STATE OF NORTH CAROLINA COUNTY OF BUNCOMBE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 08 CVS 6575
W. GREG GREEN and DR. KENNETH ELLINGTON, individually and derivatively on behalf of MedOasis, Inc., Plaintiffs, v. KEN CONDRA, DANIEL PREVOST, MARC MILLER, and PETER FONTAINE, individually and as current or former directors of MEDOASIS, INC., and TIM LONGBINE and DAVID PHILLIPS in their capacities as current or former directors of MEDOASIS, INC., Defendants, and MEDOASIS, INC., a North Carolina Corporation, Nominal Defendant.	**REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

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Ken Condra, Daniel Prevost, Marc Miller, Peter Fontaine, Dr. Timothy Longbine, and David Phillips (collectively, "Defendants"), respectfully submit this Reply in Support of Their Motion to Dismiss to respond to some assertions of note in Plaintiffs' Opposition.

A motion to dismiss for failure to state a claim upon which relief may be granted challenges the legal sufficiency of the pleading. Defendants have done that here. Defendants demonstrate that Plaintiffs' Complaint fails to state claims upon which relief can be granted. In their Opposition, Plaintiffs fail to address many of the issues directly, or otherwise ignore them completely. Plaintiffs' Opposition reveals that they possess insufficient legal support for their specific claims for relief. In short, the Complaint fails Defendants' test and should be dismissed.

I. PLAINTIFFS FAIL TO OFFER A JUSTIFIABLE BASIS TO MAINTAIN THEIR DERIVATIVE CAUSES OF ACTION.

Plaintiffs fail to demonstrate that this is a proper derivative suit. In their Opposition, Plaintiffs' fail to explain or identify in the Complaint the alleged damage to MedOasis. Plaintiffs' pre-suit demand on MedOasis demonstrates that this suit concerns only Plaintiffs' alleged personal rights. As to their particular derivative claims, Plaintiffs fail to state claims upon which relief can be granted.

A. Plaintiffs Fail To Allege That MedOasis Suffered Harm.

Plaintiffs' allegations are devoid of alleged harm to MedOasis. Plaintiffs' general conclusion that some courts recognize that suits can possess a "dual character" is unavailing. *See* Opp. at 10-11. Defendants acknowledge that in certain limited instances, a plaintiff may assert both direct and derivative claims. *Norman v. Nash Johnson & Sons' Farms*, 140 N.C. App. 390, 395, 537 S.E.2d 248, 253 (2000); *Barger v. McCoy Hilliard & Parks*, 346 N.C. 650, 658-59, 488 S.E.2d 215, 219-20 (1997). Plaintiffs, however, merely recite these case holdings without demonstrating that those cases are applicable here. They are not. The Complaint does not

present facts that allege harm to both Plaintiffs and MedOasis for the same alleged actions.

Plaintiffs' disagreement with the outcome of the vote at the August 18, 2008 shareholders' meeting precipitated this action. Based on their failure to take control of MedOasis, Plaintiffs maintain that their individual rights as shareholders were impaired. This is not a derivative claim. *Carmody v. Toll Bros.*, 723 A.2d 1180, 1189 (Del. 1998) ("An entrenchment claim … [is] … individual … when the shareholder alleges that the entrenching activity directly impairs some right she possesses as a shareholder."). Plaintiffs do not allege any specifics of how, or to what degree, MedOasis was harmed—only a general conclusion that their lack of voting control is not only detrimental to Plaintiffs, personally, but has negatively affected the company itself.

B. Plaintiffs Did Not Make An Adequate Written Demand Specifying Their Derivative Claims.

Conspicuously absent from Plaintiffs' Opposition is any reference to their September 10, 2008 written demand on MedOasis (the "Demand Letter"). Plaintiffs' avoidance is particularly telling because the Demand Letter is wholly dispositive of Plaintiffs' derivative claims.

Derivative actions must comply with the statutory demand requirements of N.C. Gen. Stat. § 55-7-42. Section 55-7-42 provides that "[n]o shareholder may commence a derivative proceeding until, among other things, "[a] written demand has been made upon the corporation to take suitable action." This requirement, which limits the rights of shareholders to bring claims of the corporation, is designed to prevent abuse, preserve the proper framework of corporate governance, and avoid improper or inadequate prosecution of the claim.

