Co. has its principal place of business in Dallas, Dallas County, Texas and may be served by service upon its registered agent: R. Mike Ward, 10100 N. Central Expy., #600, Dallas, TX 75231.

13. The White Bluff 19th Hole, Inc. is a Texas corporation and a wholly owned subsidiary of Double Diamond. White Bluff 19th Hole owns and operates food services at The White Bluff Resort. The White Bluff 19th Hole, Inc. has its principal place of business in Dallas, Dallas County, Texas and may be served by service upon its registered agent: R. Mike Ward, 10100 N. Central Expy., #600, Dallas, TX 75231.

## II.

## JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 18 U.S.C. § 1964(c) (RICO) and the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2) (the amount in controversy exceeds five million ($5,000,000) dollars exclusive of interest and costs, members of the putative class number in excess of one hundred (100) and many reside in states different from the Defendants). This Court has supplemental jurisdiction over the Plaintiffs' common law and state law claims pursuant to 28 U.S.C. § 1367.

15. Venue is established in this District under 28 U.S.C. § 1391, and 18 U.S.C. § 1965 because Defendants conduct a substantial amount of business in this District. Venue is also appropriate in this District because the principal offices of the corporate Defendants are in this District, the individual Defendants reside in this District, and much of the conduct made the subject matter of this action occurred in this District.

## III.

## FACTUAL ALLEGATIONS

16. Double Diamond-Delaware, Inc. ("DD Delaware") is a privately-held, for-profit real estate company headquartered in Dallas, Texas, engaged in the business of resort development. DD Delaware employs an extremely complex organizational structure with

numerous subsidiaries. DD Delaware does business in Texas through its Texas corporation, Double Diamond, Inc. Collectively, DD Delaware and Double Diamond, Inc. will be referred to herein as "Double Diamond."

17. Double Diamond has acquired, managed, marketed, and constructed four communities in Texas, and another in Pennsylvania. At issue in this action is the community known as the White Bluff Resort at Lake Whitney, Texas ("White Bluff" or "White Bluff Resort").

18. In general, the business model employed by Double Diamond is to purchase large tracts of undeveloped property, subdivide the property, then promote and sell lots to individual consumers as investment and/or retirement property. The purchasers of the lots are not required to immediately build on their lots, but may hold the unimproved lots indefinitely. However, each purchaser is required, as a condition of ownership, to become a member of the property owners association. All members of the property owners' association are subject to mandatory annual dues and assessments.

***The White Bluff Resort at Lake Whitney***

19. White Bluff Resort consists of over 6000 lots, most of which have at one time been sold by Double Diamond to individual consumers. Out of the 6000+ lots, there are only 600-700 homes constructed in White Bluff.

20. The resort "amenities" at White Bluff include two 18-hole golf courses, the Lighthouse Restaurant, a spa, The Inn, and a marina, all of which are owned by Double Diamond through one of its subsidiaries. The subsidiaries established to own and operate the White Bluff resort amenities include White Bluff Club Corp., White Bluff Golf, Inc., White Bluff Marina, Inc., The Lighthouse Dining Co., The Inn at White Bluff, Inc., and White Bluff 19th Hole, Inc. Each of these subsidiaries is wholly owned by Double Diamond.

*The White Bluff Property Owners' Association*

21. The White Bluff Property Owners' Association, Inc. ("WBPOA") was formed in 1990 by Defendant Ward as "Declarant." The WBPOA is a non-profit association formed under and governed by the Texas Non-Profit Corporation Act. The WBPOA Articles of Incorporation provide that "the association does not contemplate pecuniary gain to the Members thereof." Under its Bylaws, the WBPOA elected to be treated as a non-profit property owners association under Section 528 of the Internal Revenue Code.

***Double Diamond Exercises Complete Domination over the WBPOA Board***

22. The WBPOA Board of Directors was originally comprised solely of directors who were also officers of Double Diamond. In May 1997, the WBPOA Board by "Unanimous Consent of the Directors" increased the number of directors to six, and elected Defendant Ward as Chairman of the Board. The May 1997 Consent provides that in the event of a deadlock in the Board, then Defendant Ward shall cast the deciding vote.

23. Thus, the WBPOA is currently, and always has been, controlled by Double Diamond. Defendants Ward and Curran have been directors of the WBPOA since its inception, while simultaneously holding positions as officers of Double Diamond. The WBPOA Board is comprised of three Double Diamond employees and three property owners at White Bluff who are hand-picked by Ward. At the time of the actions giving rise to the claims set forth herein, Larry Groppel, Clark Willingham, George Collins, and Don Fritz were property owners who served as directors of the WBPOA.

24. Double Diamond maintains control of the WBPOA by continually re-electing Double Diamond officers as directors for the WBPOA through a proxy voting system. Thus, even though Double Diamond owns far less than a majority of the lots in White Bluff, Double

Diamond and Defendant Ward, as ninety-three percent owner and President of Double Diamond, continue to exercise virtually unfettered control over the management of the WBPOA.

25. The WBPOA holds annual members meetings. Prior to the annual meeting, Defendant Ward sends notice of the date and time of the annual meeting together with a proxy request to each White Bluff property owner. This notice and proxy request are sent to the members on WBPOA letterhead, and signed by Defendant Ward as President of the WBPOA. The letter includes a proxy form for the property owner to execute appointing Defendant Ward as the member's proxy and includes a postage-paid return envelope. In these communications, Defendant Ward does not disclose to the members that he is also the President and the majority shareholder of Double Diamond.

26. Although the Bylaws originally established that the annual members' meeting would be held on the fourth Saturday in May, the board has in the past acted to change the date and time of the annual meeting. In 2000, by resolution, the Board changed the date of the annual meeting to the third Wednesday of May. In 2009, after certain property owners had sent out proxy requests so that someone other than Defendant Ward would have proxy rights, Defendant Ward sent the notice of the 2009 annual meeting, and changed the date to the second Wednesday in May, thus attempting to invalidate all other proxy requests.