Failure to comply with the demand requirements of Section 55-7-42 constitutes an "insurmountable bar" to recovery. *Allen v. Ferrera,* 141 N.C. App. 284, 540 S.E.2d 761, 764 (2000). This Court has routinely dismissed derivative claims based on a plaintiff's failure to

comply with the demand requirements. *See Winters v. First Union Corp.,* No. 01-CVS-5362, 2001 WL 34000144 at *2 (N.C. Super. Ct. July 12, 2001); *Garlock v. Hilliard,* No. 00-CVS-1018, 2000 WL 33914616 at *3-4 (N.C. Super. Ct. August 22, 2000); *Greene v. Shoemaker,* No. 97-CVS-2118, 1998 WL 34032497 at *3-4 (N.C. Super. Ct. Sept. 24, 1998).

A shareholder's demand must be made "with sufficient clarity and particularity to permit the corporation … to assess its rights and obligations and determine what action is in the best interest of the company." *Greene,* 1998 WL 34032497 at *3. Thus, "[i]n order to satisfy the requirements of the statute, the demand must contain specific requests for action by the Board of Directors." *Id.* This requirement "serves the obvious purpose of allowing the corporation the opportunity to remedy the alleged problem without resort to judicial action." *Alford v. Shaw,* 72 N.C. App. 537, 540, 324 S.E.2d 878, 881 (1985), *modified and aff'd*, 320 N.C. 465, 358 S.E.2d 323 (1987). Accordingly, the Court "must compare the derivative claims asserted in a complaint against the specific demands a plaintiff has made prior to filing suit," and should dismiss claims not predicated on some specific request for action by the board. *Greene,* 1998 WL 34032497 at *3.

Here, Plaintiffs did not make an adequate demand on the MedOasis Board because the Demand Letter does not reference what is now claimed in Plaintiffs' derivative causes of action. Rather, the Demand Letter makes a single unambiguous request: to reverse the outcome of Mr. Green's motions at the August 18, 2008 shareholders' meeting. *See* Defendants' Mem. at Ex. A. The Demand Letter does not request affirmative action concerning alleged damage to MedOasis. Importantly, Plaintiffs' counsel threatened to file suit "to enforce Mr. Green and Dr. Ellington's rights" if their demands were not met. *Id.*

Plaintiffs' pre-suit demand to address "Mr. Green and Dr. Ellington's rights" stands in

stark contrast to Plaintiffs' current claims for derivative relief purportedly based upon corporate "mismanagement," cancellation of "valuable contracts," and other wastes of corporate assets. The only derivative claim Plaintiffs address specifically in their Opposition on this issue is the accounting claim. An analysis of this claim, however, aptly demonstrates the insufficiency of Plaintiffs' pre-suit demand. The Demand Letter does not assert that the Defendants somehow failed to keep MedOasis' shareholders informed about the financial condition of the company, and, importantly, the Demand Letter does not demand an accounting.

When compared against the Amended Complaint, the Demand Letter thus fails to demand the relief sought by Plaintiff in their derivative claims, and lacks the "clarity and particularity" necessary to allow the MedOasis Board an opportunity to "assess its rights and obligations and determine what action is in the best interest of the company." *Greene,* 1998 WL 34032497, at *3.

C. Plaintiffs' Claims For "Abuse of Control," "Gross Mismanagement," and "Corporate Waste" Are Not Recognized As Distinct Torts.

Plaintiffs concede that "abuse of control," "gross mismanagement," or "corporate waste" are "varieties" of a breach of fiduciary duty. Plaintiffs, therefore, admit that such claims are redundant of their breach of fiduciary duty claim. The Court should, accordingly, dismiss those claims.

Plaintiffs do not cite a single North Carolina case holding affirmatively that such claims are viable distinct torts. Plaintiffs misstate the holding in *Lowder v. All Star Mills, Inc.*, and merely quote a section of the opinion that mentions "gross mismanagement." In *Lowder*, however, the plaintiffs asserted a cause of action for breach of fiduciary duty, not a separate claim for "gross mismanagement." 75 N.C. App. 233, 235, 330 S.E.2d 649, 651 (1985).

Plaintiffs other cited cases are inapposite. *Greene v. Shoemaker* concerned derivative claims for breach of fiduciary duty and fraud. 1998 WL 34032497 at *2. *Merchants' Bank & Trust* concerned claims for "breach of trust" and "breach of duty." 193 N.C. 113, 115, 136 S.E. 362, 363 (1927). *Anthony v. Jeffress* concerned claims for negligence and fraudulent misrepresentation. 172 N.C. 378, 379, 90 S.E. 414, 415 (1916).

In the remaining cases cited by Plaintiffs, the courts did not even pass on the issue. *Newgen Techs., Inc. v. Corcoran*, No. 3:07-cv-314, 2008 U.S. Dist. LEXIS 43924 (W.D.N.Y. June 3, 2008) (default judgment entered against defendant, plaintiff's claims not challenged); *Garlock v. Hilliard, No. 00-CVS-1018, 2000 WL 33914616* (claim for misappropriation/waste of corporate assets not addressed or challenged, complaint dismissed on other grounds).

D. Plaintiffs Fail To State A Claim For Unjust Enrichment.

Plaintiffs do not address Defendants' arguments for dismissal of the unjust enrichment claim. Plaintiffs fail to allege, and fail to explain in their Opposition, how each individual Defendant was unjustly enriched. As is common throughout the Complaint, Plaintiffs refer to the individual Defendants collectively no matter the specific allegation or timeframe—ignoring that not all of the Defendants were involved with or employed by MedOasis at all times relevant to the allegations in the Complaint.

Although Plaintiffs list "unjust enrichment" in the heading of the section of their Opposition concerning their claims for "abuse of control," "gross mismanagement," and "corporate waste," they fail to discuss unjust enrichment with any detail. Plaintiffs argue only that Director Phillips is the Corporate Secretary, and that he and Mr. Fontaine are "eligible" for compensation. This cursory assertion, that was not pleaded, hardly demonstrates that Plaintiffs have properly pleaded their claim for unjust enrichment against all Defendants.

E. Plaintiffs Fail To State A Claim For Rescission.

Rescission is an alternative remedy for a plaintiff to seek to void a contract or agreement that was procured through alleged fraud, mistake, or duress. It is not simply a stand-alone cause of action that is somehow synonymous with a breach of fiduciary duty. A claim for rescission of a contract does not exist in a vacuum without and underlying cause of action or contractual defense based on fraud, mistake or duress.

Rule 9(b) requires that "[i]n all averments of fraud, duress, or mistake, the circumstances constituting the fraud or mistake shall be stated with particularity." Plaintiffs explicitly aver that Messrs. Condra and Prevost obtained their stock their stock through "Defendants' fraud deceit, and abuse of control." Compl. at ¶ 93. As such, this clearly operates as a fraud-based claim and Plaintiffs' conclusion that Rule 9(b) does not apply is incorrect. The Court should not allow Plaintiffs to circumvent this pleading requirement.

II. PLAINTIFFS FAIL TO STATE CLAIMS AGINST MESSRS. CONDRA, PREVOST, FONTAINE, AND MILLER IN THEIR INDIVIDUAL CAPACITIES.

Plaintiffs summarize that they plead their claims "with great particularity" against Messrs. Condra, Prevost, Fontaine, and Miller (the "Individual Defendants") for personal liability, but a review of the Complaint demonstrates that they have not.

N.C. Gen. Stat. §§ 55-2-02 (b)(3), 55-8-30(d), 55-8-42(d), and MedOasis' Articles of Incorporation (*see* Defendants' Mem. at Ex. A) immunize the Individual Defendants from personal liability for the conduct alleged in the Complaint. Plaintiffs fail to plead facts to overcome these protections, and instead lump all Defendants together collectively, without alleging the particular conduct that forms the basis for asserting personal liability against four of the six defendants here. In their Opposition, Plaintiffs conclude generally that they allege "self-dealing" by the Individual Defendants, but fail to cite any allegations in the Complaint that

specify the particular self-dealing of each Individual Defendant.