27. At every annual meeting, Defendant Ward, or someone acting under his direction, announces that Defendant Ward has enough proxies to out-vote anyone else in attendance at the meetings. The elections of directors to fill the expired directorship terms are held, and without fail, by virtue of the proxies allegedly held by Defendant Ward, the persons nominated by Defendant Ward are elected into office.

28. In the past, members have attempted to organize a take-over of the board by launching a proxy battle. Such attempts have been met with aggressive, punitive stifling actions

by Defendant Ward. For example, at an annual meeting in 2000, Dick Van Tyne, a property owner who was dissatisfied with Double Diamond's and Defendant Ward's management of White Bluff, organized a group of property owners, known as the White Bluff Group Trust, for the purpose of running a slate of candidates, including himself, for election to the association's board of directors. As part of his effort to elect these candidates, Van Tyne prepared three documents criticizing Double Diamond's management and development of the resort. Van Tyne's efforts to unseat the Double Diamond board members resulted in a defamation lawsuit brought by Defendant Ward against Van Tyne, even though none of his statements were defamatory, and as a matter of law, Van Tyne had a qualified privilege to communicate his concerns to other property owners.

29. Likewise, when another property owner, Daniel Saturn, began organizing a group of dissatisfied property owners to complain about the actions taken by Double Diamond and the board of the WBPOA, Double Diamond sued Daniel Saturn alleging various defamation and business disparagement claims. On at least three occasions, Double Diamond has sued members of the WBPOA for defamation when members engaged in activities that publicly criticized the actions of the WBPOA board, Double Diamond and/or Defendant Ward. By filing these lawsuits, Double Diamond and Defendant Ward have used the court system to stifle the members' attempts to gain control of the WBPOA and demand answers to their perceived financial improprieties between the WBPOA, Double Diamond and Defendant Ward.

***Double Diamond Controls the Financial Affairs of the WBPOA.***

30. The acts of the WBPOA are supposed to be limited to the powers set forth in the statutes and in the governing documents (articles, bylaws and declarations). The WBPOA governing documents provide that no part of the income of the association shall be distributed to

any member, director, officer or private individual unless such compensation is reasonable for services rendered to or for the Association related to or pertaining to one or more of its purposes.

31. The WBPOA makes semi-annual assessments from the members for maintenance fees. These assessments are collected in January and July of each year. The Board of the WBPOA unilaterally frequently raises mandatory assessments. As WBPOA maintenance fee collections have risen, so have costs. The WBPOA mandatory assessments presently exceed $3,000,000 per year.

32. Virtually every function of the WBPOA is handled by Double Diamond through "shared management and operating functions." All purchases are made through intercompany accounts with Double Diamond, and the WBPOA does not even have its own check book. Double Diamond processes all cash receipts for income received by the WBPOA. All water and sewer costs are paid to Double Diamond Utilities Co., a subsidiary of Double Diamond, Inc. Most employees are "shared" employees who do work for Double Diamond and the WBPOA but are actually employed by National Resort Management Corp., another subsidiary of Double Diamond. All complaints about the WBPOA are handled by people who work in the corporate office for Double Diamond. The legal affairs of the WBPOA are handled by general counsel for Double Diamond or outside law firms who also represent Double Diamond.

33. Double Diamond also controls virtually all of the accounting and financial affairs of the WBPOA, and the WBPOA accounts are managed through a series of "inter-company" "due-to" and "due-from" accounts whereby Double Diamond commingles the funds of the not-for-profit WBPOA with the accounts of Double Diamond.

34. Since its inception in 1990, the WBPOA has never established a reserve account for future expenditures because virtually every dollar that goes into the association is sucked out in some form or fashion by Double Diamond. Every year, as revenues rise, the WBPOA

manages to spend more money than it collects. The WBPOA does not pay its own bills, but pays everything through Defendant White Bluff Club Corp. In fact, the WBPOA cash journal reflects receipt of income which is then systematically transferred electronically to White Bluff Club Corp.

***The WBPOA Claims Tax-exempt Status.***

35. As a not-for-profit property owners' association, the WBPOA claims exempt status under Section 528 of the Internal Revenue Code. The tax returns for WBPOA are prepared by and signed by Fred Curran, a certified public accountant, a director of the WBPOA, and the Chief Financial Officer of Double Diamond.

***The Fraudulent Scheme: Illegal Assessments***

36. The WBPOA is a Texas non-profit corporation governed by the Texas Non-Profit Corporation Act and the Texas Property Code. Article 1396-2.24 of the Non-Profit Corporation Act prohibits the distribution of any part of the income of the corporation to any member, director, or officer unless it is reasonable compensation for services rendered. WBPOA violates this statute.

37. Additionally, in order to be a tax exempt non-profit property owners' association, Section 528 of the Internal Revenue Code requires (i) that the association be organized and operated to provide for the acquisition, construction, management, maintenance, and care of association property; (ii) 60 percent or more of the annual gross income the association consist solely of amounts received as membership dues, fees, or assessments from owners of residential lots; (iii) 90 percent or more of the annual expenditures of the association are expenditures for the acquisition, construction, management, maintenance, and care of ***association*** property; and, (iv) no part of the net earnings of the association may inure (other than by acquiring, constructing, or providing management, maintenance, and care of association property, and other

than by a rebate of excess membership dues, fees, or assessments) to the benefit of any private shareholder or individual. *See* 26 U.S.C. § 528.

38. If all the assessment revenue was properly booked and reported on the WBPOA financial statements, the WBPOA annual gross receipts from assessments is approximately $4,000,000. Based on the conduct alleged herein, the WBPOA is not organized and operated to provide for the acquisition, construction, management, maintenance and care of association property, but rather is organized and operated for the purpose of increasing the profitability of Double Diamond and filling the pockets of Defendant Ward.

***The Mandatory Food and Beverage Assessments a/k/a the "Hospitality Program"***

39. In December 2003, the WBPOA Board adopted a mandatory food and beverage assessment program applicable to Plaintiffs and all members of the Class. Initially, the assessment was $100.00 per year, and currently it is $200.00 per year. Double Diamond refers to this assessment as a "food and beverage credit" or "hospitality credit" because, upon payment of the $200, the member is issued a "credit" in the amount of $250 to be redeemed for the purchase of services at the Double Diamond amenities at White Bluff, e.g. the golf course, the restaurants, the hotel, or the spa. If a property owner does not use the pre-paid food and beverage credit in a given year, then the property owner loses the credit, and the sums are retained by Double Diamond, even though no services were ever provided.

40. This "hospitality program" was announced to the property owners through a letter enclosed with the January 2004 invoice for semi-annual assessments. The letter, signed by Defendants Ward and Curran, together with the other directors of the WBPOA, stated the following:

> **Hospitality at White Bluff**
> This operation is critical to the future of White Bluff. In the history of White Bluff the hospitality operation has never made a profit. Losses this year will

> again be in the six digits. The real estate, or lot sales operation, has subsidized all of the hospitality efforts both in funding operating losses and capital improvements and repairs. One of the methods used to maintain an upscale operation while cutting losses was to solicit and service group business. This has worked to some extent—however it tends to detract from member services. The dynamics of White Bluff are changing. Three of the biggest factors in play now are that more and more members are building, more are using the facilities, and we are running out of the source of funds that we have used to support the hospitality effort – real estate. Bottom line is that White Bluff is headed where it should be – a member supported facility, and we are taking steps in that direction daily. ...

41. Many of the representations set forth in the excerpt above were false. The hospitality operations of Double Diamond were profitable, but even if they were not, that was the responsibility of Double Diamond who owned and managed the hospitality operations, and not the responsibility or the problem of the WBPOA.

42. The mandatory assessments for the "hospitality program" for services to be purchased at resort facilities owned by Double Diamond, which are open to the general public and the guests of Double Diamond, is not a legal or proper use of assessments levied by a Section 528 tax-exempt property owners' association. Simply put, this is a transfer of income from a non-profit property owners' association to a third party, without being reasonable compensation for services provided to the Association.

43. The food and beverage assessments in 2004 and 2005 were $100 per year, per property owner. The assessments were made semi-annually in January and July of each year.

44. Sometime in 2006, Defendant Curran, as Vice President of the WBPOA, and Defendant Ward, as President of Double Diamond, entered into a "Capital Improvement Agreement" wherein the WBPOA agreed to continue the practice of assessing the food and beverage fees for ten years and paying these assessments to Double Diamond. The Capital Improvement Agreement was ratified by Defendant Curran, and other WBPOA directors Gracy,

Groppel, Fritz and Willingham. The Capital Improvement Agreement extending the food and beverage assessment program for ten years was not discussed at the May 2006 members' meeting, and was not announced to the membership. In fact, when specifically asked by a member "What is the agreement with Double Diamond on the F & B Credit?", Defendant Curran stated "[i]t can only go up 5% per year. The credits are helping hospitality's bottom line. We have to have hospitality make money if we want White Bluff to stay alive."

45. Prior to 2006, Double Diamond was allegedly making an annual contribution to the WBPOA in the amount of $50,000 under a purported "revenue sharing" agreement between Double Diamond and the WBPOA. This annual contribution was terminated by virtue of the Capital Improvement Agreement.

46. Pursuant to the Capital Improvement Agreement, Double Diamond and the WBPOA agreed that the food and beverage assessment would increase to $150 per year in 2006, $175 per year in 2007, and $200 in 2008.

47. As of the date of the filing of this Complaint, the food and beverage assessments have been included in the property owners "Maintenance Fee Statement" which is mailed out twice per year to property owners. Thus, on twelve occasions, Double Diamond has caused the invoices for these assessments to be sent to thousands of property owners via the U.S. mail. Specifically, these mailings were sent in January 2004, July 2004, January 2005, July 2005, January 2006, July 2006, January 2007, July 2007, January 2008, July 2008, January 2009, and July 2009.

***Defendants Conceal the Amounts of Food and Beverage Assessments from the Property Owners and the IRS.***

48. The income derived from the food and beverage assessments is not, and never has been, reflected on the audited financial statements of the WBPOA. While the food and beverage

fees are assessed by the WBPOA, they are "passed through" to Defendant White Bluff Club Corp. At the May 2006 members' meeting, when asked specifically whether the food and beverage fees were included on the financial statements of the WBPOA, Curran stated "No. It is billed by the POA but passes through the company; it does not show up on the financial statements of the POA."

49. The income received from the food and beverage assessments is also not included or reported on the Section 528 tax returns of the WBPOA are prepared and filed by Defendant Curran.

***In May 2009, the 68th Judicial District Court of Dallas County Declares the Food and Beverage Assessment Program Void Ab Initio.***

50. On June 15, 2009, the 68th Judicial District Court of Dallas County, Texas entered Final Judgment in Cause No. DC-07-12490, *Double Diamond, Inc. and White Bluff Property Owners' Association v. Daniel Saturn,* a lawsuit brought by Double Diamond against a property owner for, among other things, recovery of unpaid food and beverage assessments. In this lawsuit, the parties sought competing declaratory judgments on the propriety of the food and beverage assessments. After a two-week jury trial, the jury found that the mandatory food and beverage assessments by the WBPOA and payment of such assessments by the WBPOA to Double Diamond, or its related companies, did not constitute reasonable compensation for services provided to the Association.

51. In the Final Judgment, a true and correct copy of which is attached hereto and fully incorporated herein as Exhibit "A", the Court made the following conclusions of law:

a. The White Bluff Property Owners' Association, Inc. is a non-profit corporation formed under the Texas Non-Profit Corporation Act;

b. The food and beverage assessments program adopted by the Board of the White Bluff Property Owners' Association, Inc. in December 2003 (the "food and beverage assessment program") was not proper and not in accordance with the bylaws of the White Bluff Property Owners' Association, Inc.;

c. The practice by the White Bluff Property Owners' Association, Inc. of assessing mandatory food and beverage assessments from its members and paying such assessments to Double Diamond, Inc. and/or its related companies without such payments being reasonable compensation for services provided to the White Bluff Property Owners' Association, Inc. violates Article 1396-2.24 of the Texas Non-Profit Corporation Act;

d. The food and beverage assessment program adopted by the directors of the White Bluff Property Owners' Association, Inc. is void *ab initio* only as to the parties to this suit;

e. The food and beverage assessment program as set forth in Paragraph 2 of that certain 2006 Capital Improvement Agreement between Double Diamond, Inc. and the White Bluff Property Owners' Association, Inc. is void *ab initio* only as to the parties to this suit.