The minutes from the meeting of the MedOasis Board on August 5, 2008 reflect clearly that the MedOasis Board's decision to sell shares to Messrs. Condra and Prevost was discussed for several months preceding the meeting (and before Mr. Green's demand for special meeting of the shareholders), and that the Board had reached a consensus months prior was that it should approve the sale of such shares. *See* MedOasis Board Minutes, dated August 5, 2008, attached as Ex. D.[1]

There are simply no allegations in the Complaint that Mr. Fontaine engaged in self-dealing, what he improperly received, or what assets he diverted to himself. Similarly, Plaintiffs fail to allege Mr. Miller's self-dealing conduct, what he improperly received, or what assets he diverted to himself. Indeed, Mr. Miller did not even participate in the meeting of the MedOasis Board on August 5 because he was not a director by that time. *See id.* In their Opposition, Plaintiffs simply do not address the absence of specific claims against Messrs. Miller and Fontaine.

As for Messrs. Condra and Prevost, the minutes reflect that they were "in concurrence on taking the action **to purchase the shares**," not that they cast a vote in favor of MedOasis approving the offer to sell the shares. *See id.* (emphasis added). Because this was a transaction for the sale of securities, as opposed to an award, Messrs. Condra's and Prevost's assent was obviously required to consummate the sale offered by the MedOasis Board. In any event, Plaintiff's point is of no moment, because clearly a majority of the disinterested directors voted to formally approve the sale of shares. *See id.*

In addressing personal liability, which Plaintiffs assert for all claims, they focus only on

[1] Plaintiffs specifically reference and rely upon the minutes of this meeting in their Complaint. Compl. at ¶ 43. Thus, the Court's consideration of those minutes is proper on a Rule 12(b)(6) motion to dismiss. *Oberlin Capital, L.P. v. Slavin*, 147 N.C. App. 52, 60, 554 S.E.2d 840, 847 (2001).

their breach of fiduciary duty claim. Plaintiffs maintain that personal liability flows from their claim for "aiding and abetting" a breach of fiduciary duties. Aiding and abetting a breach of fiduciary duty is no longer a viable tort under North Carolina law. Plaintiffs cite *Blow v. Shaughnessy*, which is the only North Carolina appellate decision that has ever recognized such a claim. 88 N.C. App. 484, 364 S.E.2d 444 (1988). That case, however, involved allegations of federal securities fraud, and the United States Supreme Court subsequently overruled its federal underpinnings. *See Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.,* 511 U.S. 164 (1994); *see also Regions Bank v. Regional Property Development Corp*., No. 07-CVS-12469, 2008 WL 1836657 at *5 (N.C. Super. Ct. April 21, 2008) (Diaz, J.). As such, this Court should conclude that there is no authority in North Carolina for Plaintiffs to bring a claim for aiding and abetting a breach of fiduciary duty.

Plaintiffs finally argue that exculpation provisions do not apply to Messrs. Condra and Prevost because they are also officers. Plaintiffs' contention is immaterial and a self-serving spin on their claims. Plaintiffs do not allege any wrongful actions taken by Messrs. Condra and Prevost in their capacities as officers. Plaintiffs also caption their Complaint against the Individual Defendants "individually and in their capacities as current of former directors of MedOasis, Inc." Moreover, this argument wholly contradicts Plaintiffs' allegation that the MedOasis **directors** engaged in self-dealing on August 5, 2008. Plaintiffs simply cannot have it both ways and maintain that Messrs. Prevost and Condra were acting in duel capacities as officers and directors at the Board meeting.

III. PLAINTIFFS FAIL TO STATE A CLAIM FOR BREACH OF FIDUCIARY DUTY.

North Carolina law does not recognize that the Defendant directors owe independent fiduciary duties to the shareholder Plaintiffs. Because Plaintiffs fail to allege an essential element of their claim, Plaintiffs fail to state a claim for breach of fiduciary duty.