52. In spite of the judicial decree declaring the food and beverage assessment program void *ab initio*, the WBPOA and Double Diamond continue to make the illegal assessments, and most recently billed all members for the food and beverage assessment in the July 2009 invoice.

***Illegal Assessments Relating to Golf Course Maintenance Expenses.***

53. In addition to the assessments for food and beverage fees which have already been found improper and illegal, the WBPOA also assesses members for golf course expenses.

The White Bluff golf courses are not "association property" as defined by federal law. In pertinent part, Section 528(c)(5) of the Internal Revenue Code defines "association property" as "(i) property held by the organization, (ii) property commonly held by the members of the organization; and (iii) property within the organization privately held by the members of the organization." The White Bluff golf courses are not "association property." They are instead owned by White Bluff Golf, Inc., a for-profit corporation and a wholly owned subsidiary of Double Diamond. Double Diamond has the exclusive right to manage and operate the White Bluff golf courses and those golf courses are open to the general public and available to the public for private golf tournaments.

54. Not only does Double Diamond collect all of the revenue from the golf course operations, but it inapplicably passes off all or most of the golf course expenses to the WBPOA. Double Diamond fraudulently represents to the members that the WBPOA is only paying for golf course "maintenance" expenses, but the alleged "expenses" far exceed the typical costs of maintaining similar golf courses. In fact, the WBPOA has paid virtually all of the costs associated with operating the golf courses, including the costs of capital improvements and salaries.

55. In exchange for the agreement to pay the golf course "maintenance costs," the members purportedly obtain certain privileges to use the golf courses. Specifically, a WBPOA member in good standing is entitled to three "free" rounds of golf per month. These "free" rounds of golf are subject to whatever restrictions that Double Diamond places on the use of a "free" round, such as imposing mandatory cart fees, and limiting the "free" rounds to week-days only. Additionally, if a property owner does not use the free rounds in any given month, they are forfeited.

56. Each year, the golf course "maintenance" expenses at White Bluff have steadily risen. The chart below shows the amounts paid by the WBPOA for alleged "maintenance" of the golf courses:[1]

| | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|---|---|---|---|---|
| WBPOA Assessment Revenue (Excluding F&B Assessments) | $2,566,821 | $2,705,945 | $2,976,078 | $3,285,497 | $3,617,637 |
| WBPOA Golf Course "Maintenance" Expenses | $984,409 | $1,149,038 | $1,578,528 | $1,788,889 | $1,639,031 |

57. Defendants represent that the WBPOA is only paying for golf course "maintenance" expenses, and fail to truthfully represent that the WBPOA assessments are being used to pay for **all** costs, including operational costs and capital improvements of the golf course. Based on the numbers above, the "maintenance" costs for the golf courses are far greater than what **all** of the operational costs of the White Bluff golf courses could possibly be. This fraud is perpetuated every year when the Defendants pass out the "audited" financial statements at the annual meeting.

58. At the members' meeting in May 2007, a property owner asked "Why can't golf revenue be used to help offset the golf maintenance expenses?" The response delivered by Defendant Curran was "Those are two separate operations. The golf fees are property of the hospitality division and help the hospitality division achieve the break even mentioned before."

[1] All figures are taken from the 2004-2008 WBPOA audited financial statements.

59. At the 2007 members' meeting, a property owner asked "What expenses does the POA pay on the golf course?" Defendant Curran stated the "POA pays for the maintenance of the golf course." Another question posed by a property owner was "What salaries does the POA pay for with regards to the golf course?" Defendant Curran answered, "POA pays for the golf course superintendent and his crew." When asked, "Who gets credit for the golf revenue," Defendant Curran stated "The golf revenue is considered a hospitality operation."

60. In order for the WBPOA income to be exempt, both state and federal law require that at least 90 percent of the expenditures of a non-profit property owners' association be spent on the acquisition, maintenance and preservation of association property. The golf courses do not fall within the definition of "association property" under federal or state law. Significantly more than one-half of the expenditures of the WBPOA are for the improvement and maintenance of property not owned by the Association, but owned by one or more of the Double Diamond Defendants.

61. By using the WBPOA as a device to collect mandatory assessments for the payment of golf course "expenses" when the golf courses are not owned by the WBPOA, Defendants have violated the governing documents of the WBPOA, the Texas Non-Profit Corporation Act, and federal and state tax laws. More specifically, the payment of these "expenses" provides a benefit to Double Diamond and its related entities that far exceeds the value of the services provided to the WBPOA, and therefore is not reasonable compensation for services provided, in violation of the Texas Non-Profit Corporation Act. Additionally, these funds constitute a transfer of POA net earnings which are inuring to the benefit of Double Diamond's related third parties but do not constitute reasonable compensation for services provided, in violation of federal and state tax laws and the governing documents of the WBPOA.

*Illegal Late Fees, the Additional White Bluff "Allocation," and other Possible Misappropriations*

62. In further violation of the Texas Non-Profit Corporation Act , and the state and federal tax laws, if a property owner refuses to pay any of the illegal assessments, or is late paying the assessments, then Double Diamond, through its White Bluff Club Corp. entity, charges and collects $10.00 per month in late fees.

63. Yet another example of the illegal use of the assessments made by the WBPOA is an annual "allocation" that is transferred from the WBPOA to Double Diamond. This allocation is approximately $500,000 per year, and there is no written contract to substantiate any such allocation.

64. While Plaintiffs currently know of the foregoing instances of misappropriation and illegal use of WBPOA funds, Plaintiffs may discover more instances of misappropriation and illegal use of funds as this suit progresses, and fair and complete audits of the books and accounts of the WBPOA and Double Diamond are conducted.

*Fraudulent Concealment*

65. Many of the fraudulent acts and improper assessments occurred within four years of filing this lawsuit. Prior to that time, and despite the fiduciary obligations Defendants Ward and Curran owed to Plaintiffs and the Class, Defendants fraudulently and deliberately concealed from Plaintiffs and the Class the truth about their deceptive operations and the fraud alleged in this Complaint, beginning with the January 2004 improper assessment. Double Diamond is not a publically held corporation, further limiting the information available to Plaintiffs and the Class. Prior to the filing of this suit, Plaintiffs and the Class were only provided with false and inaccurate "audited" financial statements, and when confronted with questions about those

financial statements at the annual meetings, Defendants made material additional misrepresentations about the financial operations of the WBPOA.

66. Specifically, the WBPOA audited financial statements available for distribution to the Plaintiffs and members of the Class contained material misrepresentations in that the statements failed to reflect the food and beverage assessments as income to the WBPOA, falsely stated that the income of the WBPOA was exempt function income, and falsely represented that the WBPOA was conducting itself as tax exempt association under Section 528 of the Internal Revenue Code.

67. Defendants engaged in a continuing practice of providing false information and withholding accurate information concerning the need for and use of the assessments from Plaintiffs and members of the Class. Defendants routinely used threats of lawsuits as a means of intimidating property owners into submissively accepting all of Defendants' false representations. And, as discussed above, on at least three occasions, Defendants actually filed lawsuits against property owners who objected to Defendants' conduct. Additionally, if a property owner failed to pay the assessments when due, United Equitable Mortgage Co., Inc., yet another wholly-owned subsidiary of Double Diamond, reported to credit reporting agencies that a property owners' account with "United Equitable Mortgage" was delinquent even though the property owner had no delinquencies whatsoever with United Equitable Mortgage.

68. In communications with Plaintiffs and members of the Class, Defendants continue to demand payment for illegal assessments in spite of the fact that the "food and beverage assessment program" between Double Diamond and the WBPOA has been declared void *ab initio*.

69. Plaintiffs and the Class did not have knowledge sufficient to discover, or which should have enabled them to discover, through the exercise of reasonable diligence, the

fraudulent and improper conduct of Defendants. To the extent applicable to the claims asserted herein, Defendants are estopped from asserting any statute of limitations defense by virtue of Defendants' acts of fraudulent concealment. Further, the actions of Defendants constitute a "continuing violation" in that each time the illegal assessments are made, Defendants have violated RICO, and committed fraud against the property owners.

70. Plaintiffs and the Class were not effectively alerted to the existence and scope of Defendants' fraud and were not on notice of their potential claims until shortly prior to the filing of this Complaint as a result of information obtained through discovery and trial in the lawsuit of *Double Diamond v. Daniel Saturn* discussed above.

71. The applicable statues of limitations for Plaintiffs' and the Class' claims are tolled by Defendants' fraudulent concealment of their actions as alleged in this Complaint.

## IV.

## CLASS ACTION ALLEGATIONS

72. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) on behalf of themselves and a class of persons similarly situated.

73. The class is defined as follows: All White Bluff current and former property owners who from January 2004 to the date this action is certified, paid assessments to the WBPOA.

74. The class is sufficiently numerous to satisfy numerosity. It is anticipated that the class comprises at least 6,000 members. Although the exact number of class members is unknown at this time, it is ascertainable by appropriate discovery. The Class members are dispersed throughout the United States such that joinder of all members of the Class is impracticable. The Class members can be identified by records maintained by the Defendants.

75. There are questions of law and fact common to the Class which predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class members are:

(i) Whether Defendants fraudulently misrepresented the need for and use of the mandatory assessments made by the WBPOA;

(ii) Whether Defendants concealed or omitted material information from Plaintiffs and the Class regarding the need for and use of the assessments made by the WBPOA;

(iii) Whether Defendants engaged in a uniform and continuing scheme to make assessments through the statutory powers granted to the WBPOA, then transferred those assessments to Double Diamond and its related entities;

(iv) Whether Defendants employed a uniform pattern of misrepresentation and omissions in presenting "audited" financial statements to the Plaintiffs and the Class that contained material misrepresentations, including failing to properly account for the illegal assessments;

(v) Whether the acts and omissions of Defendants as described in this Complaint violate RICO;

(vi) Whether Defendants are liable to Plaintiffs and the Class for damages for conduct actionable under RICO;

(vii) Whether Defendants are "persons" as defined in RICO, 18 U.S.C. § 1961(3);

(viii) Whether Defendants were employed by or associated with an "enterprise" as defined in RICO, 18 U.S.C. § 1962(3);

(ix) Whether Defendants engaged in a pattern of racketeering activity or collection of unlawful debt;

(x) Whether Defendants used the mails and wires to further their fraudulent scheme as alleged in this Complaint;

(xi) Whether the acts and omissions of Defendants violated various state laws as alleged herein;

(xii) Whether Defendants engaged in a conspiracy in violation of RICO, 18 U.S.C. § 1962(d);

(xiii) Whether Plaintiffs and the Class sustained damages and losses as a result of Defendants' illegal acts and omissions as alleged in this Complaint;

(xiv) The scope, extent and measure of damages and equitable relief that should be awarded to Plaintiffs and the Class;

(xv) The amount of attorneys fees, prejudgment interest, and costs of suit to which Plaintiffs and the Class are entitled; and,

(xvi) Whether the Defendants' acts and omissions were sufficiently wrongful to entitle Plaintiffs and the Class members to punitive damages.

76. Plaintiffs' claims are typical of the claims of the Class because Plaintiffs and the Class sustained damages arising out of the Defendants' wrongful conduct as detailed in this Complaint. Specifically, Plaintiffs' claims and the claims of the Class arise from Defendants' illegal scheme and pattern of racketeering activity as alleged in this Complaint.

77. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel competent and experienced in class action lawsuits. Plaintiffs have no interests antagonistic to or in conflict with those of the Class and therefore should be adequate as representatives for the Class.

78. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members of the Class is impracticable. Furthermore, because the damages suffered by individual members of the Class may in some instances be relatively small, the expense and burden of individual litigation make it impossible for Class members individually to redress the wrongs done to them. Also, the adjudication of this controversy through a class action will avoid the possibility of inconsistent and possibly conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

## V.

## COUNT ONE

## VIOLATION OF 18 U.S.C. § 1962(c)
## (AGAINST ALL DEFENDANTS)

79. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

80. Defendants are "persons" within the meaning of 18 U.S.C. § 1961(3) who conducted the affairs of the Enterprise.

81. At all relevant times, and as described in this Complaint, Defendants carried out the illegal assessment scheme to defraud Plaintiffs and the Class in connection with the conduct of an "enterprise," within the meaning of 18 U.S.C. §1961(4). The enterprise consists of the board of directors of the WBPOA (including Gracy, Willingham, Collins, Groppel, and Fritz), Defendants Ward and Curran, and Double Diamond, who used the WBPOA and the Double Diamond subsidiaries to conspire with each other and with Double Diamond and its web of related entities (the "Enterprise").

82. At all relevant times, the Enterprise was engaged in, and its activities affected, interstate commerce within the meaning of RICO, 18 U.S.C. § 1962(c).

83. As described herein, the Enterprise has and continues to have an ascertainable structure and function separate and apart from the pattern of racketeering activity in which Defendants have engaged. In addition, the members of the Enterprise function as a structure and continuous unit, and performed roles consistent with this structure. The members of the Enterprise perform certain legitimate and lawful activities that are not being challenged in this Complaint, including the acquisition, control and maintenance of the common properties (roads, swimming pools, tennis courts and parks in the White Bluff Resort) which are owned by the WBPOA. Aside from legitimate activities carried out by the WBPOA, the WBPOA was used as part of the Enterprise's structure to carry out the fraudulent and unlawful activities alleged in this Complaint, including, but not limited to, the illegal assessments of "food and beverage fees," the illegal use of WBPOA funds to maintain the golf courses owned by Double Diamond, and the free and unfettered transfer of monies from the non-profit WBPOA to the for-profit companies of Double Diamond without such transfers being reasonable compensation for services provided to the WBPOA.

84. Defendants conducted and participated in the affairs of the Enterprise through a pattern of racketeering that includes acts indictable under 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud) as described in this Complaint.

85. Defendants' use of the U.S. mails and wires in furtherance of the fraud described in this Complaint involved tens of thousands of communications beginning in 2004 and continuing through the present, including, but not limited to:

a. communications between Defendants and the Enterprise to establish and maintain the Enterprise;

b. communications, including financial payments with and among Defendants and the Enterprise, relating to the WBPOA assessments;

c. communications with and among Defendants and Plaintiffs and the Class including mailing semi-annual invoices, newsletters, answering questions and complaints, and receiving payments via the mails and wires;

d. Receiving the proceeds of Defendants' improper scheme from Plaintiffs and the Class;

e. Transferring payments from the accounts of WBPOA to the accounts of Double Diamond, or one or more of its subsidiaries.

**COUNT TWO:**

**VIOLATION OF 18 U.S.C. § 1962(d)**
**(AGAINST ALL DEFENDANTS)**

86. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

87. Subsection 1962(d) of RICO provides that it "shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section." Defendants have violated § 1962(d) by conspiring to violate § 1962(c). The object of this conspiracy has been and is to conduct or participate in, directly or indirectly, the conduct of the affairs of the Enterprise described above through a pattern of racketeering activity.

88. Defendants as co-conspirators have engaged in numerous overt and predicate fraudulent racketeering acts in furtherance of the conspiracy as described in this Complaint, including multiple instances of mail and wire fraud violations, specifically including one or more of the following:

(i) sending written communications via the U.S. mail or electronically to Plaintiffs and other members of the Class regarding the need for and use of the illegal assessments;

(ii) sending via the U.S. mail semi-annual invoices beginning in January 2004 and continuing through the present to Plaintiffs and the Class demanding payment of the illegal assessments;

(iii) communicating via telephone with Plaintiffs and other members of the Class regarding the illegal assessments;

(iv) communicating electronically with credit reporting agencies through Double Diamond's wholly owned subsidiary, United Equitable Mortgage, Inc., for the purpose of reporting any failure to pay the illegal assessments by any member of the Class;

(v) transferring electronically sums from the bank accounts of the WBPOA to the accounts of Double Diamond and its subsidiaries.

89. The nature of the above-described acts by Defendants as co-conspirators in furtherance of the conspiracy gives rise to a plausible inference that Defendants agreed to the objective of violating 18 U.S.C. § 1962(c) and that by conspiring to violate 18 U.S.C. § 1962(c), they were aware that their fraudulent acts have been and are part of an overall pattern of racketeering activity.

a. Plaintiffs and the Class have been injured in their property by reason of the conspiracy alleged herein in that Plaintiffs and the Class have paid the WBPOA millions of dollars in illegal assessments which in turn have been illegally transferred from the non-profit WBPOA to Double Diamond and its subsidiaries.

b. The injuries of Plaintiffs and the Class were directly and proximately caused by Defendants' racketeering activity as described above.

c. By virtue of these violations of 18 U.S.C. § 1962(d), Defendants are liable to Plaintiffs and the Class for three times the damages Plaintiffs and the Class have sustained, plus the costs of this suit, including reasonable attorney's fees.

**COUNT THREE:**

**CLAIM FOR REIMBURSEMENT (OFFENSIVE COLLATERAL ESTOPPEL)**
**(AGAINST DOUBLE DIAMOND AND RELATED CORPORATE DEFENDANTS)**

90. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

91. Plaintiffs will show that the members of the WBPOA are entitled to reimbursement for all food and beverage assessments paid to or received by Double Diamond-Delaware, Inc., Double Diamond, Inc., White Bluff 19th Hole, Inc., White Bluff Club Corp., White Bluff Marina, Inc., The Lighthouse Dining Co., The Inn at White Bluff, Inc., and White Bluff Golf, Inc. ("Double Diamond Defendants") based on the doctrine of offensive collateral estoppel. In *Double Diamond and the White Bluff Property Owners Association, Inc. v. Daniel Saturn*, Cause No. DC-07-12490, the 68th Judicial District Court of Dallas County entered a Declaratory Judgment ("Judgment") on the 15th day of June 2009 declaring that the food and beverage assessments void *ab initio* for the reasons set forth in the Judgment. See Exhibit "A." Accordingly, Plaintiffs and members of the Class seek reimbursement for food and beverage assessments collected or received by any of the Double Diamond Defendants from 2004 through the present.