Plaintiffs make two arguments on this point. First, Plaintiffs cite cases where North Carolina courts allowed minority shareholders to bring direct and derivative claims against majority shareholders in close corporations. Second, Plaintiffs argue that majority shareholders owe fiduciary duties to minority shareholders. Both arguments are red herrings, and without merit.

North Carolina courts define close corporations as "little more than incorporated partnerships" and "[a] corporate entity typically organized by an individual, or a group of individuals, seeking the recognized advantages of incorporation … regarding themselves basically as partners and seeking veto powers as among themselves much more akin to the partnership relation than to the statutory scheme of representative corporate government." *Meiselman v. Meiselman*, 309 N.C. 279, 288-89, 307 S.E.2d 551, 558 (1983).

Although North Carolina has not established a specific test that specifies the attributes of a close corporation, other jurisdictions uniformly hold that close corporations are characterized by, among other things, a small number of shareholders, *see e.g. Edenbaum v. Schwarcz-Osztreicherne*, 165 Md. App. 233, 885 A.2d 365 (2005); *Kortum v. Johnson*, 2008 ND 154, 755 N.W.2d 432 (N.D. 2008) (close corporation has few shareholders, often two or three), and active stockholder participation in the business. *Berreman v. West Pub. Co.*, 615 N.W.2d 362 (Minn. Ct. App. 2000).

Plaintiffs' cited authority has no relevance here. In *Meiselman*, most of the corporation's

shares were held by two brothers, each of whom was employed by the corporation. 309 N.C. at 281, 307 S.E.2d at 553. *Nash Johnson & Sons' Farms* concerned a dispute amongst shareholders of a family-owned poultry business. 140 N.C. App. at 393, 537 S.E.2d at 252.

Plaintiffs do not allege that MedOasis is a close corporation, nor can they. As of August 6, 2008, MedOasis had fifty-nine separate shareholders. Plaintiffs have alleged no facts that MedOasis is akin to partnership, or is actively managed by its fifty-nine stockholders.

In addition, it is immaterial here that, under some limited circumstances, majority shareholders owe fiduciary duties to minority shareholders. Plaintiffs have sued current and former directors of MedOasis. They have not alleged any wrongful actions by Defendants in their capacities as shareholders. Rather, Plaintiffs go great lengths to persuade the Court that Defendants have violated their duties in their capacities as directors of the company.

Moreover, Messrs. Fontaine and Phillips are not even shareholders of MedOasis. Dr. Longbine is not a majority shareholder, and in fact, owns fewer shares than both Mr. Green and Dr. Ellington. Messrs. Condra and Prevost likewise are not majority shareholders. Importantly, even collectively, the Defendants do not own a majority of MedOasis' outstanding shares.

In their Opposition, Plaintiffs do not address Defendants' argument that as directors, they do not owe independent fiduciary duties to Plaintiffs as minority shareholders, apart from their respective duties to the company itself. *See* Defendants' Mem. at 19-21, *citing* North Carolina Comment, N.C. Gen. Stat. § 55-8-30. As such, Plaintiffs fail to state a claim for breach of fiduciary duty, and the Court should dismiss this cause of action.

IV. PLAINITFFS FAIL TO STATE DIRECT AND DERIVATIVE CLAIMS FOR CONSTRUCTIVE FRAUD.

Plaintiffs fail to address that they have failed to plead the essential elements of constructive fraud. Rather, Plaintiffs focus only on the requirements of Rule 9(b). Contrary to Plaintiffs' general presumption, however, constructive fraud is not the same as breach of fiduciary duty.

"In order to maintain a claim for constructive fraud, plaintiffs must show that they and defendants were in a 'relation of trust and confidence … [which] led up to and surrounded the consummation of the transaction in which defendant is alleged to have taken advantage of his position of trust to the hurt of plaintiff.'" *Barger v. McCoy Hillard & Parks,* 346 N.C. 650, 666, 488 S.E.2d 215, 224 (1997) (internal quotes omitted). "Implicit in the requirement that a defendant '[take] advantage of his position of trust to the hurt of plaintiff' is the notion that the defendant must seek his own advantage in the transaction; that is, the defendant must seek to benefit himself." *Id.* (internal quotes omitted).

In this case, Plaintiffs make the following averments in their derivative claim for "Constructive Fraud Against All Defendants," which are identical to those made in their direct claim:

> 82. As corporate fiduciaries, Defendants owed to MedOasis and its shareholders a duty of candor and full and accurate disclosure regarding the true state of MedOasis' business and assets and their conduct with regard thereto.
>
> 83. As a result of the conduct complained of, Defendants made, or aided and abetted and/or concealed material facts from MedOasis shareholders despite their duties to, *inter alia*, disclose the true facts regarding their stewardship of MedOasis. Thus they have committed constructive fraud and violated their duty of candor.
>
> 84. By reason of the foregoing, MedOasis has been damaged.

Noticeably absent is the required assertion that **each** of the individual Defendants somehow

sought to benefit themselves. Accordingly, Plaintiffs have not asserted claims for constructive fraud. *See Toomer v. Branch Banking and Trust Co.*, 171 N.C. App. 58, 69, 614 S.E.2d 328, 335 (2005) (dismissing constructive fraud claim for failure to allege that defendant took advantage of plaintiffs to benefit itself); *Hunter v. Guardian Life Ins. Co. of Am.*, 162 N.C. App. 477, 482-83, 593 S.E.2d 595, 599-600 (2004) (same).

In addition, Rule 9(b)'s particularity obligations apply here. Although a claim for constructive fraud typically does not require the strict pleading requirements of actual fraud, Rule 9(b) applies to all **averments** of "fraud, mistake, or duress." Here, Plaintiffs explicitly allege that Defendants "concealed material facts," thus, Plaintiffs have made a specific averment grounded in alleged fraud. Compl. at ¶ 32, 102. Plaintiffs chose to word their claim as they did. The Court should accordingly hold Plaintiffs to the proper pleading standard.

Plaintiffs offer a mere summation that they "have pleaded the claims with sufficient particularity to pass even Rule 9 standards," but fail to explain, cite, or otherwise even discuss how they have plead their fraudulent averment with any particularity.

V. THE BUSINESS JUDGMENT RULE APPLIES TO MEDOASIS' DECISIONS WITH RESPECT TO AAA.

Plaintiffs' Opposition does not offer a compelling reason for this Court to abandon application of the business judgment rule with respect to the termination of the AAA/MedOasis relationship. MedOasis' decision to stop providing services to AAA as a client is clearly a business decision. Plaintiffs' opinion that this decision was harmful to the company is a classic example of the policy reasons behind the application of the business judgment rule. Otherwise, any dissenting shareholder could maintain suit for any purportedly objectionable business decision by an officer or director.

In an attempt to circumvent the application of the business judgment rule, Plaintiffs offer

a general and unsubstantiated conclusion that the termination of the AAA relationship "served no legitimate business purpose" and a circular argument that because the MedOasis by-laws required redemption of the AAA shareholders' stock after termination, that this must have been the reason for the end of the relationship. Plaintiffs plead no facts that support this contention.

Plaintiffs also contend that the business judgment rule does not apply to their allegations concerning the sale of shares to Messrs. Condra and Prevost because the Defendants engaged in self-dealing. For the reasons set forth above in Section II, this argument lacks merit. The Defendants fail to allege facts that the individual Defendants each engaged in self-dealing.

* * *

In their Opposition, Plaintiffs fail to adequately counter the Defendants' grounds that justify the dismissal of the Complaint. Because Plaintiffs fail to plead viable causes of action that would entitle Plaintiffs to relief, Defendants respectfully request that the Court grant their Motion to Dismiss.

Dated: April 17, 2009

Respectfully submitted,

/s/ Joshua M. Hiller

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing **REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS** is compliant with the three thousand seven hundred and fifty (3750) word count limit specified in Rule 15.8 of the General Rules of Practice and Procedure for the North Carolina Business Court.