**COUNT FOUR:**

**BREACH OF FIDUCIARY DUTY**
**(AGAINST DEFENDANTS WARD AND CURRAN)**

92. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

93. The individual Defendants owed a fiduciary duty to Plaintiffs and the Class as they were and/or continue to be officers and directors of the WBPOA. Such duty is owed either through a formal fiduciary relationship, or through an informal relationship based upon the dominance and control maintained by the WBPOA Board over the White Bluff property owners, and the high degree of influence and power that the WBPOA Board has exercised and continues to exercise over the White Bluff property owners. The fiduciary duties owed by the directors and officers of the WBPOA to the members include: (i) the duty to act with the utmost of good faith in the directors' and officers' relations with the members of the WBPOA, (ii) the duty of loyalty to the members of the WBPOA; (iii) the duty of candor to the members of the WBPOA; (iv) the duty to refrain from self-dealing and/or to make full disclosure of any personal interest an officer or director has in the subject matter of any contract that the officer or director negotiates for or with the WBPOA; and, (v) the duty to act with integrity of the strictest kind.

94. Plaintiffs will show that the individual Defendants breached their fiduciary duties in using the authority granted to the WBPOA by statute to assess mandatory fees that Defendants subsequently passed on to the for-profit private corporations owned by Double Diamond when such transfers were not reasonable compensation for services provided to the WBPOA. Plaintiffs will further show that the individual Defendants failed to disclose all the material terms of the transactions to the members of the WBPOA. At all times, the apparent primary concern of the individual Defendants, in particular the Defendant Ward, was the financial benefit to Double Diamond, and ultimately, the financial benefit to Defendant Ward personally.

95. Plaintiffs will show that the individual Defendants did not properly account for the funds collected by the WBPOA, and used WBPOA funds for unauthorized purposes and permitted improper distributions to Double Diamond and its subsidiaries, which were not reasonable compensation for services provided, in violation of the Texas Non-Profit Corporation Act, Section 528 of the Internal Revenue Code, and the governing documents of the WBPOA.

96. The acts and omissions of the individual Defendants as alleged above constitute a constructive fraud on the Plaintiffs and members of the Class.

**COUNT FIVE:**

**MISAPPLICATION OF FIDUCIARY PROPERTY**
**(AGAINST DEFENDANTS WARD AND CURRAN)**

97. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

98. As officers and directors of the WBPOA, Defendants Ward and Curran were carrying on fiduciary functions and as such, had the legal obligation to apply WBPOA funds to the accounts of the WBPOA and to hold such funds for the benefit of the members of the WBPOA. These Defendants intentionally caused the misapplication of these fiduciary funds by redirecting the funds to one or more of the Double Diamond Defendants. Defendants Ward and Curran acted intentionally, knowingly, or recklessly in misapplying the property they held and controlled as fiduciaries in a manner that involved substantial risk of loss to the members of the WBPOA. As such, these Defendants have engaged in conduct that violates Section 32.45 of the Texas Penal Code.

**COUNT SIX:**

**CONSTRUCTIVE TRUST**
**(AGAINST DOUBLE DIAMOND AND ITS RELATED CORPORATE DEFENDANTS)**

99. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

100. Plaintiffs and the Class plead for the specific equitable remedy of constructive trust. Plaintiffs will show that the WBPOA funds that were misappropriated and misapplied by Defendants were used to improve and enhance the personal and real property of the Double Diamond Defendants, and therefore Plaintiffs and the Class are entitled to a constructive trust on all such property.

**COUNT SEVEN:**

**UNJUST ENRICHMENT**
**(AGAINST DEFENDANT WARD, DOUBLE DIAMOND AND ITS RELATED CORPORATE DEFENDANTS)**

101. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

102. Plaintiffs and the Class also seek to recover from Defendant Ward, as the majority owner of Double Diamond, and from the Double Diamond Defendants under the equitable theory of unjust enrichment in that these Defendants obtained financial benefits from the Plaintiffs and the Class through fraud or by taking undue advantage. Accordingly, Plaintiffs and the Class seek restitution damages to restore Plaintiffs and the Class to the position Plaintiffs and the Class would have been in had these Defendants not used the illegal assessments in an unlawful manner for the benefit of the Double Diamond Defendants.

**COUNT EIGHT:**

**CONSPIRACY / AIDING AND ABETTING**
**(AGAINST ALL DEFENDANTS)**

103. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

104. The individual Defendants and the Double Diamond Defendants all engaged with each other in performing the acts described herein with an unlawful purpose, and are therefore jointly and severally liable as co-conspirators for all of the damages suffered by Plaintiffs and the Class. Defendants participated with each other, or gave assistance, and encouraged the wrongful acts regarding unlawful use of WBPOA funds for the benefit of Double Diamond. Such assistance or encouragement was a substantial factor in causing the harm suffered by Plaintiffs and the Class. Therefore, the Defendants are jointly and severally liable for all of the damages resulting from the wrongful conduct of each Defendant.

## VI.

## EXEMPLARY DAMAGES: ALL DEFENDANTS

105. In addition to reimbursement and actual damages, Plaintiffs and the Class seek exemplary damages for the outrageous, malicious, and otherwise morally culpable conduct of Defendants and to deter such conduct in the future. Because the conduct of Defendants involves felonies under the Texas Penal Code, Plaintiffs and the Class specifically plead that the exemplary damages are not subject to any caps under the Texas Damages Act. Accordingly, Plaintiffs and the Class seek exemplary damages in excess of twenty-five million dollars.

## VII.

## ATTORNEYS' FEES

106. Plaintiffs are entitled to recover reasonable and necessary attorneys' fees and costs of litigation under RICO and the common-fund doctrine.

## VIII.

## JURY DEMAND

107. Plaintiffs request a jury trial and tender the appropriate fee with this petition.

## IX.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class demand judgment in their favor against Defendants as follows:

a. Certifying the Class as set forth in this Complaint, and appointing the Individual Plaintiffs as Class representatives for these classes;

b. Actual damages for all of the illegal assessments;

c. Additional statutory and exemplary damages;

d. Equitable relief as pled herein;

e. Pre-judgment and post-judgment interest;

f. Court costs;

g. Attorney's fees; and,

h. All other relief to which Plaintiffs and the Class are entitled.

Respectfully Submitted,

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**Michael D. Richardson**
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**ATTORNEYS FOR PLAINTIFFS BETTY BRIDGEWATER AND JERRY P. WILLIAMS AND ALL OTHERS SIMILARLY SITUATED**

CAUSE NO. DC-07-12490

| | | |
|---|---|---|
| DOUBLE DIAMOND INC. and WHITE BLUFF PROPERTY OWNERS ASSOCIATION, INC. | § | IN THE DISTRICT COURT |
| Plaintiff, | § | |
| v. | § | 68TH JUDICIAL DISTRICT |
| DANIEL SATURN | § | |
| Defendant. | § | DALLAS COUNTY, TEXAS |

## FINAL JUDGMENT

On May 5, 2009, the above entitled and numbered cause was called for trial. Plaintiffs Double Diamond, Inc. and White Bluff Property Owners Association, Inc. appeared in person and through their attorney and announced ready for trial. Defendant Daniel Saturn appeared in person and through his attorney and announced ready for trial.

After a jury was impaneled and sworn, it heard the evidence and arguments of counsel. In response to the jury charge, the jury made findings that the Court received, filed, and entered of record. The questions submitted to the jury and the jury's findings are attached as Exhibit "A" and incorporated by reference.

Based upon the jury's factual finding on the special issue submitted to the jury regarding the food and beverage assessments collected by the White Bluff Property Owners' Association, Inc., the Court makes the following conclusions of law:

a. The White Bluff Property Owners' Association, Inc. is a non-profit corporation formed under the Texas Non-Profit Corporation Act;

b. The food and beverage assessments ~~and the hospitality~~ program adopted by the Board of the White Bluff Property Owners' Association, Inc. was



EXHIBIT A

7250.1

A December 2003 (the "Board

not proper and not in accordance with the bylaws of the White Bluff Property Owners' Association, Inc.;

c. The practice by the White Bluff Property Owners' Association, Inc. of assessing mandatory food and beverage assessments from its members and paying such assessments to Double Diamond, Inc. and/or its related companies without such payments being reasonable compensation for services provided to the White Bluff Property Owners' Association, Inc. violates Article 1396-2.24 of the Texas Non-Profit Corporation Act;

d. The food and beverage assessment program ~~effective January 7, 2004 and~~ adopted by the directors of the White Bluff Property Owners' Association, Inc. is void *ab initio* only as to the parties to this suit;

e. The food and beverage assessment program as set forth in Paragraph 2 of that certain 2006 Capital Improvement Agreement between Double Diamond, Inc. and the White Bluff Property Owners' Association, Inc. is void *ab initio* only as to the parties to this suit.

Defendant Daniel Saturn requested attorney's fees under the Texas Declaratory Judgment Act. Attorney's fees were proved at a hearing which established reasonable and necessary attorney fees in the amount of $120,000, the additional sum of $50,000 for attorney's fees in the event of an appeal to the Court of Appeals, the additional sum of $15,000 for attorney's fees in the event a petition for review is filed with the Texas Supreme Court, and the additional sum of $30,000 for attorney's fees in the event the Texas Supreme Court grants the petition for review, with all of the appellate attorney's fees contingent upon the success of Defendant on appeal.

The Court hereby **RENDERS** judgment for Defendant Daniel Saturn.

**IT IS ORDERED ADJUDGED** and **DECREED** that Plaintiff White Bluff Property Owners' Association, Inc. and any person acting on its behalf with notice of this Judgment, are hereby enjoined from committing any of the following acts:

(a) assessing or collecting the mandatory food and beverage fees referred to in paragraphs (d) and (e) on page two of this Judgment from Defendant Daniel Saturn;

(b) making any negative or derogatory credit reports against Defendant Daniel Saturn for any failure to pay the food and beverage assessments referred to in paragraphs (d) and (e) on page two of this Judgment;

(c) foreclosing on the property currently owned by Defendant Daniel Saturn for any failure to pay the food and beverage assessments referred to in paragraphs (d) and (e) on page two of this Judgment; and,

**IT IS FURTHER ORDERED ADJUDGED** and **DECREED** that Plaintiffs request removal of all derogatory credit reports from any credit bureau to which it, or a person acting on its behalf, has made a derogatory report on Daniel Saturn regarding the food and beverage fees referred to in paragraphs (d) and (e) on page two of this Judgment.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiffs Double Diamond, Inc. and White Bluff Property Owners' Association, Inc. take nothing by their suit and that Defendant Daniel Saturn recover from Plaintiffs Double Diamond, Inc. and White Bluff Property Owners Association, Inc. his attorney's fees in the sum of $120,000, the additional sum of $50,000 for attorney's fees in the event of an appeal to the Court of Appeals, the additional sum of $15,000 for attorney's fees in the event a petition for review is filed with the Texas Supreme Court, the additional sum of $30,000 for attorney's fees in the event the Texas Supreme Court grants a petition for review, with all of the appellate attorney's fees contingent upon the

success of Defendant Daniel Saturn on appeal; court costs, and post-judgment interest accruing at the rate of five percent (5%) per annum until paid in full.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this judgment is final, disposes of all claims and all parties, and is appealable.

The Court grants Defendant all writs necessary for the enforcement of this judgment.

Signed this 15th day of June, 2009.

JUDGE PRESIDING

APPROVED AS TO FORM:

Kent Pearson
Attorney for Plaintiffs

Barbara T. Hale
Attorney for Defendant Daniel Saturn