/s/ Joshua M. Hiller

Joshua M. Hiller

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April, 2009, the foregoing **REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS** was served on the following persons via the North Carolina Business Court's electronic filing system, email, and first class mail addressed to the following counsel of record:

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Exhibit D

MedOasis Board of Directors Meeting
August 5, 2008, 7:55pm

Members Present in Person: Ken Condra, Daniel Prevost, David Phillips
Members Present on Conference Call: Ron Evans, Peter Fontaine
Guests: Tim Longbine

Peter Fontaine:
Called the meeting to order. Explained that we would have had a formal meeting in the next couple of weeks, but decided to call tonight's meeting in light of the circumstances (Special Shareholders Meeting Letter From Greg Green).

David Phillips:
While we are together, there are a couple of outstanding issues that we need to take action on, the first of which is accepting Ron's Board resignation. Motion to accept.

Fontaine:
Second

Vote was taken and Ron's resignation was unanimously accepted.

David Phillips:
Motion to accept Tim Longbine as Ron's replacement for GAA Board seat.

Fontaine:
Second

A vote was taken and Tim Longbine was unanimously accepted as the new GAA Board representative.

All Board members congratulated Tim on joining the Board and thanked Ron for his years of service.

Ken Condra:
Kicked off discussion about Special Shareholders meeting request from Greg Green.

Daniel Prevost:
Read the 3 fold purpose described in the letter from Greg.

Ken Condra:
Explained that he and several other Board members had several discussions over the past couple of days with 2 different attorneys (Albert Sneed and Chris Derrick) regarding the letter. They informed us of the NC Statute on Redeemable Shares, which makes the 507,000 shares associated with the AAA buyback non-voting.

David Phillips:
Read the NC General Statute pertaining to Redeemable Shares. Furthermore, Article IV, Section 5 of the By-Laws state that notice of a special shareholders meeting must only be given to shareholders entitled to vote at such a meeting.

The Board agreed to provide Mr. Green a list of shareholders entitled to vote at the meeting as per the By-Laws and his request. Additionally, the Board agreed to the date of Monday, August 18th at 6:00 PM for the meeting and to send notice of the Special Meeting only to shareholder entitled to vote at the meeting.

David Phillips:
Reviewed the conversations and consensus arrived at among Board members over the last several months since new management took office on March 21st regarding their thoughts on stock ownership for the management team and incentives to grow the Company going forward. The consensus from these discussions has been that the Board should approve the purchase of 280,000 shares of common stock at $.17 per share by Ken and Daniel. This price was the current per share value as determined by the recent Dixon Hughes valuation.

Peter Fontaine:
Added that he feels a stock incentive for the management team is critical in the success of a growing organization such as this and he feels the Board should approve this for all the right reasons. This has been an issue in the past that he has observed with the Company since his involvement, and he feels that it needs to be addressed and supports this action wholeheartedly. He would like to hear directly from the other Board members how they feel about this?

David Phillips:
Supports this action as well. The Company needs a proper balance of current management ownership going forward, and the senior management team needs to be properly incented to grow the Company.

Tim Longbine:
He concurs and feels like this is the right course of action.

Ron Evans:
He agreed with Tim and concurred that this reflects his understanding of previous discussions.

Daniel Prevost/Ken Condra:
Agreed that they are in concurrence on taking the action to purchase the shares.

Peter Fontaine:
Is there a motion?

David Phillips:
I motion that we agree to sell a total of 280,000 shares to Ken and Daniel at $.17 per share, with each purchasing 140,000 shares.

Peter Fontaine:
Second

A vote was taken and the purchase of shares was unanimously approved. Additionally, the Board concurred to provide a Promissory Note to Ken and Daniel for the purchase of these shares inclusive of an amendment clause stating that if the purchase of shares is determined by the Company to be invalid, then the shares and note are voidable by either Party.

Peter Fontaine:
Finally, the last item of business is that we need to elect someone as the Secretary of the Corporation as the previous Secretary resigned from the Board.

Daniel Prevost:
I nominate David Phillips as Secretary

Ken Condra:
I second.

Peter Fontaine:
Any others?

There were none, so a vote was taken and David Phillips was elected Secretary of the Corporation.

Peter Fontaine:
Any other business?

Meeting adjourned.